



2011

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Recommended Citation

Harada, Satoko (2011) "Comment: Additional Barriers to Breaking the Silence: Issues to Consider When Representing a Victim of Same-Sex Domestic Violence," *University of Baltimore Law Forum*: Vol. 41 : No. 2 , Article 4.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol41/iss2/4>

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COMMENT

ADDITIONAL BARRIERS TO BREAKING THE SILENCE: ISSUES TO CONSIDER WHEN REPRESENTING A VICTIM OF SAME-SEX DOMESTIC VIOLENCE

By: Satoko Harada

Recent media coverage of same-sex marriage has brought the issue of equality for same-sex couples to the forefront of society's consciousness. Heated debates supporting both sides of the issue have argued both the similarities and differences between opposite-sex and same-sex partnerships. While various aspects of relationships are being explored in the public forum, what is suspiciously missing from the discussion is the issue of domestic violence. Domestic violence has become accepted as a social epidemic fueled by silence, and the unwillingness to address its impact can significantly limit the availability of resources for its victims. Regardless of sexual orientation, it seems to be a view held in common that there is discomfort and reluctance in addressing the issue of a victim being abused by an intimate partner.

Domestic violence can have devastating consequences on the mental and physical well-being of the victim. A review of literature comparing domestic violence between opposite-sex and same-sex couples reveals issues that impact the latter specifically, which present additional challenges to a victim of same-sex domestic violence. Lawyers are in a unique position to address the particular needs of these victims when providing legal assistance. While many legal remedies specifically addressing domestic violence have been developed and refined in this country, it is widely recognized that those remedies may still be inaccessible to many victims.¹ Many harbor distrust in the legal system's ability to assist or fear that attempts to escape the abuse may lead to further consequences. As a result, these victims continue to suffer in silence as the cycle of abuse is continued. When a legal practitioner is called upon to assist a victim of domestic violence, it is crucial for the lawyer to not only have an understanding of the applicable law, but to also be sensitive to the nature of domestic violence and its effects on the victims. In the case of domestic violence in same-sex relationships, it is essential to understand the additional obstacles faced by the victims.

The first section of this article seeks to improve the understanding of same-sex domestic violence by shedding light on the factors that make it

¹ DEBORAH L. RHODE, ACCESS TO JUSTICE 83-85 (2004).

difficult for a victim of same-sex domestic violence to leave his or her abuser. Aspects of domestic violence that occur in both opposite-sex and same-sex couples are introduced, and are followed by an examination of factors that specifically impact same-sex domestic violence. The second section of this article discusses the barriers present in the world outside of the abuse. Even if the victim of same-sex domestic abuse is able to overcome the confines of the abusive relationship to seek help, the world outside of the “closed doors” still presents considerable challenges. Seeking assistance means addressing the abuse in public, in a society that does not always support issues involving members of the LGBT community. The role of the courts in shaping the societal attitudes toward same-sex domestic violence, current state statutes addressing domestic violence, and availability of civil protection orders are examined, followed by a subsection discussing the Maryland statutes and how they impact victims of same-sex domestic violence.

Based on the information in the foregoing sections addressing the challenges faced by victims of same-sex domestic violence, the third section incorporates those special needs into the standard of practice for a lawyer representing a victim of domestic violence. This section outlines steps a lawyer can take to assure competent and sensitive representation. It should serve only as a reference to the specific needs of a same-sex domestic violence victim and should be taken into consideration with the rules of conduct and ethics governing the lawyer’s representation of the client.

I. TERMINOLOGY

The terms most often used in reference to domestic violence, such as “spousal abuse” and “battered wife,” can falsely imply that domestic violence is primarily a problem among heterosexual, married couples.² The Centers for Disease Control and Prevention utilizes the term “intimate partner violence” in referring to domestic violence.³ The term differentiates the violence between intimate partners from abuse against children and the elderly, while being inclusive of intimate couples regardless of marital status, age, or gender.⁴ Some feminist researchers disfavor the use of the term “domestic violence” in describing same-sex domestic violence, objecting that the term “domestic” is reflective of the

² Kathleen Finley Duthu, *Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?* 18 T. JEFFERSON L. REV. 23, 25 (1996).

³ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Understanding Intimate Partner Violence* (2011), available at http://www.cdc.gov/violenceprevention/pdf/IPV_factsheet-a.pdf.

⁴ Joan C. McClennan, *Domestic Violence Between Same-Gender Partners: Recent Findings and Future Research*, 20 J. INTERPERSONAL VIOLENCE 149, 150 (2005).

heterosexist norm which has often excluded consideration of non-conforming gender roles.⁵

In this article, the term “same-sex domestic violence” (“SSDV”) will be used to refer to the abuse that transpires between two intimate partners of the same gender. While recognizing the need to distinguish the traditional view of domestic violence rooted in heterosexist gender stereotyping, the term was selected to remain aligned with the language most often utilized in the statutory language addressing this issue.⁶ Currently, applicable state statutes are identified as “domestic violence statutes,” and as this article seeks to examine the legal remedies currently available to victims of SSDV, the language most similar to what is used in the statutes themselves has been selected. Domestic violence among partners of the opposite sex will be defined as “opposite-sex domestic violence” (“OSDV”) throughout this article.

II. UNDERSTANDING DOMESTIC VIOLENCE IN SAME-SEX RELATIONSHIPS

A. What is Domestic Violence?

This article will identify the issues that are specific to SSDV. It is important, however, to first illustrate the similarities between SSDV and OSDV. The basic definition of domestic violence is applicable to both types of abuse. Domestic violence has been defined as “a pattern of behaviors utilized by one partner (the abuser or batterer) to exert and maintain control over another person (survivor or victim) where there exists an intimate, loving and dependant relationship.”⁷ The hallmark of the underlying relationship is that there is an established connection, trust, and reliance between the partners. The reasons for two opposite-sex individuals to become involved in an intimate partnership are held in common with two same-sex individuals. It is when one partner takes advantage of this intimacy that domestic violence emerges.⁸

Abusers should not be identified as “insane, crazy or psychotic,” which gives the false impression that the battering behavior cannot be changed and is beyond the abuser’s control.⁹ Women as well as men are

⁵ NAT’L COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUEER DOMESTIC VIOLENCE IN THE UNITED STATES IN 2008 9 (2009) (hereinafter NCAVP).

⁶ Michelle Aulivola, Note, *Outing Domestic Violence: Affording Appropriate Protections to Gay and Lesbian Victims*, 42 FAM. CT. REV. 162, 162 (2004).

⁷ *Id.* at 163 (citing NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE IN 2001, 4 (Rachel E. Baum & Clarence Patton ed., 2002)).

⁸ *See id.* at 164.

⁹ Duthu, *supra* note 2, at 27.

capable of the various forms of abuse, including physical abuse, emotional abuse, and financial abuse, as well as other controlling behaviors.¹⁰ Each abuser exhibits a unique pattern of abuse, making it impossible to establish a profile that typifies the abuser in a relationship.¹¹ It can be said, however, that the one trait held in common by every abuser, regardless of sexual orientation, is the belief that they are entitled to control their partner, and that violence is permissible in producing the desired effect.¹²

1. Types of Abuse

It is a commonly held misconception that the physically dominant partner is by default the abuser.¹³ Such false notions perpetuate the myth that domestic violence is about physical violence, when in fact it is about power and control gained through various patterns of behavior.¹⁴ The most recognizable and widely understood form of domestic abuse is physical battering. Physical abuse can range from shoving and pushing to violent attacks including punching, kicking, and strangling.¹⁵ Throwing objects at the partner can also be considered as a form of physical abuse.¹⁶

Emotional abuse uses the intimacy between the partners as a tool of abuse, with the abuser taking advantage of his or her knowledge of the victim's weaknesses.¹⁷ The abuser will prey on the victim's weaknesses with verbal abuse by name-calling, criticism, humiliation, mind games, and making the victim feel guilty.¹⁸ This form of abuse destroys the victim's self-esteem, leaving the victim feeling worthless, helpless, and vulnerable to further attacks.¹⁹

Just as the victim's intimacy with the abuser can be used against them in emotional abuse, if partners have intertwined their finances, this too can be used as a tool of abuse.²⁰ Abusers tend to take control of the couple's finances by ensuring that all accounts are kept in their name.²¹ By controlling the money, the abuser will require the victim to ask permission to access the funds, and in doing so, the abuser will demand

¹⁰ Linda M. Peterman & Charlotte G. Dixon, *Domestic Violence Between Same-Sex Partners: Implications for Counseling*, 81(1) J. COUNSELING & DEV. 40, 42 (2003).

¹¹ *Id.*

¹² *Id.* at 42-43.

¹³ Duthu, *supra* note 2, at 30.

¹⁴ *Id.*

¹⁵ *Id.* at 26-27.

¹⁶ Peterman & Dixon, *supra* note 10, at 41.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 42.

²⁰ *Id.*

²¹ *Id.*

that every penny is accounted for.²² Often, the abuser will leave the victim in debt, and therefore, financially dependent on them.²³

Isolation is another form of control exerted by the abuser.²⁴ The abuser will restrict the victim's social interactions and isolate them from their friends, family, and other individuals that may be a source for support.²⁵ In order to isolate the victim, the abuser will interrogate the victim about their daily routines, what they did, where they went, whom they saw, and why.²⁶ The victim eventually believes that isolation is a better alternative to being subjected to the verbal and physical attacks that are often used during such interrogations.

2. Cycle of Violence

The various forms of abuse are inflicted upon the victim in patterns referred to as the "cycle of violence."²⁷ The cycle has been described as consisting of three distinct phases.²⁸ In the first phase, identified as the "tension building" phase, the victim is made to feel as though they are walking on eggshells around the abuser.²⁹ This phase is distinguished by subtle forms of control exhibited by the abuser, forcing the victim to avoid certain behavior that elicits a strong reaction from the abuser, thereby creating tension between the partners.³⁰ The abuse that takes place during this phase tends to be less severe and can vary in duration, lasting days, weeks, or even months.³¹

The first phase eventually leads to the second phase, marked by a significant violent event identified as the "acute battering incident."³² During this phase, a physical, verbal, or emotional abuse of significant magnitude is inflicted upon the victim, resulting in serious physical and/or psychological harm.³³ This is the phase in which the abuser instills shock and fear in their victim, demonstrating the extent of their controlling and restrictive behavior.³⁴ The violent event can occur as a result of the abuser feeling the need to exert or regain control over the victim, if the subtle control tactics of the prior phase proved insufficient.³⁵

²² Peterman & Dixon, *supra* note 10, at 42.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ NCAVP, *supra* note 4, at 12.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Peterman & Dixon, *supra* note 10, at 42.

³² *Id.*

³³ *Id.*

³⁴ NCAVP, *supra* note 5, at 12.

³⁵ *Id.*

It is during this phase that the victim is most vulnerable to extreme physical violence, cruel emotional attacks, and events even resulting in death.³⁶

The abuser then returns to a peaceful, loving, and kind behavior in the third phase, also known as the “honeymoon phase.”³⁷ The abuser generally begs for forgiveness, professes their love for the victim, and often promises never to engage in such violent behavior again.³⁸ Any tactic that can be used to prevent the victim from leaving the relationship is utilized during this phase, reinforced by kind and loving behavior. If the abuser is successful in preventing the victim from leaving, the caring attitude will eventually lead back into the first phase, and the kind and loving attitude will return to subtle forms of control.³⁹

III. REASONS FOR SILENCE: ISSUES SPECIFIC TO SAME-SEX DOMESTIC VIOLENCE

While similar methods of asserting control over victims are utilized in both same-sex and opposite-sex relationships, victims of SSDV must overcome additional barriers that are specific to same-sex relationships. The lack of legal recognition and social acceptance of same-sex relationships have provided the abusers with additional “tools of abuse,” or methods of control that may not be present among heterosexual couples. The same discrimination that has kept LGBT individuals “in the closet,” forcing them to choose not to disclose their sexual orientation publicly, can be used in SSDV to further silence the victim.

A. Homophobia in a Heterosexist Community

Most members of the LGBT community have experienced being in conflict with heterosexism at some point in their lives. Heterosexism is the social perspective and belief that it is more natural or “normal” to be heterosexual, and it is the foundation of much of the homophobia prevalent in our society.⁴⁰ Homophobia is an emotional reaction of “fear, disgust, anger, discomfort, and aversion to homosexuals.”⁴¹ Those who exhibit homophobic attitudes scrutinize same-sex relationships and label them as unhealthy by default due to their belief that homosexuality is immoral.⁴² Such negative social attitudes may have a devastating impact on a SSDV victim whose self-esteem has been eroded by abuse, for they

³⁶ *Id.*

³⁷ Peterman & Dixon, *supra* note 10, at 42.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 44.

⁴¹ *Id.*

⁴² Duthu, *supra* note 2, at 32.

may come to believe that as a homosexual, bisexual, or transgendered person, they are not deserving of the same rights and protections that are available to heterosexual victims of abuse.⁴³

The heterosexism of society as a whole can be used as a tool of abuse in SSDV. The abuser may threaten to “out” the victim’s sexual orientation or gender identity.⁴⁴ “Coming out,” or openly identifying as gay, lesbian, bisexual, or transgendered, is deeply personal and can potentially impact the relationships an individual has with friends, family, or the workplace.⁴⁵ If the “outing” is forced or conducted in a hostile manner, those relationships can be damaged permanently.⁴⁶ The abuser will use homophobia to convince the victim that the heterosexist system will be unwilling to help them due to their sexual orientation, especially if the victim is already apprehensive toward the potential negative consequences of publicly revealing their sexual orientation.⁴⁷

B. Scrutiny from the LGBT Community

Same-sex couples face additional scrutiny from their own community. In recent years, great efforts have been made by the LGBT community to portray same-sex relationships and families as being equally wholesome, healthy, and committed as their heterosexual counterparts.⁴⁸ Cases involving same-sex couples seeking adoption emphasize the strength of the bond between the two committed same-sex partners.⁴⁹ Proponents of same-sex marriage put forth great effort in comparing same-sex unions with heterosexual unions to reinforce the similarities and to dispel the myth that same-sex relationships are inferior.⁵⁰ While such efforts have contributed greatly to legal recognition of same-sex unions and for moving towards marriage equality, they have put significant pressure on the issue of SSDV.

⁴³ *Id.*

⁴⁴ Joanna Bunker Rohrbaugh, *Domestic Violence in Same-Gender Relationships*, 44 FAM. CT. REV. 287, 293 (2006).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Aulivola, *supra* note 6, at 164.

⁴⁸ See Complaint for Declaratory and Injunctive Relief, *Finstuen v. Edmunson*, 497 F. Supp. 2d 1295 (W.D. Okla. 2006) (No. 04CV1152) (Plaintiff same-sex couples seeking legal recognition under Oklahoma adoption laws include, in subsection describing the parties, accounts of their relationships with an emphasis on similarity to legally recognized heterosexual couples).

⁴⁹ See *In re: Gill – Summary of Scientific Evidence*, AMERICAN CIVIL LIBERTIES UNION, (Nov. 25, 2008), http://www.aclu.org/lgbt-rights_hiv-aids/re-gill/re-gill-summary-scientific-evidence, where Dr. Michael Lamb’s testimony explains that a strong bond between parents of a child is one of three strong predictors of that child’s healthy development.

⁵⁰ See Verified Complaint, *Goodridge v. Department of Public Health*, 440 Mass. 309 (2003) (No. 01-1647 A).

Many same-sex couples feel that they must uphold the image of the exemplary relationship to fight the stigma attached to homosexuality.⁵¹ Members of the LGBT community have expressed reluctance to recognize SSDV, believing that it would be perceived as reinforcing the negative stereotypes associated with homosexuality, especially among the politically conservative.⁵² Further, many “[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.”⁵³ Refusal to recognize SSDV is a manifestation of the fear that admitting to such a fault would undo the efforts that have been made to improve political, legal, and societal recognition of the LGBT community.⁵⁴

C. A Lack of Specified Services

There is a uniform consensus among the materials reviewed for this article that there is a significant lack of services specifically designed to meet the needs of a victim of SSDV.⁵⁵ Most domestic violence services currently in operation primarily serve victims of OSDV, and the majority of the individuals receiving such services are female victims of abuse.⁵⁶ Domestic violence shelters are designed to protect the victim by making them inaccessible by the abuser. Locations of shelters are undisclosed, and careful steps are taken to ensure that the victim is safely “hidden.”⁵⁷ Such precautions, however, may offer little protection to a lesbian SSDV victim, whose abuser could falsely claim to be a victim seeking assistance in order to be led to the shelter.⁵⁸ This has led to reluctance by some shelters in serving victims of SSDV, forcing a lesbian victim to identify her abuser as a man in order to be accepted by shelters and supportive services.⁵⁹

Gay male victims of SSDV have even fewer options. Very few domestic violence shelters are open to male victims, as such services tend

⁵¹ Rohrbaugh, *supra* note 44, at 294.

⁵² Tara R. Pfeifer, Comment, *Out of the Shadows: The Positive Impact of Lawrence v. Texas on Victims of Same-Sex Domestic Violence*, 109 PENN ST. L. REV. 1251, 1256 (2005).

⁵³ Carla Da Luz, Cmt., *A Legal and Social Comparison of Heterosexual and Same-Sex Domestic Violence: Similar Inadequacies in Legal Recognition and Response*, 4 S. CAL. REV. L. & WOMEN'S STUD. 251, 268 (1994).

⁵⁴ Pfeifer, *supra* note 52, at 1256.

⁵⁵ See Duthu, *supra* note 2, at 33; Pfeifer, *supra* note 52, at 1255; Da Luz, *supra* note 53, at 270; Rohrbaugh, *supra* note 44, at 293.

⁵⁶ Da Luz, *supra* note 53, at 270-71.

⁵⁷ Kristen M. Driskell, Comment, *Identity Confidentiality for Women Fleeing Domestic Violence*, 20 HASTINGS WOMEN'S L.J. 129, 131 (2009).

⁵⁸ Da Luz, *supra* note 53, at 271.

⁵⁹ Duthu, *supra* note 2, at 33.

to be founded on the need to assist female victims of violence.⁶⁰ Even if a shelter is accepting of male victims, they too face the prospect of their abuser falsely claiming to be a victim to gain access to the victim's location.

D. Children and Adoption

Children are often used as tools of domestic abuse, where the abuser threatens the safety of the children if the victim does not submit to the abuser's control.⁶¹ Many victims also refuse to leave their abuser for fear of the safety of their children.⁶² The issue becomes more complex as it relates to SSDV, due to the fact that there is no legally recognized biological relationship to both partners.⁶³ The legal relationship between a same-sex partner and a child, if not biological, is completely subject to how it is defined under state law.⁶⁴ The fact that some states do not recognize adoptions by same-sex parents can be used as a tool of abuse specific to SSDV. Where the biological or adoptive parent is the batterer, the threat of being forcibly separated from the children without legal recourse can be used to exert control over the victim, forcing him or her to stay in the relationship.⁶⁵ Where the abuser is the non-biological partner, the threat of "outing" the biological parent can be used.⁶⁶ Especially in a heterosexist community, the biological parent can lose legal custody of the children to the other biological parent if the courts are sharply critical of children being raised in same-sex parent households.⁶⁷

E. HIV/AIDS

A victim of SSDV who is living with AIDS or is HIV-positive faces additional obstacles. The victim's HIV status can be used as a tool of abuse, which allows the abuser to exert control over the victim that can have immediate and serious ramifications on the victim's emotional and physical welfare.⁶⁸

⁶⁰ Da Luz, *supra* note 53, at 270-71.

⁶¹ A.B.A. COMM'N ON DOMESTIC VIOLENCE, STANDARD OF PRACTICE FOR LAWYERS REPRESENTING VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING IN CIVIL PROTECTION ORDER CASES 5 (2007), available at http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/0908/Standards_of_Practice_for_Lawyers_Representing_Victim_of_DV_SA_Stalking.authcheckdam.pdf.

⁶² *Id.*

⁶³ Rohrbaugh, *supra* note 44, at 293.

⁶⁴ DENIS CLIFFORD ET AL., A LEGAL GUIDE FOR LESBIAN & GAY COUPLES 105-06 (Emily Doskow ed., Nolo 14th ed. 2007) (1980).

⁶⁵ Rohrbaugh, *supra* note 44, at 293.

⁶⁶ *Id.* at 293.

⁶⁷ *Id.* at 293.

⁶⁸ Jane K. Stoeber, *Stories Absent from the Courtroom: Responding to Domestic Violence in the Context of HIV and AIDS*, 87 N.C. L. REV. 1157, 1167-68 (2009).

In addition to the stigma associated with homosexuality, the victim must also confront the stigma attached to HIV and AIDS. The abuser may threaten to “out” the victim’s HIV status to friends, family members, or workplace if the victim does not submit to the abuser’s control.⁶⁹ HIV infection is recognized as a disability under the Americans with Disabilities Act of 1990,⁷⁰ which highlights the legal necessity of protecting the privacy of an individual’s status as it may subject them to discrimination.⁷¹ The scrutiny of the LGBT community may be compounded for a victim of SSDV, as the community has long fought the stigma of HIV/AIDS being labeled as a “gay disease.”⁷² While it has been established that anyone is susceptible to the virus, the stigmatized association still remains.⁷³ Furthermore, the stigma against the disease often has detrimental effects on a victim’s self-esteem, and the abuser may reinforce the victim’s belief that no one will be willing to assist someone with HIV/AIDS.⁷⁴

The complexities of treatment for an individual living with HIV and AIDS can potentially provide the abuser with opportunities to control the victim. The abuser may withhold or limit access to the victim’s medications, which tend to be numerous and must be taken on a specific dosing schedule in order to maintain their effectiveness.⁷⁵ Failure to take the medications on time, as prescribed, may allow the virus to overcome their effects, leading to drug resistance.⁷⁶ Forms of control such as this make it even more difficult for the victim to leave the relationship to seek help, for specialized medical assistance can only be attained with the disclosure of status.⁷⁷

IV. FACING THE OUTSIDE WORLD: BARRIERS TO RELIEF FOR THE SSDV VICTIM WHO SEEKS HELP

Even if the SSDV victim is able to leave the abuser, they must overcome barriers outside of the relationship in order to obtain help.

⁶⁹ Stoever, *supra* note 68, at 1171-72.

⁷⁰ See 42 U.S.C. § 12102 (2009) (providing ABA definition of disability).

⁷¹ U.S. DEP’T OF JUSTICE CIVIL RIGHTS DIV., *Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDS*, <http://www.ada.gov/pubs/hivqanda.txt> (last visited Feb. 18, 2011).

⁷² *Answers to Your Questions For a Better Understanding of Homosexuality*, AM. PSYCHOLOGICAL ASS’N, 2 (2008), <http://www.apa.org/topics/sexuality/orientation.pdf>.

⁷³ See, e.g., Meredith Cohn, *Baltimore Leads in HIV Infection in Gay Men*, BALTIMORE SUN, Oct. 2, 2010, at A1, available at 2010 WLNR 19633050 (explaining that the stigma associated with homosexuality continues to be a barrier to HIV testing and treatment).

⁷⁴ Stoever, *supra* note 68, at 1172.

⁷⁵ Stoever, *supra* note 68, at 1173.

⁷⁶ AIDSINFO, FACT SHEET, HIV TREATMENT REGIMEN FAILURE (Dec. 2008), http://www.aidsinfo.nih.gov/ContentFiles/HIVTreatmentRegimenFailure_FS_en.pdf.

⁷⁷ Stoever, *supra* note 68, at 1174.

Since the 1980s, every state has responded to the need for the criminal justice system to address cases of domestic assault by passing domestic violence legislation.⁷⁸ In doing so, the need for response by the police, victim's services, and the courts has been addressed.⁷⁹ It is only when the assistance of each component of the criminal justice system is in synchronicity that effective assistance can be provided to the victim of domestic violence.

A. Gender-Based Stereotyping

There is a general assumption among the LGBT community that same-sex couples are not treated equally by the criminal justice system, believing that the officers' and courts' reactions are indicative of the homophobia that is prevalent in society as a whole.⁸⁰ They often do not seek help from police out of fear of encountering a negative or even hostile reaction.⁸¹ A 911 call to report domestic abuse may be the first time a victim reaches out for help, so sensitivity is crucial. If a dispatcher makes assumptions that a female caller was victimized by a male partner, or responds negatively to the identification of a same-sex batterer, the victim may lose trust in the criminal justice system and fail to seek further assistance.⁸²

Gender-based stereotyping can negatively influence how the police handle SSDV situations, as officers tend to assume that the male, being physically stronger, is by default the aggressor against the female victim. Such assumptions can lead to confusion when the police are called upon to assist in an SSDV situation. When the police are not able to distinguish the abuser from the victim, they tend to treat each party similarly by either arresting both or arresting neither.⁸³

B. Mutual Battering

Most LGBT individuals grew up influenced by the gender roles prevalent in the heterosexual community.⁸⁴ The heterosexist gender roles dictate that men cannot be vulnerable and women cannot be violent.⁸⁵

⁷⁸ Shannon Little, *Challenging Changing legal Definitions of Family in Same-Sex Domestic Violence*, 19 HASTINGS WOMEN'S L.J. 259, 263 (2008).

⁷⁹ April Pattavina, et. al., *A Comparison of the Police Response to Heterosexual Versus Same-Sex Intimate Partner Violence*, 13 (4) VIOLENCE AGAINST WOMEN 374, 378 (2007).

⁸⁰ Jane A. Younglove et. al., *Law Enforcement Officers' Perceptions of Same Sex Domestic Violence: Reason for Cautious Optimism*, 17 J. INTERPERS. VIOLENCE 760, 761 (2002).

⁸¹ Aulivola, *supra* note 6, at 167.

⁸² Duthu, *supra* note 2, at 34.

⁸³ Aulivola, *supra* note 6, at 167.

⁸⁴ Michael J. Potoczniak et al., *Legal and Psychological Perspectives on Same-Sex Domestic Violence: A Multisystemic Approach*, 17 J. FAM. PSYCHOL. 252, 254 (2003).

⁸⁵ *Id.*

These gender norms have given rise to the term "mutual battering," a term developed to describe a female victim who fought back against her abuser husband in self-defense.⁸⁶ The concept is particularly problematic when applied to SSDV situations, for it implies that the victim is participating equally in the violence.⁸⁷

Where both parties are of the same gender, and certainly if they are of similar size and build, it is assumed that there is no differential of power between them.⁸⁸ When physical violence occurs between a same-sex couple, and especially when one resists or takes defensive action, the violence is labeled as mutual battering and the police and the courts hold both parties equally responsible.⁸⁹ When the physical altercation is labeled as mutual battering, the victim may not be given the protection offered by domestic violence statutes.⁹⁰ An abuser may take advantage of the label and convince the victim that they too are accountable for the violence.⁹¹ When the assault is identified as a criminal assault and battery as opposed to a violation of a civil domestic violence statute, the abuser may not be promptly arrested, bail may be set considerably lower, and the victim may not be offered assistance by domestic violence services.⁹² There have been reports of cases in which both parties were arrested and placed in the same jail cell, where the victim was subsequently re-assaulted.⁹³

C. *The Legal System's Response to SSDV*

The courts pose a complex challenge to a victim of SSDV. It has established law that has impacted society's view and acceptance of homosexuality, and continues to redefine the extent to which the law is willing to grant rights and privileges to same-sex couples. The courts also serve as sources for individualized protection, as civil protection orders and criminal charges are some of the legal remedies available to victims of domestic violence. The legal system, however, is no exception in contributing additional barriers to a victim of SSDV who seeks help. Even if the victim was able to leave the abusive relationship, seek protection, and was successfully assisted by police, the law and the courts may still stand as barriers to legal remedy. In representing a victim of SSDV, it is crucial for the legal practitioner to not only be aware of the

⁸⁶ *Id.* at 254-55.

⁸⁷ *Id.* at 255.

⁸⁸ Aulivola, *supra* note 6, at 167.

⁸⁹ *Id.*

⁹⁰ See Nancy E. Murphy, Note, *Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence*, 30 VAL. U. L. REV. 335, 342 (1995).

⁹¹ Duthu, *supra* note 2, at 29.

⁹² Aulivola, *supra* note 6, at 167-68.

⁹³ Pattavina, *supra* note 79, at 380.

applicable laws, but also to be sensitive to the effects of the legal process itself on the victim.

The Supreme Court has played a significant role in shaping the societal attitudes toward homosexuality in the United States. In its decision in *Bowers v. Hardwick*,⁹⁴ the Court held a Georgia anti-sodomy statute as constitutional.⁹⁵ In a strongly worded opinion, Justice White stated, “respondent would have us announce, as the Court of Appeals did, a fundamental right to engage in homosexual sodomy. This we are quite unwilling to do.”⁹⁶ After suggesting that conferring the constitutional right to privacy to consenting homosexual adults would open the door to grant the same recognition to “adultery, incest and other *sexual crimes*,”⁹⁷ the Court ruled that state sodomy laws were valid, refusing to declare inadequate the “majority sentiments about the morality of homosexuality.”⁹⁸

The ruling in *Bowers* provided legal ammunition for anti-gay sentiments and significantly impacted the legal rights of LGBT individuals.⁹⁹ Hostility in the courtroom further fueled the discrimination against the LGBT community, labeling them as criminals.¹⁰⁰ Legal affirmation of the validity of anti-sodomy laws led to an association of “the sexual expression of gay and lesbian individuals with negative criminal connotations and contributed to the self-hatred and shame of individuals in those relationships.”¹⁰¹ In an article reviewing the history of anti-sodomy laws and their impact on domestic violence statutes’ applicability to same-sex relationships, Tara R. Pfeifer raises, as an example, North Carolina Republican Representative Russell Capps, who sought to exclude same-sex domestic violence victims from protection under the state’s Crime Victims Rights Amendment by citing to the state’s anti-sodomy statute.¹⁰² Representative Capp stated, “[t]his doesn’t take away anyone’s rights. It simply keeps us from adding a benefit to a group violating the law.”¹⁰³

The far-reaching and negative impact the *Bowers* ruling had on the LGBT community was recognized by the Court in *Lawrence v. Texas*.¹⁰⁴ In overruling *Bowers*, the Court stated, “the statutes do seek to control a

⁹⁴ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁹⁵ *Id.*

⁹⁶ *Id.* at 191.

⁹⁷ *Id.* at 196 (emphasis added).

⁹⁸ *Id.*

⁹⁹ Pfeifer, *supra* note 52, at 1265.

¹⁰⁰ *Id.* at 1266.

¹⁰¹ *Id.* at 1267.

¹⁰² *Id.* (citing Joseph Neff, *Panel Backs Victim’s Rights in Domestic Violence*, THE NEWS AND OBSERVER, July 1, 1998, at A3).

¹⁰³ Pfeifer, *supra* note 52, at 1267.

¹⁰⁴ *Lawrence v. Texas*, 539 U.S. 558 (2003).

personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.”¹⁰⁵ The Court specifically pointed to the *Bowers* Court’s reliance on the historical condemnation of homosexuality as immoral, and asserted that the Court had no role in enforcing criminal laws supported by the majority’s views on morality.¹⁰⁶ The *Lawrence* Court ruled statutory prohibitions on consensual sodomy as unconstitutional, finding that such bans “further[ed] no legitimate state interest which can justify its intrusion into the personal and private life of the individual.”¹⁰⁷

D. Civil Protection Orders Under Domestic Violence Statutes

The invalidation of state anti-sodomy statutes under *Lawrence*, however, marked only a small victory for victims of SSDV. While seeking protection under domestic violence statutes no longer poses the threat of criminal prosecution, whether the protection provided by such statutes extends to victims of SSDV is vague at best, if not explicitly barred by the statutory language.¹⁰⁸ Current state domestic statutes have evolved from their most primitive form, which restricted protection to wives battered by their husbands.¹⁰⁹ Most states have since modified the statutory language defining the protected class under the law to include couples living together in a “marriage-like” relationship or cohabiting.¹¹⁰ Some states have further broadened the statutory language, making the statutes gender-neutral and applicable to same-sex couples.¹¹¹ As of July 2008, three states, however, restrict application of their domestic violence laws to opposite-sex couples, explicitly excluding same-sex couples.¹¹² Louisiana, Montana, and South Carolina require that the requisite relationship be between the victim and an individual of the opposite sex.¹¹³ On the other end of the spectrum, Hawaii’s statute includes the language “current or former same sex partners,” extending protection to victims of SSDV.¹¹⁴

Most states’ statutes are “neutrally available” in that they neither explicitly extend nor exclude SSDV victims from protection under the

¹⁰⁵ *Id.* at 567.

¹⁰⁶ *Id.* at 571.

¹⁰⁷ *Id.* at 578.

¹⁰⁸ Pattavina, *supra* note 79, at 378.

¹⁰⁹ Da Luz, *supra* note 53, at 258.

¹¹⁰ Little, *supra* note 78, at 263-64.

¹¹¹ Da Luz, *supra* note 53, at 275.

¹¹² Little, *supra* note 78, at 264.

¹¹³ A.B.A. COMM’N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOS) BY STATE (July 2008), available at http://www.abanet.org/domviol/pdfs/CPO_Protections_for_LGBT_Victims_7-08.pdf (hereinafter CPOS BY STATE).

¹¹⁴ *Id.*

domestic violence statutes.¹¹⁵ This leaves the determination of applicability of these statutes to SSDV victims subject to the court's interpretation, the results of which may vary "based on personal attitudes of prosecutors and judges assigned to these cases."¹¹⁶ As of July 2008, Florida, Kentucky, Pennsylvania, and Illinois were the only states with case law extending the availability of civil protection orders to SSDV victims.¹¹⁷ In *Peterman v. Meeker*,¹¹⁸ the Court of Appeals of Florida, citing a subsection of the state's domestic violence statute, stated that no person could be precluded from seeking injunctive relief solely on the ground that such person was not a spouse, where they otherwise met the requirements for an injunction.¹¹⁹ In *Ireland v. Davis*,¹²⁰ the Court of Appeals of Kentucky explicitly extended the availability of domestic violence orders to a victim of SSDV, interpreting the gender-neutral statutory language as indicative of the legislature's intent to provide equal protection to both homosexual and heterosexual victims of domestic violence.¹²¹

V. MARYLAND DOMESTIC VIOLENCE STATUTE

Under Maryland Code § 4-501, "abuse" is defined as the occurrence of one or more of the following acts between "family or household members": assault; an act that places a person in fear of imminent serious

¹¹⁵ Aulivola, *supra* note 6, at 169.

¹¹⁶ *Id.*

¹¹⁷ CPOS BY STATE, *supra* note 113.

¹¹⁸ *Peterman v. Meeker*, 855 So. 2d 690 (Fla. Dist. Ct. App. 2003). In a case involving partners in a same-sex relationship for 13 years and living together in a jointly owned home, the Circuit Court for Pinellas County entered a final judgment for protection under the Florida domestic violence statute, FLA. STAT. § 741.30 against defendant, Peterman, who appealed. Relying on Florida law banning same-sex marriage, Peterman argued that same-sex couples do not qualify as persons residing together as if a family under the statute. The Court of Appeal of Florida, Second District cited section 741.30(1)(e) ("No person shall be precluded from seeking injunctive relief pursuant to this chapter solely on the basis that such a person is not a spouse") in ruling that the statute does not exclude "those persons who otherwise meet the requirements for a domestic violence injunction but seek protection from a person of the same sex." *Id.* at 691.

¹¹⁹ *Id.* at 691.

¹²⁰ *Ireland v. Davis*, 957 S.W.2d 310 (Ky. Ct. App. 1997). In a case where appellant male partner obtained a Domestic Violence Order against appellee male partner, pursuant to the statute permitting "members of an unmarried couple" to pursue such orders, the trial court dismissed the entire proceeding upon appellant's filing of an affidavit claiming appellee's violation of the order. *Id.* The trial court based the dismissal on the ground that the court lacked jurisdiction under the statute because the appellant and appellee were a same-sex couple. *Id.* On appeal, the Court of Appeals of Kentucky reversed the orders of the Fayette district court and the circuit, finding that gender-neutral language incorporated into the statute was intended to include same-sex couples in the protected class. *Id.* The court explicitly stated the legislative intent as being one of providing equal treatment under the statute to both homosexual and heterosexual victims of domestic violence. *Id.*

¹²¹ *Id.* at 312.

bodily harm; an act that causes serious bodily harm; rape or sexual offense; attempted rape or sexual offense; stalking and/or false imprisonment.¹²² Individuals eligible for a protective order are defined under Maryland Code § 4-501 as: current and former spouses; a person related to the respondent by blood, marriage, or adoption; a parent, stepparent, or stepchild (under certain circumstances); vulnerable adults; a person who has had a child with the respondent; or a person who has cohabited with the respondent for 90 days.¹²³ "Cohabitant" is defined as: "a person who has had a sexual relationship with the respondent and resided with the respondent in the home for a period of at least 90 days within 1 year before the filing of the petition."¹²⁴ No case law exists interpreting the statutory language to determine whether a victim of SSDV is a person eligible to file a petition for civil protection under the statute. The statutory language does not explicitly exclude same-sex couples, but there is no guarantee that the order will be granted.¹²⁵

If granted, a civil protective order ("Protective Order") offers protection to the victim in three distinct phases. An interim protective order can be obtained by a district court commissioner, and goes into effect as soon as the respondent is served by a law enforcement officer, remaining effective until a judge holds a temporary hearing.¹²⁶ Temporary protective orders may be obtained without a full hearing and remain in effect for seven days leading up to the full court hearing for the final protective order.¹²⁷ It is at this full hearing that the victim must face their abuser in order for a judge to properly assess the evidence in deciding whether to grant the final protective order.¹²⁸ Once granted, a final protective order will remain effective up to one year, and may be amended or extended.¹²⁹ Effective October 1, 2009, the General Assembly extended the maximum length of a final protective order from one to two years in cases of recurring abuse requiring a Protection Order.¹³⁰

¹²² MD. CODE ANN., FAM. LAW § 4-501 (2009).

¹²³ MD. CODE ANN., FAM. LAW § 4-501(l) (2009).

¹²⁴ MD. CODE ANN., FAM. LAW § 4-501(d) (2009).

¹²⁵ Brief and Record Extract for Appellant, Kelly v. Ruth, No. 1120, 1997 WL 34632792 (Md. App. Nov. 10, 1997). Appellant filed appeal from Circuit Court for Harford County, Maryland, on ground the court erred in determining that parties, an unmarried heterosexual couple, were "cohabitants" under § 4-501 of the Family Law Article in issuing a protective order against Appellant. *Id.* Documentation of subsequent proceedings not available.

¹²⁶ Know the Laws: Maryland, WOMENSLAW.ORG, http://www.womenslaw.org/laws_state_type.php?id=530&state_code=MD (last visited Feb. 17, 2011).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ MD. CODE ANN., CTS. & JUD. PROC. § 3-1505 (2009).

¹³⁰ *Id.*

If a victim of SSDV is found ineligible to petition for a Protective Order, Maryland makes a Peace Order (“Peace Order”) available under Maryland Code, Courts and Judicial Proceedings § 3-1503.1, et seq.¹³¹ While a Peace Order is procedurally very similar to a Protective Order, there are some notable differences. The abusive act must have occurred within 30 days of filing the petition, and the petitioner is required to show that the act is likely to recur.¹³² Unlike the one-year term of the Protective Order, the Peace Order is effective for six months.¹³³

There is a marked difference in the relief offered by the two types of orders. The Peace Order provides only counseling and the recovery of fees and court costs,¹³⁴ whereas the Protective Order can provide relief in the establishment of temporary visitation, award of emergency family maintenance, award of use and possession of jointly titled car, and counseling.¹³⁵ Further, as of October 1, 2009, a new requirement ensures that judges order respondents to surrender firearms in their possession and further bars them from acquiring new firearms.¹³⁶ If a Maryland court finds a victim of SSDV to be ineligible to file a petition for a Protective Order, the resulting disparity in benefits and protections will reinforce the unequal legal treatment of same-sex couples. While it is important to consider the legal alternatives to a Protective Order to ensure some form of relief to a victim of SSDV, there is a need for advocacy to encourage Maryland courts to provide equal protection under the state’s domestic violence statute.

VI. A NEW LOOK AT THE STANDARD OF PRACTICE: ADDRESSING THE SPECIFIC NEEDS OF AN SSDV VICTIM

A lawyer who represents a victim of abuse must be mindful of the dynamics of domestic violence prior to representation. The importance is magnified where the client is a victim of SSDV, due to the additional complications and issues that may arise over the course of the representation.¹³⁷ The limited availability of resources on the specific subject of SSDV requires the lawyer to actively seek out relevant and current information in order to provide the proper standard of care.¹³⁸ Competent knowledge and an accurate understanding of the dynamics of SSDV are necessary in order for the lawyer to effectively explain the pros

¹³¹ MD. CODE ANN., CTS. & JUD. PROC. §§ 3-1501 to 1510 (2009).

¹³² Know the Laws: Maryland, *supra* note 127.

¹³³ *Id.*

¹³⁴ MD. CODE ANN., CTS. & JUD. PROC. § 3-1505 (2009).

¹³⁵ MD. CODE ANN., FAM. LAW § 4-506 (2009).

¹³⁶ § 4-506(d).

¹³⁷ A.B.A., *supra* note 61, at 17.

¹³⁸ *Id.* at 12.

and cons of pursuing the various avenues of remedy that may be available to the client.¹³⁹

Lawyers should become accustomed to screening a prospective client for domestic violence.¹⁴⁰ Even if violence is the catalyst for the client to seek legal assistance, he or she may not be willing to self-identify as a victim of abuse.¹⁴¹ In order to gather crucial and relevant information, the lawyer must take initiative to draw out pertinent information. The assurance of confidentiality and privacy of the meeting is likely to provide some comfort for the client.¹⁴² A lawyer must be aware of the fact that as a victim of domestic abuse, the client has suffered betrayal from an intimate partner. The lawyer will not be successful unless the trust of the client is earned.¹⁴³

Whether the client is "out" is information crucial to representation. If the client wishes not to reveal his or her sexual orientation, pursuing a civil protection order may not be an option, as states are careful not to apply domestic violence statutes to roommate situations.¹⁴⁴ Lawyers should be mindful of the environment of the courtroom and the procedures that must be followed, and address potential challenges to the client's privacy. Most family law proceedings occur in open court, where members of the public and their lawyers fill the gallery, waiting to be called. Such an environment can be threatening to a client who wishes to keep their sexual orientation, the nature of the abusive relationship, or HIV status private.¹⁴⁵

Identifying the client's vulnerabilities is also important.¹⁴⁶ Not only do they shed light on some of the weaknesses preyed upon by the abuser, they also become important when considering formal legal proceedings.¹⁴⁷ Even if a civil protection order is available, obtaining the order and initiating legal action against the abuser may not be the best option if doing so is likely to compromise the safety of the client.¹⁴⁸ It is likely that the abuser will, upon being served with a petition for civil protection, retaliate by filing a cross-petition against the victim.¹⁴⁹ The

¹³⁹ *Id.* at 17.

¹⁴⁰ John M. Burman, *Lawyers and Domestic Violence: Raising the Standard of Practice*, 9 MICH. J. GENDER & L. 207, 235 (2003).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ A.B.A., *supra* note 61, at 20.

¹⁴⁴ Sandra E. Lundy, *Preventing and Protecting Against Domestic Violence*, REPRESENTING NONTRADITIONAL FAMILIES, CH. 5, (Mass. Continuing Legal Educ., Inc., 2006), available at WL NTFAM MA-CLE 261.

¹⁴⁵ Stoever, *supra* note 68, at 1187-88.

¹⁴⁶ Lundy, *supra* note 144, at *6.

¹⁴⁷ *Id.*

¹⁴⁸ A.B.A., *supra* note 61, at 17.

¹⁴⁹ A.B.A., *supra* note 61, at 17.

client needs to know that just as the abuser's faults will be addressed in court, the client's vulnerabilities will be brought up.¹⁵⁰ If the client wishes to assert self-defense, evidence of the abuse and its effects are required, and expert testimony is most often relied upon in establishing the necessary belief of reasonable fear of imminent death or great bodily harm.¹⁵¹ Lawyers need to recognize that the attack on the client's credibility at the protection hearing will be difficult for a victim whose vulnerabilities have already been exploited.¹⁵² There is a need to explain that this is a necessary part of the proceeding, and the lawyer's success will depend upon the quality and detailed nature of the facts that the client is able to disclose.¹⁵³

Lawyers representing victims of SSDV should also have competent knowledge in assessing client safety, which should be conducted through the entire course of representation.¹⁵⁴ Risk assessment, also referred to as lethality assessment, is the evaluation of the presence of violence in a client's life.¹⁵⁵ Factors to consider include whether the abuser has threatened to kill the victim or him or herself; whether physical abuse has included choking, biting or strangling; whether the abuser has access to a weapon; whether the abuser is depressed or paranoid; and whether the abuser has killed or mutilated a pet.¹⁵⁶

Getting information on the nature and extent of the abuse suffered is not only important in determining the legal remedies that may be available, but is also crucial for detailed safety planning. If the victim suffered financial abuse, they may not have the funds necessary to live outside of the home.¹⁵⁷ Once legal proceedings begin, the victim will need a place to live away from the abuser, and will need a support system that will offer assistance throughout the process.¹⁵⁸

Safety planning involves helping the victim in preparing to leave the abusive relationship.¹⁵⁹ When a victim attempts to leave, seeks a protective order, or files a police report, the abuser is likely to react negatively to the threatened loss of power and control. It is during this time that the victim is most vulnerable.¹⁶⁰ It is imperative that the lawyer

¹⁵⁰ Lundy, *supra* note 144, at *6.

¹⁵¹ Burman, *supra* note 140, at 226-27.

¹⁵² Lundy, *supra* note 144, at *6.

¹⁵³ *Id.*

¹⁵⁴ A.B.A., *supra* note 61, at 23.

¹⁵⁵ Gael Strack & Eugene Hyman, *Your Patient. My Client. Her Safety: A Physician's Guide to Avoiding the Courtroom While Helping Victims of Domestic Violence*, 11 DEPAUL J. HEALTH CARE L. 33, 44-45 (2007).

¹⁵⁶ Burman, *supra* note 140, at 238.

¹⁵⁷ Lundy, *supra* note 144, at *6.

¹⁵⁸ *See id.*

¹⁵⁹ Strack & Hyman, *supra* note 155, at 45.

¹⁶⁰ *Id.*

gives the client advance notice of any developments in the proceeding so that proper precautions can be taken to minimize the risk of harm to the victim.¹⁶¹ In combination with the factors evaluated in the risk assessment, the lawyer should help identify steps the client can take to increase his or her safety. Steps include, but are not limited to: planning escape routes from the home, changing locks, having a locked room to retreat to where an emergency cell phone is available to call for help, packing a bag with important documents and necessities and storing it at a separate location, and varying routines that can be predictable.¹⁶²

Unpredictable events or issues may arise that are beyond the lawyer's expertise, and it may become necessary to seek assistance from specialized professionals. Lawyers should prepare in advance a list of LGBT-sensitive professionals and services in the area, including physicians, counselors, social workers, and domestic violence service providers.¹⁶³ The information should be immediately accessible should the need arise, as a victim of SSDV may have limited access to services, or may not be able to gather information without the risk of provoking the abuser.

A. Education and Advocacy

The true extent of the prevalence of SSDV will remain indeterminable as long as the victims believe that the system will not be supportive of them. In order to properly address the problem of SSDV, training and education to increase the understanding of the specific issues related to SSDV is needed. Training should be provided at every level of intervention, including judges, prosecutors, police officers, as well as medical and social service providers.¹⁶⁴ Proper training will increase the probability that abuse will be recognized, and proper assistance will be provided in a manner that will not be offensive to the victim.¹⁶⁵

The invalidation of anti-sodomy laws under *Lawrence* is one step toward decreasing the stigma associated with homosexuality, and the hope is that the “[Supreme] Court’s recognition of the freedom and dignity of sexual intimacy between adults, heterosexual and homosexual, sinks into the consciousness of American society.”¹⁶⁶ Whereas many heterosexual female victims of domestic abuse have benefited from making their abuse public, allowing them to confront their abusers and

¹⁶¹ Burman, *supra* note 140, at 240.

¹⁶² *Id.* at 241.

¹⁶³ A.B.A., *supra* note 61, at 38.

¹⁶⁴ Duthu, *supra* note 2, at 37.

¹⁶⁵ *Id.*

¹⁶⁶ Pfeifer, *supra* note 52, at 1272.

regain control in their lives,¹⁶⁷ the same opportunity may not be available to the victim of SSDV due to societal homophobia.

In order for the situation to improve for victims of SSDV, it is necessary to look to the successes that have been achieved by the mainstream domestic violence awareness movement.¹⁶⁸ While the systems in place should consider ways to expand their services to address the specific needs of the victims of SSDV, it will require a concerted effort at every level of intervention. Ever since the establishment of the first national task force on family violence in 1984, they have played an integral role in addressing the issue of domestic violence in this country.¹⁶⁹ Significant changes to the way the law handled domestic violence took place only when police officers, prosecutors, and judges received specialized training under the guidance of the feminist movement and began to advocate their views in the criminal justice system.¹⁷⁰ The battered women's movement is credited with insisting upon these changes through their persistent advocacy efforts.¹⁷¹ Similar efforts must be made on behalf of victims of SSDV.

A community-based effort in improving assistance to victims of SSDV is needed. The collaborative effort made in the city of San Diego is often cited as being a pioneering and encouraging example in incorporating the needs and issues specific to SSDV into their model of providing assistance to victims of domestic violence.¹⁷² The City Attorney's Office of the City of San Diego initiated the launch of the San Diego Family Justice Center in October of 2002.¹⁷³ Under the joint leadership of the city attorney and the police chief, the initiative reflects a progressive approach in providing comprehensive public safety services. The Center assists victims of domestic violence and their children, promotes victim safety and offender accountability, and provides referrals and access to services through a network of twenty-five government and non-government agencies.¹⁷⁴ The participating agencies, including medical, legal, and social agencies, provide services directly at the Center.¹⁷⁵ This innovative approach prevents the victim from having to "run-around" for services, and dramatically reduces the trauma of having to repeat the

¹⁶⁷ Strack & Hyman, *supra* note 155, at 42.

¹⁶⁸ *Id.* at 36.

¹⁶⁹ *Id.* at 35.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 36.

¹⁷² See Michelle Aulivola, Note, *Outing Domestic Violence: Affording Appropriate Protections to Gay and Lesbian Victims*, 42 FAM. CT. REV. 162, 167 (2004).

¹⁷³ See Strack & Hyman, *supra* note 155, at 38; see also San Diego Family Justice Center, About Us, <http://www.sandiego.gov/sandiegofamilyjusticecenter/> (last visited Mar. 3, 2011).

¹⁷⁴ Strack & Hyman, *supra* note 155, at 38.

¹⁷⁵ *Id.*

accounts of the abuse they endured.¹⁷⁶ The City Attorney's Office's Domestic Violence Unit consistently incorporates awareness toward SSDV into their objectives, including the development of a personal safety plan for both heterosexual and same-sex domestic violence victims.¹⁷⁷ Incorporation of SSDV issues into their inter-agency and multidisciplinary approach, including police training, serves as a model for positive development in addressing the needs of SSDV victims.¹⁷⁸

VII. CONCLUSION

Improvement of the understanding toward SSDV is required to properly address the problem.¹⁷⁹ Lawyers are in a unique position to address SSDV and to bring much needed attention to the issue.¹⁸⁰ By addressing the specific issues a victim of SSDV must confront, a lawyer may be able to empower the victim by providing assistance in seeking much needed legal remedy. Each case of SSDV that achieves a favorable result is one more step toward an improved societal and legal landscape for a victim who has yet to overcome the countless barriers to relief. Just as education, understanding, and advocacy changed society's attitudes toward the battered wife, effective assistance to the SSDV victim can lead to greater recognition of the problem and, hopefully, toward the granting of equal rights and protections that these victims deserve.

¹⁷⁶ *Id.*

¹⁷⁷ Susan Golding, *San Diego City Attorney's Child Abuse & Domestic Abuse & Violence Unit*, The United States Conference of Mayors (1999), http://mayors.org/bestpractices/domestic/san_diego_ca.htm (last visited Apr. 4, 2011).

¹⁷⁸ *Id.*

¹⁷⁹ Burman, *supra* note 140, at 209.

¹⁸⁰ *Id.*