In 1992, a Los Angeles prosecutor described a case she encountered in 1990 as follows:

“The clerk called my name… ‘They’re sending us a battery [case,’ he said]. Shortly after the clerk’s announcement, the door swung open. Two women entered and immediately sat down together. Neither seemed inclined to speak to me. I decided that they must be defense witnesses and wondered where the victim was. Victims generally come rushing up to the prosecutor, anxious to air their grievances. The clerk called the defendant’s name and one of the women stood up. A female defendant in a battery case was relatively unusual. I found the victim’s name in the file and went to the hallway, where I imagined she might have taken refuge. I called her name. No response. Returning to the courtroom, I was greeted by the bailiff [who said], ‘The victim’s in the courtroom.’ … I went back in… and saw no one except the same two women who had already come in. I turned back to the bailiff. ‘Where?’ I asked.”

“The defendant … grinned triumphantly at me. ‘She’s right here,’ she stated, indicating the woman at her side. I stared at them, disoriented. I had not seen anything like this before. The report had described a roommate dispute, but I hadn’t had time to read it carefully, and it certainly seemed as if the dispute had been settled. Then I recognized them. I had noticed them earlier that week outside calendar court. They had been arguing. The one who turned out to be the defendant had been… talking very agitatedly to the other woman, who had been nodding meekly. Their body language had attracted my attention… These women stood only about a half inch apart. It was immediately clear to me that these women had an intimate relationship.”

“The file contained… [a] photo of the victim… with two swollen, purplish black eyes. The extent of her injury alone would distinguish this case as one of our more serious cases… [I thought to myself], maybe there had been some mistake… The defendant couldn’t have meant to do this… Women aren’t aggressive. Women aren’t violent by nature. Women don’t hurt other women in relationships—do they? Isn’t that one of the major advantages of lesbianism—freedom from domination and from the threat of brute force?”

This prosecutor was quite progressive for her time. Thanks to her unwavering efforts to persuade the judge that the two women were in a lesbian relationship, that the incident was one of domestic violence rather than a mere “roommate dispute,” and that an expert should be allowed to testify about the Battered Woman Syndrome (“BWS”) when the victim recanted, it became the first

1 Also commonly referred to in the literature as “intimate partner violence,” “abusive lesbian relationships,” or “lesbian battering.” I use these terms interchangeably in this paper. One definition of domestic violence in the context of lesbian couples offered by Barbara Hart is “[a] pattern of violent and coercive behaviors whereby a lesbian seeks to control the thoughts, beliefs or conduct of her intimate partner or to punish the intimate [partner] for resisting the perpetrator’s control over her.” Barbara J. Hart, Lesbian Battering: An Examination, in Naming the Violence: Speaking Out About Lesbian Battering 133 (Kerry Lobel ed., 1986), cited in Tamara L. Kuennen, Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?, 22 Berkeley J. Gender L. & Just. 2, at 9 (2007).

lesbian battering case in which BWS evidence was used successfully. Nonetheless, the prosecutor’s words describing her initial confusion and disbelief clearly portray the inaccurate assumptions and ignorance of even the most progressive prosecutors about the issue of domestic violence in lesbian relationships. Furthermore, the fact that the police report in the case file described the incident as a “roommate dispute” suggests additional ignorance and heterosexist assumptions on the part of the officers who documented the victim’s complaint. Lastly, the difficulty the prosecutor faced when trying to convince the judge that the victim and perpetrator were in a lesbian relationship, and the judge’s reluctance to characterize the case as one of domestic violence rather than simple battery, reflect the judge’s similar heterosexist assumptions and ignorance about the issue of same-sex domestic violence.

Granted, however, this 1990 Los Angeles case arose at a time when Americans were just beginning to notice same-sex domestic violence. “For the most part, same-sex partner abuse was not recognized or systematically recorded anywhere in the country until 1987.” Until then, same-sex domestic violence went undocumented “for several reasons, including the resistance of gay and lesbian communities, the prevalence of societal homophobia, the lack of reporting by police and hospital employees, the problem of under-reporting by victims, and the lack of public assistance programs or shelters for gay and lesbian victims.” “The first full-length empirical study of lesbian battering” was not published until 1992. Even then, the research was “based on anecdotal evidence” because it was “extremely difficult to obtain hard data on ‘hidden’ populations such as lesbians.”

Violence in lesbian relationships remains “a relatively new area of research” in which most studies “use small, nonrandom samples obtained through friendship circles, lesbian and gay

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5 Id.
6 Sandra E. Lundy, Abuse that Dare Not Speak Its Name: Assisting Victims of Lesbians and Gay Domestic Violence in Massachusetts, 28 New Eng. L. Rev. 273, 281 (1993).
organizations, or advertisements in lesbian and gay publications.”7 In 2001, more than a decade after the Los Angeles case described above, researchers were still expressing the concern that “lesbian intimate partner violence is shrouded in silence within the lesbian community and that ‘the lesbian community may not be conceptualizing violence in lesbian relationships as domestic violence.’”8 Nonetheless, a 2009 review of 17 empirical studies conducted between 1995 and 2006 that examined same-sex intimate partner violence (“SSIPV”) found that “rates of SSIPV are comparable to rates of heterosexual domestic violence, with approximately one quarter to one half of all same-sex intimate relationships demonstrating abusive dynamics.”9

Over the past two decades, domestic violence advocates have gained increased awareness and understanding of the dynamics of intimate partner violence in lesbian couples. They have also made great strides toward addressing the challenges faced by lesbian victims of domestic violence in seeking protection, support, and remedies from the legal system and social service providers. Still, lesbian victims of domestic violence continue to encounter discrimination, heterosexism, and ignorance on the part of police, prosecutors, judges, attorneys, and community support service personnel when trying to obtain safety and justice.

In Part I of this paper, I provide an overview of the dynamics of domestic violence in lesbian couples that details the predominant tactics of lesbian batterers. Part II describes the internal and external roadblocks lesbian victims of domestic violence have encountered when attempting to access non-legal sources of safety and assistance such as domestic violence shelters. In Part III, I explain the ways in which law enforcement officials, legislatures, and courts have failed to provide

adequate protection and justice for battered lesbians. In addition, throughout Parts II and III, I highlight strategies and reforms implemented and recommended by advocates over the past two decades to improve the legal and non-legal support systems available to battered lesbians.

**Part I: The Dynamics of Domestic Violence in Lesbian Relationships: Lesbian Batterers’ Tactics of Power and Control**

Research on lesbian batterers suggests that they share some similarities with heterosexual male batterers. Like heterosexual male batterers, lesbian batterers display “extreme jealousy” and intensely fear abandonment such that they “feel threatened by their partner’s desire to be independent” and “use violence… to reject or avoid the partner before the partner can reject them” and to “achieve power, control, and dominance in their intimate relationships.” Lesbian batterers also use tactics such as physical, sexual, and verbal abuse to maintain power and control over their victims, as do their male counterparts. Another similarity is that lesbian batterers are often “charming, articulate, and manipulative in public,” which may lead law enforcement “to believe [their] claim that the victim was the cause of the relationship problems and the battering.”

In contrast to heterosexual male batterers, however, lesbian batterers have some additional tools of power and control at their disposal. These unique tactics are “specifically targeted to take advantage of [lesbian victims’] marginalized status” in a heterosexist and homophobic society. In general, these tactics center on the “threat of ‘outing,’” or exposing the victim’s sexual orientation

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10 See Rohrbaugh, supra note 7, at 295.
12 See Rohrbaugh, supra note 7, at 295. For additional clinical research on the risk factors associated with being a lesbian batterer and the psychosocial characteristics of lesbian batterers, information that is “important to the prevention, assessment, and treatment of IPV [intimate partner violence] among lesbians,” see Blaise Fortunata & Carolynn S. Kohn, Demographic, Psychosocial, and Personality Characteristics of Lesbian Batterers, Violence and Victims, 18:5, at 557 (2003).
13 Tamara L. Kuennen, Analyzing the Impact of Coercion on Domestic Violence Victims: How Much is Too Much?, 22 Berkeley J. Gender L. & Just. 2, at 18 (2007). See also Lundy, supra note 6, at 282 (“The most significant difference between the behavior of same-sex and heterosexual (male) batterers is that same-sex batterers have an extra weapon in their arsenal of terror: homophobia, or society’s fear and hatred of homosexuality.”)
to her family, friends, and employers, and “extreme isolation due to being ‘in the closet.’”\textsuperscript{14} A Power & Control Wheel\textsuperscript{15} adapted for lesbian domestic violence highlights how lesbian batterers tailor heterosexual male batterers’ tactics to target lesbian victims’ vulnerabilities. Specific examples of lesbian batterers’ unique means of achieving dominance over their victims include:

- \textit{Using Coercion & Threats}: threatening to “out” the victim
- \textit{Using Intimidation}: using looks, actions, and gestures to reinforce homophobic control
- \textit{Using Emotional Abuse}: questioning whether the victim is a “real” lesbian; reinforcing internalized homophobia
- \textit{Using Isolation}: saying no one will believe the victim because she is a lesbian
- \textit{Minimizing, Denying, & Blaming}: accusing the victim of mutual abuse; saying that women can’t abuse women
- \textit{Using Children}: threatening to tell the victim’s ex-spouse or authorities that the victim is a lesbian so they will take her children away\textsuperscript{16}

As the Power & Control Wheel makes clear, lesbian batterers take advantage of society’s heterosexism and homophobia to control and isolate their victims. Lesbian batterers know that, due to societal discrimination against lesbians, threatening to “out” their partner could cause her to lose her job, housing, or educational opportunities, as well as damage her relationships with friends and family who may disown her based on her sexual orientation.\textsuperscript{17} When a lesbian victim is trying to hide her sexual orientation from her family by remaining “in the closet,” or when she has already become distanced from them due to their disapproval of her sexual orientation, the batterer is more readily able to isolate her and convince her “that the abusive behavior is normal” and “any problems [she] has with it are a reflection of… her lack of experience [with] lesbian relationships.”\textsuperscript{18}

Furthermore, a lesbian batterer may exploit the homophobia and inadequacies of the legal system and other social service agencies by convincing her victim that she is “not legally entitled to protection from abuse” or that she “will be treated with derision by hospitals, advocates, shelters,

\textsuperscript{14} See Rohrbaugh, \textit{supra} note 7, at 293.
\textsuperscript{16} All examples provided in this list are excerpted from the MCBW Power & Control Wheel, \textit{supra} note 14.
\textsuperscript{17} See Rohrbaugh, \textit{supra} note 7, at 293.
the police, and by the courts if she seeks help.” If the victim does seek refuge in a women’s shelter, the batterer may “use her gender to gain entry to the victim’s safe space” or prevent the victim from entering the shelter in the first place by pretending that she herself is the victim. Worse yet, the victim may not be able to go to a shelter because the batterer is employed there. Lesbian batterers also exploit police officers’ heterosexist assumptions to alienate their victims from potential sources of assistance. For example, a batterer may hide her abuse by playing into an officer’s assumption that violent behavior between two women is merely a consensual “cat fight,” a phenomenon that advocates have labeled the “myth of mutual battering.” A batterer who is smaller or more feminine than her victim may use an officer’s heterosexist assumption that the batterer is always “stronger or more butch” to convince the officer that the victim was the abuser.

Moreover, lesbian batterers prey on their victims’ internalized homophobia and insecurity about their sense of sexual identity by attacking their partners’ lesbianism, a tactic that advocates have labeled “definitional hegemony.” For example, the batterer “may accuse her partner of fantasizing about men or not being lesbian enough.”

A batterer may also prey on her victims’ fear of losing her children. Because some state adoption laws do not allow same-sex parents to adopt each other’s children, a batterer who is the biological or adoptive parent can easily threaten to take the children away because the non-biological parent/victim has no legal parental rights if the couple separates. In states that permit

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19 See Lundy, supra note 6, at 284.
20 Leigh Goodmark, When is a Battered Woman Not a Battered Woman? When She Fights Back, 20 Yale J.L. & Feminism 75, 104 (2008) (“The batterer, using her gender to claim victim status, may have already applied for or be receiving services from the sole provider in the area.”)
21 See Franklin, supra note 18, at 306.
22 As Judge Feinman explains, “Experience with heterosexual battering and attitudes about traditional sex roles lead many to fall into [the trap of] stereotypes of how batterers and victims… should look. Unfortunately, such stereotypes are of little actual use in… identify[ing] who the batterer is in a same-sex relationship. A person who is small but prone to violence… can do a lot of damage to someone who may be taller, heavier, stronger, and nonviolent. … A batterer does not need to be 6‘1” and built like a rugby player to use a weapon against you, smash your compact discs, cut up your clothing or tell everyone at work that you really are queer.” Quoted in Queer Law 1999 Current Issues in Lesbian, Gay, Bisexual and Transgendered Law, 27 Fordham Urb. L.J. 283, 330 (1999).
23 See Giorgio, supra note 11, at 1244.
second-parent adoption by the non-biological lesbian parent, the biological parent/batterer may have intentionally refused to allow the non-biological parent/victim “to do the second-parent adoption precisely to retain more power… in the relationship.”

When the victim is the biological parent, the batterer may coerce the victim by threatening to “out” her to her children’s biological father. This could risk the biological parent/victim’s ability to retain custody “given the history of case law wherein lesbians have lost their children to dysfunctional ex-husbands… simply on the grounds that the children ‘should be afforded the opportunity to grow up in a non-lesbian household.’”

Part II: Internal and External Roadblocks Preventing Lesbian Victims of Domestic Violence from Accessing Non-Legal Support, and Advocates’ Efforts to Remove These Roadblocks

Both internal roadblocks (such as self-blame and internalized homophobia) and external roadblocks (such as heterosexism on the part of community service providers) can prevent battered lesbians from accessing non-legal assistance and protection from their batterers.

A. Internal Roadblocks

Battered lesbians experience many of the same internal barriers to receiving support and protection as do battered heterosexual women. Like heterosexual women victims, abused lesbians exhibit “denial, hypervigilence, and minimization, among other survivor behaviors.” An important distinction, however, is that the difficulties lesbian victims face when trying to escape their batterers are compounded by “the presence of homophobia, and the isolation and alienation it fosters.” The homophobia and heterosexism of the victims’ friends, family, and social service agencies tend to distance battered lesbians “from the larger society and from its resources,” thereby depriving them

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24 See Rohrbaugh, supra note 7, at 293.
25 Id. Note that after Lawrence v. Texas, the argument that homosexual parents are per se unfit because they are engaging in criminal conduct is no longer viable, but courts can and do consider evidence of the sexual behavior of parents in custody disputes and are traditionally harsher on parents involved in same-sex relationships. See Ira Mark Ellman, et. al., Family Law: Cases, Text, Problems 578-79 (4th ed. 2004).
of a support system and rendering them more emotionally dependent on their batterer, who they may feel is the only person that “can understand and accept their sexual preference.”

A lesbian victim may also hesitate to disclose the violence to her family and friends because she fears that doing so would “reinforce[e] stereotypes of the ‘sickness’ of [lesbian]… lifestyles.” Psychologists explain that this fear is “rooted in [the lesbian’s] own internalized homophobia” which can cause her “to be defensive about… her sexual orientation and thus unwilling to recognize the problem of same-sex violence… in [her] relationship.” If her batterer is also closeted, the abused lesbian may be “ironically… protective of her [abusive] partner and may refrain from reporting the abuse… for fear of the consequences of [outing] the abusive partner.” Furthermore, in a society with few public role models of healthy lesbian relationships, the victim may be more likely to believe her batterer’s claims that the violence she is experiencing is normal.

In addition, lesbian victims differ from heterosexual battered women in that they “tend to use physical force to defend themselves against their batterers more frequently than abused heterosexual women do.” As a result of fighting back, a lesbian victim may blame herself for provoking the batterer’s violent behavior and be more likely to believe “the assertion of the batterer, and even friends and counselors, that [her] self-defensive fighting constitutes abuse, and that [she] is the aggressor and does not deserve help.” She may feel especially guilty if she believes that

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27 Id.
29 See Lundy, supra note 6, at 286.
30 See Franklin, supra note 18, at 304.
31 Kathleen Finley Duthu, Why Doesn’t Anyone Talk About Gay and Lesbian Domestic Violence? 18 T. Jefferson L. Rev. 23, 29 (1996). See also Goodmark, supra note 20, at 96. (“Social science research suggests that… [lesbians] are particularly likely to fight back against their abusers.”)
lesbians are “not predisposed to violence” due to “their gender and enlightened lesbianism,” and therefore infers that she must be at fault for causing her partner “to resort to male-like violence.”  

**B. External Roadblocks**

Paradoxical as it may seem, the lesbian community itself has often been an external obstacle to abused lesbians who are seeking assistance. Lesbian communities “may be reluctant for ideological reasons to acknowledge that women can batter other women” because doing so would shatter “a utopic vision of a peaceful, women-centered world.” Lesbians may also discourage victims from seeking help because they think “the lesbian community should not ‘air its dirty laundry’ in public or participate in patriarchal institutions such as the courts.” As a result, lesbian victims are less likely to report the abuse to their friends, especially if these friends are also lesbian, because doing so may result in ostracism. Furthermore, “the lesbian batterer may be a prominent person in the lesbian community or the battered women’s community, thus providing… the ‘perfect cover-up’ to cast doubt on the victim’s account and allow the battering to go unchallenged.”

Battered lesbians have also encountered external roadblocks when trying to access support services such as hotlines and shelters. These roadblocks range from the outright “denial of shelter… [due to] homophobia within the shelters” to well-meaning but ill-equipped providers whose services fail to meet battered lesbians’ needs because they are “based on assumptions of universal heterosexuality and the transposition of heterosexual understandings of domestic violence.”

Discrimination against lesbian victims in women’s shelters arises from several sources. Homophobic staff members may make the lesbian victim feel “unwelcome or unsupported.” Heterosexual women residents of the shelter may complain that they are uncomfortable sharing

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33 See Da Luz, *supra* note 4, at 283.
spaces with lesbian victims.\(^{38}\) Shelters may also refuse to accept lesbian victims because they fear losing government or community funding if it is discovered that they offer services to lesbians.\(^{39}\) As a result, lesbian victims who try to utilize services for heterosexual battered women may have to pretend that their batterer was a man to avoid homophobia from shelter staff and other victims.\(^{40}\)

Even well-intentioned service providers may inadequately address battered lesbians’ safety needs. When both the batterer and victim arrive at a shelter, staff members may use inaccurate stereotypes to identify the “true” victim\(^{41}\) or otherwise fail to carefully screen the women “to ensure that the batterer will not gain access to the victim.”\(^{42}\) Hotline receptionists may inadvertently alienate a lesbian caller with a heteronormative question such as “What did he do to you?”\(^{43}\) Counselors who call a lesbian victim may accidentally endanger her by assuming the female voice on the other end of the phone line is that of the victim rather than the batterer.\(^{44}\) Public education campaigns may alienate lesbian victims by “model[ing] abusive relationships exclusively on the heterosexual paradigm.”\(^{45}\)

Traditional gender stereotypes may also prevent counselors and the public from being sympathetic to lesbian victims. The stereotype of “upstanding femininity” is “a double bind” because it makes people less inclined to believe that a lesbian could be a victim, since her

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\(^{40}\) See Duthu, *supra* note 31, at 33. Advocates for lesbian victims of domestic violence have also noted instances in which shelter counselors have instructed a lesbian victim “not [to] tell anyone [that her] abuser was female,” a misguided effort meant to protect the lesbian victim that “in fact … just… slam[s] the door on the closet.” See *Revolutions Within Communities: The Fifth Annual Domestic Violence Conference, Lesbian, Gay, Bisexual, and Transgender Communities and Intimate Partner Violence*, 29 Fordham Urb. L.J. 121, 129 (2001).

\(^{41}\) See Knauer, *supra* note 38, at 347. See also *Queer Law 1999*, *supra* note 22, at 330. (Stereotypes based on “size, weight, masculinity, femininity or any other physical attribute” are not sufficient to determine whether a lesbian is the victim or the batterer.’); see also Duthu, *supra* note 31, at 30. (“The myth that the batterer will always be bigger… than the victim only focuses on physical abuse and fails to recognize that domestic violence is really about power and control maintained by numerous forms of abuse in the relationship.”)

\(^{42}\) See Lundy, *supra* note 6, at 288.

\(^{43}\) See *Revolutions Within Communities*, *supra* note 40, at 130.

\(^{44}\) Elizabeth Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. Rev. 520, 545 (1992) (“Telephoning a house where violence often occurs is more dangerous in a lesbian relationship… because volunteers cannot assume that the woman’s voice on the line is that of the victim.”)

\(^{45}\) See Franklin, *supra* note 18, at 303.
lesbianism places her outside of the “good battered woman” paradigm, yet more inclined to believe that a lesbian could not be a batterer, since her female gender defies the general assumption that batterers are male.\(^46\) Racial stereotypes compound these difficulties for lesbians of color. For example, service providers may perceive black lesbians “as mutual combatants and, thus, less deserving of protection” due to racial stereotypes of black women as “angry” and “domineering.”\(^47\)

C. Removing Roadblocks to Non-Legal Services for Battered Lesbians

Over the past two decades, advocates have identified and begun to implement a number of measures that will help improve battered lesbians’ access to non-legal support services,\(^48\) including:

- **Continued Research and Increased Reporting** – to better understand and document the prevalence of domestic violence in lesbian relationships and to develop appropriate “health and human services” policies and practices in response to lesbians’ needs.\(^49\)

- **Increasing Support and Recognition from the LGBT Community** – by encouraging battered lesbians to participate in “community speak-outs”\(^50\) about their experiences and fostering the formation of LGBT coalitions and non-profit organizations\(^51\) to address same-sex domestic violence in a way that “does not undermine… the lesbian community [and also] does not detract from the extent of male violence against women.”\(^52\)

- **Disseminating Information about Same-Sex Domestic Violence** – via articles in LGBT newspapers and pamphlets distributed at LGBT community events and bars frequented by lesbians,\(^53\) as well as via online resources that can be accessed anonymously.\(^54\)

- **Training Practitioners in Health, Human, and Community Services** – to increase knowledge of the dynamics of domestic violence in lesbian relationships, to challenge heteronormative assumptions and promote the use of inclusive gender-neutral language when questioning clients,\(^55\) to improve the ability of shelter intake interviewers to distinguish lesbian batterers from

\(^46\) Id. at 305.


\(^48\) Note, however, that lesbian batterers are also in need of improved non-legal assistance. For example, while heterosexual males “who are convicted or accused of battering their spouses can go into [a batterers’] program, get treatment, and then… have their cases dismissed or reduced,” these programs do not accept (and are not designed for) lesbian batterers. Advocates have urged the creation of rehabilitative programs specifically for gay and lesbian batterers. See Queer Law 1999, supra note 22, at 315.

\(^49\) See Irwin, supra note 36, at 199.

\(^50\) See Lundy, supra note 6, at 309.

\(^51\) See, e.g., the National Coalition of Anti-Violence Programs, which focuses exclusively on violence against LGBT individuals. For more information, see http://www.ncavp.org/issues/DomesticViolence.aspx.

\(^52\) See Irwin, supra note 36, at 212.

\(^53\) See Lundy, supra note 6, at 309.

\(^54\) See Irwin, supra note 36, at 212.

\(^55\) See Revolutions Within Communities, supra note 40, at 158.
victims\textsuperscript{56} and to screen out batterers from among the shelter staff and clientele,\textsuperscript{57} to make appropriate referrals to other non-legal and legal resources, and to develop preventive services that are safe and relevant for lesbians.\textsuperscript{58}

- **Urging the Creation of State Government Commissions on Same-Sex Partner Abuse** – Modeled on other commissions sponsored by government executives, a commission on same-sex domestic violence would include “knowledgeable individuals in law enforcement, district attorneys’ offices, the battered women’s community and the [LGBT] communit[y]” and would “be empowered to take testimony across the state, hire appropriate staff, make recommendations, and promulgate guidelines for state workers and other professionals who respond to same-sex victims” of domestic violence.\textsuperscript{59}

**Part III: Roadblocks Faced by Battered Lesbians in the Legal System, and Advocates’ Efforts to Improve Access to Justice and Protection from Law Enforcement, Legislatures, and Courts**

Police, legislatures, and judges have historically failed to adequately protect lesbian victims of domestic violence, but within the last two decades advocates have identified and begun to implement a number of measures aimed at enhancing battered lesbians’ access to legal remedies.

**A. Law Enforcement**

Battered lesbians often hesitate to call the police because officers’ responses to their calls have been unhelpful or even victimizing.\textsuperscript{60} Upon realizing that the conflict involves two women, officers may “minimize the aggressive nature” of the violence.\textsuperscript{61} Worse still, the officers may make anti-lesbian slurs.\textsuperscript{62} Even well-intentioned officers may not render effective assistance because they fail to recognize the situation as domestic violence rather than just plain violence,\textsuperscript{63} or they fail to properly identify the perpetrator due to reliance on mistaken assumptions such as that the more

\textsuperscript{56} Practitioners should “determine who has relationship hegemony by finding out who controls the home space and makes major decisions” and “who instigates the violence, not simply who attacks.” \textit{See} Giorgio, \textit{supra} note 11, at 1253.

\textsuperscript{57} \textit{See} Lundy, \textit{supra} note 6, at 307.

\textsuperscript{58} \textit{See} Irwin, \textit{supra} note 36, at 212.

\textsuperscript{59} \textit{See} Lundy, \textit{supra} note 6, at 310.

\textsuperscript{60} Note that lesbians may also fear that police will victimize them because of the “history of police misconduct within the queer community.” \textit{See} Franklin, \textit{supra} note 18, at 313.

\textsuperscript{61} \textit{See} Franklin, \textit{supra} note 18, at 310.

\textsuperscript{62} For example, one lesbian victim who called the police described the officer’s attitude as “So two dykes are trying to kill each other; big deal.” Claire M. Renzetti, \textit{Violent Betrayal: Partner Abuse in Lesbian Relationships} (1992), quoted in Lundy, \textit{supra} note 6, at 290. Another reported that officers “drooled” and “snickered” because she was a lesbian. \textit{See} Franklin, \textit{supra} note 18, at 313. Some police still believe that “lesbians are immoral or abnormal, incapable of having a meaningful… relationship, and a threat to the traditional family,” and such heterosexist and homophobic stereotypes can influence the officers’ “perceptions of and respect for… lesbian victims’ claims.” \textit{See} Da Luz, \textit{supra} note 4, at 282.

\textsuperscript{63} As occurred in the L.A. case described on page 1, in which police thought the incident was a “roommate dispute.”
“butch” woman is always the abuser. Officers may also erroneously report the incident as “mutual combat” or believe that “same-sex partner abuse is merely… sadomasochistic sexual behavior.”

Advocates have sought to improve police response to same-sex domestic violence through increased training. This training has taken the form of written manuals for police officers that explain how to determine whether the two women in conflict are in an intimate relationship and offer reliable techniques for identifying which woman is the predominant aggressor without relying on inaccurate stereotypes or other myths about same-sex domestic violence. Advocates have also designed workshops that present officers with hypothetical same-sex domestic violence scenarios to which they must practice role-playing a proper response. Police must continue to receive this training to counter “institutionalized homophobia [and] heterosexism” in law enforcement.

B. Legislation

Legislatures have historically failed to account for lesbian battering when drafting statutes providing civil protection orders (“CPOs”) to victims of domestic violence. Some state statutes explicitly preclude battered lesbians from obtaining CPOs by defining domestic violence as “violence between a man and a woman” or violence in “opposite-sex” relationships. Other statutes restrict protection to “current or former spouses,” which effectively bars lesbians from obtaining CPOs in states that prohibit same-sex marriage. Statutes that refer to “partners,” “cohabitants,” or “household members,” and do not explicitly preclude their application to same-sex couples” still do not guarantee that lesbians will be able to obtain CPOs because the “nebulous statutory language”

64 See Giorgio, supra note 11, at 1243. Also note that this assumption ignores other tactics used to control abused partners such as “psychological abuse, property destruction or… intimidation.” See Da Luz, supra note 4, at 286.
65 See Da Luz, supra note 4, at 283.
66 Id. at 286. (“This myth is indicative of society’s belief that… lesbians are an aberration.”)
68 See Revolutions Within Communities, supra note 40, at 136. Lieutenant Grace Telesco of the NYPD describes a mandatory cultural competency course for police that involves them in “structured improvisations [and] theater workshops [about domestic violence], where one of the scenarios is a same-sex couple.” Trainers evaluate whether the officers in the role-play display “homophobic reactions” or rely on heterosexist assumptions when making an arrest.
69 Id. at 135.
allows “their application [to] be [determined] by… judges” whose decisions may be influenced by heterosexist or homophobic attitudes toward same-sex relationships.  

When advocates brought these deficiencies to legislators’ attention, some legislators opposed amending the statutes to include same-sex domestic violence, arguing that “because same-sex individuals [are] not married, they [can] easily leave an abusive relationship,” that “basic assault and battery provisions [are] adequate relief for… lesbian victims,” and that amended statutes would be “too broad [and] inappropriately include all roommate relationships.” Advocates countered that such arguments fail to understand that “abused partners remain with their abusers because of… psychological barriers and the fear of separation, not because a marriage certificate validates a legal union.” Furthermore, defining “the protected class” as “persons who are or who have been in a dating relationship or ongoing intimate relationship” would easily avoid the problem of “overbreadth.” Advocates also argued that domestic violence statutes that exclude same-sex domestic violence discriminate on the basis of sexual orientation and are unconstitutional under the Equal Protection Clause. In addition, advocates mobilized broad-based public support for amending the statutes by emphasizing how these statutes often exclude not only LGBT victims of domestic violence but also teenagers and heterosexual persons in intimate or dating relationships.

70 See Franklin, supra note 18, at 312.
71 See Da Luz, supra note 4, at 279.
72 Id. at 290.
73 Id. at 280.
74 Id. at 291.
75 See e.g., Pamela M. Jablow, Victims of Abuse and Discrimination: Protecting Battered Homosexuals Under Domestic Violence Legislation, 28 Hofstra L. Rev. 1095 (2000) (arguing that statutes excluding same-sex domestic violence are unconstitutional under the Equal Protection Clause regardless of whether rational basis, intermediate, or strict scrutiny review is applied); see also Nancy E. Murphy, Queer Justice: Equal Protection for Victims of Same-Sex Domestic Violence, 30 Val. U. L. Rev. 335, 346 (1995) (arguing that “de jure and de facto discrimination against gay men and lesbians makes this type of legislation inherently suspect under the Equal Protection Clause”).
76 For example, Sanctuary for Families’ “Fair Access to Family Court” campaign highlighted how New York’s law granting CPOs only to victims related to their abusers by blood, former/current marriage, or who had a child in common, afforded no protection to same-sex couples, teens, and people in intimate/dating relationships. In response, the legislature amended the law in June 2008. See “Fair Access to Family Court,” available at http://www.sanctuaryforfamilies.org/index.php?option=com_content&task=view&id=307&Itemid=273.
As of 2009, the domestic violence statutes of Montana, Louisiana, and South Carolina continue to bar lesbian (and gay) victims from obtaining CPOs with language that explicitly limits protection to opposite sex couples. Many other state statutes remain silent on the issue, allowing battered lesbians to pursue CPOs as “dating partners” or “household members” unless and until courts determine that these gender-neutral terms do not include lesbian and gay victims of domestic violence. As of 2008, only four states with gender-neutral statutes had appellate case law ensuring the availability of CPOs to LGBT victims of domestic violence. Only Hawaii explicitly protects some lesbians and gay men by offering CPOs to victims in same-sex couples who are current or former “reciprocal beneficiaries” as well as to spouses and persons in a “dating relationship.”

C. Civil Court

A battered lesbian encounters formidable obstacles when seeking protection via courts. First, she must overcome the fear of publicly “outing” herself in court and face the attendant risks

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78 For example, in North Carolina, N.C. Gen. Stat. § 50B-1(b) offers protection from domestic violence to “persons of the opposite sex who are in a dating relationship,” thereby excluding gay and lesbian dating partners. However, because the statute also offers protection to “former or current household members” without specifying whether the household must be of the opposite sex, it is possible that a court could determine that the statute extends protection to lesbian and gay victims who are cohabiting or have cohabited with their batters.

79 Florida (855 So.2d 690), Kentucky (957 S.W.2d 310), Pennsylvania (734 A.2d 409), and Illinois (252 Ill. App.3d 372). For summaries of these four appellate cases, see American Bar Association (ABA) Commission on Domestic Violence “Domestic Violence Civil Protection Orders By State: Overview of CPO Protections for LGBT Victims of Domestic Violence” (July 2008), available at http://www.abanet.org/domviol/pdfs/CPO_Protections_for_LGBT_Victims_7-08.pdf. For a comprehensive chart noting the applicable statutes for all 50 states and whether they provide for CPOs for same-sex couples, see ABA Commission on Domestic Violence “Domestic Violence Civil Protection Orders By State” (June 2009), available at http://www.abanet.org/domviol/pdfs/dv_cpo_chart.pdf.

80 See Haw. Rev. Stat. § 586-1(2) (2010). Haw. Rev. Stat. § 572C-2 (2010) indicates that “individuals who are of the same gender” who have a “significant personal, emotional, and economic relationship” but are restricted from legally marrying may apply for the status of “reciprocal beneficiary.”

81 As a result, battered lesbians are even less likely to seek assistance through the courts than they are to call the police. See Goodmark, supra note 20, at 104.
of doing so. She may then find herself in front of a judge who, due to ambiguities in the state’s domestic violence statute, finds that battered lesbians are not entitled to CPOs. Alternatively, the judge may dismiss her case “on the grounds that [same-sex] violence is de facto ‘mutual’” or order “inappropriate ‘relief’ such as unwarranted mutual restraining orders” because the judge is ill-informed about the dynamics of domestic violence in lesbian relationships.

Even when the domestic violence statute can be construed to afford protection to lesbians, the “heterosexual model of domestic violence ([i.e.] male abuser/female abused)” remains an “implicit obstacle” to battered lesbians seeking legal protection. “For most judges it is an extreme paradigm shift to think there is a same-sex couple before them and one partner is abusing the other.” Judges are also influenced by gender stereotypes and heterosexist assumptions that cause them to misidentify the abuser, especially when the victim is more masculine in appearance.

D. Criminal Court

Battered lesbians who are willing to cooperate with district attorneys to prosecute their batterers may nevertheless find that the prosecutors are “not… interested in pursuing charges in a case of lesbian… battering.” Worse still, the district attorney “may end up prosecuting the victim” because he or she has “not thoroughly investigated the case.”

83 Such risks include that it will negatively affect her relationships with family or employers, and that court personnel may become “abusive and deliberately unhelpful” due to her sexual orientation. See Lundy, supra note 6, at 291.
84 As previously explained, domestic violence statutes that fail to explicitly offer CPOs to lesbian victims leave protection “to the precarious discretion of the judges… in each case.” See Hodges, supra note 82, at 318.
85 See Lundy, supra note 6, at 291. Mutual orders of protection are dangerous for battered lesbians, just as they are for heterosexual battered women, because they give perpetrators an additional means of abusing their victims. However, the risk of receiving unwarranted mutual orders is higher for battered lesbians. As Sarah Buel once observed, “In cases involving same-sex partners, judges routinely order mutual restraining orders without the required written findings of fact (and often require the parties to undergo mediation), in clear violation of [the law].” Rather than make any effort to determine who is the true victim. Quoted in Franklin, supra note 18, at 314.
86 See Franklin, supra note 18, at 325.
87 Theresa Jefferson of the Anti-Violence Project, quoted in Revolutions Within Communities, supra note 40, at 142.
88 See Hodges, supra note 82, at 328.
89 See Lundy, supra note 6, at 291.
Even if a district attorney does want to prosecute lesbian batterers under domestic violence statutes, he/she may be hindered by numerous difficulties. For example, the Los Angeles prosecutor (supra page 1) had to argue that the case was misfiled as a roommate dispute when it was in fact an incident of domestic battery. To do so, she had to convince the victim to “out” herself and admit to having an intimate relationship with the defendant. When the victim later perjured herself by saying a stranger had mugged her, the prosecutor had to persuade the judge to permit expert testimony to explain that the victim recanted because she was “afflicted by BWS.” The jury ultimately convicted the defendant, but the prosecutor doubted whether the case was truly a victory because she suspected that “negative factors contributed to the jurors’ acceptance of the BWS testimony.”

Battered lesbians who fight back or kill their batterers are at the greatest risk of being misunderstood and unfairly condemned. Both heterosexual and lesbian women who kill their abusers “challenge judicial… understandings of victim behavior” and lose credibility with judges and juries for failing to conform to the “good battered woman” stereotype. While BWS testimony sometimes persuades juries of the reasonableness of a heterosexual woman defendant who killed her batterer, such testimony may not be as effective for a battered lesbian defendant because lesbians are already stereotyped as “aggressive” and “disturbed” and are therefore “outside the normative understanding of womanhood” even before they kill their batterers.

*State v. Green* is one example of a case in which BWS testimony did not prove to be effective for a battered lesbian who killed her batterer. At Annette Green’s trial, her lawyer

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90 See West, supra note 2, at 266.

91 For example, perhaps the jurors were inclined to accept the BWS testimony, which explains actions “generally thought to be… abnormal,” because the victim’s lesbianism would already render her “abnormal” to heterosexist jurors. Alternately, the jurors may have convicted the batterer in this case because she was black, and racial stereotypes of “aggressive” black women fueled their willingness to believe that this defendant was a batterer. *Id.* at 269.

92 See Goodmark, supra note 20, at 116.

93 See Franklin, supra note 18, at 316.


95 The facts of the case, as summarized in Bricker, supra note 28, at 1379-81, are as follows: Annette Green met Yvonne Julio when she was 18. After developing a sexual relationship, Green moved from Puerto Rico to Florida with
offered BWS testimony to support her plea of self-defense, but the jury convicted her of murder and the judge sentenced her to 12 years in prison. Jurors questioned after the trial said that “male jurors refused to believe Green suffered from BWS, although all believed that she had been beaten.”

Denise Bricker argues that Green’s case exemplifies how BWS is a gender-specific theory and “many of its tenets do not translate to same-sex couples.” BWS testimony is not useful to explain the actions of battered lesbians who fail to fit the gendered “symptoms” (e.g. socialized passivity, economic dependence, and lesser strength). Furthermore, theories of domestic violence as an instrument of male power used to reinforce the “position of women as property in a patriarchal structure” do not account for domestic violence perpetrated by a woman. Moreover, BWS testimony may be “dangerous as a cognitive device for understanding lesbian battering” because it imposes a “heteronormative framework upon lesbian relationships” by forcing the jury to “ask themselves who played the role of the man and who played the role of the woman,” thereby perpetuating the myth that ‘butches’ are batterers and ‘femmes’ are victims.

Acknowledging that some kind of expert testimony is needed to translate battered lesbian defendants’ experiences for judges and juries, Bricker proposes developing “genderless theories of adult intimate violence” as an alternative to BWS. Such gender-neutral theories might assess victims’ behavior and perceptions in light of “the level of violence perpetrated against them and

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96 Id. at 1381.
97 Id. at 1385-86.
98 Id. at 1430.
99 Id. at 1417.
100 See Knauer, supra note 38, at 335.
101 See Bricker, supra note 28, at 1426. See also Schneider, supra note 44, at 544. (“Lesbian relationships cannot be neatly analogized to heterosexual relationships. This analogy only serves to victimize [battered lesbians] further by obliterating their distinct sexuality and community.”)
102 See Bricker, supra note 28, at 1430.
their diminished ability to perceive escape opportunities,” draw greater comparisons between “non-
gender-specific victims” of trauma and battered victims, or focus on how intimate violence renders
victims “less able to perceive injustice and act on this perception.”103

Other advocates caution, however, that genderless explanations “redefining battering as an
issue of power and control” present in all relationships makes “battering normal and usual,” thereby
undermining feminists’ efforts to “establish woman-battering as a unique phenomenon justifying
special legal recognition.”104 Yet Elizabeth Schneider has argued that “we must hold on to both
particularity (the particular experiences of women who have had relationships with battering men)
and generality (violence and power and control…) simultaneously” because this does not deny the
“distinctiveness of women’s experiences with woman-abuse” but rather makes for “both a richer
and more detailed description” of the problem of violence between intimates.105

Still others argue that BWS and the traditional gendered analysis of domestic violence can in
fact explain lesbian battering because “gender specific (or expected) behavior need not track
biological sex.” Battering can be defined as male-gendered behavior that can be “committed
regardless of the biological sex of the offender.”106

Others suggest that gender-focused theories of domestic violence fail to explore the role of
other factors in determining power and control in intimate relationships.107 Rather, advocates should
discover how power is “deployed in the absence of gender difference” by studying the impact that
sexual orientation, race, class, education, age, and/or ability have on intimate violence.108

While it is beyond the scope of this paper to resolve the controversy over whether and how
to apply BWS testimony to battered lesbian defendants, I conclude this paper by highlighting some

103 Id. at 1433-34.
104 See Schneider, supra note 44, at 539.
105 Id. at 568.
106 See Knauer, supra note 38, at 335.
107 Sally F. Goldfarb, Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and
108 See Knauer, supra note 38, at 336.
measures that advocates have agreed can be taken to provide battered lesbians with better legal representation and to improve the responsiveness of judges and juries to same-sex domestic violence. Such measures include:

- **Educating Judges and Prosecutors** – via mandatory sensitivity trainings in widespread geographic areas that educate judges and prosecutors not simply to treat lesbian victims “the same” as heterosexual victims but to understand domestic violence in lesbian couples.  

- **Educating Defense Attorneys** – not to minimize or exclude the nature of their client’s lesbian relationship (based on the assumption that a client’s homosexuality is a ‘negative’) when the battered lesbian’s criminal conduct or behavior may make little sense outside the context of a batterer’s pattern of abuse of an intimate partner.

- **Urging Judges to Conduct Extensive Voir Dire of Prospective Jurors** – to determine if their personal feelings, prejudices, or religious beliefs about lesbian relationships will affect their ability to be fair and impartial jurors and apply the law to the facts of the case.

- **Increasing Availability of Legal Service Providers for Battered Lesbians** – modeled, for example, on Sanctuary for Families’ LGBT Initiative, which provides direct legal representation on behalf of LGBT victims so that the law responds to their needs.

- **Allowing Battered Lesbian Clients to Tell Counterstories** – Rather than “narrowing the range of acceptable victims” by editing clients’ stories to fit norms or stereotypes, lawyers should let non-stereotypical clients “tell unedited narratives” to challenge prevailing victim stereotypes.

- **Allowing Expert Testimony on the Dynamics of Same-Sex Violence** – Judges should permit such testimony to enhance the fact-finders’ understanding of battered lesbians’ experiences.

- **Advocating for Appropriate Civil Protection Orders** – Battered lesbians’ lawyers should vigorously challenge unwarranted mutual CPOs and/or referrals to mediation, and should also press for CPOs tailored to the unique needs of the victim, such as CPOs containing provisions stating that “involuntary ‘outing’ by the batterer” is a violation of the CPO.

By making a continued commitment to understanding and responding to domestic violence in lesbian relationships, the legal system and non-legal service providers can remove the roadblocks to justice and safety for battered lesbians.

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109 See Lundy, supra note 6, at 304.
110 Id. at 290.
111 See Duthu, supra note 31, at 38.
113 See Goodmark, supra note 20, at 126. (“To the extent that we as advocates doubt that our clients’ stories will be credible or persuasive, we perpetuate untruths about our clients who fight back—that they are not believable, that they are wantonly violent, that they are not victims of abuse. Why should judges change their minds about these women and reassess the stories they tell if advocates have no faith in those stories either?”)
114 See Lundy, supra note 6, at 305.
115 Id.