

DOMESTIC PARTNER VIOLENCE IN SAME-SEX RELATIONSHIPS: WHAT IS IT AND WHAT CAN WE DO TO HELP?

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I. Introduction

On the morning of December 29, 2006, fifty-one year-old pastor John Smith was severely beaten by his partner of over five years.¹ On that morning, John and Manuel were having an argument and without warning, Manuel repeatedly punched John in the face. He threw John against the kitchen wall and then to the floor, which caused John to lose consciousness. As a result of the severe beating, John was treated for a broken eye socket, lacerations on his head, and cartilage damage on the bridge of his nose. John was required to have surgery to put a metal plate under his eye. Manuel was eventually criminally prosecuted by the Santa Clara County District Attorney's office for assault likely to produce great bodily injury, felony false imprisonment, and inflicting corporal injury. He had prior convictions. He was convicted on all charges and sentenced to seven years in prison.

Although it has been nearly six years, John still suffers trauma from the brutal beating. After the incident, the Santa Clara County District Attorney referred John to a support group for battered men. There were nine men in his group, all heterosexual with the exception of John and one other man. John did not feel comfortable opening about his personal experience with the group of men out of fear of homophobic sentiment and lack of understanding of the particularities of homosexual relationships. As a result, John has never received the therapeutic assistance he requires and continues to suffer from the after-effects of victimization.

John's story of intimate partner abuse is not an anomaly. Domestic violence is prevalent, although often underreported, in the LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. On December 30, 2011, a San Jose woman, Sagal Sadiq, was arrested on suspicion of hacking her mother-in-law to death with a machete. Authorities reported that Sadiq was enraged that her wife was breaking up with her. Before this incident, Sadiq had abused her wife for some time. The abuse, however, was never reported.

While these stories are shocking and horrific, they are not all that much different than that of thousands of men, women, and children who have been affected by and experienced domestic violence. Domestic violence does not discriminate;

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it affects people of all races, economic classes, cultures, genders, religions, education, geographical areas, and sexual orientation.

Although often perceived as a heterosexual problem, most often conjuring up the image of a battered woman emotionally and physically abused by a violent husband, the LGBTQ community is just as, if not more, likely to be affected by domestic violence. Government and community-based agencies provide limited social services unique to victims of same-sex domestic violence, such as shelters, therapy and psychological assistance, and sexual health education and awareness programs. LGBTQ-specific organizations lack the funding to fully implement programs necessary to assist the thousands of women and men who are affected by domestic violence in same-sex relationships.

II. Domestic/Intimate Partner Violence in the LGBTQ Community

A few studies and the limited research conducted in the area of same-sex domestic violence indicate that domestic violence in same-sex relationships occurs with the same statistical frequency as in heterosexual relationships, or in approximately 25% to 33% of all relationships.² Same-sex domestic violence is believed to be the "third most severe health problem facing gay men today."³

As a result of the lack of statistics relating to same-sex domestic violence, it is unclear how many individuals in California are victims. There are approximately 37,691,912 people living in California and based on statistics, approximately ten percent of those people are LGBTQ.⁴ As such, approximately 3,769,191 LGBTQ individuals are living in California.⁵ Based on research that indicates that one in four are dealing with relationship abuse issues, domestic violence services are needed for up to 942,300 LGBTQ individuals in California. Therefore, these estimated statistics indicate that there is a substantial need in the community for shelters and support services specific to LGBTQ individuals.

A. Problems particular to same-sex domestic violence

Although in many respects domestic violence in the LGBTQ community is not that much different than heterosexual domestic violence, there are several problems unique to the LGBTQ community. One of the major problems is the hesitation on the part of the LGBTQ community to acknowledge the existence of violence within the community.⁶ LGBTQ communities often fear that raising the issue to mainstream society would reinforce commonly held negative stereotypes of same-sex relationships, such as that they are dysfunctional.⁷ “Denial, minimization, and rationalization about abuse have been the community’s ways of protecting itself from a society that is looking for reasons to condemn lesbians and gays as sick and perverted.”⁸

Another major barrier the LGBTQ community faces in accessing justice is the prevalent myths and misconceptions regarding same-sex relationships, and domestic violence within the community. The predominant view that women are the victims and men are the abusers presents a fundamental challenge in homosexual relationships. In contrast to the traditional notions of domestic violence, women can be and are abusers, and men can be and are victims of domestic violence.

Furthermore, there is a prevalent misconception that the more “butch” partner is the abuser and the smaller, more feminine partner is the victim in lesbian relationships, and that the more masculine male is the abuser in gay relationships. As the misconceptions of same-sex relationships are widespread, the effects are worsened by the lack of specialized training in local police departments and the court system to better handle and understand domestic violence in gay and lesbian relationships. As a result, oftentimes the victim is arrested instead of the abuser, or both partners may be arrested.⁹

B. ‘Outing’

One of the major barriers unique to same-sex domestic violence and access to justice, and a particularly strong control method, is the threat of ‘outing,’ or divulging a partner’s sexual orientation and/or gender identity to family, friends, employers, landlords, the community in general, or others in a position of power. This is an attempt to keep the victim from reporting the acts of violence or seeking help, with the intent to force them to remain in the abusive relationship.¹⁰ In addition to the threat of outing one’s sexual orientation, an abuser may threaten to out the victim’s health conditions as a means of control.¹¹

The exploitation of homophobia and stigmatization of HIV-positive individuals that pervades American society can be a

powerful mechanism of emotional abuse employed by the abuser for someone who is gay, lesbian, or bisexual.¹² Outing can result in the loss of a job, support system, home and even child custody.¹³ The abuser may focus on and exploit the continued existence of stigmatization of homosexuals to reinforce the victim’s fear that people will be unwilling to help because of the victim’s sexual orientation.¹⁴

III. Access To Justice For Same-Sex Domestic Violence Victims

A. Domestic/Intimate Partner Violence in California

Under the Domestic Violence Prevention Act (DVPA),¹⁵ victims who may apply for a restraining order are defined by statute as a spouse or former spouse, cohabitant or former cohabitant, a person with whom the abuser has had a dating or engagement relationship, a person with whom the abuser has had a child, a child of the parties who has suffered domestic violence, and any other person related by consanguinity or affinity within the second degree.¹⁶ Pursuant to California Penal Code section 243, subdivision (e)(1), domestic battery is committed if a person willfully inflicts force or violence upon an intimate partner. Therefore, in California, The Domestic Violence Prevention Act applies to crimes perpetrated against one’s intimate partner, regardless of whether the partners are heterosexual. As a result, California law offers a range of remedies to LGBTQ individuals, both criminally and civilly.

In addition, many of California’s metropolitan police departments are trained in the intricacies and particularities involved in same-sex domestic violence cases, and are therefore better equipped to protect and respond to such cases.¹⁷ San Diego’s City Attorney’s Domestic Violence Unit is at the forefront of same-sex domestic violence prosecution.¹⁸ The City Attorney’s office has one full-time prosecutor and one part-time advocate who are assigned solely to handle same-sex domestic violence cases.¹⁹ Members of the City Attorney’s office in San Diego are specially trained to handle same-sex domestic violence cases, and the City of San Diego produced a training video on the issue of gay and lesbian domestic violence, which is viewed by the entire patrol force of the San Diego Police Department.²⁰

The Police Chiefs’ Association of Santa Clara County has established a detailed protocol for dealing with domestic violence cases in order to limit the likelihood of inadvertently arresting the victim of domestic violence. In handling a domestic violence incident, the fact that the victim and suspect are of the same gender is second on its list of factors that are not to influence the officer’s decision

to investigate or arrest, except as they relate to the elements of the crime.²¹

While police departments in California have adopted protocols for same-sex domestic violence cases, it is unclear whether these protocols are successfully implemented in all incidents of domestic violence. According to Wiggsey Sivertsen, a counselor at San Jose State University who is actively involved in the LGBTQ community, police officers in San Jose used to be dismissive of calls of domestic violence between LGBTQ partners.²² Officers were often reluctant to get involved in these disputes and would treat incidents between lesbian partners as mere “cat fights.” Often when called to respond to LGBTQ domestic violence incidents, the police officers would admonish the victim to “fight back.”²³

Despite the historical reluctance on the part of police officers to get involved in LGBTQ domestic violence incidents, Ms. Sivertsen noted that law enforcement in Santa Clara County has been responsive to calls by LGBTQ activists to provide better training to its police officers; in particular, police officers are now required to attend training sessions that educate the officers on how to properly respond to incidents of domestic violence between lesbian or gay partners.²⁴

In addition to the necessity for police officers to become more informed on the specifics of domestic violence in same-sex relationships, defense attorneys, prosecutors, and judges are often not trained to understand the unique nature of domestic/intimate partner violence. Victims can face prejudicial treatment by all of these actors in the justice system, which could seriously hinder the victims’ ability to gain protection from their abuser.

Most important can be the role and view of the judge assigned to a case. If a judge maintains biases and preconceived notions of same-sex domestic violence, even if the police and prosecutors handle a case well, a judge can undermine the work at sentencing. In one case, a San Francisco judge told two lesbian women, one the victim and the other the abuser, “now ladies, that’s not way to have a relationship.”²⁵ As these attitudes are perceived to be prevalent throughout the country, many LGBTQ victims continue to feel that the justice system is not a viable option to gain protection from their abuser.

IV. Resources Available for Domestic/Intimate Partner Violence

Unlike their heterosexual counterparts, same-sex domestic violence victims and abusers do not have consistent access to

service providers to prevent and address the violence against them.²⁶ Mainstream domestic violence service providers often cannot meet the needs of LGBTQ domestic violence victims in culturally sensitive ways as they are often not trained or equipped to work with LGBTQ victims, and LGBTQ-specific domestic violence programs either lack the resources to do so or do not exist.²⁷

Even if service providers do have the training to work with LGBTQ victims, same-sex domestic violence victims may fear encountering homophobia because of the history and prevalence of such attitudes.²⁸ Mainstream victim service providers may contribute to the appearance of bias by the lack of inclusive language or images used in outreach materials.²⁹ As a result, LGBTQ victims may suffer disproportionately from violence and the after-effects of victimization.³⁰

Many of the organizations offering assistance to LGBTQ domestic violence victims do not have policies and procedures in place to work specifically with LGBTQ victims, including LGBTQ-friendly signs and materials and gender-neutral intake forms.³¹ Even if organizations want to implement LGBTQ-specific programming and procedures, there are substantial obstacles that have prevented them from doing so. Victim service providers reported that they were overworked, under-funded, understaffed, and have limited options for offering specific programming for LGBTQ victims.³²

A. Shelters

Battered lesbian women, and occasionally transgender women, often are able to stay in shelters. There are, however, several unique problems facing them there, particularly in regard to their safety. Although shelter locations are usually well guarded from men, a lesbian batterer may be able to gain access to this information by pretending to be a victim, and can thus easily locate her partner.³³ Very few shelters have employees trained to handle issues specific to same-sex domestic violence. A female abuser may gain entry into a shelter by claiming to be a victim herself, as battered women’s shelters and support groups are often only concerned with thoroughly screening male visitors.³⁴ Furthermore, the few shelters where employees are trained to handle same-sex domestic violence are primarily located in major metropolitan areas; meaning people living in suburban or rural areas are often unable to benefit from this service.³⁵

In the San Francisco Bay Area, many of the organizations serving domestic violence victims are able to provide shelter and refer lesbian women and transgender victims to safe havens. When these shelters are able to accommodate victims

referred to them, women and their children can often stay in the shelters up to 45 days, and after that time period organizations typically work with the women to find them transitional and low-cost housing.

Although lesbian women and sometimes transgender women have safe havens to turn to, shelters for gay men are virtually nonexistent.³⁶ As shelters almost never provide assistance to gay men, some shelters try to provide some sort of assistance by offering gay men and transgender people “hotel shelter” for short stays, usually only for a couple of nights.³⁷ While at least these are laudable attempts to provide assistance to gay men and transgender people, hotel shelters are problematic in that they seldom offer victims the same level of safety and security, nor inclusion into a community of survivors with access to a greater scope of services, such as support groups and short-term and transitional housing.³⁸

B. Support Organizations

Only one in five LGBTQ victims of domestic/intimate partner violence get help from service providers.³⁹ There are a number of organizations present in the Bay Area, including the Billy DeFrank Center in San Jose, the Community United Against Violence (CUAV) in San Francisco, Gaylesta, Next Door Solutions to Domestic Violence in San Jose, Maitri, which primarily works with South Asian individuals, and Community Solutions in Morgan Hill and Gilroy. Despite the community presence of these organizations, they are oftentimes unable to meet the needs of the LGBTQ community because of a lack of funding. As a result, they are understaffed and have insufficient programs. In addition, not all of these organizations are actively working to specifically address domestic violence in the LGBTQ community. Many of these organizations can only refer victims to other services. As such, the complex needs of many victims of same-sex domestic violence in the Bay Area are not being met. Presumably, this is reflective of other parts of the state as well.

VI. Recommendations

Based on examination of the unique needs and circumstances of the LGBTQ victims of domestic/intimate partner violence and the organizations currently working in the Bay Area, it is evident that further services and professional psychological care are still needed. As funding is limited for programs providing assistance to domestic violence victims, particularly LGBTQ-specific programs, one way to bridge the gap in services offered would be cooperation among the different organizations. Mainstream domestic violence providers could team up with LGBTQ-specific organizations

and pool their resources to raise awareness of the issue in the community, as well as create support groups consisting solely of lesbian women or gay men and outreach materials specific to LGBTQ victims. This will better ensure that LGBTQ victims of domestic/intimate partner violence know that services are available and they will not be confronted with homophobic sentiments when they seek assistance.

Members of LGBTQ-specific organizations can also help educate and train mainstream domestic violence program staff on the unique needs of LGBTQ victims, so that when LGBTQ victims do seek assistance, mainstream programs will be better equipped to work with them. It is important that the education initiatives be well-organized, local, and sensitive to the complex needs and culture of the LGBTQ community. Most importantly, these initiatives need to be able to reach the people who need the services most so that they are aware of what support is available to them in the community.

In addition to efforts needed on the part of care providers, family law attorneys in California need to increase their training and knowledge about same-sex domestic violence in order to better assist LGBTQ individuals. Specifically, attorneys should be aware of the range of civil legal relief available under the DVPA for victims of same-sex domestic violence, as well as the challenges of assisting these clients when so few specialized social services are available. Attorneys should be mindful that many LGBTQ individuals may not be comfortable turning to the civil or criminal court systems for reasons previously discussed. As a result, family law attorneys should be sensitive to the needs and desires of the client, particularly understanding that if the client chooses not to apply for a restraining order or report abuse to authorities, that is ultimately the client's choice to make. Attorneys should also be aware of the risks of abuse and encourage clients to obtain safety planning information and other assistance that may be available in their area.

VII. Conclusion

The issue of LGBTQ domestic violence is substantial, yet it fails to receive public attention proportionate to the problem. Service providers are unable to provide LGBTQ victims of domestic violence with services specific to their needs. Based on the analysis of the particularities and complexities of domestic violence in the LGBTQ community, the status of legal protections offered to same-sex domestic violence victims, the role of service providers currently working in the Bay Area, and the recommendations outlined herein, considerable work must be done to ensure that domestic violence victims receive sought-after assistance, and awareness

programs are put in place to hopefully limit the occurrence of same-sex domestic violence. In addition, greater public awareness is necessary to quash prevalent myths of same-sex relationships and domestic violence to ensure victims become more comfortable coming forward about their abuse.

Endnotes

- 1 The names have been changed in this paper in order to protect the parties' anonymity.
- 2 See National Center for Victims of Crime and National Coalition of Anti-Violence Programs, *Why It Matters: Rethinking Victim Assistance for Lesbian, Gay, Bisexual, Transgender, and Queer Victims of Hate Violence and Intimate Partner Violence*, at Page 5 (2010) (hereinafter *Why It Matters*).
- 3 See Aulivola, *supra* note 3, at p. 163 (quoting David Island & Patrick Letellier, *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence* (1991)).
- 4 See Amy Caffrey, LMFT, *Some Basic Facts about LGBTQ Relationship Abuse (Domestic Violence of Intimate Partner Violence)* (2011).
- 5 *Id.*
- 6 See Gabriel, *supra* note at p. 418.
- 7 See Aulivola, *supra* note 3 at p. 163.
- 8 Aulivola, *supra* note 3 at p. 163 (quoting Karen J. Wilson, *When Violence Begins at Home: A Comprehensive Guide to Understanding and Ending Domestic Abuse* (1997)).
- 9 See Aulivola, *supra* note 3 at p. 167.
- 10 See Aulivola, *supra* note 3 at p. 164; See also *Why It Matters*, *supra* note 9 at p. 5.
- 11 See Beth Leventhal & Sandra E. Lundy, *Same-Sex Domestic Violence: Strategies for Change* 103 (1999).
- 12 See Sandra E. Lundy, *Abuse that Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts*, 28 New Eng. L.Rev. 273, 293(1993).
- 13 Aulivola, *supra* note 3 at p. 164.
- 14 See Aulivola, *supra* note 3 at p. 164.
- 15 Codified in Cal. Fam. Code, §§ 6200-6409, Cal. Code Civ. Proc. § 527.6 (civil harassment), Cal. Pen. Code, § 13700 and other statutes.
- 16 Cal. Fam. Code, § 6211; See also Cherri N. Allison, Hon. Barrett J. Foerster, Romina Arguedas, Meritt L. McKeon & Hon. Donna M. Petre, *Domestic Violence Remedies in California Family Law Cases* § 1.2 (2008).
- 17 See Aulivola, *supra* note 3 at p. 167.
- 18 *Id.*
- 19 *Id.*
- 20 See Aulivola, *supra* note 3 at p. 167.
- 21 See Police Chiefs' Association of Santa Clara County, *Domestic Violence Protocol for Law Enforcement 2011 15* (Feb. 2011).
- 22 Interview with Wiggys Sivertsen, Professor, San Jose State University, in San Jose, Cal. (September 29, 2011).
- 23 Interview with Wiggys Sivertsen, Professor, San Jose State University, in San Jose, Cal. (September 29, 2011).
- 24 *Id.*
- 25 Adele M. Morrison, *Queering Domestic Violence to "Straighten Out" Criminal Law: What Might Happen When Queer Theory and Practice Meet Criminal Law's Conventional Responses to Domestic Violence*, 13 S. Cal. Rev. L. & Women's Stud. 81, 146 (2003).
- 26 See *Why It Matters*, *supra* note 9 at p. 2.
- 27 *Id.*
- 28 See *Why It Matters*, *supra* note 9 at p. 6.
- 29 See *Why It Matters*, *supra* note 9 at p. 6.
- 30 *Id.*
- 31 *Id.*
- 32 See *Why It Matters*, *supra* note 9 at p. 9.
- 33 See *Why It Matters*, *supra* note 9 at p. 9.
- 34 *Id.*
- 35 *Id.*
- 36 See Aulivola, *supra* note 3 at p.164.
- 37 *Why It Matters*, *supra* note 9 at p. 15.
- 38 *Id.*
- 39 *Why It Matters*, *supra* note 9 at p. 6.