

HEINONLINE

Citation:

Marnie J. Franklin, The Closet becomes Darker for the Abused: A Perspective on Lesbian Partner Abuse, 9 Cardozo Women's L.J. 299 (2003)

Content downloaded/printed from [HeinOnline](#)

Tue Jan 22 21:14:20 2019

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

THE CLOSET BECOMES DARKER FOR THE ABUSED: A PERSPECTIVE ON LESBIAN PARTNER ABUSE

MARNIE J. FRANKLIN*

I. INTRODUCTION

Heterosexual feminists can learn a great deal about domestic violence by listening to lesbian feminist theorists.¹ Predominant academic theories on domestic violence usually fail to recognize or address battering in homosexual relationships.² The lack of awareness of same-sex battering is also present in American culture and its court system.³ Same-sex batterers have taken advantage of this gender specific assumption that the batterer is male and cultural homophobia to keep her partner silent. The key distinguishing factor that differentiates same-sex domestic violence from heterosexual intimate abuse is the victim's feelings of being disenfranchised and powerless because of her sexual orientation.⁴ It may be difficult for individuals, who have never encountered physical, emotional, or sexual abuse from their intimate partner, to understand how the abused could allow such attacks to occur.⁵ In addition, lesbians who have been victimized

* J.D. Candidate, Golden Gate University School of Law; B.S., Indiana University. I want to thank Professor Maria Grahn-Farley for making this symposium possible. I also want to thank *Cardozo Women's Law Journal* for their very helpful editorial work.

¹ See Phyllis Goldfarb, *Describing Without Circumstances: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582, 589

Those who developed the discourse [on domestic violence] sought to portray accurately the gothic horrors of battering in heterosexual relationships. They did so effectively, calling public attention to a pervasive and pervasively overlooked system of brutality and contributing to an understanding of the women caught in these nightmarish situations. Despite their popular success in exposing and naming the problem of heterosexual battering, these activists suggested that the entire problem of battering consisted of male violence against female intimates. . . . By failing to circumscribe the boundaries of the particular problem upon which they focused, these activists silently inscribed heterosexuality into the meaning of battering.

Id.

² See *id.* at 597-604.

³ See *id.* at 608.

⁴ See *id.* at 594.

⁵ See generally Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 13 (1991) ("the criminal justice system tend[s] to blame women for their abuse and deny or trivialize the violence involved. These excuses and justifications are

by their intimate partner may feel too humiliated and fearful to break the silence and stop the cycle of violence.⁶

One of the ways that the lesbian batterer maintains control over her intimate partner is by threatening to reveal her partner's sexual orientation her to employers, family, friends, ex-spouses or anyone else that may not agree with her lifestyle.⁷ As other scholars have noted, the time is ripe for the legal community and domestic violence support services to become aware of the sensitive nature of lesbian⁸ domestic violence and to develop and implement strategies that will encourage the lesbian victims of domestic abuse to seek help.⁹

II. PURPOSE

This paper attempts to provide a platform for legal feminist theorists to derive their own paradigms of lesbian partner abuse amidst the feminist theories that explain women's oppression stemming only from male dominance. My objective in writing this paper is to validate the need to address lesbian partner abuse in all facets of the legal community and domestic violence support services and influence the way in which it is perceived and advocated. I also hope that this paper will serve to open communications between the heterosexual and homosexual communities so they can work together to eradicate domestic violence of all types.

III. Method

I inserted narratives in this paper to incorporate the perspective of the victim, because frequently in this discourse, narratives are used to make the victim visible. Most of the leading feminist jurisprudence publications did not touch upon lesbian partner abuse in their domestic violence section.¹⁰ Sometimes silence makes the loudest sound - a sound for change is in itself to take the perspective of the victim because their stories are often unheard. This change is even more critical when one considers the dangers of intimate violence.¹¹

ideological in nature: 'At the individual level, they obscure the batterer's self-interest in acting violently; at the societal level, they mask the male domination underlying violence against women.'") (internal citation omitted).

⁶ See Goldfarb, *supra* note 1, at 594.

⁷ Kathleen Finley Duthu, *Perspective: Why Doesn't Anyone Talk About Gay and Lesbian Domestic Violence?*, 18 T. JEFFERSON L. REV. 23, 31 (1996) (citing 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, 282 (1993)).

⁸ In this paper, the term "lesbian" refers to any intimate relationship between women and is not limited to women who identify themselves as lesbian.

⁹ Duthu, *supra* note 7, at 24.

¹⁰ For further discussion on this issue, see generally Goldfarb, *supra* note 1, 589.

¹¹ Goldfarb, *supra* note 1, at 604. Goldfarb cites a study in Angela Browne & Kirk R.

My goal in discussing the images of lesbian partner abuse from the perspective of the victim is to emphasize the multitude of barriers that an abused lesbian encounters when she attempts to break the cycle of violence. First, this paper examines the images of lesbian partner abuse from the perspective of the victim and lesbian community and the ramifications of such images on the victim's chances of seeking and receiving needed support. Because there is much overlap with respect to how the images of the victim and images in the lesbian community affect the victim's chances in seeking and receiving help, I discuss both issues in Part IV. I will then discuss the images of lesbian partner abuse as perceived by the legal system and then discuss the effects of these images on the battered lesbian seeking and receiving assistance.

IV. IMAGES OF LESBIAN PARTNER ABUSE THROUGH THE EYES OF THE ABUSED AND THEIR EFFECTS ON THE ABUSED SEEKING AND RECEIVING HELP

A. *Homophobic Images Through the Eyes of the Abused*

I am still healing or coming to terms with the sexual abuse, the sexual assault. It affected me so significantly. The main thing is that I feel marked by it. I feel somehow that that incident specifically marks me as being different from other people and somehow different from other lesbians . . . I have really internalized the idea that it was somehow because I was a lesbian that this happened.¹²

The above excerpt was taken from an interview conducted by Janice L. Ristock as part of her study on lesbian relationship violence.¹³ These battered women consistently express feelings of shame because same-sex relationships are taboo. In addition, these battered lesbians are emotionally devastated by the fact that their intimate partner abused them.¹⁴

The 1998 Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence, released by The National Coalition of Anti-Violence Programs ("NCAVP"), contains a survivor story that exhibits many of the

Williams, *Exploring the Effect of Resource Availability and the Likelihood of Female-Perpetrated Homicides*, 23 LAW & SOC'Y REV. 75, 91 (1989), which suggests that access to social and legal support services has contributed to a decline in partner-killings by heterosexual women.

¹² *Samantha, Interview #29*, in JANICE L. RISTOCK, NO MORE SECRETS: VIOLENCE IN LESBIAN RELATIONSHIPS, 54 (2002).

¹³ See generally *id.* Janice L. Ristock conducted interviews with 102 women to better understand the complexities involved in lesbian partner abuse. Her findings revealed that no one paradigm will be sufficient to capture all of the details of a particular situation because of the diversity of woman's experiences and how different contexts change the dynamics of relationship violence. Such findings support the Survivor-Centered Model developed by Professor Linda Mills. See Linda G. Mills, *Killing Her Softly*, 113 HARV. L. REV. 550 (1999).

¹⁴ *Samantha, Interview #29*, *supra* note 12, at 53-54.

complexities involved in lesbian partner abuse.¹⁵ For instance, victims of lesbian domestic suffer from the threat of outing, i.e., their abusive partner revealing the victim's sexual orientation. I have separated the different aspects of *Jennifer's Story* throughout this section to highlight the effects of such images on Jennifer's, the narrator and main character of *Jennifer's Story*, support options. "*Jennifer's story* is quite illustrative of the experiences of many battered lesbian, gay, bisexual, and transgender persons."¹⁶

I met her at a party that a close friend hosted. She was intelligent, beautiful, and had a wonderful sense of humor. Our relationship developed rapidly and the closeness we shared was something I had never experienced before.

It is difficult to remember exactly when the abuse began because it was subtle. She criticized me because she didn't like my cooking, and she occasionally called me names when we argued. I didn't think much about it because she had recently lost custody of her daughter to ex-husband because of her sexual orientation and was angry, irritable, and depressed. She often threatened suicide and attempted it during an argument that we had and then blamed me for calling 911 for help.

Despite the stress she was experiencing, she was very supportive of me when my family "disowned" me after I came out to them. When I bought my first car without their assistance, she insisted I put it in her name.¹⁷

As Jennifer explained, it was difficult for her to realize when the abuse began because her partner's mistreatment of her was subtle. Many victims of lesbian domestic violence experience similar patterns of abuse, where "[w]hen the abuse began, . . . it was difficult to detect."¹⁸ Over time, the abuse increases and may include emotional abuse,¹⁹ physical abuse,²⁰ isolation,²¹ sexual abuse,²² threats,²³ financial control,²⁴ and property

¹⁵ *Annual Report on Lesbian, Gay, Bisexual, Transgender Domestic Violence, Released by The National Coalition of Anti-Violence Programs (NCAVP)* (October 1998), available at <http://www.vaw.umn.edu/FinalDocuments/glbtdv.htm> [hereinafter NCAVP Report].

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

¹⁹ *If the One You Love or Used to Love is Using Coercion, Threats and Physical Violence to Frighten You and Control Your Actions . . . Community United Against Violence*, available at <http://www.xq.com/cuav/domviol.htm> [hereinafter Symptoms List].

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Id.

abuse.²⁵ In addition, the lesbian victim may fail to recognize that she is being abused because the batterer is a woman and that only men inflict violence on women.²⁶ However, when lesbian domestic violence victims do recognize that they are in an abusive relationship and seek assistance, they encounter obstacles.²⁷ The following excerpt demonstrates the frustration experienced by lesbian victims when they seek counseling:

I kept telling myself things will get better but they never did. [My partner] continually accused me of being unfaithful (I wasn't) and even raped me once after claiming I had flirted with a supermarket cashier. The first time she hit me I grabbed her wrist and twisted her arm to keep from being hit again. My response frightened me so much I suggested we see a couple's counselor, and she agreed.

Couples counseling was not helpful, and although things felt worse our therapist said that was normal, so we persevered. I began scrutinizing my own behavior believing that if I could only do things better or differently, our life together would improve.²⁸

The lesbian victim's hesitation in seeking assistance is further reinforced by public education campaigns on domestic violence, which model abusive relationships exclusively on the heterosexual paradigm.²⁹ For instance, lesbian victims frequently express that lesbian battering challenged their preconceptions of lesbian experiences.³⁰

Homophobia plays an integral role in keeping the lesbian victim silent.³¹ Whether she is "out," i.e. revealed her homosexuality, to those around her or "in the closet" (keeping her sexual identity a secret), homophobia is the ever-present tool that the same-sex batterer uses to maintain control and power over the lesbian victim.³² One victim explains:

Although [my partner and I] had periods of profound happiness, our arguments increased in frequency as did her drinking and drug use. [My partner] was arrested once for possessing and driving under the influence. Several months later, she insisted that I submit to drug

²⁵

Id.

²⁶ *Id.* This preconception of women is not limited to the heterosexual public; some lesbian communities are reluctant to acknowledge that women may be batterers "because to do so would mean shattering a utopic vision of a peaceful, women-centered world." Sandra E. Lundy, *Abuse that Dare Note Speak Its Name: Assisting Victims of Lesbians and Gay Domestic Violence in Massachusetts*, 28 *NEW ENG. L. REV.* 273, 286.

²⁷ NCAVP Report, *supra* note 15.

²⁸ *Jennifer's Story*, available at <http://www.vaw.umn.edu/Final Documents/glbtdv.htm>

²⁹ *Id.*

³⁰ *Samantha*, interview #29, *supra* note 12.

³¹ See generally Luthu, *supra* note 7.

³² Lundy, *supra* note 26, at 282 (citing a letter from Beth Leventhal, Coordinator, Network for Battered Lesbians, to Robert Gittens, Chairman, Massachusetts Advisory Board of Pardons, in support of the commutation petition of Debra D. Reid (Feb. 4, 1992)).

testing in her place and threatened to tell my employer that I am a lesbian when I resisted.³³

Furthermore, Beth Levanthal, a lesbian battering activist, observes that:

[I]n a culture without many healthy role models for lesbian [and gay] relationships . . . the batterer can convince [his or] her partner that the abusive behavior is normal and that any problems the partner has with it are a reflection of [his or] her lack of experience and understanding of [gay or] lesbian relationships.³⁴

Lesbian victims who attempt to seek help often encounter threats from their batterer to "out" them to their employers, ex-spouses, friends, family, or others in order to blackmail the victim into complying with their demands.³⁵ The following circumstances facilitate the batterer's abuse of her same-sex partner: lack of awareness of same-sex domestic violence in the lesbian community and the victim's internalized homophobia.³⁶ The following narrative by a lesbian victim of domestic violence aptly demonstrates this situation:

Leaving her was the hardest thing I have ever done. We have occasional contact because my car is still in her name, and it is always very painful because she continues to be verbally abusive. My family used the abuse to justify their belief that lesbians are "sick." I have one friend who has been supportive but I do not tell mutual friends because I don't want them to abandon her.

It is still difficult to think of my situation as domestic violence but with the help of my counselor and support group, I am learning that women can be violent to other women, that anger, stress, depression, alcohol, and drugs do not cause violence, that violence is a choice the abuser makes, and finally, I am not to blame.³⁷

There are barriers inherent in same-sex relationships that prevent an abused lesbian to step forward and seek support. "Grappling with these complexities in abusive relationship dynamics is necessary not only for theorizing and researching lesbian partner violence, but also for developing effective responses."³⁸

B. Heterosexist Images Through the Eyes of the Abused

Homophobia and heterosexism interplay with one another to intensify

³³ *Jennifer's Story*, *supra* note 28.

³⁴ Lundy, *supra* note 26, at 282.

³⁵ *Id.*

³⁶ Goldfarb, *supra* note 1, at 594.

³⁷ *Jennifer's Story*, *supra* note 28.

³⁸ *Samantha*, *interview #29*, *supra* note 12, at 77.

the feeling of isolation, preventing the abused lesbian from receiving needed support.³⁹ Research indicates that domestic violence counselors and the public in general have a more positive outlook toward battered women if they fit into stereotypes of “upstanding femininity.”⁴⁰ “This, of course, is a double bind for lesbians who are already seen as falling outside dominant constructions of femininity and battering.”⁴¹ One lesbian victim of domestic violence complained that people had a difficult time believing that a feminine woman could be a batterer:

You know you have a very feminine woman who is beating her partner and a lot of people will find that hard to believe just because of [gender] stereotypes and the mutual abuse thing. . . . I don't know why [heterosexuals] perceive [same-sex domestic violence] differently, it's like you aren't supposed to react, the second you react you are also abusive . . . whether you are doing it with intent⁴²

The victim in the above narrative also complained of the myth of “mutual abuse,” which assumes that the two people in the relationship both occupy the roles of victim and batterer and that they have equal control, motivation, and intent to harm.⁴³ “[S]ame-sex batterers often use the myth of mutual battering to disguise their abuse as mutual, consensual combat [and] alienate the victim from sources of assistance.”⁴⁴ That is to say, batterers often accuse their same-sex partner of abusive behavior in order to “take advantage of the victim's guilt and confusion surrounding the [domestic violence] and to avoid taking full responsibility for their own actions.”⁴⁵ In “mutual abuse,” “the same-sex batterer may still exercise homophobic control by exploiting sexist and heterosexist stereotypes to hide the abuse.”⁴⁶ For instance, when one victim called the police on her same-sex partner, her same-sex partner accused her, the victim, of being the batterer:

So my neighbor came over and I walked out the door with him and my kids and went to his house and called the cops. I put my kids in the car and drove to my girlfriend's and I phoned my place about an hour later and the cops are there and they said “you better get back here or else.” So I go back and she had basically packed up ¾ of my

³⁹ Goldfarb, *supra* note 1, at 594.

⁴⁰ Sheila, interview #1, in JANICE L. RISTOCK, NO MORE SECRETS: VIOLENCE IN LESBIAN RELATIONSHIPS, 101 (2002).

⁴¹ *Id.*

⁴² Rhonda, Interview # 3, in JANICE L. RISTOCK, NO MORE SECRETS: VIOLENCE IN LESBIAN RELATIONSHIPS, 77 (2002).

⁴³ Lundy, *supra* note 26, at 283.

⁴⁴ *Id.*

⁴⁵ Duthu, *supra* note 7, at 29.

⁴⁶ Lundy, *supra* note 26, at 283.

stuff and said it was her stuff and she told them that I had tried to kill her. They took her home and charged me!⁴⁷

The lesbian victim who fights back is considered unworthy by the homophobic public and undeserving of legal protection.⁴⁸

C. Lesbian and Heterosexual Feminists Need to Join Forces

It is in the best interest of all feminists, both lesbian and heterosexual, to join forces and fight this lack of legal protection available to lesbian and heterosexual domestic violence victims who defend themselves. This gap in legal protection is a direct reflection of the stereotypical perception of gender roles.⁴⁹ A joined effort will make legal reform possible. Thus, collaboration to fight sexism and end all forms of domestic violence together, the homosexual and heterosexual communities can create a much stronger voice for needed change.

D. Images Through the Eyes of the Lesbian Community

Until recently, the lesbian community was unaware that domestic violence existed in lesbian relationships.⁵⁰ It was considered a type of abuse found only in heterosexual relationships where the man dominated power and control over the woman.⁵¹ Also, contemporary scholars have excluded same-sex relationships from their definition of domestic violence.⁵² Although "a mature body of research about domestic violence and a growing body of research about lesbian, gay, transsexual and bisexual (LGTB) issues, little has been written about the combined dilemma of being LGTB and experiencing domestic violence, and even less of what has been written has been published."⁵³ Domestic Violence in same sex couples is substantially ignored in social, and legal responses to domestic abuse.⁵⁴ The struggles that the battered women in the 1960's faced in changing the legal system's

⁴⁷ Sheila, Interview #1, *supra* note 40, at 100.

⁴⁸ Duthu, *supra* note 7 at 32. The "mutual abuse" myth also applies to heterosexual domestic violence victims where the authorities may assume the battered woman who acts in self-defense has also engaged in abusive behavior toward the batterer. See, e.g., Katharine T. Bartlett, 2002 U.S. Custody Laws and Trends in the Context of the ALI Principles of the Law of Family Dissolution, 10 Va. J. Soc. Pol'y & L. 5, 34 (2002) (Some cases present circumstances of mutual aggression and courts must sort out whether one, or both, have engaged in domestic abuse); Nancy K.D. Lemon, *Statutes Creating Rebuttable Presumptions Against Custody to Batterers: How Effective Are They?*, 2 WM MITCHELL L. REV. 628-29 (discussing allegations of mutual abuse in Schumacher v. Schumacher, 598 N.W.2d 131, 134-35 (N.D. 1999)).

⁴⁹ See generally Duthu, *supra* note 7, at 31-40.

⁵⁰ Duthu, *supra* note 7, at 28-30; Goldfarb, *supra* note 1, at 591-97.

⁵¹ Duthu, *supra* note 7, at 28-30; Goldfarb, *supra* note 1, at 591-97.

⁵² See Pamela M. Jablow, *Victims of Abuse and Discrimination: Protecting Battered Homosexuals* *Undg* Domestic Violence Legislation, 28 HOFSTRA L. REV. 1095, 2000.

⁵³ See NCAVP Report, *supra* note 15.

⁵⁴ *Id.*

response to domestic violence parallels that of the gay and lesbian community today.⁵⁵

“For lesbians, keeping secrets about abuse in our relationships is also linked to homophobia and heterosexism: it is still risky for some of us to be out, and it can be dangerous to reveal abuse within an already oppressive context.”⁵⁶ Lesbian batterers often will threaten to “out” the abused and/or even follow through with such threats, even if doing so will also “out” the batterer herself, to continue the cycle of violence.⁵⁷ Moreover, homophobia instills a need for the abused to defend the relationship to prevent anti-gay individuals and organizations from adding same-sex domestic violence to their arsenal for attacking homosexuality.⁵⁸ “Secrets are sometimes kept for strategic reasons within liberatory movements such as feminism that are trying to eradicate the globally pervasive phenomenon of male violence against women.”⁵⁹

There is, however, an increasing awareness in the lesbian community regarding the existence of lesbian relationship violence and the need to provide outreach efforts to the abused.⁶⁰ For instance, Janice L. Ristock conducted a survey to ascertain the prevalence of lesbian domestic violence in Toronto and found that “66 percent of the 189 respondents knew of lesbians who had been in abusive relationships.”⁶¹ Confronted with a “new” problem in the lesbian community, lesbian support services are trying to develop appropriate information and resources.⁶² The following narrative summarizes this effort to provide appropriate assistance to battered lesbians:⁶³

I felt its effects myself when I was volunteering at the Toronto Counseling Center for Lesbians and Gays in the mid-1980's, and first began to hear about abuse in lesbian relationships. I felt confused; I had worked in rape crisis centers and shelters in large cities; in fact, I had come out in the supportive feminist environment of a rape crisis center where issues such as sexual identities were freely discussed. I knew of the extent of violence against women, but I had never encountered or received training about violence between women. My confusion was not owing to simple naiveté. I had known of “bad relationships,” had seen lesbians physically fighting at bars, for

55

Id.

56 See *Samantha, Interview #29, supra* note 12, at 76.

57 See NCAVP Report, *supra* note 15.

58 *Id.*

59 *Id.*

60 See generally Duthu, *supra* note 7.

61 See generally *Samantha, Interview #29, supra* note 12.

62 See generally Duthu, *supra* note 7.

63 See *Samantha, Interview #29, supra* note 12, at 76.

example. But these incidents were never named as a community or social issue; they were seen as individual problems.

As a first step we got funding from the Ontario Women's Directorate to obtain more information on how large an issue this was within our communities. We put together a questionnaire and surveyed lesbians in Toronto. One significant finding from that survey, for us, was that 66 percent of the 189 respondents knew of lesbians who had been in abusive relationships. We learned from this that abuse in lesbian relationships was something we could not ignore. We then wrote a booklet on lesbian abuse that provided information and resources, and we ran two support groups for survivors through the Center. My experience in cowriting the booklet and cofacilitating the support group was that we often felt unsure and conflicted about how best to respond, and that we were often worried about causing more harm to lesbians and to feminism by speaking about the issue too publicly.

It was, by then, the early 1990's and there was slightly more information on lesbian partner abuse to inform our work, but we encountered not only a lack of information about lesbians in shelters, but a lack of awareness of how the very language and policies of domestic violence made lesbian experiences hard to hear or articulate; all attempts were immediately encased in established thinking based on heterosexual women's experiences. Ten years later, lesbians remain barely visible in some places, but in many others there has been more focus on responding to our needs.⁶⁴

Today, more and more information regarding lesbian partner abuse is available.⁶⁵

New definitions of domestic violence⁶⁶ illustrate that the lesbian

⁶⁴ *Id.*

⁶⁵ See NCACP Report, *supra* note 15.

⁶⁶ Domestic violence is the intentional, non-consensual pattern of harm by one's intimate partner for the purposes of gaining and maintaining control over that partner.

Batterers often use a range of tools to force harm on their partner. These include threats and coercion, intimidation, emotional abuse, isolation, sexual abuse, physical abuse, economic manipulation, threatening or abusing children, pets or other family members, and utilizing personal entitlement and institutional oppression.

In same-sex abuse, a pattern of violence or behaviors exists where one seeks to control the thoughts, beliefs, or conduct of their intimate partner, or to punish their partner for resisting their control. This may be seen as physical or sexual violence, or emotional and verbal abuse. An additional form of emotional abuse for someone who is gay, lesbian, or bisexual may be to "out" them at work or to family or friends.

Local resources for domestic violence in the GLBT community are often scarce and many traditional domestic violence services lack the training, sensitivity, and expertise to adequately recognize and address abusive GLBT relationships. A Queer individual who is being battered must overcome homophobia and denial of the issue of battering. Lesbians, bisexuals and gay men who have been abused have much more difficulty in finding sources of support than heterosexual women who are battered by their male partners.

Id.

community is not only beginning to recognize that domestic violence occurs in lesbian relationships, but that this issue deserves public attention. Although many men are abusive to their intimate female partner, this abuse is only one symptom of a structure of gender subordination. Another form of that is the majority to recognize domestic abuse between lesbian couples as domestic abuse. Thus, intimate abuse between lesbian partners encompasses all of the same emotional attachments and issues inherent with any type of intimate partnership. Unfortunately, "lesbian relationships are not immune to the issues of power and control, or to the violence that can erupt as a result."⁶⁷

V. IMAGES OF LESBIAN PARTNER ABUSE THROUGH THE EYES OF THE LEGAL COMMUNITY AND THEIR EFFECTS ON THE ABUSED SEEKING AND RECEIVING HELP

A. *Heterosexist Theory Model – "One Size Fits All" Mentality of the Legal Community*

The battered heterosexual woman has an advantage over the battered lesbian in receiving acknowledgment from the legal community that she is a victim of domestic violence.⁶⁸ Currently, there is only one model available in the legal community pertaining to domestic violence protection, that is, the heterosexual model (male abuser/female abused).⁶⁹ Notwithstanding the fact that the state may grant some level of protection to same sex couples, the heterosexual model is an implicit obstacle that the battered lesbian faces in receiving legal protection.⁷⁰ "Gendered notions of social roles are part of our national consciousness, and they are intricately woven in the web of the law as heterosexual paradigms."⁷¹ "The gender story of domestic violence is the template upon which our legal system contextualizes victim's experiences of domestic abuse."⁷² Thus, it is only when a woman behaves in a timid, pure, innocent, passive, delicate, and deferential manner, may she be entitled to the protections afforded under the law. "Feminist activists may have succeeded in putting domestic violence on the mainstream social agenda only to the extent that it cultivates traditional gender imagery of men as aggressive actors and women as passive victims in need of the surrogate male protection of the state."⁷³

Research conducted by the women's domestic violence movement has

⁶⁷ *Id.*

⁶⁸ See generally Krisana M. Hodges, *Trouble in Paradise*, 9 LAW & SEX 311 (1999).

⁶⁹ *Id.* at 7

⁷⁰ *Id.*

⁷¹ NCAVP Report, *supra* note 15.

⁷² *Id.* at 7.

⁷³ *Id.*

indicated that the police are hesitant to interfere in "private domestics."⁷⁴ This reluctance to intervene soars in the context of same sex domestic violence where homophobia, heterosexism, and homosexuality issues are present.⁷⁵ Reluctance on the part of law enforcement is demonstrated by the following quotation:

We were having an argument and she cracked a glass over my head. By the time the police got there, she was acting as if I was crazy – the one who did it. And they just totally ignored me, they were laughing it off and everything. I had glass in my hair and they didn't even want to look, they couldn't care less. They basically said "whose house is this?" At the time I was staying with her and they told me to leave.⁷⁶

As soon as the police realize that they are dealing with a domestic conflict involving two women, they often minimize the aggressive nature involved and fail to render assistance.⁷⁷ "As one interviewee told Professor Renzetti, 'I called the police, but nothing was done about it. I kept thinking, 'No one cares because I'm a lesbian.' The police basically took the attitude, 'So two dykes are trying to kill each other; big deal.'"⁷⁸

B. Theory and Practice

The male dominators of society have the privilege of having their sentiments and views expressed and transmitted, i.e, have the privilege of developing theories about society.⁷⁹ On the other hand, the oppressed groups lack the prestige to permit their views to translate into theoretical models; rather, they are deemed political expressions.⁸⁰ In this context, women have long suffered at the hands of the dominators. In addition, within the category of women, lesbians are excluded from the dominant theory of domestic violence advanced by heterosexual feminists because they do not have the requisite clout for inclusion and their plight does not move

⁷⁴ Lee Vickers, *The Second Look Closet: Domestic Violence in Lesbian and Gay Relationships: A Western Australian Perspective*, 3 MURDOCH UNIV. ELECTRONIC J.L. § 39 at <http://www.murdoch.edu.au/elaw/issues/v3n4/vickers.html>.

⁷⁵ *Id.*

⁷⁶ Vanessa, *Interview #66*, in JANICE L. RISTOCK, *NO MORE SECRETS: VIOLENCE IN LESBIAN RELATIONSHIPS*, 100 (2002).

⁷⁷ Lundy, *supra* note 26, at 8

⁷⁸ *Id.*

⁷⁹ Colette Guillaumin, *Women and Theories about Society*, in RACISM, SEXISM, POWER AND IDEOLOGY, 153, 153 (1995).

⁸⁰ Goldfarb, *supra* note 1, at 589.

The very conceptualizations that made a crucial difference in societal understandings of battered heterosexual women inflicted further injury on abused lesbians . . . who were already injured by violent lovers. Were it not for the comparative reference of the case of the lesbian petitioner juxtaposed with [the] heterosexual client's case, . . . this dynamic at work would have gone unnoticed. Such is the power of privilege.

the heterosexual model forward.⁸¹

1. "Feminist of Convenience" is Out of Vogue

By excluding oppression that exists in theoretical paradigms, the male dominator are able to maintain the status quo and stay in power.⁸²

The minorities, who do not even know the theoretical details of the matter, merely know every day in practice, under duress, by the contempt with which they are treated, and through their hunger, what place they must always occupy – a sometimes life-threatening place of silence, of inferiority, of widespread menace – menace that at certain times is frightfully explicit in beatings and murder.⁸³

The battered lesbian is consciously and unconsciously aware that the theoretical paradigm that society advances does not include her as a victim of domestic violence. Thus, she is constantly evaluating the repercussions of every step involved in seeking relief from the abuse.

There is no difference between theory and practice when male dominance is supported.⁸⁴ Feminists who have academic and political influence have a duty to participate in changing the heterosexual image of domestic violence, especially since they created the heterosexual norm,⁸⁵ together with the homosexual community. Failure to do so undermines the feminist movement. "Feminists should reflect on the abusive character of the state power they have unleashed upon the women they seek to protect."⁸⁶ All feminists have a responsibility to advance the rights of women, even those women who do not fit neatly into their privileged theoretical models, namely, lesbians). Women who pride themselves on being a feminist and advancing the rights of women should not only do so when it is convenient for them, but rather when women of all types are still suffering without legal recourse. "One must be aware that oppressed peoples have a common consciousness (if not common interests) because it is in struggling for other oppressed peoples that women have discovered that they must struggle for themselves – the entry of minorities into the field of theory also reflects their solidarity."⁸⁷

C. Effects of These Heterosexist and Homophobic Images on the Abused Seeking and Receiving Help

⁸¹ See Guillaumin, *supra* note 79, at 153; see also Goldfarb, *supra* note 1, at 597-604.

⁸² See Guillaumin, *supra* note 79, at 153.

⁸³ *Id.*

⁸⁴ *Id.* at 159.

⁸⁵ Goldfarb, *supra* note 1, at 597-604.

⁸⁶ Mills, *supra* note 13, at 613.

⁸⁷ *Id.* at 167.

1. Protection Under State Domestic Violence Statutes

Today, there are still six states that specifically exclude same-sex couples from their domestic violence statutes: Delaware, Indiana, Louisiana, Montana, North Carolina, and South Carolina.⁸⁸ These statutes may incorporate gendered language, such as "opposite sex," and/or restrict protection only to married couples in order to limit their coverage to male-female relationships.⁸⁹ Homosexual domestic violence obtained public attention in the early 1980's.⁹⁰

On the other hand, only a few states, such as Massachusetts and California, have specifically provided for same sex domestic violence protection in their statutes.⁹¹ "The majority of states have domestic violence statutes which refer to 'partners,' 'cohabitants,' or 'household members,' and do not explicitly preclude their application to same-sex couples."⁹² Because of the nebulous statutory language, their application will be directly affected by the prosecutor and judges' viewpoints regarding same-sex relationships.⁹³ "Ambiguous language in these statutes allows judges and prosecutors to make facially legal decisions that may, in fact, disguise homophobic attitudes about same-sex relationships."⁹⁴ This ambiguity makes it difficult to predict the legal outcome of court decisions when a lesbian victim of domestic violence seeks legal protection.⁹⁵

2. Access Available to Courts

One example of the law's inability to provide swift protection of battered lesbians is the Family Court Act of New York. The "Family Court Act says that to access family court, which is where [one obtains] civil orders of protection, [one must] to be related by blood, marriage, or a child in common."⁹⁶ This restriction forces the same-sex domestic victim to obtain an order of protection from the criminal system, which requires the abused to put forth more evidence of abuse and (what takes longer?) takes longer

⁸⁸ Del. Code Ann. tit. 10 §1041(2)(b) (1999); Ind. Code §§35-42-2-1.3 (Michie 1997 & Supp. 1999) (domestic battery), 12-7-2-70, 12-18-4-12 (Michie 1997) (domestic violence prevention and treatment centers); La. Rev. Stat. Ann. §§46:2121.1, 46:2132 (West 1999); Mont. Code Ann. §45-5-206 (1999); N.C. Gen. Stat. §50B-1 (1999).

⁸⁹ Hodges, *supra* note 68, at 314.

⁹⁰ See Jablow, *supra* note 52.

⁹¹ Hodges, *supra* note 68, at 318.

⁹² *Id.* at 316

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See *Conference 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 (2001) [hereinafter Conference].

than a civil order of protection.⁹⁷ “What this means for the queer community is that [lesbians and gays] have to endure higher levels of violence than other people before having and legal recourse.”⁹⁸

3. Police Protection

“Some of the structural impediments include the fear of accessing police services.”⁹⁹ As with all marginalized groups, such as the queer community, one must seek legal protection through other avenues when one has been alienated by the legal community such as access to police services.¹⁰⁰

However, abused lesbians find it difficult to rely on the police because of the history of police misconduct within the queer community.¹⁰¹ It is not unreasonable for the victim to decide not to report the abuse because she assumes that law enforcement will be unsympathetic, or even hostile, to her abusive situation.¹⁰² In addition, the battered lesbian fears the possibility of exposing herself further victimization and harassment from the legal community because of her sexual identity.¹⁰³ For instance, “[o]ne woman . . . reported . . . that when she told police officers, and later the assistant district attorney, about her partner’s abusive behavior, they ‘drooled’ and ‘snickered’ when they heard that she was a lesbian.”¹⁰⁴ “Another woman reported that her own attorney seemed more interested in the details of ‘what two women did in bed’ than in knowing and presenting the facts of the abuse.”¹⁰⁵ Moreover, the batterer may use the inadequacies of the legal system’s response to same sex abuse as a weapon of isolation, telling her victim that it is futile to turn to the police and courts for help.¹⁰⁶ The reservations that the abused already has in seeking assistance from the legal community and the batterer capitalizing on the legal deficiencies in providing support to the battered lesbian both play an integral role in whether the abused will seek help from the police.

“The National Coalition of Anti-Violence Projects (NCAVP), of which the Anti-Violence Project¹⁰⁷ is a member, publishes a domestic violence

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Lundy, *supra* note 26, at 7.

¹⁰⁴ See Hodges, *supra* note 68.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁷ The Anti-Violence Project is a crime service agency formed in 1980 to address lesbian, gay, bisexual, transgender, and HIV-affected victims of violence and discrimination. *Id.*

report each year.”¹⁰⁸ “In 1999, seventy-one percent of those who reported domestic violence to the Anti-Violence Project did not report that violence to the police, twenty-nine percent of the population reported and the police took a complaint, and three percent of people reported to us, also reported to the police, but the police failed to take a complaint.”¹⁰⁹ “In sixty-six percent of the cases where a client made a police complaint and a report was taken, no arrest was made.”¹¹⁰ These statistics reflect that one abuser arrested for every ten victims who called to the Anti-Violence Project, thereby supporting the claim that law enforcement does not respond adequately to the needs of battered lesbians.¹¹¹

4. Heterosexist and Homophobic Stereotypes Within the Judicial System

When, and if, the survivor gets passed the above barriers, they may still need to tackle the heterosexist, and perhaps homophobic screening procedure in the district attorney's office, which includes the prosecution, the judges, and even the laws themselves.¹¹² “To the extent that the law recognizes or understands domestic violence, 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.”¹¹³

In addition, the lesbian battered women's credibility is shattered once she informs those in authority about the abuse she suffers at the hands of another woman.¹¹⁴ “These stories clash with traditional notions of femininity that often infuse domestic violence discourse; and as a result, judges and juries may find it hard to imagine a woman as an abuser.”¹¹⁵ As a result, her pleas for help may be unheeded by the justice system and she may abandon any hope that she may have in receiving legal assistance.¹¹⁶

5. Mutual Restraining Orders

“Police avoidance of the question ‘who is the aggressor?’ when responding to an incident of lesbian domestic violence may manifest in the arrest of both women as ‘mutual combatants.’”¹¹⁷ Merely because both partners may be of approximately equal size and are of the same sex, law

¹⁰⁸ *Id.* The National Coalition of Anti-Violence Program reports are available at <http://www.vaw.umn.edu/FinalDocuments/glbtdv.htm>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 12.

¹¹¹ *Id.*

¹¹² Conference, *supra* note 96, at 12.

¹¹³ *Id.*

¹¹⁴ Hodges, *supra* note 68 at 7.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 8.

enforcement often make the assumption that the partners equally share responsibility for the abuse.¹¹⁸ The lack of education and training in law enforcement on same-sex partner abuse fosters the feeling of mistrust in the police, virtually eliminating the chances of the battered to rely on the police for help.

In addition, the misuse of mutual restraining orders is furthered by judicial avoidance of the question regarding lesbian domestic violence.¹¹⁹ "For instance, Suffolk County Assistant District Attorney Sarah Buel notes that 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 Chapter 209A."¹²⁰ "Such information is particularly alarming given the conclusion of the 1989 Gender Bias Study that mutual restraining orders under Chapter 209A are 'rarely issued.'"¹²¹ This information suggests that mutual restraining orders are issued exponentially in same sex domestic violence cases, which stem from the failure avoidance of the court to deal with abused lesbians in the Massachusetts courts.¹²² "The tendency of Massachusetts judges to issue mutual restraining orders is unique to cases of same-sex domestic violence, and it exemplifies that statutory inclusion alone is not enough to dismantle the legal barriers to protecting victims of same-sex domestic violence."¹²³ The tendency of judges to issue mutual restraining orders in same-sex domestic violence situations is not exclusive to Massachusetts, but is rather widespread among the country.¹²⁴

"Mutual restraining orders present grave consequences to the real victims of abuse as they create the perception of shared responsibility between the abuser and abused in the violence."¹²⁵ It takes a lot of courage for the lesbian batterer to have faith in the legal community in the first place, and the overuse of mutual restraining orders undermines her brave move to seek legal protection.¹²⁶

6. No Practical Defenses Exist For The Battered Lesbian

Lesbians' lack of credibility in the judicial and law enforcement communities may also limit the use of the battered woman syndrome

¹¹⁸ Duthu, *supra* note 7, at 30.

¹¹⁹ Hodges, *supra* note 68, at 8

¹²⁰ Lundy, *supra* note 26, at 10

¹²¹ *Id.*

¹²² *Id.*

¹²³ Hodges, *supra* note 68, at 9

¹²⁴ *Id.*

¹²⁵ *Id.* at 8.

¹²⁶ *Id.*

defense.¹²⁷ Several long-standing female stereotypes provide the foundation of battered woman syndrome.¹²⁸ “Lesbians are not regarded as the appropriate beneficiaries of the state’s (i.e., men’s) chivalric protection.”¹²⁹ “Moreover, independent of the facts and circumstances of a particular case, the dominant cultural imagery of lesbians as aggressive, masculine, angry, and disturbed persons tends to place them outside the normative understanding of womanhood and, therefore, outside the group by ‘battered woman’ or ‘battered woman syndrome.’”¹³⁰

State statutes that ignore same sex domestic violence exacerbate the inability of lesbians to raise self-defense claims.¹³¹ As a result, there are many avenues of legal redress unavailable to lesbian batterers that are available to their heterosexual counterparts.¹³² “The failure of [the] legal system to extend protections to victims of same-sex abuse may mean that lesbian, gay, bisexual, and transgender persons are subject to the dangerous behaviors of their abusers over a longer period of time than are heterosexual victims who are able to enlist the support of the state.”¹³³ Battered lesbians neither have faith in the police nor the judicial system to provide adequate protection from the abuse. Thus, vast majority are not seeking legal help to end their suffering.

CONCLUSION

A victim of lesbian partner abuse faces many obstacles in seeking and receiving adequate assistance to end the violence. The lesbian community’s unwillingness to recognize the problem, coupled with the legal community’s lack of training and understanding of the complexities involved has inhibited the finding of appropriate solutions to this serious problem.

Lesbian and heterosexual feminists work together to create a stronger voice for women in the legal arena. Instead of spending precious resources into theorizing why this bleak situation for battered lesbians exists, it is better to focus on to end this injustice.. Section V, A of my paper, *Heterosexist Theory Model – “One Size Fits All” Mentality of the Legal Community* was by far the most difficult section to portray because there is very little information on how the police, attorneys, and judges perceive lesbian partner abuse. The only images that I found were merely a reflection of heterosexual domestic violence – if it does not fit with this paradigm then it must not be domestic

¹²⁷ Duthu, *supra* note 7, at 29-30.

¹²⁸ Goldfarb, *supra* note 1, at 10

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ NCAVP Report, *supra* note 15.

violence.

I believe one interesting way to delve into police prejudices is to take a random sample of police officers in a major city who has gone through domestic violence training (including same-sex domestic violence issues) and determine their perceptions on same-sex domestic violence and how they resolve such violent situations. Then, compare your results with those from a major city where the police officers were not exposed to same-sex domestic violence education or training and even with those from a smaller urban town to determine the “success” level in getting the lesbian battered legal help.

The Survivor-Centered Model¹³⁴ that Professor Linda Mills has developed to assist state actors in providing the best possible assistance to battered women should be incorporated into the police department’s domestic violence training. This model allows the police to respond to the individual needs of the batterer thereby allowing her to play an active role in reclaiming her power as well as providing a safe haven of support.¹³⁵ For instance, if the woman is afraid that she will be ostracized from the lesbian community should she step forward, “the police officer or prosecutor might develop a plan with the victim that both ensures her safety and provides resources for working through her specific issues.”¹³⁶ By focusing on the particular needs of the battered, the legal community can foster a strong connection between the state and the victim, maximizing their effectiveness to end all forms of domestic violence.¹³⁷

Professor Josephine Ross¹³⁸ spoke to our class about the legal climate on same-sex marriage and shared with us her opinion on why it is such an uphill battle for the homosexual community to gain support on this issue, which can be summarized in two words: “vicious circle.” The “vicious circle” refers to the following propositions: 1) marriage is sacred; 2) sex outside marriage is profane; 3) gay relationships exist outside marriage; 4) gay relationships are profane so gays should not marry. This “vicious circle” also applies to domestic violence within same-sex relationships by simply replacing “not marry” in number 4 above with “be excluded from legal

¹³⁴ See Mills, *supra* note 13, 596-609. Section IV of Mills’ article describes in detail the elements of the Survivor-Centered Model: acceptance, respect, reassurance, engagement, resocialization, empowerment, emotional responsiveness, and liberation. Although she does not specifically mention same sex abuse issues in her argument, her model is based on the diverse needs of the survivor. Thus, the lesbian batterer would certainly be included in her tailored approach to end domestic violence.

¹³⁵ *Id.* at 600.

¹³⁶ *Id.*

¹³⁷ *Id.* at 599.

¹³⁸ Josephine Ross is a professor at Boston College Law School and specializes in homosexual rights and is author of *Sex, Marriage and History: Analyzing the Continued Resistance to Same-Sex Marriage*, 55 SMU L. REV. 1657 (2000).

protection under state domestic violence statutes.” The legal community and domestic violence support services must break this “vicious circle” and ensure that every lesbian suffering abuse from her partner feels safe to seek help.

PART III: TO IMAGINE GENDER

