

LGBT DOMESTIC VIOLENCE

The Williams Institute, UCLA School of Law
Presented by:

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What we'll explore today:

- **Demographic info: LGBT people in our courtrooms**
- **Definitions of terms: a common understanding**
- **Scenario to examine LGBT abusers' tactics**
- **Challenges unique to LGBT DV cases : the myth of “mutual abuse,” victims who present poorly, creating a bias-free courthouse, and identifying appropriate services**
- **Use of civil protection orders to protect LGBT survivors**

SELF-TEST

COMMON ASSUMPTIONS

- Media images of lesbians and gay men create the impression that most of them are white urban dwellers
- Many assume they also have high incomes and are preoccupied with shopping for expensive clothes, preparing gourmet food, or eating at upscale restaurants

SELF-TEST OBJECTIVES

- A variety of stereotypes and misconceptions exist about lesbian and gay persons and their families
- After this session, you will have some facts taken from US Census data about this understudied population
- Here's a quiz to test your knowledge of lesbians and gay men in the United States and in California

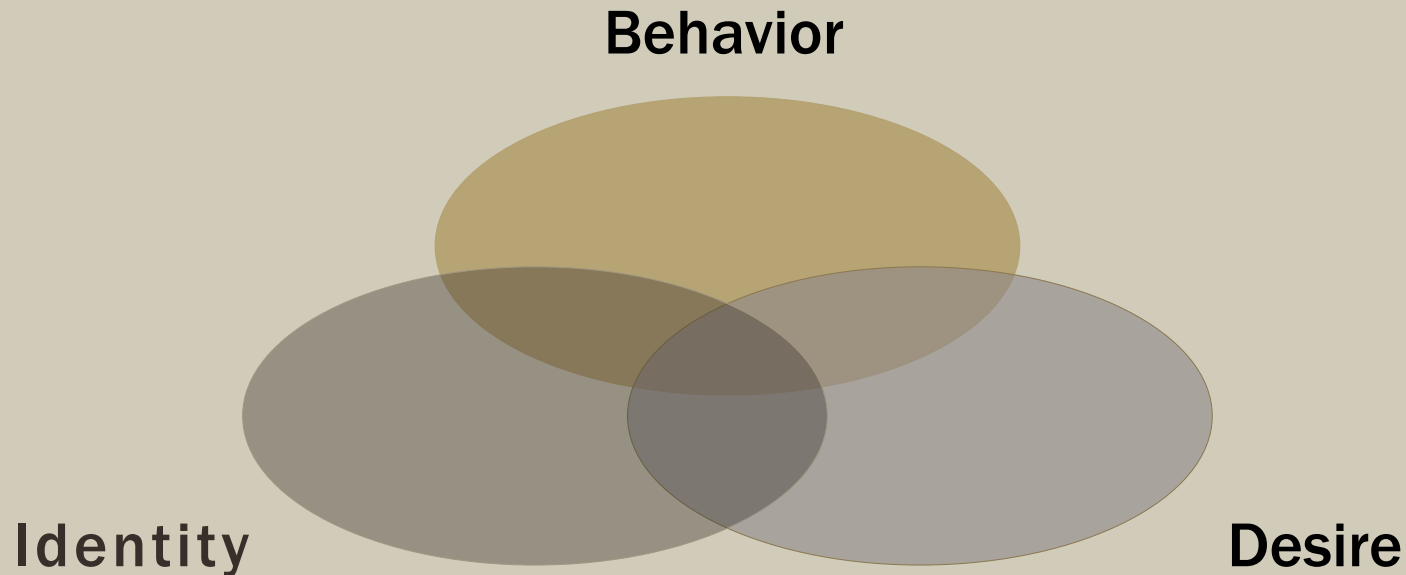
SELF-TEST

1. What fraction of the U.S. population identifies as gay, lesbian, or bisexual?
 - a. 1 percent
 - b. 3 percent
 - c. 10 percent
 - d. 24 percent

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SEXUAL ORIENTATION INCLUDES A COMPLEX INTERACTION OF IDENTITY, BEHAVIOR, AND DESIRE



- ❖ 2011 aggregate study data show that 3.5% of US adults identify as gay, lesbian or bisexual; 0.3% as transgender.
- ❖ General Social Survey (2008)
 - Nearly 10% of adult men and 8% of adult women have had at least one same-sex experience since age 18
 - 1.5% of these men and 1.9% of the women identify themselves as gay or lesbian
 - 0.7% of men and 1.5% of women identify as bisexual

SELF-TEST

2. How many same-sex couples were identified in California in Census 2010?
- a. 24,845
 - b. 86,332
 - c. 125,516
 - d. 248,469

SELF-TEST

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- a. 24,845
 - b. 86,332
 - c. **125,516**
 - d. 248,469

CENSUS BUREAU DATA CAN BE USED TO STUDY SAME-SEX (GAY/LESBIAN) COUPLES

- Census does not ask sexual orientation
- A householder identifies his/her relationship with each individual in the house
- Choices include husband/wife, unmarried partner, roommate, unrelated adult
- Same-sex husbands, wives, or unmarried partners are understood to be gay or lesbian couples

SELF-TEST

3. What percentage of CA counties include at least one same-sex couple?
- a. 35 percent
 - b. 52 percent
 - c. 78 percent
 - d. 100 percent

SELF-TEST

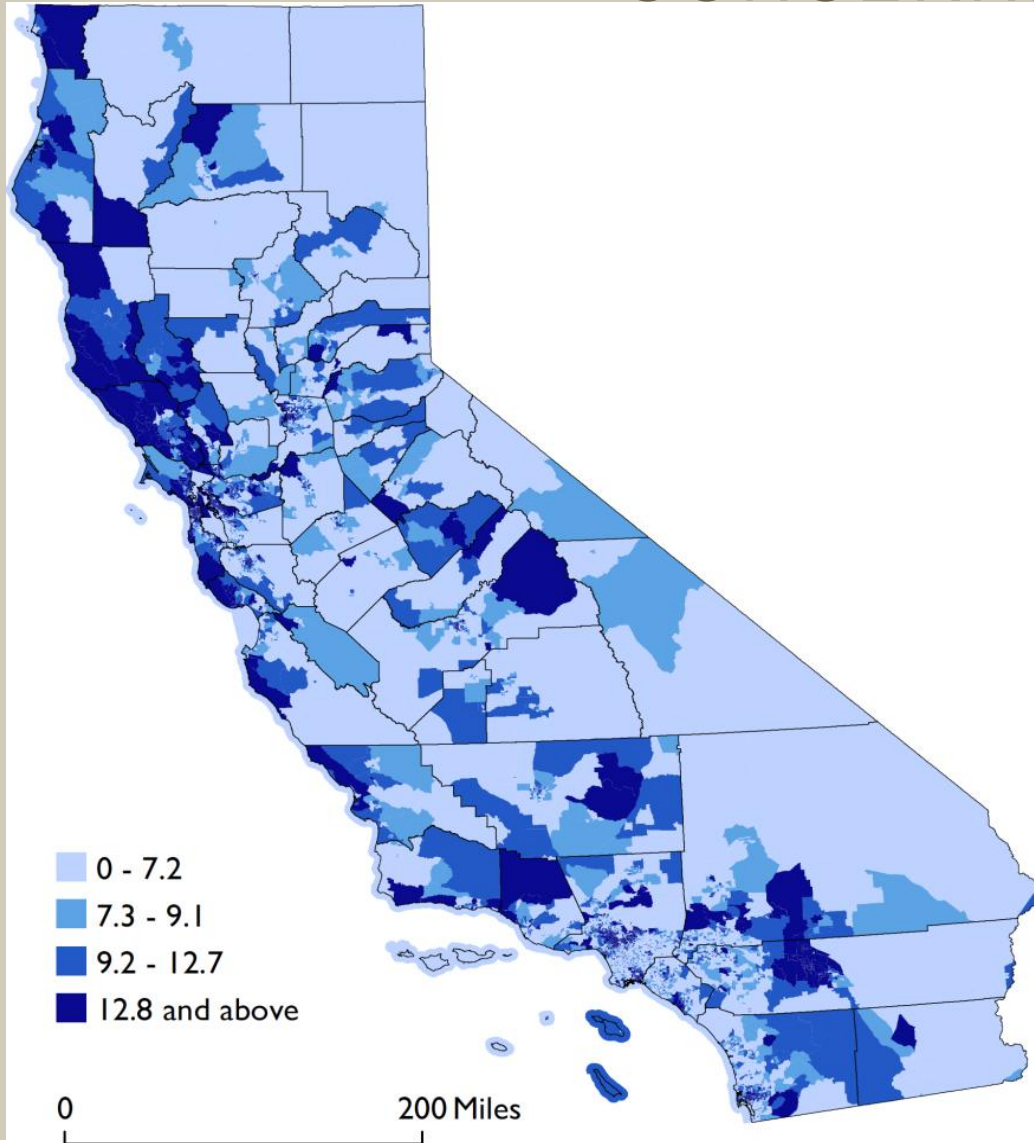
3. What portion of CA counties include at least one same-sex couple?
- a. 35 percent
 - b. 52 percent
 - c. 78 percent
 - d. 100 percent

ALL PLACES ARE NOT CREATED EQUAL

(AT LEAST WHERE SAME-SEX COUPLES ARE
CONCERNED)

Female: 53%

Male: 47%



SELF-TEST

4. What percentage of same-sex couples in CA have children under age 18 in the home?
- a. 5 percent
 - b. 11 percent
 - c. 21 percent
 - d. 43 percent

SELF-TEST

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- a. 5 percent
 - b. 11 percent
 - c. 21 percent
 - d. 43 percent

INCREASING NUMBERS OF SAME-SEX COUPLES ARE RAISING CHILDREN

- Nationally, 22 percent of same-sex couples are raising children
 - That figure was less than 20 percent in 1990
- 21 percent of California same-sex couples are raising children
- Of the same-sex couples raising children, more than four-fifths are female couples

SELF-TEST

5. Which CA county(ies) rank among the top ten in the proportion of same-sex couples who are raising children?
- a. Imperial
 - b. San Francisco
 - c. Tulare
 - d. Glenn

SELF-TEST

5. Which CA county(ies) rank among the top ten in the proportion of same-sex couples who are raising children?
- a. **Imperial**
 - b. San Francisco
 - c. **Tulare**
 - d. **Glenn**

SAME-SEX COUPLES IN THE CENTRAL VALLEY HAVE HIGH RATES OF CHILD-REARING

The nine CA counties with the highest percentage (38% and above) of same-sex couples raising children are:

Colusa
Imperial
Kings
Merced
Tulare

Glenn
Kern
Madera
San Benito

Los Angeles and San Francisco each have
22% or below.

SELF-TEST

7. In 2008, 37 percent of the children being raised by married couples in the U.S. were non-white. What percentage of children being raised by same-sex couples is non-white?
- a. 10 percent
 - b. 27 percent
 - c. 44 percent
 - d. 95 percent

SELF-TEST

7. In 2008, 37 percent of the children being raised by married couples in the U.S. were non-white. What percentage of children being raised by same-sex couples is non-white?
- a. 10 percent
 - b. 27 percent
 - c. 44 percent
 - d. 95 percent

SELF-TEST

8. In 2008, the median household income of married couples with children in the U.S. was \$78,000. What is the comparable figure of same-sex couples raising children?
- a. \$96,200
 - b. \$77,100
 - c. \$66,500
 - d. \$50,000

SELF-TEST

8. In 2008, the median household income of married couples with children in the U.S. was \$78,000. What is the comparable figure of same-sex couples raising children?
- a. \$96,200
 - b. \$77,100
 - c. **\$66,500**
 - d. \$50,000

SAME-SEX COUPLES WITH CHILDREN ARE RELATIVELY ECONOMICALLY DISADVANTAGED

- Differences in household income occur among nearly all racial/ethnic groups raising children

	Different-sex married	Same-sex
White	\$85,000	\$80,000
African-American	\$68,200	\$37,000
Latino/a	\$52,000	\$52,000
Asian/Pacific Is.	\$89,500	\$65,000

DEFINITION OF TERMS

DEFINITIONS

- **Sexual orientation:** a person's emotional, romantic and/or sexual attraction to individuals of a particular gender.
- **Gender identity:** describes the gender with which a person identifies (i.e., whether one perceives oneself to be a man, a woman, or describes oneself in other ways).

SEXUAL ORIENTATION

- **L: Lesbian-** A woman who is predominately or exclusively attracted to women emotionally, physically, spiritually and/or sexually.
- **G: Gay** – A term identifying a man who is predominantly or exclusively attracted to men emotionally, physically, spiritually and/or sexually. Also sometimes used as a blanket term ("the gay community").
- **B: Bisexual** – A term identifying a person who is attracted to men and women emotionally, physically, spiritually and/or sexually.
- **Note:** The L, G and B relate to a person's sexual orientation

GENDER IDENTITY

- **The T: Transgendered** – An umbrella term used to describe a continuum of individuals whose gender identity and how its expressed, to varying degrees, does not correspond to their biological sex.
 - Some common terms under the umbrella:
 - Transsexual, Male to Female (MTF), Female to Male (FTM), Cross Dresser, Drag Queen/King
 - Note: The T relates to a person's gender identity.

What's most important?

- LGBTQ individuals are as diverse as heterosexuals and come from all racial ethnic and socio-economic backgrounds
- Respect how people self-identify – how ever that may be – queer, genderqueer, questioning, a man who sleeps with men (MSM), a woman who sleeps with women (WSW), pansexual, two-spirit, dyke, androgyne, asexual, bear, stud, etc.

DOMESTIC VIOLENCE

Definitions
and Issues

DEFINITION OF DOMESTIC VIOLENCE

- ***A pattern of abusive behavior in an intimate relationship that is used by one partner to gain or maintain power and control over another intimate partner.***

COERCIVE CONTROL

- (Evan Stark (2009) “Rethinking Custody Evaluation in Cases Involving Domestic Violence,” *Journal of Child Custody*,6:3,287):

- “A growing body of research suggests that in an estimated 60% to 80% of abuse cases where outside help is sought or required, the physical and sexual assaults are accompanied by a combination of tactics to intimidate, humiliate, degrade, exploit, isolate, and control a partner.”

COERCIVE CONTROL

- “Well over 90% of all domestic violence incidents are relatively minor from a medical or criminal justice perspective. This is even more true in cases of coercive control where the typical pattern involves frequent or routine, but typically low level violence such as pushes, slaps, hair pulling, kicks, and grabbing, events that are likely to remain invisible if radar is set to pick up only injurious violence. The significance of these events lies in their cumulative effect on a person’s sense of autonomy and on their decision-making, an outcome called ‘entrapment,’ rather than in their proximate physical consequence.”

PREVALENCE OF DOMESTIC VIOLENCE IN LGBT RELATIONSHIPS

- Current research indicates that the prevalence of domestic violence in LGBT relationships is comparable to that in heterosexual relationships (25-33%)
- The dangerousness presented by LGBT abusers is also comparable.

“you fight like a girl”

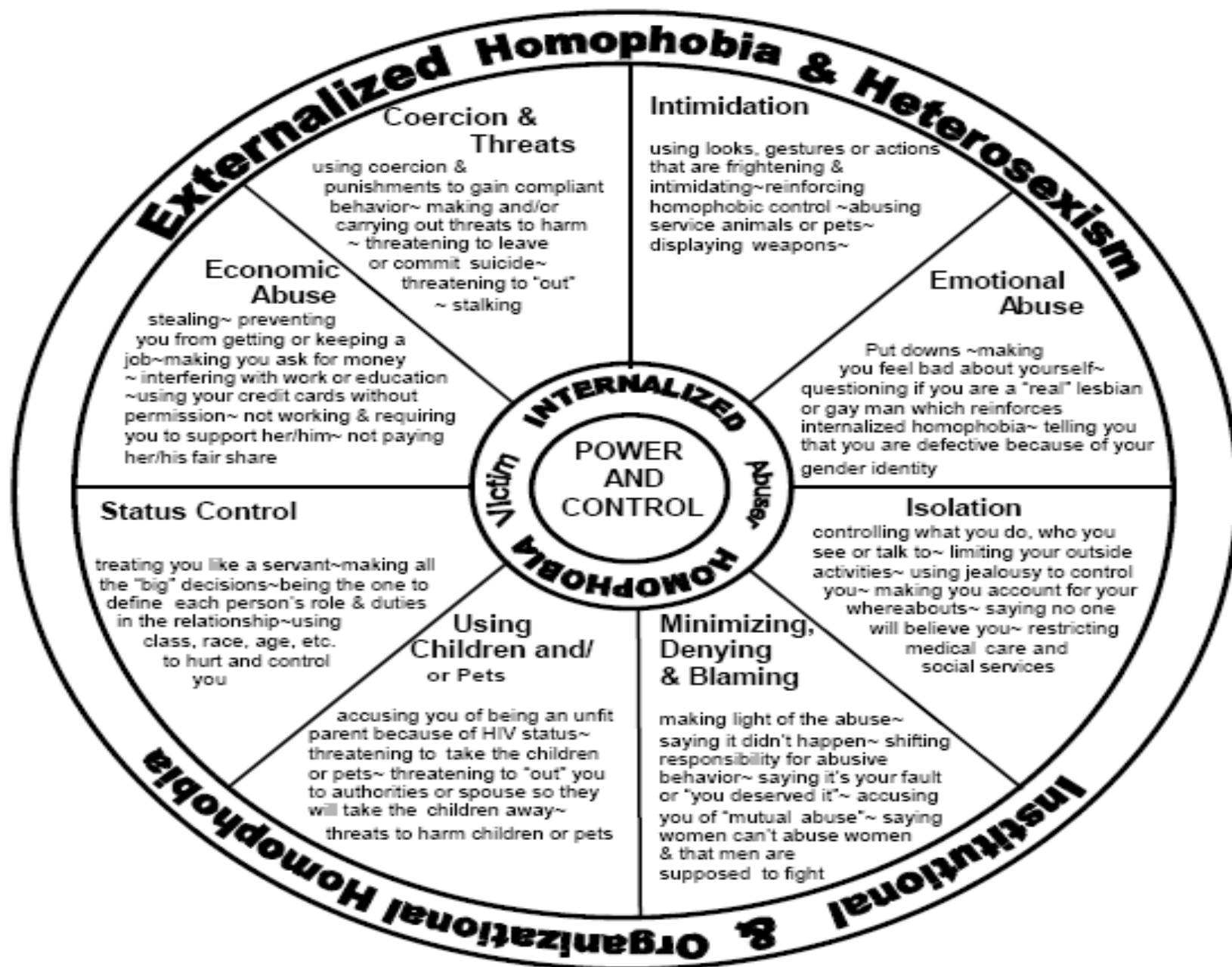
- Arm wrenched out of socket.
 - Hit in the head by a brick
 - Eardrum ruptured by blows to the head with a shovel.
 - Gunshot wound to shoulder - not allowed to seek medical assistance for hours.
 - Ribs broken and then gun held to head for 2 hours
 - Forced to kneel on broken glass.
- If you heard these stories what gender would think the survivor was? What gender would you think the batterer was?
- These incidences have been reported to DVLAP staff members by female, male and transgender survivors.

SCENARIO:
EDWARD AND
DANIEL

Abusers' tactics

- What forms of abuse can you identify in the scenario?
- What other forms of abuse do you think may be present or are likely to occur in the future?

LGBT Power and Control Wheel



Abusers' tactics

1. Using Intimidation;
2. Using Emotional Abuse;
3. Using Isolation;
4. Denying, Minimizing, and Blaming
5. Using the Children;
6. Using Economic Abuse; and
7. Using Coercion and Threats.

Abusers' tactics

- What forms of abuse can you identify in the scenario?
- Denying, Minimizing, Blaming:
 - Saying all LGBT relationships are like this (especially for individual in first relationship)
 - Accusing survivor of “mutual” abuse
 - Saying all men are violent in relationships; saying women can't abuse each other
 - Edward tells Daniel that other gay couples “fight just as much as we do” and that he's just too inexperienced to know it
 - He also tells Daniel that he is just as responsible for what is happening as Edward

Abusers' tactics

■ Using Coercion/Threats:

- Threats to out (sexual orientation/HIV status) to family, friends, employers, places of worship: threat of job/housing loss, excommunication, alienation, etc.
- Edward threatens to tell the owner of the bakery that Daniel is gay; he reminds Daniel that he'll have nowhere to stay if he loses his job and Edward does not provide for him

■ Using Emotional Abuse:

- Making the victim feel guilty/ridiculing him/her for not being out to family, friends, work, etc.
- Reinforcing internalized homophobia
- Edward tells Daniel that he is suicidal because he cannot deal with his sexual orientation and that he is “damaged goods that no one else will take pity on”

Abusers' tactics

- Using Isolation:
 - Using sexual orientation to alienate survivor from family, community, institutions; exploiting homophobia
 - Saying that no one will believe the survivor because she or he is LGBT
 - Saying only the abuser will love the survivor because survivor is LGBT (especially for trans/elder survivors)
 - Edward warns Daniel that he will lose all of his friends if he leaves, and that they will not believe that Edward has been abusive; Edward warns Daniel that he has nowhere to go because his family has rejected him.

Abusers' tactics

■ Using Children:

- Threatening to out survivor to child protection, other authorities, or other parents and to have children removed
- Threatening to deny contact/custody to non-biological parent, where survivor has no custody rights
- Edward knows that Daniel has no legal rights to the child, so he constantly threatens Daniel that if he leaves he'll never see her again

■ Using Privilege:

- Exploiting homophobic systems to reinforce survivor's subservient status, especially where abuser can "pass" as non LGBT
- Edward, with his daughter from a previous marriage to a woman, does not appear to be gay; he tells Daniel that because, except at work, he dresses and acts gay, the police won't help him, but that if Edward calls them he'll get help

Abusers' tactics

- Using Economic Abuse:

- Threatening to out survivors to employers, housing authorities, etc.
- Keeping name off joint assets, exploiting inability to marry
- Denying survivor domestic partner benefits
- Committing identity theft

- In addition to threatening to out Daniel at work, Edward has managed to take over all of the couple's finances and to put all of their major purchases in his name only; he tells Daniel that if he leaves, he has no right to anything they bought because there is no such thing as "marital property" in a gay relationship.

LGBT ABUSERS' TACTICS: BEYOND THE POWER AND CONTROL WHEEL

■ Physical and Sexual Abuse:

- Forcing survivor to have sex to prove survivor is a “true” LGBT person
- Using shame surrounding LGBT sexuality to keep survivor from discussing sexual abuse
- Hiding/destroying survivor’s hormones (for trans survivors) or HIV/AIDS medications (for HIV+ survivors)
- HIV transmission through coercion, concealment, or assault
- Increasing survivor’s vulnerability to hate crimes

■ Exploiting Vulnerabilities:

- Using own vulnerabilities (e.g., HIV+ status; not being “out”) to obligate/coerce survivor into staying with, caring for, prioritizing abuser

LGBT ABUSERS' TACTICS: BEYOND THE POWER AND CONTROL WHEEL

- **Leveraging Societal Discrimination/Homophobia:**
 - Exploiting homophobia of police, hospital personnel, service providers, justice system
- **Additional Barriers Abusers Exploit:**
 - Inability of gay men/trans people to use most shelters
 - Ease with which women can access shelters; with which same-sex abusers can access hospital rooms, bathrooms, and other “safe” spaces
 - Small, insular communities: difficulty in finding safety; ease with which survivor can be ostracized
 - Immigration status: abusers threaten to report undocumented victims; undocumented abusers exploit vulnerable status

DOMESTIC VIOLENCE IN THE COURTROOM:

Unique
Challenges

UNIQUE CHALLENGES

- The myth of “mutual abuse:”
Identifying the true victim:
- Victims who present poorly
- Creating a bias-free courthouse
- Identifying appropriate services

THE MYTH OF MUTUAL ABUSE

- Daniel is physically much larger than Edward
- Edward says that Daniel usually initiates the “fighting” and that he must defend himself physically
- Edward plays into myths about gay relationships by claiming that the fighting is typical
- Edward denies or minimizes the non-physical abuse (economic abuse, isolation, etc.)

THE MYTH OF MUTUAL ABUSE

- LGBT abusers can make the domestic violence look “mutual”
 - It’s not mutual: Has each of the parties exhibited a pattern of abusive behavior to gain or maintain power and control?
- LGBT (and non-LGBT) victims may “use violence” for a range of reasons, including as a way to survive the abuse

THE MYTH OF MUTUAL ABUSE

- Not looking deeper can result in damaging collateral consequences:
 - Dual arrests
 - Cross protection orders
 - Loss of employment
 - Loss of public benefits

HOW TO LOOK DEEPER

- Ask questions about:
 - The **context** of the abuse
 - The **intent** of the abuse
 - The **effect** of the abuse

- Assessment tools and training on their use are available from LGBT DV organizations

- (Including the Northwest Network of Bi, Trans, Lesbian, and Gay Survivors of Abuse and The Network LaRed)

**Victims who
“present” poorly**

Victims who “present poorly”

As a result of all of the barriers we discussed, victims may not present well in our courtrooms:

- Cases may come to you with little or no evidence of abuse beyond the victim’s testimony:
 - No or shoddy police reports
 - Dual arrests/cross filed protection order petitions
 - No or little medical evidence
 - No witnesses

Victims who “present poorly” – cont’d

- Although victims allege long-standing abuse, they have never sought help in the past
- Victims may appear to be trying to conceal their sexual orientation or gender identity (due to perceptions of how they will be treated or to previous help-seeking experiences)
 - Seem highly distrustful/hesitant to be forthcoming with information

Victims who “present poorly” - scenario

- Daniel never reported the abuse to the police
- A neighbor called 911 once, but the police refused to complete a report because they claimed that they could not determine a primary aggressor and that it simply looked like a fight between two men
- Edward once slashed Daniel with a knife, but when he sought medical treatment he reported it as an accident at work because he did not want to come out to the doctor; he never brings this to the Court’s attention
- Daniel has no witnesses to support his allegations

Victims who “present poorly”

- In addition, LGBT people may face additional hurdles in court
 - Court forms, procedures, etc. may require the victim to come out
 - Especially difficult where victim cannot obtain expert representation (or any representation) and must navigate the system pro se
 - Court personnel (clerks, bailiffs, etc.) may lack training and act on implicit bias to mistreat LGBT people
 - Judges may do the same

TOWARDS A BIAS-FREE COURTHOUSE

ABA Model Code of Judicial Conduct (2007)

RULE 2.3

Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

TOWARDS A BIAS-FREE COURTHOUSE

ABA Model Code of Judicial Conduct (2007)

RULE 2.3

Bias, Prejudice, and Harassment

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

TOWARDS A BIAS-FREE COURTHOUSE, INCLUDING JUDICIAL LEADERSHIP

- Amend forms, procedures, etc. to allow victims to seek legal relief without coming out
 - In some states, the victim can check a box labeled “room-mate” without revealing the nature of the relationship
- Train all court personnel on how to dismantle barriers to access for LGBT people
- Establish and enforce rules regarding offensive conduct and statements by staff and others in the courthouse
- Recognize and minimize the effects of implicit bias in yourself and others with whom you work

USING DOMESTIC
VIOLENCE PROTECTIVE
ORDERS
TO PROTECT LGBT
SURVIVORS

EFFECTIVE PROTECTION ORDERS

- Safety provisions (stay-away, no-contact, no abuse, no harassment, no stalking, etc.) should be **specific and tailored to the particular relationship**, taking into account the tactics used by LGBT abusers;

- Examples include:

Prohibiting the abuser from outing the survivor in any context: (e.g., “Respondent shall not disclose information about Petitioner’s sexual orientation or gender identity to others with the intent of harassing, isolating, embarrassing, or otherwise harming the Petitioner.”)

EFFECTIVE PROTECTION ORDERS

- **Economic relief** – Where appropriate, judges should include appropriate provisions granting economic relief, which is especially important for LGBT survivors who may not have protections available to heterosexual married survivors
- **Housing relief** - Judges should consider including housing relief (exclusion of abuser; abuser required to pay rent and utilities; etc.), especially important due to housing discrimination against LGBT survivors
- **Custody and visitation issues** - Judges should issue temporary custody provisions within protection orders in favor of the survivor, where the survivor has custody rights (biological or adoptive parent)
- **Use Catch-all provisions** where available to grant requested relief if it would otherwise not be available given LGBTQ nature of relationship.

MUTUAL ORDERS

- Unless supported by the facts, judges should **not** issue mutual protection orders (single order with relief against petitioner as well as respondent) for several important reasons; especially problematic in LGBT context where dual arrests or non-action by police already is prevalent

TRANSGENDERED VICTIMS

- Judges should permit the transgendered person to use his or her chosen name and gender identity in the order
- If necessary, “also known as” or “formerly known as” language should be employed

EFFECTIVE SERVICES: AN OPPORTUNITY FOR JUDICIAL LEADERSHIP

- DV advocacy services:
 - Are there services in your community for LGBT victims; will programs assist male victims in same-sex relationships?
 - Are shelters limited to heterosexual, non-transgendered women?

EFFECTIVE SERVICES: AN OPPORTUNITY FOR JUDICIAL LEADERSHIP

- Batterers' intervention programs:
 - One size does not fit all—is there a program in your community that has the expertise to serve LGBT clients?
 - Will the program even permit perpetrators of same-sex DV to participate?
 - How do you judge the competence and effectiveness of such programs

SOME THOUGHTS FROM JUDGES

- WA State Judges' Benchguide on Sexual Orientation and the law
 - "I have observed that many gay/lesbian couples are embarrassed about being in court in the Domestic Violence (DV) issues (which is not unique to the gay/lesbian community; most everyone is), but also embarrassed about the need to disclose their relationship, which is required to establish standing to obtain a DV order. Usually testimony to establish the relationship isn't required, but may be if the Respondent contests the relationship. These are public hearings, so there are usually people on the benches waiting their turn, and they of course listen to what's going on. Fortunately, the statute allows people living together to file, so the more intimate details don't need to be revealed in court, and I will interrupt and redirect if the testimony goes in that direction when there is no need. The parties usually seem very relieved."

SOME THOUGHTS FROM JUDGES

- WA State Judges' Benchguide on Sexual Orientation and the law
 - “A case of former companions [same-sex couple] where the aggressor filed a DV complaint against his partner. I did not believe him and reversed the parties at the hearing and granted the order in favor of the respondent. Life lesson: do not ignore your instincts; take the time to listen to a person who may be intimidated by the court and the batterer. The batterer is often the person who uses the court as part of the victimization process. I will never forget the look in the respondent's face when I told him I believed him. He crumpled in a mass of tears and the storm-trooper smiled and bowed to me.”

SOME RESOURCES

■ The Williams Institute

- The Williams Institute, UCLA School of Law is a national think tank dedicated to sexual orientation law and public policy. It advances law and policy through rigorous and independent research and scholarship.
- <http://williamsinstitute.law.ucla.edu>
- Voice: (310) 267-4382
- Fax: (310) 825-7270
 - For Judicial Education:
 - Professor Todd Brower
 - tbrower@wsulaw.edu

SOME RESOURCES

- American Bar Association – Commission on Domestic Violence

http://www.americanbar.org/groups/domestic_violence/resources/resources_for_attorneys/marginalized_communities/lgbtq.html

- (The ABA CDV has a LGBT DV Toolkit and other specific resources for legal professionals).

- L.A. Gay & Lesbian Center – Domestic Violence Legal Advocacy Project: 323-993-7649 or www.lagaycenter.org

- National Coalition of Anti-Violence Programs (NCAVP): (212) 714-1184 or www.avp.org/ncavp.htm