



**American Bar Association
Report from the Exploratory Summit
To Improve and Expand
Access To Justice For Lesbian, Gay,
Bisexual, and Transgender (LGBT)
Victims of Domestic Violence**



March 2009

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*ABA Report from the Exploratory Summit to Improve and Expand Access to Justice for
Lesbian, Gay, Bisexual, and Transgender (LGBT) Victims of Domestic Violence*

PREFACE

Lesbian, gay, bisexual and transgender (LGBT) victims of domestic violence have been a traditionally underserved population of domestic violence victims, despite the prevalence of domestic violence in these communities. Although research regarding the rates of domestic violence in LGBT relationships is not extensive, studies indicate that as many as 46% of lesbians and gay men report abuse by a current or former partner.¹ Other studies indicate that 20% to 35% of men and women in gay and lesbian relationships experience domestic violence.² These studies and others indicate that the rates of domestic violence in LGBT relationships are the same as those in heterosexual relationships.³

However, services and especially legal services for LGBT victims of domestic violence, are rare. Only a few attorneys and organizations in the U.S. provide legal assistance specifically to LGBT victims of domestic violence. The lack of dedicated legal services is especially disturbing because legal assistance, particularly the civil protection order,⁴ is one of the most effective tools available to victims of domestic violence to ensure their safety and reduce violence. In some jurisdictions, LGBT survivors are eligible for civil protection orders.⁵ However, without well-trained attorneys to provide accessible legal services to LGBT victims, these protections are meaningless.

In fall 2007, the American Bar Association Section of Individual Rights and Responsibilities, Commission on Domestic Violence and the Criminal Justice Section (“the ABA partners”) received funding from the American Bar Association (ABA) Enterprise Fund to launch a national project to increase access to justice for lesbian, gay,

¹ Elliot, P. *Shattering Illusions: Same-Sex Domestic Violence*, in C.M. Renzetti & C.H. Miley (eds.), *Violence in Gay and Lesbian Domestic Partnerships* (pp. 1-8), Binghamton, NY: Haworth Press (1996).

² Lundy, S., “Abuse That Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts,” 28 *New England Law Review* 273 (Winter 1993).

³ Gunther, J., & Jennings, M. A. (1999). Sociocultural and institutional violence and their impact on same-gender partner abuse. In J. C. McClennen & J. Gunther (Eds.), *A professional guide to understanding gay and lesbian domestic violence: Understanding practice interventions* (pp. 29-34). Lewiston, NY: Edwin Mellen Press.

⁴ See e.g., Amy Farmer & Jill Tiefenthaler, *Explaining the Recent Decline in Domestic Violence*, 21 *CONTEMPORARY ECONOMIC POLICY* 158 (April 2003).

⁵ The majority of state statutes are silent on the issue as to whether LGBT survivors are eligible for protective orders. Only one state, Hawaii, specifically extends protection to LGBT victims by including current or former “reciprocal beneficiaries” within its statutory language (HAW. REV. STAT. § 586-1). Three states, Louisiana (LA. REV. STAT. ANN. §46:2132(4)), (Montana MONT. CODE ANN. § 40-15-202), and South Carolina (§S.C. CODE ANN. 20-4-40(a)), have protective order statutes that explicitly deny LGBT victims standing to seek civil orders of protection by requiring the requisite relationship to be with an individual of the opposite sex.

The remaining states have statutes that are silent or unclear as to whether they apply to same-sex couples. The gender-neutral language in the statutes, such as “dating relationship” or “sexual partners,” leaves the decision of whether to extend the protection up to the discretion of judges. In three states, appellate decisions have explicitly extended the protective order statutes to same-sex couples: Florida, Kentucky and, Illinois. In other states, court decisions have assumed that civil orders without that being the holding of the case: D.C., and Ohio. In other states, appellate court decisions have held that roommates meet the definition of “household member,” which is a category of persons eligible for protection in many statutes: New Jersey, Massachusetts, and California.

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bisexual and transgender (LGBT) victims of domestic violence and sexual assault through leadership and training for attorneys. The goals of the project include: (1) identification and development of materials for attorneys addressing the unique legal needs and legal remedies of LGBT victims of domestic violence and sexual assault; (2) hosting national trainings to promote networking and to share resources; and (3) launching of a web-based clearinghouse of resources for attorneys representing LGBT victims of domestic violence and sexual assault.

In spring 2008, the ABA partners hosted an exploratory summit of national, regional, local and grassroots leaders from domestic violence, sexual violence, and lesbian, gay, bisexual and transgender communities to brainstorm about the most effective role for the ABA in addressing this issue. Participants were also invited to share their own experiences working with LGBT victims of domestic violence and sexual assault and to identify barriers to the success of that work. The Coordinator of the ABA project, Amanda Kloer, reached out to various stakeholders and extended invitations to approximately 75 individuals representing a broad spectrum of experience and geographic diversity. While we received a tremendous reception, several individuals who were invited did not attend either because of scheduling conflicts or because they declined to participate. The Summit was held on April 11 and 12, 2008, in Washington, D.C. A list of the attendees of this Summit is attached to this report as an addendum.

We would like to extend our most heartfelt thanks to all those who participated. We would also like to thank and acknowledge the many advocates and attorneys around the country who have been working to increase justice for LGBT victims of domestic violence for many, many years. We firmly believe we are seeing great progress in America toward a day of greater equality for LGBT victims. We look forward to that day.

Sincerely,

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SUMMIT GOALS

The primary goal of the Summit was to inform the work of the ABA project by consulting with leading experts and practitioners from across the country. The goals for the Summit also included creating an opportunity for those who have worked with survivors of domestic violence in LGBT communities to meet, network and share their experiences. According to many participants, this was a rare opportunity for individuals who serve LGBT victims of domestic violence to meet and share experiences, and it was one of the first times legal services had been the focus of such a meeting.

Additionally, through facilitated discussions, the ABA partners sought input on the specific focus of the ABA's project. In keeping with its goals, the Summit:

- Brought together multiple, diverse communities in an open, collaborative conversation, seeking common ground and building professional relationships;
- Provided an opportunity to exchange insights and information and to expand participants' thinking about legal services in order to create new perspectives for the ABA project and for the work of all of the participants;
- Identified the key areas in which the ABA could most effectively increase access to justice for LGBT domestic violence and sexual assault victims, including educational materials, trainings and other resources which will improve legal services.

KEY CULTURAL THEMES

A primary theme that emerged from the Summit was the need for practitioners to identify and recognize cultural issues, themes, and barriers that often exist when representing LGBT victims of domestic violence. There was general agreement that without addressing the cultural themes which create barriers to victims seeking and gaining access to legal services, access to justice for these victims cannot be significantly improved. The first day of the Summit was dedicated primarily to a discussion of these cultural issues.

LGBT individuals and victims of domestic violence and sexual assault face a number of complex cultural barriers. Although the experiences of individuals differ and cultural oppressions affect people in various ways, a number of common themes were raised during the first day of the Summit. These include:

1) HOMOPHOBIA, TRANSPHOBIA AND HETEROSEXISM IN AMERICAN CULTURE

Homophobia, transphobia and heterosexism are culture barriers to LGBT victims of domestic violence seeking help from a number of sources, including the legal profession. Often cultural homophobia affects victims' desire and ability⁶ to seek legal services in subtle ways. For example, homophobia in a victim's family may prevent that person from seeking familial support. It also may prevent that victim from seeking professional help for fear that the victim's sexual orientation may be exposed. Victims of same-sex abuse may fear that they will not be taken seriously or will be discriminated against by law enforcement officials. Similarly, cultural transphobia may prevent a transgender victim from seeking support due to fear of being outed or refused services based on gender identity (*see section on law enforcement for more discussion*).

Heterosexism also presents a significant cultural barrier for LGBT victims seeking services. Traditionally, service providers have focused most of their resources and expertise on the heterosexual community. Although many providers claim to serve all victims equally, there is limited outreach to LGBT communities. The outreach materials that do exist often are not written in gender-neutral language and may lead LGBT victims to assume that they are not included in the services offered (*see section of gender-neutral language for more discussion*).

2) THE DISTINCT AND INTERCONNECTED NATURE OF LGBT COMMUNITIES

LGBT communities are both distinct and interconnected, which creates a number of cultural issues for victims of domestic violence. Lesbian, gay, bisexual and transgender communities are all culturally distinct in and of themselves. Victims from each of these communities experience different cultural oppressions and therefore have different needs. When heterosexist culture clumps "LGBT" under a single cultural umbrella and does not acknowledge the different needs of different

⁶ It is important to note that while many victims want to seek help and are able to seek help, they may not seek help because they are worried about the consequences of doing so.

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communities, victims may not be given the most appropriate services. This inappropriate treatment often creates another cultural barrier for LGBT domestic violence and sexual assault victims.

LGBT communities also tend to be culturally close and interconnected in a variety of ways. This is particularly true within specific communities under the umbrella “LGBT”. Because of the interconnected nature of many LGBT communities, victims often fear the ease with which abusers can isolate them from their community and support system. This may discourage disclosure of abuse out of fear, embarrassment or a desire to prevent a fracture in the community. LGBT victims who choose to seek assistance may experience fear and isolation more acutely than heterosexual victims because of these dynamics.

3) GENDERED LANGUAGE

Gendered language is often used when discussing domestic violence, both by professional service providers and individuals. Specifically, “he” is used to refer to abusers, and “she” is used to refer to victims. This is problematic for male victims, victims of a female abuser, and victims with gender identities outside the binary system. For example, a gay man who has been abused by his boyfriend may be excluded from a “battered women’s shelter⁷,” or feel unable to access any services because he is a man. To effectively serve LGBT victims of domestic violence, service providers should avoid gendered language which excludes certain populations of victims.

However, the use of exclusively gender-neutral language also creates challenges. Women of all sexual orientations and gender identities comprise the majority of victims of domestic violence and sexual assault. The movement to use gender-neutral language largely embraces heterosexual men as a victim group, and has not, for the most part, included the LGBT population. There are concerns among professional that this change may disproportionately shift the focus of the conversation to a population that does not comprise a large percentage of victims. Furthermore, the LGBT population should be explicitly addressed beyond the use of gender-neutral language. Domestic violence victim service providers must navigate these cultural issues of gendered language to include LGBT victims.

4) SEXUAL ORIENTATION, GENDER IDENTITY AND GENDER EXPRESSION

There are pervasive cultural misunderstandings of the differences between sexual orientation and gender identity. Often, victims who have sexual orientations or gender identities outside the cultural mainstream are clumped into a single community, when in reality they have very different needs and experience abuse and domestic violence in different ways. Those with non-mainstream gender identities and sexual orientations face different challenges, which must be addressed by the legal community. The misunderstanding, confusion and clumping which often occurs

⁷ In different jurisdictions, shelters may or may not be required by law to admit certain populations of victims. This varies greatly by jurisdiction and shelter.

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with these distinct issues may prevent the specific cultural barriers a victim experiences from being appropriately recognized and treated.

5) LAW ENFORCEMENT RESPONSE

There is a general fear within the LGBT community of interacting with law enforcement. In recent years, there has been a marked improvement in the legal response to domestic violence among LGBT couples. However, even in areas with an improved law enforcement response, this culture of fear remains. Many victims fear an inappropriate or inadequate response by law enforcement when an LGBT person reports a situation of domestic violence, abuse, or sexual assault⁸. This fear may prevent victims from reporting abuse to law enforcement and often gives abusers a tool to further exert power over victims.

6) DIVERSITY AND INCLUSIVITY

LGBT victims of domestic violence are both a diverse population and one which has not been traditionally included in cultural mainstream movements⁹. Although some women in the lesbian community have been involved in the forefront of the domestic violence movement, LGBT communities have not historically addressed domestic violence as a priority. Similarly, domestic violence communities that operate in a heterosexual paradigm have not reached out to LGBT organizations to include LGBT individuals. Because of this, there is a great need to grow and maintain a diverse and inclusive group of organizations and individuals to address cultural barriers and legal issues. Continuing to include traditionally-marginalized populations will provide a crucial diversity of opinion and skill to address cultural and legal issues. These groups include, but are not limited to, communities of color, immigrants, youth, transgender communities and bisexual communities.

The issues discussed during the Summit and presented above are complex cultural issues that affect LGBT victims of domestic violence in a number of ways, including their ability to access legal services. Summit participants agreed that legal services provided to the LGBT communities must take into account the backdrop of these issues.

⁸ Responses from law enforcement vary greatly between jurisdictions. Increased training around domestic violence and working with LGBT persons may have improved the response of law enforcement in some areas. In other areas, more training is needed to improve the response of law enforcement.

WORKING GROUPS

During the second day of the Summit, the ABA partners presented participants with seven questions that emerged directly from the key themes and barriers discussed during the first day. Each of the questions became the focus of a working group, and participants each chose a group in which to work. The goal of the working groups was not to provide a clear answer to the question. In fact, many of the questions were so complex that arriving at a single solution was impossible. However, the groups sought to discuss each question by teasing out those aspects of the question that were the most critical to address to improve legal services for LGBT victims of domestic violence.

Below are the questions put forth and summaries of key points of each group discussion.

1. WHAT DO LGBT ORGANIZATIONS AND DOMESTIC VIOLENCE ORGANIZATIONS STAND TO GAIN BY COLLABORATING? WHAT DO THEY STAND TO LOSE? WHAT IS THE SOURCE OF RESISTANCE FROM THESE GROUPS TO INCREASING LEGAL ACCESS TO JUSTICE FOR LGBT VICTIMS?

Participants in this group examined why LGBT victims traditionally have been excluded from the “mainstream” domestic violence movements, why domestic violence often has been ignored by LGBT movements, and why there has been resistance to this inclusion. This discussion addressed:

- The limitations of the legal system, especially the criminal justice system, as a result of misconceptions by law enforcement regarding domestic violence and sexual assault in LGBT communities;
- The need for new, more complex definitions of domestic violence, sexual assault, oppression and other language used to explain the experience of LGBT domestic violence victims;
- The challenge facing domestic violence and sexual assault organizations to adopt gender-neutral language in outreach and education materials in order to incorporate the experiences of gay male and female-to-male transgender victims in the face of attacks from the men’s rights and fathers’ rights movements;
- The effects of sexism, racism, economic disparities and homophobia on individual victims and the need to be conscious of multiple oppressions in developing effective legal responses;
- The possibility that the domestic violence and sexual assault movement may be excluding LGBT victims out of ignorance rather than resistance.

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2. WHAT CHARACTERISTICS OF LGBT RELATIONSHIPS ARE SPECIFIC TO THESE COMMUNITIES AND WHAT, IF ANYTHING, IS DIFFERENT ABOUT THE VIOLENCE THAT OCCURS IN THEM? HOW DOES THAT AFFECT PEOPLE’S EXPERIENCES IN THE LEGAL SYSTEM?

Participants in this group examined the question with the aim of creating a greater understanding of the various ways that LGBT persons understand their legal experiences. This discussion raised the following issues:

- Referring to lesbian, gay, bisexual and transgender people together as one group implies that all of these communities are the same and experience domestic violence and sexual assault in the same way, which is an incorrect understanding and leads to inappropriate “clumped” legal responses;
- Most people are ill-informed or misinformed about the dynamics of LGBT relationships, such as how people meet, if they can sexually assault each other or the coming out process. This is also true for the difference between sexual orientation and gender identity;
- Lack of legal status of relationships often allows an abuser to exert power and control in unique ways and creates problems for labeling and defining relationships, both in a legal and personal context;
- Gender stereotypes about size, appearance and aggression may make it difficult to accurately identify which person is the victim and which is the abuser in an LGBT relationship.

3. WHAT ARE THE MOST IMPORTANT LEGAL ISSUES RELATED TO DOMESTIC VIOLENCE IN LGBT RELATIONSHIPS TO BE ADDRESSED BY IMPACT LITIGATION (E.G., SURGERY STANDARDS AND THE DEFENSE OF MARRIAGE ACT)?

Participants in this group focused specifically on how the ABA through its national project may improve and increase legal services for LGBT victims of domestic violence. This discussion raised the following issues:

- The importance of protecting impact litigation theories, to prevent them from being used against victim advocates and LGBT victims of domestic violence and sexual assault by batterers and anti-LGBT activists;
- The common denial of shelter services and protection orders to LGBT victims;
- The difficulty of obtaining appropriate counseling to address the unique issues that an LGBT victim faces;

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- Issues of custody and support, probate and guardianship;
- The need for a list of needs and challenges faced by attorneys representing LGBT victims of domestic violence and matching resources to support those attorneys.

4. WHAT NON-LEGAL REMEDIES COULD THE PROJECT PROMOTE?

Participants discussed a number of non-legal communities which should be reached with information regarding domestic violence and sexual assault in LGBT relationships and the rights of victims. Some of these suggestions include:

- Schools and Universities – Create environments of acceptance by teaching about nonviolence, safe relationships, sexual orientation and gender categories, along with developing codes of safety with acceptable consequences;
- Hospitals and Mental Health Professionals – Focus on first responders and how reactions, words and attitudes promote or suppress safety;
- ER/Nursing – Create a protocol for documentation of abuse. Expand language to broaden possibilities for family and next-of-kin. Stress confidentiality concerning outing awareness;
- Spiritual Caregivers – Explore and expand this leadership role;
- Workplaces –Address the issue of acceptable and unacceptable behavior parameters in the workplace and develop “no tolerance” training. Foster an atmosphere in which victims feel that they are not alone, that help is available and that their safety will be addressed.

5. WHAT NEEDS TO HAPPEN TO CREATE LEGAL INTAKE AND OTHER SYSTEMS THAT SUPPORT SAFETY AND SELF-DETERMINATION AND THAT TAKE INTO ACCOUNT CONFLICT OF INTEREST ISSUES? HOW DO THESE SYSTEMS NEED TO CHANGE TO ADDRESS CONFLICT ISSUES?

Participants discussed several issues surrounding the legal intake process and other systems as applied to LGBT domestic violence victims. This discussion addressed:

- The need for intake systems to correctly identify the victim and the batterer in LGBT relationships without relying on gender identity;

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- Identification of the gatekeepers of justice; for example, the criminal justice system;
- The limitations of existing legal service models;
- Specific issues surrounding confidentiality and privacy of LGBT clients.

6. WHAT ARE PREVENTION STRATEGIES FOR DOMESTIC VIOLENCE IN LGBT COMMUNITIES? IS THERE A LEGAL COMPONENT TO THIS?

Participants brainstormed various strategies to improve awareness and prevention of domestic violence and sexual assault in LGBT communities. Some of these suggestions included:

- Shift focus to early intervention by identifying cases sooner and by involving attorneys, mental health care providers and other individuals earlier in the process;
- Support national and local organizations and contacts for additional information via the project website, including Frequently Asked Questions;
- Build an understanding of the cause of abuse in LGBT communities; include information on domestic violence 101 and address cultural issues;
- Develop partnerships between the ABA and LGBT community groups to ensure materials are used competently and effectively;
- Examine LGBT domestic violence on a global level. How are these issues addressed in other countries? The United States could set a precedent;
- Identify measurable outcomes for prevention and intervention, a greater proportion of abuse reported, referrals for intervention and methods to monitor treatment;
- Develop and disseminate “know your rights” information about safety planning, such as changing locks and breaking leases, as well as employment concerns relating to domestic violence and sexual assault.

7. SHOULD THERE BE LEGAL RESPONSES FOR LGBT VICTIMS OF DOMESTIC VIOLENCE SPECIFIC TO THESE COMMUNITIES? WOULD THE EXISTING MODELS OF LEGAL RESPONSE TO DOMESTIC VIOLENCE BE EFFECTIVE IN PROVIDING LEGAL ASSISTANCE TO LGBT VICTIMS OF DOMESTIC VIOLENCE? IS IT A QUESTION OF ACCESS OR A QUESTION OF PARADIGM SHIFT?

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Participants discussed existing legal service models and whether these models are effective for LGBT victims of domestic violence if these victims were able to access existing services. This discussion addressed:

- Existing legal models including legal aid and legal services programs without a dedicated unit or attorney for LGBT domestic violence, as well as legal programs that have a staff members focused on LGBT matters; LGBT legal organizations without a dedicated unit or attorney for domestic violence; non-legal anti-violence LGBT organizations without any attorneys on staff; and domestic violence programs with expertise in assisting lesbian, bisexual and male-to-female transgender victims of domestic violence with no attorneys on staff;
- Problems with the criminal justice system and law enforcement response to LGBT domestic violence and sexual assault;
- The existing setup of domestic violence services often make LGBT victims feel unwelcome or like their needs will not be met.

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RECOMENDATIONS FROM SUMMIT

Although each working group addressed a different question, many of the same issues, challenges and needs were highlighted. Based on in-depth discussion and analysis, participants made the following suggestions:

- Create best practices on assessment, intake and screening as well as an intake and/or screening tool for attorneys to more effectively and accurately identify and represent LGBT victims of domestic violence and sexual assault;
- Bring a more comprehensive and diverse set of groups and individuals into a discussion about the legal needs of LGBT domestic violence victims;
- Continue the conversation that began at the Summit between LGBT service providers and domestic violence service providers to build trust and relationships;
- Use existing resources at the grassroots level, especially community-based programs, to develop more effective legal responses to LGBT domestic violence;
- Build awareness in both LGBT and domestic violence organizations about the legal remedies available to LGBT domestic violence and sexual assault victims;
- Develop new domestic violence legal service models which include information about legal rights, sexual assault and related crimes and resources from outside, such as a toolkit for lawyers;
- Develop attorney and judicial trainings to educate judges on domestic violence and sexual assault in LGBT relationships;
- Create a referral network for trained service providers at the regional, state and local levels to reduce isolation of service providers;
- Train “mainstream” domestic violence service provider organizations on LGBT domestic violence;
- Utilize existing training programs, including LGBT 101 training, in future trainings;
- Make a comprehensive referral database of practitioners who are familiar with the nuances of LGBT domestic violence and/or have received specific training;
- Adopt ABA policies regarding LGBT domestic violence and sexual assault, equal access to courts and services, and gender identity and expression;
- Use gender neutral language in ABA publications about domestic violence and sexual assault;

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- Build relationships with educated and trained practitioners;
- Work with organizations to write amicus briefs in impact cases of LGBT domestic violence and sexual assault.

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NEXT STEPS

The ABA partners came away from the Summit with a strong commitment to continue to seek funding for the Project to support networking opportunities for attorneys representing victims of domestic violence the LGBT communities; to develop educational opportunities for attorneys and; to provide on-going leadership and support to attorneys representing survivors from these communities in collaboration with local, regional, statewide and national organizations who share these goals. The Project Partners recognize this will be accomplished through achieving both immediate and long term goals.

IMMEDIATE NEXT STEPS

1. Update and expand existing ABA resources and charts on state-by-state availability of civil protection orders LGBT victims of domestic violence and sexual assault;
2. Create a screening and intake tool and best practice model for attorneys representing LGBT victims of domestic violence;
3. Continue to develop public education materials, including informational brochures and a know-your-rights fact sheet.
4. Continue increasing the capacity of the project website available at www.abanet.org/irr/enterprise/LGBT.

LONG TERM NEXT STEPS

1. Continue the conversation. The ABA currently is seeking additional ways to continue the conversations and networking begun at the Summit;
2. Continue to develop more in-depth legal training and educational materials for attorneys who are representing LGBT victims of domestic violence.
3. Continue to create tools for attorneys. The ABA is continuing to create written and web-based tools for attorneys.

The ABA remains committed to improving and expanding legal services and increasing access to justice for LGBT victims of domestic violence. For more information about the American Bar Association Exploratory Summit To Improve and Expand Access To Justice for Lesbian, Gay, Bisexual and Transgender (LGBT) Victims of Domestic Violence, the American Bar Association Legal Assistance for LGBT Victims of Domestic Violence Project or this report, please contact Amada Kloer, Project Coordinator at kloera@staff.abanet.org or visit www.abanet.org/irr/enterprise/LGBT.

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**APPENDIX A:
AMERICAN BAR ASSOCIATION
SUMMIT ON IMPROVING AND EXPANDING LEGAL ASSISTANCE FOR
LESBIAN, GAY, BISEXUAL AND TRANSGENDER VICTIMS OF DOMESTIC VIOLENCE
APRIL 11-12, 2008
THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL
WASHINGTON, DC**

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