

Chapter 5

The Closet and the New Law

You may be tempted to skip this chapter to get to the heart of the law. Please do not. The issues in this chapter are the filter through which all the legal issues must be viewed.

As this book was coming together, the issue that emerged again and again was the issue of the *coming out* experience for gays and lesbians. So many of the examples in this book could easily be read and dismissed. “What’s the big deal?” a reader might ask. How hard could it be for a judge to disqualify or recuse himself because his wife’s nephew’s domestic partner is a material witness in a case? It probably would not be hard at all for the judge, but it might be very hard for the gay person. It will be hard for others who are close to the gay person as well.

There is no easy way to describe the experience of being gay and having to come out day after day and time after time. Some choose not to come out at all. Two women have been together nineteen years and raised six children. They have not registered as domestic partners because one is afraid that anyone could go to the Secretary of State’s office and find her name as a domestic partner and *out* her at work,¹ which could bring serious repercussions. She’s right: the documents at the Secretary of State’s office are public records, and, for a fairly minimal amount, one can buy the mailing list. Marriage licenses are public records, so domestic partner registration records should also be public.

It may be difficult to understand the seriousness and the pervasiveness of the coming out process. It is hard to find a good metaphor to convey the range of emotions and the risks that prevail in the gay community daily. Despite the improving conditions socially, many are still afraid. Some have been the victims of hate crimes. Dr. Gregory Herek at the University of California, Davis, has conducted one of the largest studies to date on the incidence and effects of hate crimes. In a study done in the Metropolitan Sacramento, California, area, he found that nearly one-fifth of lesbians and more than a quarter of gay men had been victims of hate crimes. Not only was the frequency important, but he found that recent hate crime victims suffered significantly more depression, anger, anxiety and post-traumatic stress than did victims of non-bias crimes. These subjects also manifested significantly more fear of crime, greater perceived vulnerability, less belief in the benevolence of people, a lower sense of mastery, and more attributions of their personal setbacks to sexual prejudice than did non-bias crime victims and non-victims.² Individuals often

¹ To *out* her means to disclose without her permission that she is gay.

² Herek, G. M., Gillis, J. R. & Cogan, J.C. (1999). Psychological sequelae of hate crime victimization among lesbian, gay and bisexual adults. *Journal of Consulting and Clinical Psychology*, 67(6), 945-951.

have been thrown out of their homes by their parents.³ Others have been shunned, degraded, even damned by their religious institutions.⁴ Many have lost their jobs or their housing. Matthew Shepard was beaten to death.

The Rev. Ed Sherriff, associate pastor of the Sacramento Metropolitan Community Church, a church with a primary outreach to the gay, lesbian, bisexual and transgendered communities, told of his experience as a young man with his church. He had married and had children, thinking his attraction to men would go away if he married. At some point early in his career, his church leadership learned that he might be homosexual. During a Sunday service, he was unexpectedly called up to the podium and in front of his parishioners, his wife and his daughters, the church fathers labeled him a homosexual and banished him from the church. It was more than twenty years later before he stepped into another church, and, when he did, he said he cried and cried on that day. Rev. Ed ran a thrift store and food program outreach in one of the more needy areas of Sacramento. He was murdered in 1999, stabbed multiple times by men who broke into his home. The killer, out on parole fewer than three months, later justified his actions by claiming that the pastor had made sexual advances to the killer's nephew. The nephew testified he had never seen the pastor. Even in death, his sexual orientation was being used against him – by his murderer.

Because sexual orientation is not a racial or physical trait, a gay person's defining characteristics are invisible. As a result, most gay people can maneuver in the community and *pass* as heterosexual if they choose. A consequence of this invisibility is that many either have to endure the deceptions they create or they must make a deliberate choice to say or do something that will identify them as gay.

One of the long-standing complaints has been, "Why do gay people have to flaunt being gay?" Unless one says something in conversation or uses a behavior such as holding a partner's hand, others may not know the person is gay. Saying something may be the only way to let another person know that one is gay. Two heterosexual people holding hands in public probably would not be accused of flaunting anything.

Picture this example: two middle-aged women, partners of many years, need a new bed. They go to a nearby store to check out mattresses. There are dozens on display, and one woman lies down on a bed. The other lies down on a different bed. The first beckons to her partner to

³ One woman, forced out of her family's home by her mother and stepfather when she was just 17, has not seen her parents in the ensuing twenty-five years. The woman is not welcome back until she abandons what they consider to be her disgraceful way of life. The woman has an advanced degree, a good career, two children she adopted and is a contributing member of her community. As far as she knows, her parents have no idea that they have grandchildren.

⁴ In one instance, an orthodox Jewish temple conducted an entire death ritual for a woman member of their congregation when she admitted she was gay, and it is now as though she is dead to those members.

come try the mattress she is lying on. The second woman is reluctant about *coming out* to the salesman. If they both lie on the mattress together, as they will when they get it home, the salesman might think they are gay. What's wrong with that? It's that the salesman may think they are gay, and the women do not know what kind of attitude or service or help to expect as a result. Will they be treated like any other customers? Will the salesman say something unkind? Or will he hold his tongue to get the sale, but forget little things, such as telling the women of a new delivery promotion the store is offering or perhaps delay their delivery or do something else to show his disdain or dislike?

Perhaps choosing a new mattress set should not be a coming out experience, but it can be. The couple has to decide for whom they are buying the mattress, the salesperson or themselves? There are so many other ways in which it is possible to have a need to come out: opening a joint bank account, telling the auto insurance representative who this other person is who needs to be on your insurance policy so the couple can claim discounts available to married couples, explaining to the contractor who is remodeling your bathroom why he is to take direction from the other adult in the house about any decisions to be made, and trying to decide which box to check for marital status on the information form at the doctor's office and whether to write down your partner's name as the emergency contact.

The fact that you are reading this book means either you are in or are contemplating a domestic partnership or you are interested in helping domestic partners deal with the realities and legalities of the new laws. It might be easy for you to dismiss any of the previous examples as nothing to worry about, knowing that if you were the bank teller or insurance representative or contractor or doctor that you would have no problem with the person identifying as gay. In fact, you might hope they would be forthcoming. Much of the rest of the world does not, however, share the same degree of egalitarianism, empathy and understanding. It is certain that others are not always hostile, but there are many people with deeply ingrained attitudes and judgments about and against gay people. It is the consternation and the anxiety which arises again and again, in surprisingly simple situations, that are the problems for gays. Do I come out and get what I want or maybe I won't get what I want by coming out? Or do I stay in the closet and not get what I want or maybe I'll get it anyway even by staying in the closet? Maybe I don't want it after all.

There is also much religious condemnation of gays. At its worst, gays are an abomination who should face everlasting judgment. At best, they must remain celibate and not act out their immoral sexual attitudes and proclivities. They are, by turns, shunned, judged, banished, disdained, feared and hated.⁵ We often attribute negative characteristics to groups against which we have discriminated in this country: lazy, dumb, slow, shiftless, shrewd, dishonest, childlike, gullible, ugly – and the list goes on. For gays, the list usually starts with terms such as “immoral,”

⁵ In the Counseling Gays and Lesbians class I have taught for many years at California State University, Sacramento, I have used a questionnaire for the students to answer anonymously. The students are all Master's degree students preparing to be counselors. This is not a scientific sampling. Anecdotally, the statements that a number of students have trouble agreeing with are: 1) homosexuals should be allowed to teach elementary school, 2) I would feel comfortable going to a doctor of my same gender who was gay, 3) homosexuals should be allowed to adopt children, and 4) homosexuals should be allowed to marry.

“sinful,” “disturbed,” “deviant,” “sick,” “disgusting” and terms far more pejorative. The terms are not so much about characteristics and attributes as they are about one’s very being and soul, one’s essence.

For whatever motivation, some people think they must condemn gays because they believe the Bible condemns gays. This book is not the forum in which to address the religious debates about the intentions of a higher power toward gays and lesbians. Nor is it a forum for clarification or discussion of the Bible. Since there are in excess of 270 different versions of the Bible, and because we learn more daily about the cultures and languages of Biblical times, it seems difficult to claim that *the* Bible condemns gays and that it follows that believers must do so too. Which Bible? Translated when? By whom? And who determines which prohibitions found in scripture are valid for this time?

It warrants repeating, however, that coming out is an ongoing experience, that there is rejection and condemnation and misunderstanding in every important venue of life for the gay person. Most significant for the context of this book is that exercising one’s rights demands coming out for the gay individual and for the gay couple.⁶

Gays are often the subject of blatant, subtle or even unconscious judgment because of their purported immorality. Knowing, as most gay people do, that there are many in the world with such judgments, coming out is frightening and rarely done lightly or casually. Back to the mattress salesman: is the gay couple going to act in such a way, although discreetly and properly, so that the mattress salesman understands that they are buying the mattress set for their shared bed in their bedroom in their home?

One other aspect of the coming out experience requires attention for those who are going to help domestic partners navigate these new rights and responsibilities: in gay relationships, the degree of comfort each partner may have about being out is not always shared equally. One member of the couple may feel reasonably comfortable being out. His or her partner, for whatever reason, may feel less comfortable or want to be open only with close friends or family. Sometimes a person will be open with one parent but not the other or with one sibling but not others.⁷ Being out is not all-or-nothing: it is developmental, temporal, situational and relational.

Understanding the fluidity of the coming out experience will help those who will provide services for domestic partners. Taking a risk to come out to those professionals who can help is necessary for those in a partnership or for those entering a domestic partnership.

⁶ In October 2004, the California Fair Political Practices Commission determined that gay and lesbian public officials with domestic partners must comply with the same financial disclosure requirements as married spouses. Public officials would be required to make public disclosures of property, considered community property with their domestic partners, and public officials could not vote or make decisions in their governmental capacity that would affect those mutual interests and create a conflict of interest.

⁷ A colleague, a professional woman in her late forties, shared with me the story of recently coming out to her parents. She spent the weekend with her parents who live several hundred miles distant. Before she left to return to her home, the woman spoke to her mother who was alone in the kitchen. She told her mother that the reason she wasn’t married after all these years was that she was a lesbian. Her mother absorbed the information but cautioned her daughter to not tell her father because, “He couldn’t handle it.” Packing her car later that day, the woman was alone with her father. She found the words to tell him, and his first comment was, “Don’t tell your mother. It would break her heart.”