

## Basics of Elder Law & Issues Specific to the LGBT Aging Community-Part 3

### Thomas Kelem, Stonewall Alliance Center of Chico

**Thomas Kelem:** What I want you to think about is three things: there's the law, there's the external world, and then there's the internal world. And over time the laws have changed, and they're getting more and more inclusive of things that protect LGBTQ people. The external world is sort of what I was alluding to; like, people that I might interact with, how do they feel about LGBTQ issues, people, situations? So is the external world safe or prejudiced?

And then I think one of the big factors is in the internal world is looking at this specific perspective. Okay? So I was thinking about this today. I'm 60 years old. So in 1969, when the Stonewall riots happened, which people look at as a pivotal moment in LGBTQ rights and the movement moving along, I was in high school. I was a senior. So that means that there's sort of before this after this. And it still took a long time for rights, laws, to catch up. But this is when people started to like openly be visible, like, "I'm not going to put up with this anymore." Prior to that people are living in very oppressed situations. It's not okay to be gay or lesbian or bisexual. I don't even know that there were very many openly visible transgender people at that point. Certainly there weren't people who were identifying themselves as queer. There were people who were being identified as "queer" in a real negative sense.

Being homosexual was illegal. Until 1973, I think, it was still part of the DSM as a psychiatric disorder. It was '73 or '74. That got changed. So people who are my age or older grew up with a lot of repression, oppression. And particularly like if you're looking at people who are 80 now, so they were a lot older when this started happening. They had a whole lot more of their adult lives having to live in environments where they weren't okay. They could be arrested, they could be bashed and harmed without any repercussions to people, they could be fired, they couldn't be...

Well the military thing still goes on. They could be discharged from the military. I mean that showed up a lot during World War II, when people really wanted to enlist and be part of, you know, going for the good fight. And people found out that they were gay, and they're like, "Oh, you can't be here." And they would get a like a deficient discharge or something, and that would be on their record for their lives. I mean nobody thinks about their draft status anymore. When I was in high school you had to worry about going to Vietnam, and getting drafted to that, or finding ways to not get drafted. And it was very present on everybody's consciousness about what being drafted was. Later became in volunteer army, some people don't think about whether they're drafted or not.

But anyway, there's a lot of stigma that along with living. You know people who are older now may take some benefit in the world how it's changed. There are still people out there who might not support them. And particularly if people are sort of in the same, well, a similar peer group. I think what Vanessa was alluding to is sometimes people who have even been out in their lives if they go into a care facility, a more structured environment, they're very cautious. I mean that, all of that repression and harm that went on for them is still a part of them. Even if they are feeling a little freer in the world, and they go

into an institutionalized environment, they're going to start being very cautious. And even to the point of not being out, being very scared if other people knew, what that's going to be like. I don't know if, like, it makes sense, what that's like to live under that kind of fear, that at any moment something really terrible could happen to you. Just because of who you are and the way you are and having to hide that. It's a lot of stress and pressure, and is still very present for people.

I think that there are more and more environments where things are changing. The laws have been changing. Facilities are getting better training, like Vanessa was alluding to, that that's a really important piece of expanding our world. And so places may even be safe, but internally it may still not feel safe. So and you know, there's like difference places all these things can be. Just because, you know, like, a law is passed today doesn't mean that it changes everything that's happened for the last 80 years. It's sort of like, "Okay today this is the way it is." Sometimes the external world isn't caught up with the law. Some places are ahead of it, some places are behind it. But you could be at a lot of facilities where people don't know what the current law is. You know, like Scott was talking about, domestic partnerships in California hold all of the legal rights of marriage. But you may go into a hospital and say, "Oh that's my partner," and they may not say, "Okay, go visit them." They may ask for a document, they may not even realize that, whether you're a partner or not, that you legally can do that. So they may be behind the times with the law. So we have to really look at things on a more personal basis. Like, who is the person? What is the environment? And then, how are the laws affecting that? Even if I went to a hospital and they said, "No you can't visit your partner," I then have to muster a lot of action to change that. Becoming an advocate, and going and getting a lawyer, and getting someone to say, "Hey, no, you've got to do this" -- It's a big deal, especially if somebody is in a critical situation. It's emotional, and you don't always have a sense of how to deal with things rationally or quickly, and it can easily get lost and trampled on. I mean, this is where education at all the different levels is really important, which is part of why doing things like this is really important.

And so we know where the laws are, we know we can educate people who affect our world, and educate ourselves. So we know this is the law; I can say that and expect some kind of action. Does this kind of make sense?

**Audience member:** So what are the rights for people when they have a partner in the hospital [inaudible].

**Corporon:** Like Tom just said, the same rights that a married couple would have. I mean, there are still some same-sex couples that are married because there was a narrow window.

**Audience member:** Right.

**Scott Corporon:** I mean this is all going to play out very shortly, right?

**Thomas Kelem:** All right.

**Scott Corporon:** Yeah, you know. It's as if you were married.

**Vanessa Sundin:** I think there's also a lot of confusion that can happen with the terminology. I mean some people think – some same-sex couples don't understand what their legal rights are. Or sometimes they'll say, they'll reference someone as their partner, but it's not a registered partner, and so there's confusion on... I mean, when people come into my office, that's sort of the, one of the first conversations, you know, questions that I have it is, "Are you guys registered? Are you married?" You know, like, "What is your legal relationship to this person?" Sometimes people don't know, you know. And so it's sometimes, I think, hard on the medical-end, for people to also understand exactly what is being conveyed to them when terminology is being used. But certainly, you know, any married or registered couple has all the same rights, in California, as an opposite sex married couple.

**Audience member:** So what does "registered" mean?

**Vanessa Sundin:** "Registered" means that you have filled out paperwork establishing that you want to, to reflect that your legal relationship with the state. So if you are going through the marriage process, you go to like the city clerk's office, and you know, you apply, you get the form, there are formalities that you have to follow through. If you're going to register with the state, you actually have to contact the Secretary of State. You fill out a lot of paperwork, and you submit it in. And then you can letter back from the Secretary of State saying, "Your registration was effective on this date." But essentially what you're doing is easier just, you're representing to the world into the state that, you know, that share the same, you know, normal, loving relationship that any other couple has.

**Scott Corporon:** As well as all the legal ramifications of financial obligations, you community liability for debts and so on.

**Vanessa Sundin:** Right.

**Thomas Kelem:** Think of it as like a registered domestic partnership, because you've actually taken a step to register somewhere.

**Vanessa Sundin:** Right.

**Thomas Kelem:** And...

**Vanessa Sundin:** But in the last several, like 10 years there's been, you could register at the city level, you could register at the county level, then you can register at the state level. And each of those were incremental in the amount of rights that are available and even if at the inter-state level, across the country. I think Colorado right now has registered partnerships that they're given six rights that opposite sex married couples have. So, you know, it varies state-by-state, but in California, you're afforded all of the same rights at the state level as an opposite sex married couple.

**Thomas Kelem:** Which doesn't change all the federal stuff. But it also brings up just another level of discrimination. If you're married and your partner is in hospital, and you go and you say, in your opposite sex marriage, "That's my husband, I want to go in there." They don't go, "Oh where's your marriage certificate? Show that to me before I let you go in there." They'll usually just let you in. But sometimes in same-sex situations, they want you to prove it. So it's kind of--

**Audience member:** In emergency situations?

**Thomas Kelem:** Right. It's like, "oh yeah it's right in my pocket [laughs]."

**Audience member:** What if you're not married and you don't have a [inaudible]?

[ Crosstalk ]

**Audience member:** So just to clarify, in California, if you register with the Secretary of State, then you are afforded all the same rights as you would at that city, County, federal--

**Thomas Kelem:** Not federal.

**Multiple speakers:** State level.

**Audience member:** So you would still need to register?

**Thomas Kelem:** There is no--

**Multiple speakers:** [inaudible].

**Thomas Kelem:** Right. I mean, I think the progression that Vanessa was talking about is before it was done on a state level. There were cities that said, "Okay, you can register as a domestic partnership, then that affords you some limited extra rights here, and we'll recognize your relationship." And that was helpful, in like, getting into a hospital room if you're locally. It helped with the transfer tax when you're buying and selling property. There were some things that it was beneficial for. And then some counties did it, and that expanded it a little bit. And then when the state did it, it gave a much broader set of rights because the state confers a lot more rights and controls more things.

**Audience member:** [inaudible].

**Thomas Kelem:** Yeah, what it covers, and it's more universal in terms of being within the state. Whereas each city was sort of different.

**Professor Sehrawat Seema :** Thank you: There is a new bill that has just been taken up. I meant to mention it before we started. It involved a student of ours. She worked with a senior legislator at the

State of California and drafted [inaudible] research around long-term care facilities, especially nursing homes, not having any kind of training, like sensitivity training, of administrators and the staff that work in those. So a legislator in Southern California picked that information, and it's now an actual bill – SB 366, I believe. I don't remember the number [inaudible]. But it's going to the, it will be voted on, and you know, what that would do is it will mandate the administrators of nursing homes to have five hours of training around LGBTQ issues. So we are hoping...

**Thomas Kelem:** Mmm hmm, it's a little bit [laughs].

**Sehrawat Seema:** That's a little step towards having...

**Thomas Kelem:** Every little bit can help. The other thing I just wanted to mention real quickly is, you know, we talk about LGBTQ. The "T" is transgender, and transgender people have other particular struggles that can come to play in senior facilities. Particularly people who are transitioning late in life, people who may present one way but really are another. And there's a lot of mistreatment there. I don't really have time to get into a lot of it, but I just want to mention that that's an important thing to think about and just having in your head to look out for.

**Audience member:** [inaudible]. When I worked in a facility as an CNA one time, I asked this man if he was Native American, and he was like, "You know, you know.." [laughs]. And so there's that factor too, not just being Gay and Lesbian, but also the ethnicity. So there's lots of things. I was sitting here visualizing. If my family was in the hospital or something, and she had a picture of a couple and the nurse knocked down the pictures and it broke. Maybe not saying "excuse me," not acknowledging, and just being really rough. And I think I have really good rapport with my partner. I would ask her, "Are you feeling safe?" You know, asking. I want to know what safe solutions are. You know, I can ask questions, "Are you safe?" What other things could I asked her? [inaudible] taken care of? And what to look for if she's not being truthful. You know, because she is having fear, you know. Fear can be paralyzing.

**Thomas Kelem:** Yeah. I would try to avoid yes or no questions, or ask questions that require her to tell you a little bit about what's going on. You know, "What's it like when the nurse comes in?" Or "What do the nurses do in the morning when they come in?" So THAT if she has to tell you more, then there's more cues for you to pick up on. You know, if she's sort of denying something's happening versus it's easier to just say, "Oh no, everything's fine." But if she starts telling you stuff, then there's a lot more cues to pick up on.

**Sehrawat Seema:** [inaudible]. If you are just, what Tommy's saying, if you ask a question that is just answered yes or no, person in fear would tend to just say "no," and get out of there. But as they are explaining to you, you can then pick on something that they had said, and then [inaudible]. You know, "expand on it more for me" or, "so when she does this how do you feel?" You know, like, just that would give you a springboard to ask more questions and you might be able to get more about what actually is happening.

**Thomas Kelem:** Very good. Thank you.