

# **LIVEBLOGGING PROP 8 TRIAL: DAY 3, WEDNESDAY PM ONE (TWELVE)**

I'm about to pick up the liveblogging of the Prop 8 trial from Teddy, who has earned a big break (and who is off to the court room for a spell). We're in the middle of expert testimony—I believe that's what we've got coming up after this lunch break.

Letitia Ann Peplau: Bachelor in Psych from Brown, PhD social Psych from Harvard. Research on heterosexual and same sex couples. Some studies that have involved marriage.

Christopher Dusseault (from plaintiffs).

Peplau: Four opinions. One, for those who enter into marriage, associated with benefits. Research of gay and lesbian couples remarkable similarities with heterosexual couples. When permitted to enter into civil marriage, will likely have same benefits as heterosexual couples. Permitting same sex marriage will not be harmful to heterosexual marriage.

Peplau: Americans very enthusiastic about marriage. Most Americans view marriage as one of most important relationships in life. Gallup poll, 91% reported that they have been married or planned to get married.

Dusseault: Any evidence that lesbians and gay men feel the same way.

Peplau: in most states, a hypothetical. Study by Kaiser Family Foundation, would you like to marry? Majority of gay men said they would like to get married. (study admitted)

Dusseault: Domestic partnerships valued as much as gay marriage?

Peplau: Researchers into prefer marriage or

domestic partnership. These researchers asked, across all states that permit domestic partnerships. What percentage took advantage. Then, MA, where marriage available. What they found was that 10-12% took option of domestic partnership. Something like 37% of couples get married in MA. 3X as likely to get married as enter into quasi-marital relationships.

Dusseault: Research regarding impact of marriage on health?

Peplau: Very large body for heterosexual marriages on health. Very consistent findings are that on average married indivs fare better, physically healthier, live longer, fewer risky behaviors, better on psychological well-being.

Peplau: Interview a sample of Americans, 100,000 people, comparison between married and unmarried indivs, control for other factors, across all groups, married indivs did better on all measures. Consistent pattern, on average, married couples were better on health.

Dusseault: Why?

Peplau: Two main explanations. Selection effect. People who are healthier to start out with more likely to attract partner. Protection effect. The idea that things associated with marriage that enhance health. Things that people didn't bring into relationship, that they experienced as a result of being married. Selection effect only partial answer, does appear to be protective effect.

Dusseault: Why protective effects?

Peplau: Getting married reflects a change in identity. For many people marriage is one of the identities. As well, part of being married may mean more of adult, or feel more responsible for our spouse. Marriage about relationship between two people. Important ways in which spouses support each other. This kind of support from another person can enhance health. Broader social network. When people get married, develop relationships with partner and extended family.

Connection to extended community and family network. Marriage can also lead to supports from government. Beneficial laws, eligible for programs, health insurance. This doesn't happen automatically in every marriage. These happen in good marriages. On average, marriage does seem to be associated with benefits, and for many good reasons.

Dusseault: Series of exhibits. 71, 913, 937, 964, 1043, 1171, 1173, 1250, 1254, 1474.

Peplau: I don't think they're in the order you read them in.

[Walker's peaking at her, trying to find them]

Peplau: All articles about benefits of marriage.

Dusseault: Second opinion. Has research been done that compares same sex to heterosexual marriage?

Peplau: Number of studies.

Dusseault: Well-received in your field?

Peplau: Peer-reviewed journals, major conferences. One major topic, examine quality of same sex as compared to heterosexuality, durability over time, processes and dynamics that affect relationships. To see if relationships influenced by same factors.

Dusseault: Does this show whether similarity?

Peplau: Consistency of findings across different studies. Consistent finding one of great similarity.

Dusseault: Quality of relationships. Research comparing quality?

Peplau: Researchers have tried to measure quality. Standardized measures of love, commitment. Researches also conducted observational studies. Systematically assess things like how much warmth, sarcasm. A lot of different methods to assess quality. Consistent finding, on average, same sex couples and heterosexual are indistinguishable.

Dusseault: Stereotype that gay marriages are unstable.

Peplau: Consistent stereotype, problem forming deep relationships.

Dusseault: Any support?

Peplau: None at all.

Peplau: Stability. For married couples, we have govt statistics. We have pretty good national data sets about heterosexual marriages. Do not have comparable data for same sex couples. Some large scale representative surveys. Substantial proportion of lesbians and gay men in relationships, long term.

Dusseault: Any studies showing that lesbians and gay men can form long-lasting relationships.

Peplau: Demographic study, analyze data, representative sample of lesbians and gay men from CA. Are you currently in cohabiting relationship with partner. 61% of lesbian yes, 46% of gay men yes. For comparison, if you looked at same age range at heterosexuals, 62% of heterosexuals married or cohabiting, percent for hetero and lesbian essentially the same.

Dusseault: Long-lasting?

Peplau: How long has current relationship been going on. 8-10 years. To put that in context, average person who was part of survey was about 41 years old. If 41 now, ten years, 31 when relationship began. Indicates that these are people who, early in adulthood established partnership. For bulk of young adulthood, with same partner. Evidence that gay men and lesbians in extended relationships and at least some of quite long duration.

Dusseault: Can lesbians and gay men form committed relationships?

Peplau: Largest in world, adopted resolution on that topic.

Peplau: APA policy statement on gay marriage.

[Exhibit on screen: "many lesbians and gay men have formed durable relationships"]

[the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual couples.]

Dusseault: gay relationships slightly shorter?  
Explanation?

Peplau: Because they aren't directly comparable, married couples may be selected for high levels of commitment. Cohabiting slightly more diverse. Comparison that may be mixing apples and oranges. I think there are several other reasons as well: gay men and lesbians don't have benefits of marriage. Marriage is stabilizing influence. We'll talk about why that may be the case. Another reason, sexual orientation, still stigmatized identity, there may be ways in which stigma take a toll.

Walker: Are you saying there's a difference in durability between cohabiting hetero and married hetero.

Peplau: I was trying to make comparison between same sex and hetero couples. We have a good idea of who those hetero couples, same sex more mixed group.

Walker: What would data show between married hetero and cohabiting hetero couples. Is there difference in durability in those relationships?

Peplau: On average hetero cohabiting relationships of shorter duration.

Dusseault: Processes? Research into whether same processes at work?

Peplau: What factors determine level of satisfaction in relationship. Arguments or conflict. Examined extent to which same sex and hetero. Same frequency of arguing, same sort of things, extent to which try to work out, negotiate, All the same. The process question is is the relationship between high levels of

conflict and satisfaction the same. Yes, level of conflict influences quality in both.

Dusseault: Consensus in research as to whether these factors are similar, same sex and hetero.

Peplau: Similarity across these two types of couples.

Dusseault: Move into exhibit on studies.

[The witness, btw, looks very matronly, with very tidy, short chesnut colored hair. She's dress all in black, which almost makes her look like a judge.]

Dusseault; Would gay men and lesbians benefit from marriage?

Peplau: if same sex couples were permitted to marry, would also enjoy same benefits.

Dusseault: professional orgs same conclusion?

Peplau: American Psychiatric Association, policy statement on that. Approved by assembly and board of trustees. 2005.

[Reads from statement: "In interest of maintaining and promoting mental health ... supports legal recognition of same-sex civil marriage."]

Peplau: my strong belief based primarily on large body of research on hetero marriage, and large body on similarities between same sex and hetero marriage. I don't think we'd see difference in rate of getting married or rate of getting divorced. Govt website, stats on annual rates for marriage and divorce. 4 years prior to same sex being legal and four years after. Has there been change? There has been no change, rates of divorce and marriage same as they were before.

[Trouble finding exhibit again]

Walker: I have it.

Dusseault: Study looking at results where couples permitted to marriage?

Peplau: What I was referring to before were govt statistics. Predict that couples would report benefitting from that. This is the study. MA Department of Health, 4 years after, conducted survey. Not representative sample. Included over 500 lesbians and gay men. Why they got married, whether it improved their lives, for those raising children, how it affected the children.

Dusseault: What did it show?

Peplau: One things researches found, many said they felt more committed. I think hetero newleyweds might say same things. Other particularly noteworthy things. Many married lesbian and gay men, families more approving of relationship. Felt less worried about legal problems. 1/3 said either they or spouse said now have access to health benefits. A number of benefits. For those who had children, about 25% of respondants, they overwhelmingly reported marriage had been beneficial.

[Walker just highlighted something, now writing notes.]

Dusseault: Did this study support your opinion.

Peplau: yes.

Dusseault: Let's turn to benefits. Fourth opinion. Opinion on whether allowing gay and lesbian couples would harm?

Peplau: I think it would have no impact on stability of hetero marriages. We mean two things. Is it going to affect entry into marriage. Exit from marriage, increase in divorce.

Dusseault: do you see any basis for arg that allowing same sex to enter in would affect entry into marriage.

Peplau: No, things about relationship, about special other person, nothing that would suggest that same sex civil marriage would lead fewer heteros to marry.

Dusseault: Any basis that would lead more

married hetero couples to divorce or exit from marriage.

Peplau: Hard to imagine someone saying, "Gertrude, we've been married for 30 years, but we've got to throw in the towel because Adam and Stewart got married." We know a lot of the reasons why people divorce. They're very personal reasons. People most likely to get divorced. Nothing we know about these factors that lead to divorce has anything to do with civil rights for same sex couples.

Dussealt: Exposure to marriage. What percentage of what proportion of married couples would be same sex if permitted to marry.

Peplau: 1 to 2 to 3% of all married couples would be same sex couples. We usually measure marriage in terms of numbers, this would increase number of marriages. Anthropologists, large group that has done kinship, American Anthropological Association has position on this.

[Results of more than a century of anthropological research ... provide no support ... for the view that either civilizations or viable social orders depend upon marriage as an exclusively heterosexual institution. ... A vast array of family types ... can contribute to stable and humane societies."]

[Repeating data showing that rates of divorce in MA consistent with expectation of no harm.]

Cross-examination:

Nicole Moss: Start first with your first opinion. Marriage confers physical and psychological benefits. When you talk about married indivs. You're talking about hetero indivs. Reason is that you don't have data on same sex indivs.

Peplau: On married same sex couples. Yes.

Moss; No empirical studies apart from this one survey on whether same sex marriage would confer the same benefits.



Peplau: Opinion based on hetero couples, research showing similarity. Informed by this one piece of information.

Moss: and that is the only empirical study, or survey, that has been done. And similarly, there have not been any studies comparing whether physical and psychological benefits comparing domestic partnerships.

Peplau: Comparing indivs in same sex domestic partnerships and same sex marriages? We have many reasons to estimate what we'd find, but there have been no studies on this.

Moss; You'd agree that we study same sex marriage.

[Well, how the fuck are we going to do that if you won't let peopl actually GET married???)

Peplau: I'd always support more research.

Moss; Studies on physical and psychological benes on domestic partnerships.

Peplau: Right, most rely on very large govt studies. Don't have statistics like that for registered same sex couples.

Moss; You can't rank or assess which particular aspect of marriage caused observed increase in physical and psychological health.

Peplau: I think they work simulatneously. I think that would vary from one couple to another depending on life circumstances. That's not an activity researches have tried to undertake.

Moss; Some aspect that researchers have opined, one of those is access to health insurance, right? To extent that health insurance afforded through domestic partnerships, you would expect to see benefits from domestic partnerships.

Peplau: DPs have been an improvement. It is my opinion that they do not confer all of the benefits of marriage. But I do not dispute that there are good things taht go along with marriage.

Moss: You can't say with certainty that those aspects that they don't confer are responsible for greater health.

Peplau: I have a lot of confidence, belief that you are in state of relationship that this society considers most legitimate undoubtedly has benefits that are not part of DPs.

Moss; But again, you have no empirical studies, that measure specifically whether there were benefits conferred differently from DPs?

Peplau: I believe that we know a lot about impact that stigma and being second class have on people and relationships.

Moss; Importance of legal contracts.

Peplau I think that's not exactly what I said. Enforceable trust that in many kinds of relationships. One benefit of marriage, enhances the likelihood that those trusts will be acted upon. I don't think solely about legal contract, that people associate with marriage a degree of seriousness and gravitas that leads them to relations.

Moss; You have no basis to dispute that many in DPs view their relationship with same level of commitment you see in marriages.

Peplau: Couples very resilient. Manage to form high quality relationships under adverse circumstances. Couples have formed strong lasting relationships. But would be further enhanced by having access to marriage.

Moss: One of the benefits of marriage that you talked about barriers to exit. Fact that it makes it more difficult to just split up.

[Moss is very pretty, fairly young, and has this flouncy thing on with a pink shirt underneath. Her voice makes her sound very young, too]

Moss: Civil unions also provide barriers to exit.

Peplau: Not equivalent, bc all of a sudden your relatives find out about. "Oh, Ann got married."

It's not necessarily understood by your relatives, which is an important part of the barrier concept.

Moss; Have you undertaken any studies to test public's perceptions on DP.

Peplau: No I have not.

Moss: And you don't cite any in your biblio One of the studies that you do rely on Kim Ballsome. In this particular study, researches found same sex couples not in civil unions more likely to end relationship. Authors characterize data as showing significant difference in relationship terminations.

Peplau: I think that is probably correct.

Moss: Isn't it correct that they found significant difference in relationship terminations. Move into evidence. Focused quite a bit on ways in which gay and lesbian couples similar to hetero couples. Focus on ways in which they're different. Gay men. Monogomy in gay male relationships different from hetero?

Peplau: Sexual exclusivity in monogomy. One, do you believe important. Second, have you been monogamous. One of ways in which gay men's relationship differ, on average, is that a higher percentage of gay men do not value monogamy. not important. May have an agreement not need to be sexually exclusive. Somewhat more gay men may report.

[Has anyone asked Mark Sanford and John Ensign about this? Because I'm pretty sure they'd say monogamy was really important to them.]

Peplau: Monogamy correlated with relationship satisfaction for lesbians and heteros. It's not one of the markets by which gay men.

Walker: That's not true of most married people, is it?

Peplau: most married people. And for sizeable of gay men.

[Moss sounds worried, directs to another

exhibit]

Moss; You write that sexual exclusivity might be exception for most gay men. Encouraged sexual openness rather than exclusivity.

[Moss seems to have no problem with lesbian marriages, then?]

Peplau: we might find different things. No one was talking about same sex marriage.

Relationships more closeted. Our understanding, less well-developed. I'm not retracting what I said, accurate of what I found at the time. I wasn't studying gay men who, for example, had chosen to get married. Whether statements about majority of gay men.

Moss; Before I move on to more recent article.

Moss: "close relationships of lesbians and gay men." In this more recent article, you did a study of a certain number of gay men in relationships.

Peplau: Not an empirical study I conducted. Literature review. Summary of results of other people's research.

Moss; My apologies. On page 410, of lit review. You write about a study that indicates that 36% of gay men, important to be sexually monogomas, 75% lesbians, 80% of wives, 75% of married men.

Peplau: Study late 70s and 80s.

Moss: Less gay men believe that sexual monogamy important as compared to lesbians, wives and husbands.

Peplau: We may not be able to pin down percentages. Percentage difference is correct.

Moss; Going back to study on sexual exclusivity and openness. In that particular study, you noted that there was a difference between valuing and carrying through when it came to their behavior.

[Moss snorts stotily.]

Peplau: There are heterosexuals who pledge to be monogamous, and the same is true of gay men.

Moss: You find that they are in closed relationships, but have had sex with at least one other partner.

[Can we please call Mark Sanford to the stand to ask about his promise of exclusivity??]

Peplau: What we did was give a definition of open and closed. The statement that you're citing is an accurate depiction of what we found.

Moss: By closed, partners agreed they would be exclusive to one another.

Peplau: A little vague about how we asked that question. I assume that what we're reporting, that yes, according to our definition. A question about presumably have you ever had sex with another person.

Moss: You also write that all men in relationships identified as having been closed, lasting 3 years or longer, had engaged in sex with at least one person other than primary partner.

Peplau: Study of gay men in LA in different time period. Don't want to deny findings. Have the context in mind.

Moss: Turning your attention to desire of gays and lesbians to marry as compared to hetero community. 74% of lesbians and gay men, they would like to do so.

[Describe some govt statistics. With translation. Plaintiffs ask if it was disclosed on exhibit list.]

Moss; In the last couple of days.

[Now Belgian]

[Plaintiffs make same reservation on them just coming on the exhibit list]

Moss: Relative different percentages, hetero

population versus same sex couples.

Peplau: My expertise is about relationships in the US. I'm in no way shape or form knowledgeable about marriage in Europe. As researcher in order to comment, I can read you the statistics, but to comment or interpret them, I'd feel unqualified, bc I don't know context in Belgium.

Moss; You did not do any studies about other countries where same sex marriage has been available.

Peplau: That is correct.

Moss: No statistics that would indicate how many gay and lesbians there were in that country. Would you agree that good conservative estimate 2%?

[Objection]

Walker: Witness has stated she doesn't have expertise outside the US.

Moss: Do you have an estimate of pop in US that's gay and lesbian.

Peplau: Something like 2-3% who identify as gay or lesbian.

Moss: From what you know, any reason that there would be remarkably different outside US?

Peplau: People's willingness to disclose sexual orientation might well vary from country to country.

Moss [snottily]: so would you just take as conservative estimate 2%?

Peplau: if we assume same as US, guesstimate, something like 2%.

Moss; I'm not offering as evidence.

Walker: Base testimony on hypothetical.

[Moss' posture is telling, she's leaning away, as if she's very clever. Has a "cute" little smile.]

Moss, now making other assumptions. Strike that, I've gotten ahead of myself.

Moss: Govt data that shows hetero marriages.

Walker: It shows trend in homosexual marriages.

Moss: I meant homosexual marriages. In 2004, reports that 2138 indivs in same sex marriage.

Peplau: What I'm not clear about, who got married or who reported they were married.

Moss; I believe that the govt number.

Peplau: So fewer in 2008?

Moss: Total number who got married that year. Individuals who got married that year.

Peplau: So that number is twice as large as the number of marriages?

Moss; If you want to know how many at end were in marriages, you'd have to add up. It comes up a total number of 10,923.

[Um, how can you have an odd number of "individuals who were married"?)

Moss: if you take total number of married indivs and subtract out same sex, you'd agree that'd give you total number of opposite sex marriages? Would you agree that to determine what percentage, you would divide number into number of gay and lesbians who are married.

Peplau: I'm puzzled about one thing, you can do the math better than I can. I thought we said on first table, 10 million marriages total. But that the table for the homosexual is number per year.

Moss: 10 million.

Peplau: Married is 4.5 million. Total of everyone in Belgium.

Moss: 10,000 individuals.

[Moss, still leaning away, sort of propping herself up on her left elbow.]

[Objection: Ms. Peplau not a demographer]

Walker: Ask the bottom line question?

Moss; Assuming my math is correct. If numbers showed that 5% of gay and lesbian indivs and 43% had taken advantage of marriage, significant difference?

Peplau: Absolutely.

Moss: Data for Netherlands.

Peplau: Can I just make sure I'm with you on these data. You're not saying that only 5% of homosexuals got married. What you're saying is that all married indivs in Belgium, only 5% of them are homosexual.

Moss: No, I'm saying 5% of homosexuals are married. I asked you to assume that 2% are homosexuals.

Peplau: You're saying 5% are married, compared to 43% of homosexuals.

Moss: You would agree that significant difference in percentage of population that is choosing to take advantage.

Peplau: I'd be struck by difference with analyses about MA that have chosen to get marriage. Americans are one of the most pro-family people around. Americans are enthusiasts of marriage.