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EMPIRICAL AND THEORETICAL PERSPECTIVES FROM SOCIAL SCIENCE ON GAY MARRIAGE AND CHILD CUSTODY ISSUES

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ABSTRACT

Research on lesbigay parenting issues is reviewed with an in-depth focus on a few examples of past research and a review of the merits of social science research cited recently by the American Civil Liberties Union in support of gay parenting rights. Those who have reviewed the literature have come to startlingly different conclusions. Neither side has fully grasped some of the limitations of certain key research studies. Some errors are such that one might wonder if peer review procedures had somehow failed. An analysis of a recent paper on same-gender sexual abuse reveals mixed findings. It appears that a significantly higher percentage of gay and lesbian parents may abuse foster children but at the same time, a majority of such parents probably do not abuse foster children. A new social science mid-range theory for explaining stigma against homosexuals and for explaining heterosexual concerns about gay marriage is presented, labeled differential risk theory, a subset of social exchange theory.

There is a large body of research on the legal issues associated with gay marriage and child custody.¹ Other writers have provided interesting

* (Revised, 15 Nov. 2005) Presented at "Lofton and the Future of Lesbian and Gay Adoption": Conference Sponsored by the J. Reuben Clark Law School, Brigham Young University Marriage and Family Law Research Grant and Stetson University College of Law Tampa Law Center Walter R. Schumm, Ph.D. Kansas State University Friday, October 28, 2005 Panel #3 – Interdisciplinary Perspectives 1: 30 – 3:00 p.m. Moderator: Professor Ellen Podgor Presenters: Professors Devon Brooks, Catherine Connolly, and George Rekers. Errors and opinions expressed in this report are the author's alone and do not reflect the position of the School of Family Studies and Human Services, Kansas State University or the *St. Thomas Law Review*. Walter R. Schumm may be reached at Schumm@ksu.edu.

1. See generally AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (2002); DAN CERE, THE FUTURE OF FAMILY LAW: LAW AND THE MARRIAGE CRISIS IN NORTH AMERICA (2005); BRENDA COSSMAN & BRUCE RYDER, GAY, LESBIAN, AND UNMARRIED HETEROSEXUAL COUPLES AND THE FAMILY LAW ACT: ACCOMMODATING A DIVERSITY OF FAMILY FORMS (1993); LAW COMM'N OF CANADA, BEYOND CONJUGALITY: RECOGNIZING AND SUPPORTING CLOSE PERSONAL ADULT RELATIONSHIPS (2001); WILLIAM P. STATSKY, FAMILY LAW: THE ESSENTIALS (1997); Charlotte J. Patterson et al., *Children of Lesbian and Gay Parents: Research, Law, and Policy*, in

and open-minded commentary from a religious perspective.² Being neither a lawyer nor a cleric by profession, I must put my hope in reader agreement with Cere, who argued that:

[m]arriage and family are too important as social institutions, affecting too many people, especially children, for basic decisions about their legal underpinnings to remain the private province of legal experts alone. There is an urgent need for the involvement of disciplines besides the law to identify, understand, and critique the legal theories of marriage and family life that are helping to shape new trends.³

BACKGROUND

"Case law has perhaps been most ambivalent when addressing the rights of lesbian and gay parents."⁴ The Lofton decision, while a relief to conservatives, was especially disappointing to gays and lesbians. As Ronner noted,

[t]he recent decision in *Lofton v. Kearney* (2004), in which the Eleventh Circuit found that Florida's law banning lesbians and gay men from applying to adopt children was not in violation of fundamental due process rights or the equal protection clause is especially disappointing. It frustrates the efforts of homosexuals to form families and express love and commitment. It also deprives many unadopted children of the stable, nurturing, and permanent homes that they deserve.⁵

CHILDREN, SOCIAL SCIENCE, AND THE LAW 176 (Bette L. Bottoms et al. eds., 2002) [hereinafter *Lesbian and Gay Parents*]; AMY D. RONNER, HOMOPHOBIA AND THE LAW (2005); MARK STRASSER, THE CHALLENGE OF SAME-SEX MARRIAGE: FEDERALIST PRINCIPLES AND CONSTITUTIONAL PROTECTIONS (1999); WILLIAM N. ESKRIDGE, JR., EQUALITY PRACTICE: CIVIL UNIONS AND THE FUTURE OF GAY RIGHTS (2002); EVAN GERSTMANN, SAME-SEX MARRIAGE AND THE CONSTITUTION (2004); R. L. Binder, *American Psychiatric Association Resource Document on Controversies in Child Custody: Gay and Lesbian Parenting, Transracial Adoptions, Joint Versus Sole Custody, and Custody Gender Issues*, 26 J. AM. ACAD. OF PSYCHIATRY & THE LAW 267, 267-76 (1998); Catherine Connolly, *The Voice of the Petitioner: The Experiences of Gay and Lesbian Parents in Successful Second-Parent Adoption Proceedings*, 36 LAW & SOC'Y REV. 325, 325-46 (2002); Kimberly Richman, *Lovers, Legal Strangers, and Parents: Negotiating Parental and Sexual Identity in Family Law*, 36 LAW & SOC'Y REV. 285, 285-324 (2002).

2. See generally WILLARD M. SWARTLEY, HOMOSEXUALITY: BIBLICAL INTERPRETATION AND MORAL DISCERNMENT (2003).

3. CERE, *supra* note 1, at 12; see also Maggie Gallagher & Joshua K. Baker, *Do Moms and Dads Matter? Evidence from the Social Sciences on Family Structure and the Best Interests of the Child*, 4 U. MD. L.J. RACE, REL. GENDER & CLASS 161, 161-80 (2004); WILLIAM J. DOHERTY ET AL., WHY MARRIAGE MATTERS: 21 CONCLUSIONS FROM THE SOCIAL SCIENCES (2002).

4. Denise A. Skinner & Julie K. Kohler, *Parental Rights in Diverse Family Contexts: Current Legal Developments*, 51 FAM. REL. 293, 296 (2002).

5. RONNER, *supra* note 1, at 99-100.

The Lofton decision has not stopped some social workers from advocating gay and lesbian adoptions.⁶ Perhaps these workers are aware of the attitude reflected in one recent study that forty-nine percent of childless lesbians and gays reported that “they would like to have or adopt children of their own.”⁷ In another recent study, four to seven percent of lesbian and bisexual women reported that they had actually lost custody of their child for being lesbian, while twenty-seven to thirty-three percent reported having been threatened with the loss of their child.⁸ Evidently, the threat of losing custody of a child is much more common than formal legal action.

Judith Stacey and Timothy J. Biblarz introduce their review of the literature on parental sexual orientation by saying, “[a]s the new millennium begins, struggles by nonheterosexuals to secure equal recognition and rights for the new family relationships they are creating represent some of the most dramatic and fiercely contested developments in Western family patterns.”⁹ Cere, however, bemoans the “absence of any real scholarly or public debate” regarding ongoing changes in family law.¹⁰ Likewise, even Stacey and Biblarz admit that “ideological pressures constrain intellectual development in this field”¹¹ and that “the political stakes of this body of research are so high that the ideological ‘family values’ of scholars play a greater part than usual in how they design, conduct, and interpret their studies.”¹² As a social scientist, I wish to add to this debate by addressing three primary issues.

First, I wish to consider the methodological issues associated with much of the research in this controversial area; having already criticized Paul Cameron’s “anti-gay” research,¹³ my focus here will be on relatively “pro-gay” research. Secondly, I will take up the issue of whether “all adult

6. Scott D. Ryan et al., *Coming Out of the Closet: Opening Agencies to Gay and Lesbian Adoptive Parents*, 49 SOC. WORK 85, 85-95 (2004); Devon Brooks & Sheryl Goldberg, *Gay and Lesbian Adoptive and Foster Care Placements: Can They Meet the Needs of Waiting Children?* 46 SOC. WORK 147, 147-57 (2001).

7. Letitia A. Peplau, & Kristin P. Beals, *The Family Lives of Lesbians and Gay Men*, in HANDBOOK OF FAMILY COMMUNICATION 233, 241 (Anita L. Vangelisti ed., 2004).

8. Jessica F. Morris et al., *Lesbian and Bisexual Mothers and Nonmothers: Demographics and the Coming-Out Process*, 16 J. FAM. PSYCHOL. 144, 144-56 (2002).

9. Judith Stacey, & Timothy J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?* 66 AM. SOC. REV. 159, 159 (2001).

10. CERE, *supra* note 1, at 21.

11. Stacey & Biblarz, *supra* note 9, at 160.

12. *Id.* at 161.

13. Paul Cameron & Kirk Cameron, *Psychology of the Scientist: LXXXV. Research on Homosexuality: A Response to Schumm (and Herek)*, 92 PSYCHOL. REP. 259, 259-74 (2003); Walter R. Schumm, *Psychology of the Scientist: LXXXIII. An Assessment of Herek’s Critique of the Cameron Group’s Survey Studies* 87 PSYCHOL. REP. 1123-32 (2000).

constructions of parenthood are equally child-friendly”¹⁴ by evaluating the validity of a recent report by Cameron¹⁵ on sexual abuse by gay parents. Thirdly, I will discuss “differential risk theory” which is the best mid-range theory, and a subset of social exchange theory that I have been able to develop with respect to these issues.¹⁶ This discussion, however, may suggest different conclusions than one based on “close relationship theory.”¹⁷

How much impact, if any, my comments will have on future legal decisions is difficult to predict. Some legal resources suggest that the legitimization of gay marriage is nearly inevitable unless opponents can demonstrate “compelling state interests that justify the discrimination” against homosexuals in such matters.¹⁸ The same resource suggests that adoption and custody cases are often evaluated along the lines of the best interests of the child (rather than banning gay adoption outright), an approach which takes into account various factors, such as the presence of live-in lovers, the openness of the parent’s sexual activities, the child’s ability to deal with the parent’s sexuality, and anticipated impacts on the child’s social life.¹⁹ On the other hand, some courts use a traditional definition of the family when evaluating gay and lesbian petitions for child custody or adoption.²⁰

METHODOLOGICAL ISSUES

DISPARITY OF OPINIONS

The disparity of allegedly “scientific” opinion on the effects of homosexual adoption is breathtaking. On one side, conservative scholars have amassed a wealth of scientific literature to demonstrate the potential or actual inadequacies of many prospective homosexual parents.²¹ Other

14. CERE, *supra* note 1, at 6.

15. Paul Cameron, *Child Molestations by Homosexual Foster Parents: Illinois, 1997-2002*, 96 PSYCHOL. REP. 227, 227-230 (2005).

16. Walter R. Schumm, *Differential Risk Theory as a Subset of Social Exchange Theory: Implications for Making Gay Marriage Culturally Normative and for Understanding Stigma Against Homosexuals*, 94 PSYCHOL. REP. 208, 208-10 (2004).

17. CERE, *supra* note 1, at 8.

18. STATSKY, *supra* note 1, at 55.

19. *Id.* at 148.

20. *Id.*; Catherine Connolly, *The Description of Gay and Lesbian Families in Second-Parent Adoption Cases*, 16 BEHAV. SCI. & THE LAW 225, 225-36 (1998).

21. See generally PETER SPRIGG & TIMOTHY DAILEY, *GETTING IT STRAIGHT: WHAT THE RESEARCH SHOWS ABOUT HOMOSEXUALITY* (Peter Sprigg & Timothy Dailey eds., 2004); George Rekers & Mark Kilgus, *Studies of Homosexual Parenting: A Critical Review*, 14 REGENT

scholars have reviewed the literature on gay parenting and have stated that “[t]he conclusion that there are no significant differences in children reared by lesbian mothers versus heterosexual mothers is not supported by the published research data base.”²² In fact, they went so far as to say that “most were biased towards proving homosexual parents were fit parents. A disturbing revelation was that some of the published works had to disregard their own results in order to conclude that homosexuals were fit parents.”²³ Pro-gay scholars are well aware of some of these critiques.²⁴ Yet, one finds nearly absolute statements to the exact contrary, even though Stacey and Biblarz admit that such uniform consistency is theoretically “implausible.”²⁵ To confirm this incredible uniformity of opinions and conclusions that coexists with conservative critiques which state directly opposing viewpoints, I will cite several recent reviews of the literature dating from 1989 to 2005.

Child custody courts often predict that a parent’s homosexuality may harm a child’s development if the child is allowed to remain with the parent. None of the above studies confirm this prediction. On the contrary, children of lesbian mothers and gay fathers appear to be normal in gender identity, gender role, sexual orientation, and social adjustment. Parental homosexuality does not appear to directly or indirectly harm the child.²⁶

“[A] rapidly growing and highly consistent body of empirical work has failed to identify significant differences between lesbian mothers and their heterosexual counterparts or the children raised by these groups. Researchers have been unable to establish empirically that detriment results to children from being raised by lesbian mothers.”²⁷

U.L.REV. 343, 343-82 (2001-2002); Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 3 U. ILL. L. REV. 833, 833-920 (1997); Paul Cameron, et al., *Homosexual Sex as Harmful as Drug Abuse, Prostitution, or Smoking*, 96 PSYCHOL. REP. 915, 915-16 (2003) [hereinafter *Homosexual Sex*] (using data from the 1996 National Household Survey on Drug Abuse and comparing it to the data with results from several other U.S. and international surveys). Psychological Reports welcomes rebuttals to any of its published articles, including those by Cameron or others.

22. Philip A. Belcastro et al., *A Review of Data Based Studies Addressing the Affects [sic] of Homosexual Parenting on Children’s Sexual and Social Functioning*, 20 J. DIVORCE & REMARRIAGE 105, 106 (1993).

23. *Id.* at 117.

24. Stacey & Biblarz, *supra* note 10, at 161; RONNER, *supra* note 1, at 97.

25. Stacey & Biblarz, *supra* note 10, at 163.

26. Julie Schwartz Gottman, *Children of Gay and Lesbian Parents*, 14 MARRIAGE & FAM. REV. 177, 177-96 (1989).

27. Patricia J. Falk, *The Gap Between Psychosocial Assumptions and Empirical Research in Lesbian-Mother Child Custody Cases*, in REDEFINING FAMILIES: IMPLICATIONS FOR CHILDREN’S DEVELOPMENT 131, 151 (Adele E. Gottfried & Allen W. Gottfried eds., 1994).

"The overall emotional well-being of gay men and lesbians, as well as children raised in gay and lesbian families, is as psychologically healthy as that of their heterosexual counterparts."²⁸

"The results demonstrate no differences on any measures between the heterosexual and homosexual parents regarding parenting styles, emotional adjustment, and sexual orientation of the child(ren). In other words, the data fail to support the continuation of a bias against homosexual parents by any court."²⁹

[T]he existing studies, taken together, also yield a picture of a thriving family life. Certainly, they provide no evidence that psychological adjustment among lesbian mothers, gay fathers, or their children is impaired in any significant respect relative to heterosexual parents or their children. Indeed, the available evidence suggests that home environments provided by lesbian and gay parents are as likely as those provided by heterosexual parents to support and enable psychological growth among family members.³⁰

"The children of gay parents do not differ from children of heterosexual parents in overall social or psychological adjustment."³¹

"Reviewed as a whole, the findings indicate that, all other variables being equal, divorced gay and lesbian parents can be good parents and their sexual orientation per se does not have a detrimental effect on their children."³²

[T]he results of the research are exceptionally clear. Results of the empirical research provide no reason under the prevailing best interests of the child standard to deny or curtail parental rights of lesbian or gay parents on the basis of their sexual orientation, nor do systematic

28. Bonnie Strickland, *Research on Sexual Orientation and Human Development: A Commentary*, 31 DEVELOPMENTAL PSYCHOL. 137, 137 (1995).

29. Mike Allen & Nancy Burrell, *Comparing the Impact of Homosexual and Heterosexual Parents on Children: Meta-analysis of Existing Research*, 32 J. HOMOSEXUALITY 19, 19 (1996).

30. Charlotte J. Patterson, *Lesbian and Gay Parents and Their Children*, in THE LIVES OF LESBIANS, GAYS, AND BISEXUALS: CHILDREN TO ADULTS 274, 291 (Ritch C. Savin-Williams & K. M. Cohen eds., 1996).

31. Andrew McLeod & Isiaah Crawford, *The Postmodern Family: An Examination of the Psychological and Legal Perspectives of Gay and Lesbian Parenting*, in STIGMA AND SEXUAL ORIENTATION: UNDERSTANDING PREJUDICE AGAINST LESBIANS, GAY MEN, AND BISEXUALS 211, 213 (Gregory M. Herek ed., 1998).

32. A.P. Buxton, *The Best Interests of Children of Gay and Lesbian Parents*, in THE SCIENTIFIC BASIS FOR CUSTODY DECISIONS 319, 319-20 (R.M. Galatzer-Levy & L. Kraus eds., Wiley 1999).

studies provide any reason to believe that lesbians or gay men are less suitable than heterosexuals to serve as adoptive or foster parents.³³

“Research consistently indicates that gay fathers and lesbian mothers are effective in providing care for their children and that children are not harmed by being raised in such households.”³⁴

“This body of research, almost uniformly, reports findings of no notable differences between children reared by heterosexual parents and those reared by lesbian and gay parents, and that it finds lesbian and gay parents to be as competent and effective as heterosexual parents.”³⁵

[R]esults of research on children of lesbian and gay parents suggest that they develop in a normal fashion. Certainly the research findings to date provide no justification for limitations on child custody or visitation by lesbian or gay parents. Similarly, results of research do not support the idea that lesbian and gay adults are less likely than others to provide good adoptive or foster homes.³⁶

“The studies indicate that children raised by lesbian women do not experience adverse outcomes compared with other children. The same holds for children raised by gay men, but more studies should be done.”³⁷

Despite these judicial obstacles and setbacks, increasing numbers of gays and lesbians have been successful in obtaining legal rights to parent. This movement has been largely aided by the culmination of social science research revealing that children’s psychosocial adjustment, gender identity, and gender-role behavior are unrelated to their parents’ sexual orientation³⁸

In rebutting those like Wardle and other opponents, it is helpful to explore the ways in which nontraditional families benefit children [C]hildren raised by gay and lesbian parents are less likely to adhere to gender stereotypes, tend to empathize with minorities, welcome social diversity, and are open minded about sexual orientation.³⁹

33. Charlotte J. Patterson & Raymond W. Chan, *Families Headed by Lesbian and Gay Parents*, in PARENTING AND CHILD DEVELOPMENT IN “NONTRADITIONAL” FAMILIES 191, 191-219 (Michael E. Lamb ed., 1999).

34. Jerry J. Bigner, *Gay and Lesbian Families*, in HANDBOOK OF FAMILY DEVELOPMENT AND INTERVENTION 279, 292 (William C. Nichols et al., eds., 2000).

35. Stacey & Biblarz, *supra* note 9, at 160.

36. *Lesbian and Gay Parents*, *supra* note 1, at 192.

37. Norman Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents. A Review of Studies from 1978 to 2000*, 43 SCANDINAVIAN J. PSYCHOL. 335, 335 (2002).

38. Denise A. Skinner & Julie K. Kohler, *Parental Rights in Diverse Family Contexts: Current Legal Developments*, 51 FAM. REL. 293, 297 (2002).

39. RONNER, *supra* note 1, at 98.

“No study has found any evidence to support the claim that lesbians and gay men are unfit to be parents.”⁴⁰

“[T]here is no evidence that children experience difficulties because of being brought up by lesbian or gay parents”⁴¹

If the above statements are not sufficient to make the point, Ferrero et al. cite similar policy statements from the Child Welfare League of America, the American Academy of Pediatrics, the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers.⁴² Some professional organizations have argued that homosexuals are even less likely to sexually abuse children than are heterosexuals.⁴³ Not surprisingly, some courts have accepted these arguments, as their rulings have indicated the importance of whether or not such arguments are actually valid.⁴⁴ Challenging these conclusions has been a bit of a David and Goliath situation, and the Davids have not fared so well in the published scholarly analysis.⁴⁵ Stacey and Biblarz hesitate to accept at least some criticisms of research on gay parenting, noting that Wardle “impugned the motives, methods, and merits of social science research on lesbian and gay parenting” and “presented a harshly critical assessment of the research”⁴⁶ Because of this, and because Ferrero et al.⁴⁷ not only disagrees with others but seems to find it useful to malign

40. ERIC FERRERO ET AL., ACLU, TOO HIGH A PRICE: THE CASE AGAINST RESTRICTING GAY PARENTING 46 (2005).

41. Fiona Tasker, *Lesbian Mothers, Gay Fathers, and Their Children: A Review*, 26 DEVELOPMENTAL & BEHAV. PEDIATRICS 224, 238 (2005). This is the most comprehensive recent review of the literature on gay parenting that this author has encountered.

42. FERRERO ET AL., ACLU, *supra* note 40, at 25-31.

43. Paul Cameron, *Homosexual Parents: Testing “Common Sense” – A Literature Review Emphasizing the Golombok and Tasker Longitudinal Study of Lesbians’ Children*, 85 PSYCHOLOGICAL REP. 282, 283 (1999) [hereinafter *Homosexual Parents*] (quoting Brief for Robert G. Boswell as Amici Curiae Supporting Respondents at 13, *Boswell v. Boswell*, 721 A.2d 662 (Md. 1998)).

44. Connolly, *supra* note 20, at 231.

45. Norval D. Glenn, *A Response to Cherlin, Scanzoni, and Skolnick: Further Discussion of Balance, Accuracy, Fairness, Coverage, and Bias in Family Textbooks*, 46 FAM. REL. 223, 223-24 (1997). Glenn notes several ad hominem attacks against himself after criticizing undergraduate textbooks. *Id.*; see Stacey & Biblarz, *supra* note 9, at 159.

46. Stacey & Biblarz, *supra* note 9, at 160.

47. See FERRERO ET AL., ACLU, *supra* note 40, at 10 (describing George Rekers, one of the conference’s panelists, as one who bases his opinions on his religious beliefs, not science and who was retained by the state of Florida “in a feeble attempt to provide evidence to support [the ban]”). Rekers is also described as “a fringe figure.” *Id.* at 11. They accept the comments of Dr. Judith Stacey that “[t]here is not a single, respectable social scientist conducting and publishing research in this area today who claims that gay and lesbian parents harm children.” *Id.* at 49. In my opinion that is pretty close to implying that anyone who disagrees with her interpretation of research cannot possibly be a respectable social scientist. They argue that “Lerner and Nagai are

them, I find it necessary to note that some have probably felt that I have harshly criticized research in a variety of areas for the past two decades.⁴⁸

FIRST, A "NEUTRAL" EXAMPLE

The same issues I will discuss with respect to lesbian parenting were the ones I have addressed in another controversial area, concerning the reputed efficacy of the human anthrax vaccine currently used and formerly mandated by the United States military. This will illustrate how my research methods and style of methodological critique are far from unique or limited to lesbian parenting issues.

In *Doe v. Rumsfeld*, six plaintiffs sued the defendants to stop the Department of Defense from forcing them to accept anthrax vaccinations that the defendants believed were of questionable efficacy and safety.⁴⁹ In their initial briefs, the lawyers for the defendants argued that some older studies were the cornerstones of the defense claim that the vaccine was effective and safe.⁵⁰ Those studies were treated as the "gold standard" of research. I was invited to assess the validity of that claim. When I asked the original author for the original data, he failed to respond to my inquiry, forcing a graduate class and me to reengineer the data from open sources.

not credible; they are researchers-for-hire for conservative organizations" and "clearly is someone who will conclude whatever he is paid to conclude." *Id.* at 112. Must we presume it is acceptable to be for hire by liberal organizations without losing credibility? Is it not possible to just criticize their research without slamming them in an ad hominem fashion? I have criticized Paul Cameron myself, but without slamming his character. Organizations that I have worked with, including the military, have quickly discovered, often to their dismay and to my financial loss, that I write what I find, not what others want to hear me say.

48. See Walter R. Schumm, *Integrating Theory, Measurement, and Statistical Analysis in Family Studies Survey Research*, 44 J. MARRIAGE & FAM. 983, 983-98 (1982); Walter R. Schumm, *Comments on Age at Marriage, Role Enactment, Role Consensus, and Marital Satisfaction*, 46 J. MARRIAGE & FAM. 985, 985-86 (1984); Walter R. Schumm, *On Publishing Family Research Using "Sophisticated" Quantitative Methodologies*, 18 MARRIAGE & FAM. REV. 171, 171-75 (1993); Walter R. Schumm & Margaret A. Bugaighis, *Comments on "Marital Cohesion: A Path Model"*, 46 J. MARRIAGE & FAM. 499, 499-500 (1984); Walter R. Schumm et al., *Stumbling Block or Stepping Stone: Path Analysis in Family Studies*, 42 J. MARRIAGE & FAM. 251, 251-62 (1980).

49. *Doe v. Rumsfeld*, No. 03-707, 2005 U.S. Dist. LEXIS 5573 (D.D.C. Apr. 6, 2005).

50. Brief of Defendant at 3, 16, *Doe v. Rumsfeld*, No. 03-707 (D.D.C. Mar. 3, 2004); Philip S. Brachman et al., *Field Evaluation of a Human Anthrax Vaccine*, 52 AM. J. PUB. HEALTH 632, 632-45 (1962); see Philip S. Brachman et al., *An Epidemic of Inhalation Anthrax. II. Epidemiologic Investigation*, 72 AM J. HYGIENE 6, 6-21 (1960) (lending support that the anthrax vaccine was both safe and effective).

We found numerous flaws in both the design and the analysis of the data, not to mention errors of fact.⁵¹ For example, one recent report stated that the anthrax vaccine trials had occurred in four New Hampshire textile mills,⁵² although we found data that suggested that at least one mill existed outside of New Hampshire. We found design flaws. For example, when comparing group A and group B to examine differences, the goal is to make the two groups equivalent before initiating the comparison. If one group already differs from the other group on important characteristics related to the variable on which you want to compare them, it would hardly be surprising to find a difference between the two groups. In the anthrax trials, the control group was selected from workers who were at greater risk of contracting anthrax infections than were the workers in the treatment group.⁵³ Therefore, finding that the control group was slightly more likely to contract anthrax infections is hardly shocking since, with or without treatment, they would have been more likely to contract the disease. Furthermore, workers in both groups had been exposed to anthrax infections previously and an unknown proportion of workers in both groups already had some immunity, even without vaccination.⁵⁴ Therefore, neither the control group nor the treatment groups was “pure” in terms of containing only immunologically vulnerable workers. Even though researchers today often appear to focus more on statistical issues, design issues remain critical for understanding what a research study really means. More seriously, one analysis yielded “significant” findings ($p = .044$), using a chi-square test. However, the chi-square test is an approximation, not an exact statistical test. Using Fisher’s Exact Test, which is as exact as its name suggests, we found a much less significant (in fact, a non-significant) result for the vaccine ($p < .13$).⁵⁵ We also discovered ethical problems with the way subjects were treated in the study,⁵⁶ despite the fact

51. Walter R. Schumm, *Was it Statistically Legitimate to Combine Data from the Four Textile Mills in Brachman et al.’s (1962) Study of the Effectiveness of a Human Anthrax Vaccine?*, 2 MED. VERITAS 342, 342-343 (2005); Walter R. Schumm & Robert L. Brenneman, *How “Adequate and Well-controlled” was the “Clinical Trial” of a Human Anthrax Vaccine, 1955-1959?*, 1 MED. VERITAS 166, 166-170 (2004); Walter R. Schumm et al., *A Statistical Reanalysis of Brachman et al.’s 1962 Study of a Human Anthrax Vaccine*, 1 MED. VERITAS 171, 171-78 (2004) [hereinafter *A Statistical Reanalysis*].

52. Arthur M. Friedlander, et al., *Anthrax Vaccine: Evidence for Safety and Efficacy Against Inhalational Anthrax*, 282 J. AM. MED. ASS’N 2104, 2105 (1999).

53. Schumm & Brenneman, *supra* note 51.

54. *Id.*

55. *A Statistical Reanalysis*, *supra* note 51.

56. Walter R. Schumm, *Were the Rights of Human Subjects Violated at the Arms Mill in Manchester, New Hampshire in 1957 During Human Anthrax Vaccine Trials?*, 2 MED. VERITAS 344, 344-47 (2005).

that the study was formerly considered “pivotal” by the government.⁵⁷ Furthermore, with respect to the alleged safety of the vaccine, our research found long-term health issues associated with a variety of toxic exposures among those who had reported reactions to their vaccinations.⁵⁸ I am sure the defense team did not expect to hear that their foundational study was so badly flawed. However, our research has also shown that over the years, fewer and fewer scholars have mentioned any of the limitations of the early clinical trial. As mention of those limitations declines, the willingness of many scholars increases with respect to proclaiming the unconditional efficacy of the government’s anthrax vaccine. Notably, the failure to mention limitations is substantially correlated with the willingness to accent the socially desirable finding, that the vaccine is “safe and effective.” When there was a chance to analyze data carefully from a specific Air Force Base that appeared to have a rash of adverse effects from the vaccine, the opportunity was lost for at least three years to try to discover any underlying cause.⁵⁹ It also appears that those authors with a vested interest in the vaccine (e.g., U.S. government employees or contractors) are especially likely to be vaccine proponents, in contrast to scholars from other nations or who represent non-federal institutions. A few government researchers do admit to limitations. They admit that the vaccine has only been tested in one human trial that used a different vaccine, that the trial had relatively few (1,249) subjects, that the vaccine has shown efficacies as low as twenty-four percent in animal studies, and that some aerosol challenges might be so great as to negate its value.⁶⁰ They even admit that there have been no long term studies on its safety.⁶¹ Yet, almost nothing stops them from concluding that the vaccine is “safe and effective.”⁶² The point is that if this type of distortion can occur in

57. Theodore J. Cieslak, Mark G. Kortepeter & Edward M. Eitzen, Jr., *Vaccines Against Agents of Bioterrorism*, IN *NEW GENERATION VACCINES* 1068 (N. M. Levine, J.B. Kaper, R. Rappuoli, M.A. Liu & M.F. Good Eds., Marcel Dekker 2004).

58. See generally Walter R. Schumm et al., *Changes in the Subjective Health of Reserve Component Veterans as a Function of Mobilization Status During the First Persian Gulf War*, 2 MED. VERITAS 336, 336-41 (2005); Walter R. Schumm et al., *The Long Term Safety of Anthrax Vaccine, Pyridostigmine Bromide (PB) Tablets, and other Risk Factors Among Reserve Component Veterans of the First Persian Gulf War*, 2 MED. VERITAS 348, 348-62 (2005); Walter R. Schumm et al., *Self-Reported Changes in Subjective Health and Anthrax Vaccinations as Reported by Over 900 Persian Gulf War Era Veterans*, 90 PSYCHOLOGICAL REP. 639, 639-53 (2002).

59. Walter R. Schumm, *Anthrax Vaccine and Gulf War Illness Symptoms in Captain Jean Tanner’s Dover Air Force Base Survey*, 1 MED. VERITAS 163, 163-65 (2004).

60. Schumm & Brennenman, *supra* note 51, at 167; Friedlander, et al., *supra* note 52, at 2105-06.

61. See Friedlander, et al., *supra* note 52, at 2104-05.

62. *Id.*

medicine, a “hard” science, how much more likely would it be to occur within social science, typically thought of as a “softer” science? Of course, without some very intense methodological digging, the problems with the early Brachman et al. study might never have entered the courtroom, leaving the federal legal system ill informed of the actual truth of the matters before them. I am sure that the lawyers for Rumsfeld et al. think that I am “harsh” with respect to my dogged refusal to accept their exceedingly weak science at the desired face value.

BACK TO HOMOSEXUALITY RESEARCH

If one looks at the research on these issues from a one-over-the-world perspective, almost everyone agrees that the research has substantial limitations, whether the critics are pro-gay or anti-gay.⁶³ Nevertheless, the research continues to be trusted to provide serious answers. It is quite remarkable how many authors note the limitations quite fairly and then ignore those weaknesses in order to draw relatively firm conclusions. I find three major limitations with the research. First, many of the research groups begin their research with serious bias either in favor or in opposition to homosexuality. Cameron’s presumed anti-gay biases are so well-known that there is even a pro-gay website dedicated to challenging his research.⁶⁴ A greater number of researchers do appear to be pro-gay, however, which may mirror the official positions of influential professional organizations such as the American Psychological Association. It is rare to find researchers, even lawyers, who admit to having changed their opinions *after* reviewing the facts.⁶⁵

This situation creates several difficulties. First, the researchers tend to see what they want to see and once they have found it, they quit, rather than trying to test their results from an oppositional perspective. For example, going back to the anthrax vaccine study, my initial findings did not support the efficacy of the vaccine against inhalational anthrax. But I did not quit there. I kept working with the data trying to find some type of analysis, which, for some select group of mill workers, might prove the

63. Stacey & Bilbarz, *supra* note 9, at 159; Bridget Fitzgerald, *Children of Lesbian and Gay Parents: A Review of the Literature*, 29 MARRIAGE & FAM. REV. 57, 57-70 (1999); Belcastro et al., *supra* note 22, at 105; Charlotte J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. MARRIAGE & FAM. 1052, 1052-65 (2000); see Sprig & Dailey, *supra* note 21, at viii (referencing the lack of understanding of what research shows about homosexuality).

64. Paul Cameron Bio and Fact Sheet, http://psychology.ucdavis.edu/rainbow/html/facts_Cameron_sheet.html (last visited Feb. 17, 2005).

65. See generally GERSTMANN, *supra* note 2 (explaining the hypocritical approaches taken by members of the legal profession in arguing about same-sex marriage).

vaccine to be effective against inhalational anthrax. After torturing the data for some time, I did come up with a subgroup of about thirty to forty workers of the 1,249 involved for which the vaccine was nearly significant ($p < .06$) at preventing inhalation anthrax. By running numerous tests and by having to select such a specific subgroup, the actual significance level was probably far less significant than .06, but I did try to analyze the data as if I was a government data analyst trying to prove that the vaccine was significantly ($p < .05$) effective.

Even though, as I recall, that data was submitted to the court, surprisingly, the government did not pick up on it, even though it is the best evidence I have yet seen in any human study of the effectiveness of the anthrax vaccine against inhalation anthrax. Instead, the government concentrated on the argument that, as a family studies professor, I must have been ignorant of statistics and medical issues (which overlooked my twenty-seven graduate hours in statistics and research methodology, including an entire graduate course devoted to nonparametric statistics). Even a relatively two-sided approach is seldom seen in research on gay male and lesbian parenting, although I credit Stacey & Biblarz with one of the few genuine attempts to consider more than one side to the issue.⁶⁶

Sometimes the bias is so great that authors appear to change their conclusions regardless of their findings. Fitzgerald, as I noted elsewhere,⁶⁷ was very critical of the research on gay and lesbian parenting and stated within the body of her review that “[i]n summary, faced with these frequent methodological difficulties, the generalizability [sic] of these studies is limited and overall, they can best be described as descriptive and suggestive, rather than conclusive.”⁶⁸ But in her abstract of the review, she turned around and drew a conclusion somewhat stronger than suggestive, saying “[t]he body of literature generally concludes that children with lesbian and gay parents are developing psychologically, intellectually, behaviorally, and emotionally in positive directions, and that the sexual orientation of parents is not an effective or important predictor of successful child development.”⁶⁹ Stacey and Biblarz, even in their relatively unbiased review, note many limitations of the research and yet

66. See generally Stacey & Biblarz, *supra* note 9 (analyzing the issue of gay and lesbian parenting while recognizing the risk of researcher bias for influencing the presentation and description of results).

67. Walter R. Schumm, *What Was Really Learned from Tasker and Golombok's (1995) Study of Lesbian and Single Parent Mothers?* 94 PSYCHOL. REP. 422, 422 (2004) [hereinafter *What Was Really Learned*].

68. Fitzgerald, *supra* note 63, at 69.

69. *Id.* at 57.

conclude that there are few differences between the children of lesbian and heterosexual parents.⁷⁰ That might be arguable except that most reviewers, including both Fitzgerald⁷¹ (1999) and Stacey and Biblarz⁷² overlooked an interesting article by Sotirios Sarantakos which, in contrast to most other research, used a relatively large sample of families.⁷³ However, that article, though a methodological improvement over much of the other research, happened to find several adverse outcomes associated with gay parenting.⁷⁴ It seems too convenient for such an important article to have been completely overlooked by virtually all of those who have reviewed the literature so thoroughly. I cannot presume to know whether their omission was an accidental oversight or because the results did not fit the desired outcome. Nevertheless, courts need to take this trend into account when weighing the value of social science research.

In addition to bias appearing to limit the ways in which one draws conclusions or in the scope of one's search for relevant evidence, bias appears to keep researchers from asking really tough questions about the validity of research with which they agree. I have yet to see anti-gay researchers pick apart the research by Sarantakos⁷⁵ or Cameron, Landess, and Cameron,⁷⁶ for example, perhaps because it fit their desired outcomes. At the same time, no researcher (other than perhaps Belcastro et al.⁷⁷) has seriously picked apart one of the seminal studies in the area of gay parenting (Kirkpatrick, Smith, and Roy⁷⁸), until I attempted it recently,⁷⁹ although Cameron had criticized Golombok and Tasker's work previously.⁸⁰ In fact, at least 111 studies since 1989 have cited Kirkpatrick,

70. Stacey & Bilbarz, *supra* note 9, at 159, 176, 177, 179.

71. See Fitzgerald, *supra* note 63, at 57, 70-73 (neglecting to consider the Sarantakos study in their work).

72. See Stacey & Bilbarz, *supra* note 9, at 182 (neglecting to consider the Sarantakos study in their work).

73. Sotirios Sarantakos, *Children in Three Contexts: Family, Education, and Social Development*, 21 CHILD. AUSTRAL. 23, 23-24 (1996).

74. *Id.* at 23-31.

75. *Id.* I would welcome even a lesbian critique of this report!

76. *Homosexual Sex*, *supra* note 21, at 915.

77. Belcastro et al., *supra* note 22 at 105-22.

78. See Martha Kirkpatrick et al., *Lesbian Mothers and their Children: A Comparative Survey*, 51 AM. J. ORTHOPSYCHIATRY 541, 541 (1981) [hereinafter *Lesbian Mothers and Their Children*].

79. Walter R. Schumm, *Response to Kirkpatrick (2004): Differential Risk Theory and Lesbian Parenthood*, 95 PSYCHOL. REP. 1203, 1203-05 (2004) [hereinafter *Response to Kirkpatrick*].

80. *Homosexual Parents*, *supra* note 44, at 284-85 (discussing the outcomes of a number of other studies as well).

Smith, and Roy,⁸¹ usually as if it were a reputable piece of research in support of the hypothesis that there is no difference between lesbian and heterosexual parents.

KIRKPATRICK'S RESEARCH

It is clear that Kilpatrick et al. included twenty children from lesbian families and twenty children from heterosexual, single parent families.⁸² What remains unclear, though very important, is how many households were involved. Kirkpatrick, Roy, and Smith note that they had collected data on twenty-one lesbian mothers and thirteen heterosexual mothers.⁸³ However, when one reviews Smith's dissertation, it is not clear how many mothers were studied.⁸⁴ To obtain twenty-one lesbian mothers from Smith, one has to assume that one twenty-nine year old mother was one person with three children who was both semi-skilled and a clerical worker rather than two twenty-nine year old mothers with different occupations, and that seven of the households had two mothers.⁸⁵ To obtain thirteen heterosexual mothers, one must assume that only one of four possible pairs of same-age mothers are actually only one person. It also is possible that there were only ten heterosexual mothers, which fits my discussion elsewhere⁸⁶ and the discussion by Kirkpatrick et al. of ten percent of the heterosexual mothers and stating that none of the heterosexual mothers had fewer than two children.⁸⁷ If they had twenty children and there were thirteen mothers, someone had to have had fewer than two children! Cameron states that Kirkpatrick et al. failed to meet accepted professional standards in reporting sample characteristics.⁸⁸ In addition, the small sample size makes rejection of the null hypothesis unlikely, while leaving the failure to reject essentially meaningless, since the null hypothesis cannot be proven.⁸⁹

81. *Lesbian Mothers and Their Children*, *supra* note 78, at 551.

82. *Id.* at 545-46.

83. Martha Kirkpatrick et al., *Studies of a New Population: The Lesbian Mother*, in MODERN PERSPECTIVES IN THE PSYCHIATRY OF MIDDLE AGE 132, 138 (John G. Howells ed., 1981).

84. See Katherine V. R. Smith, *Children Raised by Lesbian Mothers* (1981) (unpublished doctoral dissertation, University of California at Los Angeles) (on file with author).

85. See *id.* at 28.

86. *Response to Kirkpatrick*, *supra* note 79, at 1203.

87. *Lesbian Mothers and Their Children*, *supra* note 78, at 546.

88. Paul Cameron, *Oddities in Kirkpatrick, et al.'s Study of Children of Lesbian Mothers*, 96 PSYCHOL. REP. 397, 397-98 (2005) [hereinafter *Oddities in Kirkpatrick*].

89. See generally Diana Baumrind, *Commentary on Sexual Orientation: Research and Social Policy Implications*, 31 DEVELOPMENTAL PSYCHOL. 130, 133 (1995); Raymond Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 CHILD DEV. 443, 454-55 (1998) [hereinafter *Psychosocial Adjustment*]; *What Was Really Learned*, *supra* note 67, at 422-23.

Furthermore, one might tend to assume that the lesbian and heterosexual groups were the same, but Kirkpatrick et al. admit that the lesbian mothers were more likely to have initiated their divorces, were more likely to have divorced over emotional intimacy issues rather than substance abuse problems, were more likely to have the emotional support provided by a lover, and had fewer children.⁹⁰ Given those advantages, it is almost surprising that the lesbian's children were not doing much better than the single heterosexual mother's children. Furthermore, many of the "lesbian" mothers indicated that they intended to marry a husband sometime in the future, which would suggest the population consisted more of bisexuals than exclusive lesbians. Why not compare a low-conflict two-parent family's children with the children of lesbians, especially for the two parent lesbian households? Showing that the children of lesbians are no worse off than those from broken single parent homes is not much of an accomplishment, especially as Kirkpatrick et al. found that a majority of children in both groups to have been emotionally disturbed.⁹¹ The process of comparing single heterosexual parents to lesbian parents (half of whom were really two lesbian parents) made the more basic question of whether two lesbian parents are as effective as two heterosexual parents invisible and unanswered. Another unanswered question would be to consider what would have happened if Kirkpatrick et al. had predicted mental health outcomes from the mother's status (lesbian versus heterosexual), the number of siblings for each child, the presence of a live-in lover, and the level of pre-divorce family conflict? On the surface, Kirkpatrick et al. found no differences on the basis of sexual orientation alone.⁹² However, they also stated that the lesbian households had more lovers, fewer children, and probably had lower pre-divorce conflict.⁹³ In doing so, they are indicating a positive relationship between lesbian status and more lovers, fewer children, and lower pre-divorce conflict. At the same time, the same factors should predict better mental health for the children. If so, all three factors could operate as suppressor variables, so that if one controlled for them, any underlying relationship between heterosexual orientation and child mental health might become significant statistically.⁹⁴

90. *Lesbian Mothers and Their Children*, *supra* note 78, at 550; Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 18 J. HOMOSEXUALITY & FAM. 123, 123-35 (1989) (finding that the self-esteem of adolescents was significantly higher when their single parent or lesbian mothers had significant others).

91. *Lesbian Mothers and Their Children*, *supra* note 78, at 550-51.

92. *Id.* at 551.

93. *Id.* at 550.

94. See MORRIS ROSENBERG, *THE LOGIC OF SURVEY ANALYSIS* 84-85 (1968).

I recreated a data set similar to Kirkpatrick et al.'s with twenty children of lesbian mothers and twenty children of heterosexual mothers, a hypothetical mental health outcome variable (high scores meaning poorer mental health), and three independent variables for pre-divorce conflict, number of siblings, and lovers.⁹⁵ The data was designed so that by an independent samples t-test, $t(38) = 0.62$, the difference between lesbian mothers' children (mean = 7.20) and heterosexual mothers' children (mean = 7.45) was not significant, with the correlation between sexual orientation and mental health outcomes being a non-significant $r = -.10$. Zero-order correlations between mental health status and number of siblings (.41, $p < .01$), having a live-in lover (-.38, $p < .05$), and pre-divorce conflict (.25, $p < .15$) were all either significant or trending toward significance. An ordinary least squares regression analysis yielded an adjusted R-squared of 0.236, with $F(4, 35) = 4.00$ ($p < .01$), with standardized regression coefficients of .61 ($p < .02$) for sexual orientation, .37 ($p < .15$) for conflict, -.32 ($p < .15$) for lover, and .40 ($p < .05$) for number of siblings. This simulation, which took about thirty minutes to develop and analyze, demonstrates that it would have been possible for Kirkpatrick et al. to have found a non-significant surface relationship between sexual orientation and child mental health, but, after controlling for the same kind of effects as they observed, to discover a significant, negative effect of lesbian sexual orientation on child mental health.⁹⁶

BAILEY ET AL.'S RESEARCH

As another example of questionable research, I mention Fitzgerald's citation of research by Bailey, Bobrow, Wolfe, & Mikach, in which she reported that they found that only eight of eighty-two sons of gay fathers reported adoption of something other than a heterosexual identity.⁹⁷ Upon examination of the actual data, the situation was not so clear because the sexual orientation of seven of the eighty-two was in doubt, with only seven being clearly nonheterosexual.⁹⁸ Therefore, the actual result could have been from seven to fourteen nonheterosexuals, with ten probably being the best estimate. However, if one compares 8/82 with 2/82 (the expected

95. See *Lesbian Mothers and Their Children*, *supra* note 78, at 545-46. About three years ago, due to her failing eyesight, Dr. Kirkpatrick threw away the data from her 1981 study. Therefore, this author was restricted to conducting an analysis of realistic but simulated data in order to demonstrate the possible role of suppressor variables.

96. *Id.* at 551.

97. Fitzgerald, *supra* note 64, at 62; J. Michael Bailey et al., *Sexual Orientation of Adult Sons of Gay Fathers*, 31 DEVELOPMENTAL PSYCHOL. 124, 124-25 (1995).

98. Bailey et al., *supra* note 97, at 126.

pattern if 2.4% of the male population is gay), the difference is significant by Fisher's Exact Test (one-sided) at $p < .05$. Regardless, Bailey et al. concluded that "[t]he available evidence, including this study, fails to provide empirical grounds for denying child custody to gay or lesbian parents because of concern about their children's sexual orientation."⁹⁹ Baumrind questioned the validity of Bailey et al.'s conclusions but did not retest their data.¹⁰⁰ In contrast, Patterson accepted Bailey et al.'s claim without reservation.¹⁰¹

GOLOMBOK'S RESEARCH PROJECTS

Another series of articles on a sample of lesbian and single parent mothers was prepared by Golombok and her associates.¹⁰² Initially, they concluded no effect except that the children of heterosexual single parents were more likely to show psychiatric symptoms.¹⁰³ However, a closer analysis of their data revealed that the daughters of lesbians were more likely to (a) be open to a gay lifestyle, (b) have engaged in same-sex sexual activity if they had experienced same-sex attraction, and (c) that 20% of the lesbian's children had considered same-sex sexual relationships even though they had never experienced same-sex sexual attraction.¹⁰⁴ Furthermore, a later study found that children were more likely to report same-gender sexual interest when their lesbian mothers, during the child's school age years, had shown more physical affection to their partners, had reported more lesbian relationships, or had been more accepting of their children having lesbian or gay relationships.¹⁰⁵ In addition, Golombok & Tasker report adult Kinsey scale ratings for both groups of children but

99. *Id.* at 128.

100. Baumrind, *supra* note 89, at 134.

101. Charlotte J. Patterson, *Lesbian Mothers, Gay Fathers, and Their Children*, in *LESBIAN AND GAY IDENTITIES ACROSS THE LIFESPAN* 262, 277 (Anthony D'Augelli & Charlotte Patterson eds., 1995).

102. Fiona Tasker & Susan Golombok, *Adults Raised as Children in Lesbian Families*, 65 *AM. J. ORTHOPSYCHIATRY* 203 (1995) [hereinafter *Adults Raised as Children*]. See generally Susan Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosocial and Psychiatric Appraisal*, 24 *J. CHILD PSYCHOL. & PSYCHIATRY* 551 (1983) [hereinafter *Lesbian and Single Parent Households*]; Susan Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *DEVELOPMENTAL PSYCHOL.* 20 (2003) [hereinafter *Children with Lesbian Parents*]; Fiona MacCallum & Susan Golombok, *Children Raised in Fatherless Families from Infancy*, 45 *J. CHILD PSYCHOL. & PSYCHIATRY* 1407 (2004); Susan Golombok & Fiona Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings From a Longitudinal Study of Lesbian Families*, 32 *DEVELOPMENTAL PSYCHOL.* 3 (1996); Tasker, *supra* note 41.

103. *Lesbian and Single Parent Households*, *supra* note 102, at 565.

104. *What Was Really Learned*, *supra* note 67, at 423.

105. Golombok & Tasker, *supra* note 102, at 3-7.

argue that the results were not significant.¹⁰⁶ However, my analysis of their data found that the variances were significantly different between the two groups by Levene test [$F(1,44) = 9.59, p < .004$]. Using the appropriate separate variance estimate t-test, that $t(26.65) = -1.83$ ($p < .04$, one-tailed) was significant, indicating that the Kinsey ratings were more oriented toward homosexuality among the children of the lesbian mothers than among the children of the single parent mothers. One might assume that the two groups of mothers were equivalent. That was not the case, however. Golombok et al. admitted that none of the single parent mothers had a live-in partner whereas only nine of the twenty-seven lesbian mothers did not have some type of partner (though fourteen had a lesbian partner).¹⁰⁷ Furthermore, the lesbian mothers had significantly more advanced education than the single parent mothers while their children had significantly more contact with their biological father than did the children of the single parent mothers.¹⁰⁸ A significant difference in child gender was evident as 62.5% of the lesbian mothers' children were girls, compared to only 38.9% of the single parent mothers' children being girls.¹⁰⁹ The preferences of the single parent mothers for their children's sexual orientation were not reported but Golombok et al. reported that 70.4% of the lesbian mothers reported no preference either way for their children's sexual orientation.¹¹⁰ They also admitted that most (91.9%) of the lesbian mothers' children had lived in a heterosexual home for some time, with 64.9% having lived in this environment for over two years and 32.4% having lived there for over five years.¹¹¹ Golombok et al. report a number of insignificant findings for sex role outcomes but the effect sizes, estimated conservatively as moderate effects, obtained from mother interviews showed boys of lesbian mothers being more feminine ($ES = 0.23$) and girls of lesbian mothers being more masculine ($ES = 0.41$) than the boys and girls, respectively, of single parent mothers.¹¹² Such results suggest that the insignificant findings for sex role development were due more to small sample size than to a genuine non-relationship.

More recently, Golombok and her associates looked at the quality of parent-child relationships and the socioemotional and gender development

106. *Id.* at 8.

107. *Lesbian and Single Parent Households*, *supra* note 102, at 555-56.

108. *Id.* at 557, 561.

109. *Id.* at 558.

110. *Id.* at 561.

111. *Id.* at 569 (admitting that this limitation prevented them from generalizing their findings to children reared in a lesbian household from the outset).

112. *Id.* at 562-64.

of the seven year old children of both lesbians and heterosexual parents, with both single parents and couples of each sexual orientation.¹¹³ They attempted to derive the lesbian subjects from a geographic population study, but not finding enough, they also used nonrandom techniques, a fact not noted in the abstract of the paper, the abstract appearing to imply that all of the lesbians were obtained from a random population study. They conclude that there were few differences and, on the surface, there were few. I reengineered their data from page twenty-three for job status, education, and number of children in each family.¹¹⁴ Job status was coded as professional/managerial versus all lower statuses. Using binary logistic regression to predict job status from sexual orientation and number of parents (one versus two), the odds ratio (0.81) was not significant for number of parents but was significant (2.45, $p < .02$) for sexual orientation, indicating that lesbian parents were much more likely to report high job status than heterosexuals (56.4% versus 34.3%). Education was coded in my analysis as graduate, professional non-graduate, and non-professional (reflecting the English system), with far fewer lesbians (35.9%) being non-professionals than the heterosexuals (58.2%); the zero-order correlation was .16 ($p < .05$) for sexual orientation but not for number of parents. Golombok et al. admit that lesbians had fewer children, but after reviewing their report, I found that lesbians had an average of 1.69 children compared to an average of 2.03 for heterosexuals in their study, with $t(171) = 2.20$ ($p < .04$, two-tailed).¹¹⁵ The single parents also had fewer children (1.71 versus 2.16), $t(171) = 3.56$ ($p < .001$).¹¹⁶ Predicting number of children in a linear regression model yielded standardized regression coefficients of -.15 ($p < .05$) for sexual orientation and .25 ($p < .01$) for number of parents.¹¹⁷ The number of parents seemed to interact with sexual orientation because the two-parent lesbian families had only slightly more children than the single-parent lesbian families (1.74 versus 1.65) whereas the two-parent heterosexual families had more than the single-parent heterosexual families (2.27 versus 1.73) but the interaction term in an analysis of variance was not significant statistically.¹¹⁸ The data would suggest that if a society wants more children, two-parent heterosexual families are perhaps most likely to generate that outcome than either lesbian families or single-parent

113. *Children with Lesbian Parents*, *supra* note 102, at 20.

114. *Id.* at 23. The actual data was number of siblings but I added one to each value to obtain the total number of children.

115. *Id.* at 22.

116. *Id.* at 22-23.

117. *Id.*

118. *Id.*

heterosexual families. A higher percentage of heterosexual families (55.2%) included two parents than did the lesbian families (48.7%) but that difference was not significant statistically (probably by design since the goal of the study was to compare four relatively evenly divided groups of families). MacCallum and Golombok in a twelve year follow-up of their original study continued to find that the lesbian families included fewer children than the two-parent heterosexual families ($p < .005$).¹¹⁹ However, my main point is that the Golombok et al. data indicate that their lesbian subjects had higher status jobs, higher levels of education, and fewer children than did the comparison group of heterosexuals. To compare parents with high status jobs, high levels of education, and fewer children against parents with low status jobs, low levels of education, and more children as if the two groups were equivalent is not fair from a scientific or logical perspective. Moreover, Golombok et al. had the capability to statistically control for such differences, but they did not appear to have done so. While there may be other factors (religiosity, income, feminist values, etc.) on which the two groups differed (besides number of parents, education, job status, and number of children) that should have been controlled statistically before assessing the impact of sexual orientation on the outcome variables, at least those four demographic variables could have been used. Since at least three factors (job status, education, and number of children) favored outcomes for lesbians' children over heterosexuals' children¹²⁰ I question whether the Golombok et al. results should be accepted as demonstrating anything other than that having more resources and fewer children leads to better outcomes. In fact, if one were to control such factors, the actual underlying effect of sexual orientation might prove to be negative on at least some of the outcome variables. Until the data are properly analyzed, we cannot know what the actual outcome might be. Thus, it would be inappropriate to use the Golombok et al. data, as convincing as it sounds, for legal purposes.

One might argue that controlling factors for socioeconomic status is inappropriate when evaluating outcomes associated with different family structures. However, Manning & Lamb were quite careful to control factors of socioeconomic status when comparing adolescent well-being in four types of families: two married biological parents, unmarried single mothers, two step-married heterosexuals, and two step-cohabiting

119. MacCallum & Golombok, *supra* note 102, at 1410.

120. Logically, having more financial resources (job status), cognitive resources (education), and fewer demands on the family system economically and psychologically (fewer children) should favor the lesbian families.

heterosexuals.¹²¹ Before the controls, the married biological parents' structure had an advantage, but after the controls, there appeared to be no difference in family forms for predicting adolescent well-being outcomes.¹²² In contrast, few studies with lesbian parents have controlled socioeconomic differences when such differences existed (some studies matched lesbian and heterosexual subjects on a number of demographic variables as part of the requirements for subjects to be included in their studies).

However, some courts have taken the high incomes of homosexuals into account when adjudicating their fitness to be parents; even if homosexuality were a negative factor, adding back the presumed beneficial effects of a high standard of living might tip the scales back to neutral or better since the best current research does seem to suggest that when homosexuals have higher incomes, better jobs, more education, and fewer children than heterosexuals they can do an equally reasonable job of parenting on selected outcome variables.¹²³

JAVOID'S RESEARCH

Cameron discusses the research by Ghazala Afzal Javoid, who looked at attitudes towards marriage and having children among children of lesbians and heterosexual single parents.¹²⁴ What would the statistics tell us? Of the twenty-eight children of heterosexuals and the twenty-six children of lesbians, the only children to report an asexual identity were children of lesbians, a significant result, $r = -.29$ ($p < .05$) with Fisher's Exact Test (2-sided) significant ($p < .05$).¹²⁵ With respect to marriage and children, three of the heterosexual's children and seven of the lesbians' children expressed reservations (no or unsure), a result nearly significant, $r = -.21$ ($p < .07$).¹²⁶ However, the only children to say "no" to marriage and children were among the lesbians' children, a result identical statistically to that of the sexual identity item.¹²⁷ For the daughters in the study, the correlation for saying "no" to marriage and family was especially strong, r

121. Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 J. MARRIAGE & FAM. 876, 876 (2003).

122. *Id.* at 884-85.

123. See Connolly, *supra* note 20, at 230-31.

124. *Homosexual Parents*, *supra* note 43, at 295 (citing Ghazala Afzal Javoid, *The Children of Homosexual and Heterosexual Single Mothers*, 23 CHILD PSYCHIATRY & HUM. DEV. 235, 242 (1993)).

125. Javoid, *supra* note 124, at 242.

126. *Id.*

127. *Id.*

= -.42 ($p < .04$).¹²⁸ Therefore, the results statistically support some effect of sexual orientation on sexual identity and attitudes towards marriage and natality, particularly among daughters.

THE NATIONAL LESBIAN FAMILY STUDY

Another study of interest has been the National Lesbian Family Study.¹²⁹ In this study, lesbian mothers were asked what sexual orientation they preferred for their children.¹³⁰ Most of the mothers (65%) replied that their children needed to find their own sexual orientation, with only 21% hoping their child would become a heterosexual.¹³¹ To assume that such unusual attitudes have no impact on the child's willingness to consider alternative relationships would be illogical, although the studies by those authors have yet to report correlations between those attitudes and sex role or sexual orientation outcomes (the children may not be old enough for reliable measurement yet).

My findings are relevant to gay adoption because some legal experts assume that social science research has rejected such findings. Statsky says that "[a]t one time, there was fear that a parent's homosexuality would cause the child to be homosexual. Many studies have rejected this conclusion, particularly since a child's sexual preferences are developed during its infancy and very early years. This is usually well before the homosexual parent seeks custody."¹³² Some social scientists relegate any such connection between parental and child homosexuality to the status of a myth, even though, as noted before, even Stacey and Biblarz consider that lack of connection to be "implausible" theoretically.¹³³ Some scholars believe that such effects are neutral,¹³⁴ but my point is that the best evidence suggests they have been overlooked or discounted even in published studies that have concluded otherwise. My findings are

128. *Id.*

129. Nanette Gartrell et al., *The National Lesbian Family Study: 3. Interviews With Mothers of Five-Year Olds*, 70 AM. J. ORTHOPSYCHIATRY 542 (2000).

130. *Id.* at 546.

131. *Id.*

132. STATSKEY, *supra* note 1, at 148.

133. E.g., Jerry J. Bigner & R. Brooke Jacobsen, *Parenting Behaviors of Homosexual and Heterosexual Fathers*, 18 J. HOMOSEXUALITY 173, 176 (1989) [hereinafter *Parenting Behaviors*]; Jerry J. Bigner & R. Brooke Jacobsen, *Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers*, 23 J. HOMOSEXUALITY 99, 102 (1992) [hereinafter *Adult Responses*]; *contra* Stacey & Biblarz, *supra* note 9, at 163.

134. See Martha Kirkpatrick, *Comments on Dr. Walter R. Schumm's Paper "What Was Really Learned from Tasker and Golombok's (1995) Study of Lesbian and Single Parent Mothers?"*, 94 PSYCHOL. REP. 1185, 1185 (2004) [hereinafter *Comments on Schumm*].

important because courts have previously made decisions based on the assumption that social science research had found no intergenerational transmission of sexual orientation.¹³⁵

TOO HIGH A PRICE

Many other social science studies have reported no differences between gays and heterosexuals. Ferrero et al., whose book was handed out at the Lofton Conference, devote an entire chapter in their book to twenty-two “leading” social science studies (four of which have been discussed in detail previously) that allegedly reported few significant differences between lesbians and heterosexuals on parenting issues.¹³⁶ They specifically reject citing any research by Paul Cameron, instead disparaging his research as that of someone who “has been discredited by, thrown out of, and publicly chastised by numerous professional organizations,” and who, they claim, argued for the “extermination” of male homosexuals.¹³⁷ I think they would have been more credible had they addressed the specific deficiencies of Cameron’s research program, as I have, rather than slamming him personally. They reject the work of Lerner and Nagia calling them “researchers-for-hire” who will conclude whatever they are paid to conclude by conservative organizations.¹³⁸ It appears that anyone who disagrees with them runs the risk of professional disparagement. However, most credible professionals with whom I have associated would prefer that critics attack bad research or poor theory rather than the personae of others.

DIFFERENT COMPARISON GROUPS

Indeed, the assumption of “no difference” is often cited by legal scholars.¹³⁹ But what about Ferrero et al.’s other eighteen studies?¹⁴⁰ The space here precludes a complete analysis of all twenty-two papers but I will discuss a number of them on key points. For there to be a fair comparison

135. See, e.g., *Dean v. District of Columbia*, 653 A.2d 307, 351-53 (D.C. 1995) (Ferren, J., dissenting); Steve Susoeff, Comment, *Assessing Children’s Best Interests When a Parent is Gay or Lesbian: Toward a Rational Custody Standard*, 32 UCLA L. REV. 852, 859-60 (1985).

136. FERRERO ET AL., ACLU, *supra* note 40, at 42, 53.

137. *Id.* at 109-10.

138. FERRERO ET AL., ACLU, *supra* note 40, at 111-12. Just for the record, this author was not paid anything to prepare this paper other than reimbursement for travel expenses to the Lofton conference.

139. CERE, *supra* note 1, at 20; Lynn D. Wardle, *The Potential Impact of Homosexual Parenting on Children*, 1997 U. ILL. L. REV. 833, 846 (1997).

140. FERRERO ET AL., ACLU, *supra* note 40, at 53.

of lesbian and heterosexual mothers or their children, the comparison groups should be similar on critical variables. Otherwise, it is reasonable to expect differences that favor the advantaged group. In most of the studies (Table 1), lesbian subjects more often had live-in lovers providing emotional support than did single parent heterosexuals. When educational levels differed between lesbians and heterosexuals, lesbians usually had higher levels of education. Though scattered, other differences were of interest. Green et al. reported that 56% of lesbians versus 15% of heterosexual mothers never attended religious services ($p < .001$),¹⁴¹ but Brewaeys et al. found no significant differences in whether their subjects said they were religious or not (44-60% "yes").¹⁴² Patterson reported that 48% of her sixty-six lesbian or bisexual mothers had earned graduate degrees.¹⁴³ One national sample found that lesbians and bisexual women were most likely to report that they had no religious preference or no formal spiritual beliefs, with 64-72% so responding, a percentage much higher than the regular U.S. population.¹⁴⁴ Green et al. found that 70% of lesbian mothers participated at least monthly in a feminist group, compared to 21% of heterosexual mothers ($p < .05$).¹⁴⁵ Hoeffler found likewise that 95% of her lesbian mothers identified with feminism compared to only 55% of her heterosexual mothers ($p < .01$).¹⁴⁶ In some studies, like Sullivan's, the income levels of lesbian mothers were very high – 85% earning over \$50,000 a year;¹⁴⁷ in Flaks et al.'s study, it was at least 37% that earned over \$55,000;¹⁴⁸ and in Chan et al., there was an average annual income of \$82,000.¹⁴⁹ Although, in Miller et al.'s study, a remarkably high number (94%) earned under \$15,000, even though 47% were working as

141. Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167, 172 (1986).

142. A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 HUM. REPROD. 1349, 1352 (1997).

143. Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity*, in LESBIAN AND GAY PSYCHOLOGY: THEORY, RESEARCH, AND CLINICAL APPLICATIONS 156, 159 (Beverly Greene & Gregory M. Herek eds., 1994) [hereinafter *Lesbian Baby Boom*].

144. Morris et al., *supra* note 8, at 148.

145. Green et al., *supra* note 141, at 172.

146. Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 537 (1981).

147. Maureen Sullivan, *Rozzie and Harriet? Gender and Family Patterns of Lesbian Coparents*, 10 GENDER & SOC'Y 747, 753 (1996).

148. David K. Flaks et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and their Children*, 31 DEVELOPMENTAL PSYCHOL. 105, 107 (1995).

149. *Psychosocial Adjustment*, *supra* note 89, at 444.

middle or higher managers or professionals.¹⁵⁰ Chan et al. did not find a significant difference in income between their lesbian couples and heterosexual couples but the average annual incomes of the lesbian partners ranged from \$40,600 to \$49,200 compared to \$31,900 to \$44,400 for the heterosexual partners.¹⁵¹ Although she did not use a comparison group of heterosexuals, Patterson reported that 46% of her thirty-seven lesbian families made more than \$60,000 a year prior to 1991.¹⁵² Green et al. also found that 81% of lesbian mothers compared to 56% of heterosexual mothers did not plan to have more children ($p < .05$),¹⁵³ while Kirkpatrick et al. and Golombok et al. found that lesbian mothers had fewer children than single-parent mothers ($p < .05$).¹⁵⁴ Almost all the subjects in all of the twenty-two studies were Caucasian, severely limiting the generalizeability of the research to lesbians from other ethnic groups. Some studies did not mention the ethnic backgrounds of their subjects at all, while only a few studies appeared to report having non-whites among their subjects.¹⁵⁵ Some of the studies were based on European samples, limiting their generalizeability to U.S. populations.¹⁵⁶ As shown in Table 2, virtually all samples were non-random, as well as very small.¹⁵⁷ Also, different methods were often used to recruit lesbian and heterosexual subjects, further reducing the comparability of subject groups and of the results.¹⁵⁸ In some studies, the control groups may have included homosexuals because no screening was conducted in regards to sexual orientation among control group members.¹⁵⁹ If the heterosexual groups included homosexuals, that would tend to reduce the differences between the groups

150. Judith Ann Miller et al., *The Child's Home Environment For Lesbian vs. Heterosexual Mothers: A Neglected Area Of Research*, 7 J. HOMOSEXUALITY 49, 53 (1981). It is very tempting to suggest that the authors miscoded their results by mistake, as they reported that 87% of the heterosexuals were making more than \$15,000 a year even though 66% of them were homemakers, with only 41% in higher status occupations.

151. Raymond W. Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations With Children's Adjustment*, 12 J. FAM. PSYCHOL. 402, 406 (1998) [hereinafter *Division of Labor*].

152. *Lesbian Baby Boom*, *supra* note 143, at 159.

153. Green et al., *supra* note 142, at 171.

154. See *Lesbian Mothers and Their Children*, *supra* note 78, at 547; *Children with Lesbian Parents*, *supra* note 102, at 23.

155. E.g., *Lesbian Baby Boom*, *supra* note 143, at 159; Mary B. Harris & Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. HOMOSEXUALITY 101, 105 (1985/86); Sullivan, *supra* note 147, at 747.

156. E.g., *Lesbian and Single-Parent Households*, *supra* note 102; Brewaeys et al., *supra* note 142, at 1351.

157. See *infra* Table 2.

158. *Parenting Behaviors*, *supra* note 133, at 177; *Adult Responses*, *supra* note 133, at 103.

159. *Parenting Behaviors*, *supra* note 133, at 185; *Adult Responses*, *supra* note 133, at 110; Sullivan, *supra* note 147, at 752.

and discourage the rejection of the null hypothesis, regardless of the existence of true differences between “pure” heterosexual/homosexual groups of parents. As several have noted, such results cannot even be generalized to even all Caucasian gays or lesbians in the general population.¹⁶⁰

SELECTION EFFECTS

There may also be issues with selection effects. Chan, Brooks, Raboy, and Patterson found that “lesbian mothers were more likely to participate” in a follow-up study than were heterosexual parents,¹⁶¹ while Tasker and Golombok found that conflicted lesbian couples were more likely to drop out of their study.¹⁶² If two such effects combined, the net result would be a higher proportion of less conflicted lesbian parents engaging in the research process, which could skew results in the direction of lesbian parents or their children scoring higher on favorable outcome measures (merely as a result of selection effects).

STATISTICAL POWER

Virtually none of the twenty-two studies assessed the effect sizes of their results or the statistical power available with their limited size samples, with notable exceptions including Chan et al., McNeill et al., as well as the review by Allen and Burrell.¹⁶³ The results in many cases were not statistically significant and yielded small to moderate effect sizes. Allen and Burrell admitted that most previous studies did not have large enough samples to provide sufficient statistical power to capture small effect sizes.¹⁶⁴ McNeill et al. also noted that in their lesbian sample, variances were consistently greater than for their heterosexual sample, suggesting that “[l]esbian parents may represent a more diverse population with regard to their adjustment, stress, and competence in the parental role, a conclusion not supported by previous research.”¹⁶⁵ Legal experts may not be familiar with statistical power. Murphy and Myors discuss it as follows:

160. *Psychosocial Adjustment*, *supra* note 89, at 445.

161. *Division of Labor*, *supra* note 151, at 405.

162. *Adults Raised as Children*, *supra* note 102, at 207.

163. *Psychosocial Adjustment*, *supra* note 89, at 454; Kevin F. McNeill et al., *Families and Parenting: A Comparison of Lesbian and Heterosexual Mothers*, 82 PSYCHOL. REP. 59, 61 (1998); Allen & Burrell, *supra* note 29, at 27.

164. Allen & Burrell, *supra* note 29, at 23.

165. McNeill et al., *supra* note 163, at 61.

First, if at all possible, power should be above 0.50. When power drops below .50, the study is more likely to fail (i.e., it is unlikely to reject the null hypothesis) than to succeed. It is hard to justify designing studies in which failure is the most likely outcome. Second, power of .80 or above is usually judged to be adequate.¹⁶⁶

Later, they note that if each of the two groups has 50 subjects (100 total subjects), then the statistical power would be 0.80 for detecting a large effect ($d = .50$) when the significance level was set at $p < .05$.¹⁶⁷

Chan et al. seemed to be more optimistic, claiming they had a power of 0.80 with only eighty subjects for detecting a medium size effect (i.e., explaining 10% of the variance, equivalent to a correlation of about 0.32) but not enough power to detect a small effect (3% of the variance or a correlation of about .17 to .18).¹⁶⁸

Not one study in Table 2 featured two groups of at least fifty subjects each, suggesting that none had enough statistical power to detect large effects, much less the more likely small to medium effects that might be involved with lesbian parenting, if any.¹⁶⁹ According to Murphy and Myers, all of the studies were essentially designed to fail given their small sample sizes; they reject the null hypothesis unless the effect sizes were large to very large.¹⁷⁰ It appears, in this author's opinion, that most of the twenty-two studies cited by Ferrero et al. were conducted by researchers who assumed something other than a neutral stance with respect to the outcomes of their research, that they appeared interested or hopeful of finding positive outcomes for gay parenting at best and neutral outcomes at worst.¹⁷¹ In my opinion, an unbiased approach would have been to conduct research capable of finding small to moderate size effects in either direction, without an assumption a priori about how the results would or should turn out.

Should that make a difference? It seems to, as noted above, when researchers are deemed anti-gay. Even Golombok cites the issue of professional bias when she discusses Freud, saying "because psychoanalysts' commitment to their theory rules them out as independent researchers it is difficult to place great weight on these findings."¹⁷² If that

166. KEVIN R. MURPHY & BRETT MYORS, *STATISTICAL POWER ANALYSIS: A SIMPLE AND GENERAL MODEL FOR TRADITIONAL AND MODERN HYPOTHESIS TESTS* 18 (2004).

167. *Id.* at 19.

168. *Psychosocial Adjustment*, *supra* note 89, at 454.

169. *See infra* Table 2.

170. MURPHY & MYORS, *supra* note 166, at 9.

171. FERRERO ET AL., *ACLU*, *supra* note 40, at 42-43, 53.

172. SUSAN GOLOMBOK, *PARENTING: WHAT REALLY COUNTS?* 51 (2000).

is proper for Freud, why not for any researcher with a predisposing bias? Why is it not true for pro-gay researchers? Should it not also be difficult to place great weight on findings by pro-gay researchers? The idea that conservatives can be biased but liberals cannot seems logically inconsistent and empirically improbable to this author. I think we need to be careful to not try to make one good study out of twenty-two weak studies and draw unwarranted conclusions. Even if there should prove to be few medium to large negative outcomes associated with gay parenting, as claimed by Allen & Burrell, it would not rule out small negative or positive outcomes that would be difficult to detect without larger samples.¹⁷³ It remains notable that the one study that used a large sample did find significant, though small, effects.¹⁷⁴ I personally tend to concur with Chan et al. that the family process probably counts for more than family structure, but that does not mean that family structures could not have smaller, yet important, effects.¹⁷⁵ Logically, it is likely that structure precedes process, since structure changes slowly if at all whereas process can change daily; therefore, structural effects are likely to be indirect, through their impact on process, on child outcomes. Controlling statistically for structure in the process-outcome relationship may appear to minimize the role of structure, which is correct if one means that its direct effects are minimal, but incorrect if one takes that result to mean that its indirect effects are unimportant.

POSITIVE TRENDS

At other times, a closer examination of the data shows that gays are reporting greater relationship happiness than heterosexuals, as I reported earlier¹⁷⁶ with respect to Julien et al.'s research with forty-two heterosexual, forty-six gay, and thirty-three lesbian couples.¹⁷⁷ The advantage for lesbians (effect size, $ES = 0.22$) was twice that for gay males ($ES = 0.11$), but within the same range as the typical difference between husbands and wives in heterosexual marriages.¹⁷⁸ Even so, I must note, that they admitted that their heterosexual couples had more children ($p < .05$), but

173. Allen & Burrell, *supra* note 29, at 30.

174. Sarantakos, *supra* note 73, at 30.

175. *Psychosocial Adjustment*, *supra* note 89, at 454.

176. *Response to Kirkpatrick*, *supra* note 79, at 1205.

177. Danielle Julien et al., *Conflict, Social Support, and Relationship Quality: An Observational Study of Heterosexual, Gay Male, and Lesbian Couples' Communication*, 17 J. FAM. PSYCHOL. 419, 422 (2003).

178. Walter R. Schumm et al., *Gender and Marital Satisfaction: Data from the National Survey of Families and Households*, 83 PSYCHOL. REP. 319, 324 (1998).

they nevertheless ignored that factor, not to mention how long the couples had been together (6.38, 4.93, and 5.42 years for each group, respectively, on average) when they analyzed their data.¹⁷⁹ Flaks et al.¹⁸⁰ concluded that relationship quality as measured by the Dyadic Adjustment Scale¹⁸¹ was similar for fifteen lesbian and fifteen heterosexual couples. While statistically equivalent, the effect size of the difference $[(119.2 - 113.3)/11.1]$ was moderate at $ES = 0.53$, suggesting that the lack of significance was due more to the small sample size rather than a small effect. Chan et al. reported on the marital adjustment of lesbian couples and heterosexual couples; the ES for the biological mothers was 0.15 and 0.38 for the nonbiological mother versus the father, both favoring the respective lesbian parents over the heterosexual parents.¹⁸² My own yet unpublished analysis of data from a study of lesbians and heterosexuals in Topeka, Kansas, found a significantly lower level of marital happiness as measured by the Kansas Marital Satisfaction Scale for the lesbians.¹⁸³ In spite of evidence that gays and lesbians are happier in their relationships, one sees that finding ignored by most anti-gay researchers; probably because they do not want to hear that same-sex relationships are happier, on average, than mixed-gender relationships. At the same time, there is some evidence to suggest that lesbigay relationships may be less stable, in spite of being happier. Space precludes a comprehensive analysis here, but I do observe that a recent series of longitudinal studies of a group of lesbian mothers found that the instability rate was 31.5% over just five years, with twenty-three of the original seventy-three couples breaking up in that timeframe,¹⁸⁴ while in a twelve year follow-up by MacCallum and Golombok the break-up rate was 46.2% (6/13, the 14th mother had died).¹⁸⁵ Such high instability rates may not be higher than for heterosexual couples, though I would suspect they are, but I would be cautious about stating as certainly as Ferrero et al. did that “[g]ay couples have no more conflict or instability than non-gay couples.”¹⁸⁶

179. Julien et al., *supra* note 177, at 422.

180. Flaks et al., *supra* note 148, at 112.

181. See generally Graham B. Spanier, *Measuring Dyadic Adjustment: New Scales for Asserting the Quality of Marriage and Similar Dyads*, 38 J. MARRIAGE & FAM. 15 (1976).

182. *Division of Labor*, *supra* 151, at 411.

183. Walter R. Schumm et al., *Concurrent and Discriminant Validity of the Kansas Marital Satisfaction Scale*, 48 J. MARRIAGE & FAM. 381, 383 (1986).

184. Nanette Gartrell et al., *supra* note 129, at 545.

185. MacCallum & Golombok, *supra* note 102, at 1409.

186. FERRERO ET AL., ACLU, *supra* note 40, at 108.

CHILD ABUSE QUESTIONS

Now let us be fair and turn the “big guns” of data reconstruction and statistics on some “anti-gay” research. Gold et al. concluded from their review of the literature that “[c]hildren of gay or lesbian parents are less likely to be victims of parental sexual or physical abuse.”¹⁸⁷ Buxton argued that “[n]o sexual molestation by gay or lesbian parents has been reported in research or in judicial records.”¹⁸⁸ More recently, Cahill has said that any claim that having homosexual parents “makes children more susceptible to child abuse” is “not supported by credible social science research.”¹⁸⁹ If true, we should be surprised to see any research that indicts gay or lesbian parents of child sexual abuse. At the same time, Patterson acknowledged a “common fear . . . that children living with gay or lesbian parents may be more likely to be sexually abused by the parent and/or by the parent’s friends or acquaintances.”¹⁹⁰ Recently, however, Cameron reported 1997-2002 data from Illinois on rates of child sexual and physical abuse by gender of adult perpetrator and by the gender of the child. Cameron assumed that same-gender sexual abuse was “homosexual.”¹⁹¹ Over the six year period there was an average of 14,150 licensed foster/relative care homes utilized for the care of placed children per year.¹⁹² On average, there were fifteen cases of same-gender sexual abuse (eleven being female/female and four being male/male) and thirty cases of opposite-gender sexual abuse (twenty-five being male adult/female child and five being female adult/male child).¹⁹³ One might estimate that such small numbers among a total sample of 14,150 could never reach statistical significance, but that would be an incorrect assumption. The wonderful thing about basic statistics is that you can rerun your tests on different assumptions and observe how the results would change with your assumptions. I created a data set with 14,150 cases and fifteen cases of same-gender sexual abuse and thirty cases of mixed-gender sexual abuse. If we assume that 2% of the childcare provider households are homosexual and that 100% of same-gender sexual abuse is homosexual, then we would

187. Melanie A. Gold et al., *Children of Gay or Lesbian Parents*, 15 PEDIATRICS REV. 354, 354 (1994).

188. Buxton, *supra* note 32, at 331.

189. Sean Cahill, *Welfare Moms and the Two Grooms: The Concurrent Promotion and Restriction of Marriage in US Public Policy*, 8 SEXUALITIES 169, 180 (2005).

190. Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1029 (1992). However, that is not to imply that she concurred with the fear; she probably did not.

191. Cameron, *supra* note 15, at 228.

192. *Id.* at 229.

193. *Id.*

find that 5.3% (15/283) of homosexuals abused a child sexually compared to 0.2% (30/13,837) of heterosexuals, a result significant ($p < .001$) by chi-square test (226.1 with one degree of freedom) and by zero-order correlation, $r = .13$ ($p < .001$). If we assume that 10% of the childcare provider households are homosexual, then the figures are 1.1% (15/1,415) versus 0.2% (30/12,735), with a chi-square of 27.3 ($p < .001$) and $r = 0.04$ ($p < .001$). In order to reduce the relationship to non-significance by a two-sided Fisher's Exact Test, we must assume an unusually high percentage (20.9%, 2,955 homosexual households) of homosexual providers. I would surmise that such an assumption would not likely be true. The expected counterargument would be "not all homosexual conduct is being conducted by homosexuals." Of course, it is possible that some mixed-gender sexual abuse is being conducted by homosexuals, but here I will assume not. What happens if one-third of all same-gender misconduct is really perpetrated by heterosexuals? Now, under the 2% assumption, we have 0.3% (35/13,872) of heterosexuals abusing a child sexually and 3.6% (10/278) of homosexuals, with chi-square = 96.2 ($p < .001$) and $r = 0.08$ ($p < .001$). Under the 10% assumption, we have 0.3% (35/12,740) of heterosexuals versus 0.7% (10/1,410) of homosexuals, with chi-square = 7.56 ($p < .01$) [Fisher's Exact Test is significant at $p = 0.012$ here] and $r = 0.02$ ($p < .01$). What if two-thirds of all homosexual conduct is perpetrated by heterosexuals? Under the 2% (actually 1.9%) assumption, we find 0.3% (40/13,877) sexual abuse by heterosexuals versus 1.8% (5/273) by homosexuals, with chi-square = 20.1 ($p < .001$) and $r = 0.04$ ($p < .001$). However, under the 10% assumption, homosexual abuse rates are higher (0.4%) than for heterosexuals (0.3%) but the differences are not statistically significant. In order to disprove the hypothesis that homosexuality is related to higher rates of sexual abuse, one would have to defend the claim that either somewhat more than 20% of the licensed placement sites in Illinois have been headed by homosexual adults or that somewhere between one and two-thirds of all same-gender sexual abuse is perpetrated by heterosexuals. Otherwise, the data would seem to suggest that homosexuals are more likely to abuse children sexually. If Cameron and Cameron's assumption is correct that about six times as many lesbians as gay males have children (or would want to adopt perhaps), the relative risk of abuse of foster children may be greater for gay males than for lesbians as the average ratio of female/female versus male/male abuse was 11:4, when it might have been expected to be 24:4 if abuse rates were not related to gender.¹⁹⁴ Accordingly, assuming a 6:1 ratio of lesbian to gay male foster

194. Paul Cameron & Kirk Cameron, *Homosexual Parents*, 31 ADOLESCENCE 757, 761

parents, I ran data on the calculation that there were 243 lesbian and 40 gay male foster parents in the 14,150 households (2% rate), which yielded a sexual abuse rate of 10.0% for the gay male foster parents and 4.5% for the lesbian foster parents. Both those rates were significantly higher than the 0.2% rate for heterosexual parents (Fisher's Exact Test $p < .001$ for both comparisons, with $r = .10$ for lesbians and $r = .11$ for gay males, both $p < .001$) but they did not differ from each other (Fisher's Exact Test was not significant, $p = .146$, one-sided).

Recently, Balsam et al. reported the gender of sexual perpetrators and of children for 458 siblings of homosexuals.¹⁹⁵ The Illinois data featured 55.6% female child/male perpetrator sexual abuse, 24.4% male child/male perpetrator, 8.9% female child/female perpetrator, and 11.1% male child/female perpetrator.¹⁹⁶ Balsam et al. found relatively similar patterns, 62.2%, 20.1%, 10.5%, and 7.2%, respectively.¹⁹⁷ Notably, Balsam et al. also found that their sample of lesbian subjects reported rates of child sexual abuse from 31.8% to 47.6% compared to 12.8% to 30.4% for heterosexuals.¹⁹⁸ When I used their data to predict later adult sexual orientation from child gender and same-gender sexual abuse, gender proved nonsignificant but having experienced same gender sexual abuse predicted later homosexual orientation with an odds ratio of 2.08 (95% CI, 1.16 to 3.72) ($p < .02$). Another recent study found that 34.8% of gay/bisexual men reported some history of child sexual abuse or incest, with the vast majority of those abused (85%) reporting the past abuse as upsetting.¹⁹⁹ A larger sample study found an increase in child sexual abuse among gay/bisexual men compared to heterosexual men but found that physical abuse was a better predictor for lesbianism.²⁰⁰ Childhood sexual abuse is associated with a wide range of adverse outcomes that could have an impact on prospective parents, including substance abuse, emotional difficulties, internalized homophobia, sexual promiscuity, and risky sexual behaviors.²⁰¹

(1996).

195. Kimberly F. Balsam et al., *Victimization Over the Life Span: A Comparison of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 73 J. CONSULTING & CLINICAL PSYCHOL. 477, 483 (2005).

196. *Id.*

197. *Id.*

198. *Id.*

199. Jeffrey T. Parsons et al., *Factors Related to Childhood Sexual Abuse Among Gay/Bisexual Male Internet Escorts*, 14 J. CHILD SEXUAL ABUSE 1, 10 (2005).

200. Heather L. Corliss et al., *Reports of Parental Maltreatment During Childhood in a United States Population-Based Survey of Homosexual, Bisexual, and Heterosexual Adults*, 26 CHILD ABUSE & NEGLECT 1165, 1172 (2002).

201. Parsons et al., *supra* note 199, at 19.

In light of this data, Cameron's other research may acquire greater credibility than might otherwise have been conceded to it.²⁰² Of course, even in the worst case assumed here, the vast majority (90-95%) of homosexuals would not have been proven to have sexually abused their charges and it could be argued that the civil rights of that 90-95% should not be voided by the possible "excess" damage done, at most, in a mere ten to fifteen (not much more and possibly less than 0.1%) of the 14,150 homes. Hence, the same data could be used by either side to argue its case. Just as Kirkpatrick et al. could be faulted for not explaining her data more completely,²⁰³ Cameron could be faulted for not analyzing his data in more detail (as was just done here).²⁰⁴ My point is that both sides in this controversy can be faulted for producing research that is incomplete or not fully analyzed in some manner or other.

USING SOCIAL EXCHANGE THEORY

That brings me to theory. Some have tried to defend traditional marriage using natural law theory.²⁰⁵ Those who disagree with the underlying assumptions of natural law theory will probably disagree with its logical conclusions. While marriage and family therapists tend to depend upon family systems theory, one of the best theories for planning and evaluating social science research appears to be social exchange theory, a theory cited even by pro-gay authors as a very legitimate social science theory.²⁰⁶ This theory assumes that humans are rational and that they make choices that have, within the limitations of their knowledge, their perceived alternatives, their relevant time spans, the appearance of maximizing their rewards, and minimizing their costs (for the level of investment); thus yielding the highest "rate of return" or profit. Formerly,

202. See generally Paul Cameron & Kirk Cameron, *What Proportion of Newspaper Stories About Child Molestation Involves Homosexuality?*, 82 PSYCHOL. REP. 863 (1998); Paul Cameron & David W. Harris, *Homosexual Parents in Custody Disputes: A Thousand Child-Years of Exposure*, 93 PSYCHOL. REP. 1173 (2003); Paul Cameron, *Are Over a Third of Foster Parent Molestations Homosexual?*, 96 PSYCHOL. REP. 275 (2005); Paul Cameron, *Molestations by Homosexual Foster Parents: Newspaper Accounts vs. Official Records*, 93 PSYCHOL. REP. 793 (2003).

203. *Lesbian Mothers and Their Children*, *supra* note 78, at 551.

204. Cameron, *supra* note 15, at 230.

205. See generally ROBERT P. GEORGE, IN DEFENSE OF NATURAL LAW (1999) (defending traditional law using natural law theory).

206. See Leticia Peplau et al., *Satisfaction in Lesbian Relationships*, 8 J. HOMOSEXUALITY 23, 24 (1982); Lawrence A. Kurdek & J. Patrick Schmitt, *Relationship Quality of Gay Men in Closed or Open Relationships*, 12 J. HOMOSEXUALITY 85, 89-91 (1985/86); Sally M. Duffy & Caryl E. Rusbult, *Satisfaction and Commitment in Homosexual and Heterosexual Relationship*, 12 J. HOMOSEXUALITY 1, 18-19 (1985/86).

homosexuality used to be considered an aberration, a mental illness. That changed when the American Psychological Association, among others, redefined homosexuality as normal, a fact decried by some.²⁰⁷ However, my position is perhaps rare in that I believe that homosexuality is a logical choice from a variety of perspectives²⁰⁸ and yet, at the same time, I think that is the very reason that some societies have developed stigmas against it. If it had not been powerfully logical, there would have been little need to develop social stigma. Social exchange theory argues that all behavior is logical from the perspective of the individual; therefore, I deduce that homosexuality must be logical from the perspective of the homosexual. Of course, the immediate objection is that many gays will report that they wish they were not gay because of the hostility they face. However, hostility is only one cost. What makes the decision is the total balance of rewards and costs. Even Jesus told his followers that whatever rewards they might have as his followers, they would inevitably experience persecution²⁰⁹ (stigma) as an inherent cost of their beliefs.²¹⁰ Upon realizing that, some of his followers departed, suggesting that stigma is a cost to reckon with.²¹¹ In conclusion, I would argue that stigma is a cost to homosexuals but unless it outweighs the rewards of homosexuality, it is not likely that homosexuals would even begin to look for alternatives to their situation (just as those who may be married will not look for alternatives such as divorce until they reach a certain point of misery, albeit the costs for them may be derived from within their marital relationship).

Now, why would homosexuality be more logical than heterosexuality? There are two types of risk that I will discuss. First, there are risks that one will incur costs. Secondly, there are risks that one will encounter more difficulties in obtaining rewards. I would argue that homosexuals “get more.” Actually, Cameron argued this years ago.²¹² Gay males do not have to overcome female resistance to having sex while lesbians do not have to overcome generalized male reluctance to sharing

207. See generally Paul Cameron et al., *Errors by the American Psychiatric Association, the American Psychological Association, and the National Educational Association in Representing Homosexuality in Amicus Briefs about Amendment 2 to the U.S. Supreme Court*, 79 PSYCHOL. REP. 383, 401 (1996); Paul Cameron & Kirk Cameron, *Did the APA Misrepresent the Scientific Literature to Courts in Support of Homosexual Custody?*, 131 J. PSYCHOL. 313, 327 (1997).

208. This comment drew some cheers when I made it at the Lofton Conference during my presentation. Of course, my meaning is logical from a social exchange theoretical perspective rather than from a number of other possible theoretical perspectives.

209. See Matthew 5:12 (providing an example on persecution for religious belief).

210. See Luke 14: 28 (providing an example of cost as a variable of a religious experience); John 15:20.

211. See John 12:43 (showing that social pressure does appear to motivate people).

212. See Paul Cameron, *A Case Against Homosexuality*, 4 HUM. LIFE REV. 17 (1978).

deep emotions.²¹³ Neither must worry about using contraceptives per se, or barrier devices for birth control or about becoming pregnant, intentionally or otherwise. Heterosexuals cannot guarantee, absent sterility or abortion, that they will not become responsible for “unplanned” children, for whom parental requirements are every bit as demanding as for “planned” children. Gay males do not have to worry about a female partner having emotional or physical symptoms associated with her menstrual cycle. Neither do they have to deal with different communication modalities of men and women.²¹⁴ Neither do they have to explain or understand different physiologies (i.e., does a man ever really understand what it feels like to be a woman with different genitals, a different body shape, and different hormones?). Lesbians do not have to worry about being dumped by a father, whose failure to support their children leaves the mother (not to mention the children) in a state of poverty.²¹⁵

What about rewards? As noted by Rosenbluth and Steil, equality and emotional intimacy can more easily “be achieved in the absence of gender-role based behaviors”, behaviors which “[s]ame-sex couples, unlike heterosexual couples, do not generally engage in . . .”²¹⁶ Thus, logically gays and lesbians should be able to establish equality and emotional intimacy in their relationships more readily than should heterosexuals. With similar logic, McGraw has suggested that there are serious limits to how successful mixed-gender couples can become at being compatible because of their biologically and socially determined gender differences.²¹⁷ Stacey has also argued that gays and lesbians are more naturally compatible than heterosexuals, sharing “more interests and time together,” as well as

213. Recently, a wife divorced her husband because she felt he loved her but did not “cherish” her sufficiently. Discussing stories like this raises much anxiety among husbands in my graduate courses but women, though they may not agree with such decisions, seem to empathize with them far more than do men. I asked a leading therapist if he was under the impression that felt his wife felt he cherished her as much as she might want. He said he doubted it, but that many husbands doubt whether they are getting as much sex as they might prefer to get either. These kinds of issue are probably reduced in same-gender relationships.

214. See generally DEBORAH TANNEN, *YOU JUST DON’T UNDERSTAND: WOMEN AND MEN IN CONVERSATION* (1990).

215. Lesbians may experience a lower reward/cost ratio when it comes to sexual interaction since one report suggested 70% of lesbians had sex less than once a month. See Nanette Gartrell et al., *supra* note 129, at 547. However, other research suggests that lesbians have better and more frequent sex than heterosexuals. See Lauren C. Bressler & Abraham D. Lavender, *Sexual Fulfillment of Heterosexual, Bisexual, and Homosexual Women*, 12 J. HOMOSEXUALITY 109, 115 (1986).

216. Susan C. Rosenbluth & Janice M. Steil, *Predictors of Intimacy for Women in Heterosexual and Homosexual Couples*, 12 J. SOC. & PERS. RELATIONSHIPS 163, 165 (1995).

217. See PHILLIP MCGRAW, *RELATIONSHIP RESCUE: A SEVEN-STEP STRATEGY FOR RECONNECTING WITH YOUR PARTNER* 40-43 (Hyperion 2000).

having more “egalitarian relationships.”²¹⁸ Chan et al. found that lesbians shared childcare more equally than did heterosexuals, probably because fathers were less interested; however, their results suggest that a mother may be more likely to find (rewarding) help with another woman than with another man.²¹⁹ All of the scenarios involve realistic risk, risk that is avoided, nearly automatically, at almost no extra effort, merely by “being” homosexual. The higher levels of satisfaction within lesbian relationships compared to heterosexual relationships, mentioned earlier, fit with this concept. If levels of relationship stability are lower, that could be accounted for by differences in barriers to separation (fewer legal hurdles, fewer children) or having greater alternatives upon separation.

Now why would society encourage an institution, heterosexual marriage, that entailed such disparate risks compared to other forms of coupling? I believe it was to minimize risk to offspring by promoting a particular structure. Cere agrees, noting that “[t]he offspring of our sexual bonds are profoundly vulnerable and demand the state’s interest.”²²⁰ Cere quotes Moore et al:

Research clearly demonstrates that family structure matters for children, and the family structure that helps the most is a family headed by two biological parents in a low-conflict marriage. Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes. . . . [sic] There is thus value for children in promoting strong, stable marriages between biological parents.²²¹

The hope of gay males and lesbians would appear to be creating equality even if that means denormalizing [heterosexual] marriage.²²² Should marriage be seen as only “one of many possible and equally valid family forms”?²²³ Is it fair to argue that homosexual relationships are “indistinguishable from marriage”?²²⁴ Is it fair for the government to recognize and support all adult close relationships equally, regardless of their inherently relative risks? Does respecting the diversity of personal choice mean that government rewards and benefits for different dyadic

218. Judith Stacey, *Gay and Lesbian Families: Queer Like Us*, in *ALL OUR FAMILIES: NEW POLICIES FOR A NEW CENTURY* 117, 138 (Mary Ann Mason et al. eds., 1998).

219. See generally *Division of Labor*, *supra* note 151, at 402.

220. CERE, *supra* note 1, at 31.

221. *Id.* at 13 (quoting Kristin A. Moore et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children and What Can We Do about It?*, CHILD TRENDS RESEARCH BRIEF, June 2002, <http://www.Childtrends.org/files/MarriageRB602.pdf>).

222. *Id.* at 12 (quoting WILLIAM N. ESKRIDGE, *EQUALITY PRACTICE: CIVIL UNIONS AND THE FUTURE OF GAY RIGHTS* 225 (2002)).

223. *Id.* at 17.

224. *Id.*

relationship structures should be equalized? Is “treating couples differently based on marital status” really “unjust discrimination”?²²⁵ Is defining marriage as between a man and a woman an unreasonable, unfair, inequitable, and “repugnant” attempt to “preserve the exclusive privileged status of heterosexual conjugal relationships in society”?²²⁶ Is imposing marriage on society really an attempt to impose a narrow theistic worldview on society? Does limiting marriage to heterosexuals “derive from an ideological rather than a logical imperative”?²²⁷ Does social science find that same-sex and mixed-gender relationships are not much different from each other?²²⁸ Or is society attempting to create a profit differential to reward heterosexual couples for taking the risks inherent in establishing and maintaining mixed-gender relationships?

Another way of analyzing a situation is to look at the desired end state, as if it had already been achieved. Accordingly, let us ask what the desired end state might be for homosexuals. I presume that end state would be the right to marry, with full benefits, and the right to adopt, with no more or less restrictions than heterosexuals might have. On the surface, that end state might appear reasonable. However, is that really the whole picture? It is known that some homosexuals do not want to marry but want to continue to lead a lifestyle involving multiple sexual partners. I presume that such homosexuals would prefer that their lifestyle receive the same social approval as the lifestyle of homosexuals who would marry and be relatively monogamous. Among other examples, Rind argues that boys as young as twelve generally enjoy having sex with men as many as thirty years older than themselves and that therefore such age-discrepant homosexual relationships should not be frowned upon, as we frown upon incest in heterosexual families.²²⁹

If my vision here is valid about the desired end states, then another inequality would have been created. As I see it, heterosexuals tend to view monogamous marriage as a more socially valuable condition than a heterosexual lifestyle involving multiple sexual partners. Thus, if the desired end state were to be achieved, homosexuals would receive

225. *Id.* at 22.

226. *Id.* at 26.

227. *Id.* at 32 (quoting GILLIAN DOUGLAS, AN INTRODUCTION TO FAMILY LAW 30-31 (Oxford Univ. Press 2001)).

228. See generally WILLIAM N. ESKRIDGE, JR., THE CASE FOR SAME-SEX MARRIAGE: FROM SEXUAL LIBERTY TO CIVILIZED COMMITMENT (1996).

229. Bruce Rind, *Gay and Bisexual Adolescent Boys' Sexual Experiences with Men: An Empirical Examination of Psychological Correlates in a Nonclinical Sample*, 30 ARCHIVES SEXUAL BEHAV. 345, 362 (2001).

widespread social approval (or at least tolerance) for a multiple partner sexual lifestyle (maybe even sex between minor boys and old men), whereas heterosexuals would not. Such a condition would be inequitable even if it appeared on the surface to be equitable, for in essence homosexuals would be demanding the right to either marry or to have multiple sexual partners, obtaining equal social approval for both patterns of behavior. A further twist is that many homosexuals, even those within committed relationships, find having affairs to be acceptable. If that value were to be granted social equivalence to monogamy, once again homosexuals would be gaining a status probably unattainable for heterosexuals (i.e., how many wives really would approve of their husbands having extramarital sex?), creating further social inequity. On the other hand, if homosexuals were to adopt an end state in which monogamy received greater approval than a multiple partner sexual lifestyle (in or out of marriage) that might tend to divide homosexuals against themselves, which would probably not be a desired end. Thus, I am not able to envision an end state that would be equally desirable for both heterosexuals and homosexuals, which would preserve some semblance of equity for both groups. Another way of putting this is that if the end state was one in which both groups received approval for monogamous marriage and both received disapproval for extramarital affairs or for having multiple sexual partners,²³⁰ then I could describe that as at least potentially equitable. However, my understanding is that there is at least a minority of homosexuals, mostly gay males, who would deeply prefer having multiple sexual partners be deemed a valid lifestyle at any stage of a relationship.²³¹ How such a view can be accommodated and yet maintain equity for the larger part of society I do not know. Thus, I share the apprehension of Cere's that legitimizing gay marriage "must, of necessity, diminish the social importance of children being raised by their own biological parents,"²³² when social science research actually points to the greater safety found, on average, by children from sexual or physical abuse when cared for by biological parents rather than unrelated adults.²³³ As noted by Cere, "for same-sex couples to have children without resorting to adoption

230. See, e.g., JONATHAN RAUCH, *GAY MARRIAGE: WHY IT IS GOOD FOR GAYS, GOOD FOR STRAIGHTS, AND GOOD FOR AMERICA* 156, 156, 195 (2004).

231. See generally MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999).

232. CERE, *supra* note 1, at 38.

233. Robin Fretwell Wilson, *Children at Risk: The Sexual Exploitation of Female Children After Divorce*, 86 CORNELL L. REV. 251, 265-66 (2001).

they must necessarily involve a third person in order to conceive and bear a child.”²³⁴

CONCLUSIONS

Clearly, there is a tremendous disparity in the way the same literature on lesbian parenting is interpreted. It is amazing that scholars can read the same research and come to such contrasting conclusions. Part of the answer lies in the way the conclusions are phrased. For example, Chan et al. argue that the data suggest that “[t]he idea that only heterosexual parents can raise healthy children is certainly not supported by the present findings.”²³⁵ I would argue that you do not need any data to support such a mild claim; to disagree with such a claim one would have to prove that all lesbian parents are automatically incompetent simply because of their sexual orientation. Especially given the fluidity of sexual orientation (remember Kirkpatrick et al.’s mothers, formerly married, now lesbians, not expecting to marry husbands in the future), no astute person would attempt such an impossible proof.²³⁶ At the same time, at least some of the literature has flaws that few have observed until recently.

Reviewer bias appears to be involved in the different ways that the limitations of such research is either highlighted or minimized. As noted by Belcastro et al., peer review, in some cases at least, appears to have failed our system of social science.²³⁷ In any event, the literature’s conclusions may not be as firm as previously supposed. While the present literature might have been used, if the comparison groups had been unbiased, to argue that effect sizes associated with lesbian parenting are not large or very large, it cannot be used to sustain hypotheses concerning small to medium effect sizes (because of low statistical power found in studies using relatively few subjects). The direction of any underlying effects of lesbian parenting remain uncertain because of either (a) the lack of comparability across most of the comparison groups or (b) the clear advantages observed for lesbian groups compared to the heterosexual comparison groups used in the study of lesbian parenting. From what we know of how the group comparisons were usually arranged in the research, same-gender parents often had higher incomes, other adults in the household, higher educational attainment, and lower pre-divorce conflict if they had been married. All of those factors would tend to work as

234. CERE, *supra* note 1, at 32 n.96.

235. *Psychosocial Adjustment*, *supra* note 89, at 454.

236. *Lesbian Mothers and Their Children*, *supra* note 78, at 546, 549.

237. Belcastro et al., *supra* note 22 at 110-15.

suppressor variables, creating a smaller negative relationship between mental health outcomes than what might actually underlie the relationship with sexual orientation.

In this paper, I demonstrated how such a situation could occur, using simulated data. Furthermore, most of the lesbian/gay samples were volunteers. By itself, that might not matter much but we also know that some of the lesbian/gay samples included a high proportion of feminists, who would probably not answer questions in ways that made their worldview look dysfunctional. Also, we did find selection effects that suggested that more conflicted homosexuals were less likely to participate in research. Taken together on the basis of several factors (inadequate sample size, selection effects, nonrandom samples with different recruitment methods for homosexuals and heterosexuals, numerous advantages for the homosexual groups selected, and suppressor effects), the conditions suggest strongly that research has been biased against rejection of the null hypothesis for parental sexual orientation and other outcomes and therefore should be granted very little weight in judicial proceedings. That conclusion contrasts, of course, with the numerous glowing reports highlighted earlier, but, then again, those reports did not analyze the weaknesses of the studies to the same depth as done here, particularly with respect to the likely role of suppressor variables.

Lest someone accuse this author of homophobic bias, I must remind the courts that the techniques that I have applied in this topical area are no different or more precise than what I have done in other areas for the past two decades. For example, I have analyzed data from Pearl Harbor and the RMS Titanic that yielded new understandings of what really happened.²³⁸ I was able to show that the ships remaining at Pearl Harbor were significantly older than those out on missions and that those missions included the interception of Japanese raiders rather than mere re-supply missions.²³⁹ With respect to the Titanic, I was able to present evidence for a curvilinear interaction of gender and social class with respect to survival rates, in which the lowest rates of survival for men occurred among second-class passengers while the highest rates of survival among woman and children occurred among that same class of passengers.²⁴⁰ Thus, contrary to popular movies, second-class passengers were most likely to conform to the social norm of “women and children first” into the lifeboats, with both

238. See generally Walter R. Schumm et al., *Enhancing Learning in Statistics Classes Through the Use of Concrete Historical Examples: The Space Shuttle Challenger, Pearl Harbor, and the RMS Titanic*, 30 TEACHING SOC. 361, 365-70 (2002).

239. *Id.* at 367.

240. *Id.* at 369.

wealthier and poorer passengers less likely to follow that rule. Remarkably, 22% of men from the third class passengers survived compared to only 8% of the men from the second class and 33% from the first class. So much for the myth that the disaster was all about the rich leaving the poor to perish.²⁴¹ The RMS Titanic story was really much more about the nobility of the second class fathers who almost all perished but at the same time ensured that 100% of their wives and children made it safely into lifeboats and survived. Although I have been critical of Paul Cameron elsewhere, as noted previously, I am sympathetic, after reviewing the literature for this paper, to his comment that "Categorical use of language, e.g., 'no data,' 'any aspects,' 'every relevant study,' 'any risk,' and a decision not to review studies that might pose problems for categorical remarks are hallmarks of propaganda."²⁴² It stretches one's credulity to believe that there is *any* area of social science where there has never been any contrary study someplace, at sometime, yet that is what some of these glowing reviews would have the courts believe.

With respect to other results of data analysis, there is new evidence to confirm Stacey and Biblarz's intuition that parental sexual orientation might make a difference with respect to intergenerational transmission.²⁴³ Intergenerational transmission cannot be relegated to the status of myth. Of course, some will see no problem here, wanting each child to make his or her own choice about their sexual orientation. However, I do not think you can have it both ways. Sexual orientation cannot be totally inborn and beyond choice when there is evidence of intergenerational transmission, especially when some children who lack lesbian sexual attractions report openness to participating in lesbian types of relationships, as I have shown before. It has to be remembered that at least two studies that provided data which was purported to show no effect of intergenerational transmission, did provide such, when the data was reanalyzed more carefully in this report. There is also new evidence to suggest that homosexual foster parents may pose a greater risk of sexual abuse to their charges than previously expected. However, even in worst cases analyses, a majority to as many as 95% (depending on the extent of underreporting of sexual abuse) of lesbian parents would appear to be able to raise foster children without abusing them sexually. If lesbians are far more likely to foster children than gay males, the data may suggest ($p < .15$, so this is very tentative) the risks of sexual abuse are somewhat greater for children cared

241. *Id.*

242. Cameron & Harris, *supra* note 202, at 1174.

243. Stacey & Biblarz, *supra* note 9, at 166.

for by gay male than by lesbian foster parents. Each side in the debate over lesbian custody will probably use the same data to defend their positions.

Finally, the social exchange theory may suggest that heterosexual dyads involve inherent added risk and perhaps reduced rewards in their formation and maintenance than do homosexual dyads. That mixed-gender couples may be experiencing higher costs and lower profits than same-gender couples may be revealed in my findings, presented here. Same-gender couples are often happier and appear more compatible than mixed-gender couples.²⁴⁴ Furthermore, most studies reviewed here that have looked at family size have found that two-parent heterosexual couples tend to have more children than either heterosexual single parents or lesbian single parents or couples. Thus, we have a situation in which those risking the most, paying greater costs for lower rewards, are reproducing more, presumably at even further cost (more children cost more to raise, on average). Pretending to equate the risks and social value of same-gender and mixed-gender relationships under such conditions would only establish a new inequality for the majority of couples in the name of providing equality for a minority of couples. Such apprehensions may have driven the development of stigma against homosexual relationships in the past as societies, in their crude way, were trying to maintain equity across different types of relationships. Today we would probably prefer to reward risk rather than to punish those who accept lower risk. The differential risk theory would suggest that providing a way to enhance couple commitment among same-gender relationships might not be an unacceptable social policy (to protect children and minimize the spread of sexually transmitted diseases) if differentials were maintained that compensated mixed-gender relationships for the additional inherent risks assumed by such couples. However, to establish a simplistic equivalence (the easier thing to do by law) of relationships governed by very different levels of risk would tend to underbenefit mixed-gender couples, a condition, according to social exchange theory, that would tend to become associated with anger towards the perceived cause of the low profits or higher costs. Therefore, a simplistic attempt to establish legal equivalence among these very different kinds of relationships might not work well nor be well received by the majority of mixed-gender couples. Changes in social policy or law that underbenefit the majority of the public might be short-lived, if they are ever accepted at all. The natural good will and desire to see gay males and

244. That conclusion, of course, is subject to some of the same cautions as the other research on parental sexual orientation except that the studies on relationship outcomes have often involved larger and more random samples than those assessed here regarding parental sexual orientation. Thus, I think these data are more reliable but they remain far from perfect.

lesbians benefited should not blind us to unintended consequences associated with the risks and rewards perceived to be associated differentially with same-gender and mixed-gender relationships. At the same time, there are many situations outside of the differential risk model that could be addressed with respect to gay parental rights, such as visitation rights in hospitals, where common sense should prevail rather than mere homophobic prejudice.

APPENDIX

TABLE 1. COMPARISONS OF LESBIAN AND HETEROSEXUAL GROUPS²⁴⁵

Study (Source of Subjects)	Date	Percent w/Lovers		Percent Highly Educated	
		Lesbigays	Heterosexuals	Lesbigays	Heterosexual
Hoefffer	1981	Not provided		Matched Intentionally	
Kirkpatrick et al.	1981	50%	Not provided	Not provided	
Miller et al.	1981	Not provided		94%	78%*
Hotvedt & Mandel	1982	Not provided		Not provided	
Kweskin & Cook	1982	45%	9%**	Not provided	
Golombok et al.	1983	52%	0%***	67%	37%*
Harris & Turner	1985/86	74%	12%***	78%	81%
Green et al.	1986	78%	10%***	Not provided	
Huggins	1989	63%	25%*	Not provided	
Bigner & Jacobsen	1990	Not provided		Not provided	
Bigner & Jacobsen	1992	Not provided		83%	14%***
Javaid	1993	69%	0%***	Not provided	
Flaks et al.	1995	Not provided		90%	93%

245. Hoefffer, *supra* note 146, at 536-44; *Lesbian Mothers and Their Children*, *supra* note 78, at 545-51; Miller et al., *supra* note 150, at 49-56; Mary E. Hotvedt & Jane Barclay Mandel, *Children of Lesbian Mothers*, in *HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL, AND BIOLOGICAL ISSUES* 275-85 (William Paul et al. eds., 1982); Sally L. Kweskin & Alicia S. Cook, *Heterosexual and Homosexual Mothers' Self-Described Sex-Role Behavior and Ideal Sex-Role Behavior in Children*, 8 *SEX ROLES* 967-75 (1982); *Children with Lesbian Parents*, *supra* note 102, at 551-72; Harris & Turner, *supra* note 155, at 101-13; Richard Green et al., *supra* note 141, at 167-84; Huggins, *supra* note 90, at 123-35; *Parenting Behaviors*, *supra* note 133, at 173-86; *Adult Responses*, *supra* note 133, at 99-112; Javaid, *supra* note 124, at 235-48; Flaks et al., *supra* note 148, at 105-14; Brewaeys et al., *supra* note 142, at 1349-59; McNeill et al., *supra* note 163, at 59-62; *Division of Labor*, *supra* note 151, at 402-19; *Psychological Adjustment*, *supra* note 89, at 443-57; *Adults Raised as Children*, *supra* note 102, at 203-15; Golombok & Tasker, *supra* note 102, at 3-11.

Brewaeys et al.	1997	100%	100%	13%	16%
McNeill et al.	1998	Not provided		Not provided	
Chan, Brooks et al.	1998	100%	100%	Percentages not provided - Lesbians had higher levels*	
Chan, Raboy et al.	1998	Not provided		Percentages not provided - Lesbians had higher levels*	

* $p < .05$

** $p < .01$

*** $p < .001$

TABLE 2. SOURCES OF DATA FOR COMPARISONS OF LESBIGAY AND²⁴⁶ HETEROSEXUAL GROUPS

Study (Source of Subjects)	Date	Number of Subjects		Source of Subjects	
		Lesbigays	Heterosexuals	Lesbigays	Heterosexual
Hoefffer	1981	20	20	Not Specified	
Kirkpatrick et al.	1981	13-21 (20 children)	10-14 (20 children)	NOW Newsletter Friendship Circles	
Miller et al.	1981	34	47	Feminist Recreation Center Local PTA School Meetings	
Hotvedt & Mandel	1982	Not specified		Not specified	
Rand et al.	1982	25	0	Friendship Pyramiding	
Kweskin & Cook	1982	22	22	Not specified Parents Without Partners University Housing Complex	
Golombok et al.	1983	27	27	Ads/Gay Organizations Ads/Single Parent Organizations	

246. *Supra* note 245; Catherine Rand et al., *Psychological Health and Factors the Court Seeks to Control in Lesbian Mother Custody Trials*, 8 J. HOMOSEXUALITY 27-39 (1982) (involving no comparison sample of heterosexuals); Sullivan, *supra* note 147, at 747-67 (involving no comparison of sample of heterosexuals).

Harris & Turner	1985/86	23	26	Ads/Posters/Gay Organizations
				Ads/Posters/Parents w/o Partners and DayCare Centers
Green et al.	1986	50 (56 children)	40 (48 children)	National/Local Women's Groups and Friendship Networks Requests for Single Parent Mothers (procedures not specified)
Huggins	1989	16 (18 children)	16 (18 children)	Solicitation/Personal Referral
Bigner & Jacobsen	1990	33	33	Gay Fathers Support Group Random Selection from large Western Regional Research Project (1980-1985)
Bigner & Jacobsen	1992	24	29	Gay Fathers Support Group Parents w/o Partners Group
Javaid	1993	13 (26 children)	15 (28 children)	Network Method
Flaks et al.	1995	15	15	Lesbian Mother Support Group Ads in Newspapers and News- letters of Gay/Women's Groups Professional Contacts and Friendship Networks
Sullivan	1996	34	0	Snowball Sampling Personal Referrals Sperm Bank Customers
Brewaeys et al.	1997	30	68	Brussels University Hospital Leiden University Hospital
McNeill et al.	1998	24	35	Snowball Sampling
Chan, Raboy et al.	1998	55	25	Sperm Bank Customers

Chan, Brooks et al.	1998	30 (30 children)	16 (16 children)	Sperm Bank Customers
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