IN THE

COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 1998

No. 4

KIMBERLY Y. BOSWELL,

Appellant

v.

ROBERT G. BOSWELL,

Appellee

ON APPEAL FROM THE COURT OF
SPECIAL APPEALS OF MARYLAND

BRIEF OF AMICI CURIAE AMERICAN PSYCHOLOGICAL ASSOCIATION AND NATIONAL ASSOCIATION OF SOCIAL WORKERS

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TABLE OF AUTHORITIES

American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 30 Am. Psychologist 620 (1975) 7

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) (1994) . . 7

Michael J. Bailey et al., Sexual Orientation of Adult Sons of Gay Fathers, 31 Dev. Psychol. 124 (Jan. 1995) . 16

Robert L. Barret & Bryan E. Robinson, Gay Fathers (1990) 14, 15, 16, 18, 26

Robert L. Barret & Bryan E. Robinson, Gay Dads, in Redefining Families: Implications for Children's Development 157 (Adele Eskeles Gottfried & Allen W. Gottfried eds., 1994) 9, 16, 19

Alan P. Bell & Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women 229 (1978) . . . 8

Jerry J. Bigner & Frederick W. Bozett, Parenting by Gay Fathers, 14 (3/4) Marriage & Fam. Rev. 155 (1989), reprinted in Homosexuality and Family Relations 155 (Frederick W. Bozett & Marvin B. Sussman eds., 1990) 9, 15, 16, 19, 26

Jerry J. Bigner & R. Brooke Jacobsen, Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 (1/2) J. Homosexuality 173 (1989) 9, 10

Jerry J. Bigner & R. Brooke Jacobsen, Adult Responses to Child Behavior and Attitude Toward Fathering: Gay and Nongay Fathers, 23 (3) J. Homosexuality 99 (1992) 10

Frederick W. Bozett, Gay Fathers: A Review of the Literature, 18 (1/2) J. Homosexuality 137 (1989) reprinted in Psychological Perspectives of Lesbian and Gay Male Experiences 437 (Linda D. Garnets & Douglas C. Kimmel eds., 1993) 9, 14, 15, 16, 19

Raymond W. Chan et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers, 69 Child Dev. 443 (April 1998) 21

Margaret Crosbie-Burnett & Lawrence Helmbrecht, A Descriptive Empirical Study of Gay Male Stepfamilies, 42 Family Relations 256 (July 1993) . . . 25

David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children, 31 Dev. Psychol. 105 (Jan. 1995) 12, 18, 22, 27

Linda Garnets & Douglas Kimmel, Lesbian and Gay Male Dimensions in the Psychological Study of Human Diversity, in Psychological Perspectives on Human Diversity in America (Jacqueline D. Goodchilds, ed., 1991) 8

Susan Golombok et al., Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. Child Psychol. & Psychiat. 551 (1983) 12, 20, 23, 24

Susan Golombok et al., Children Raised in Fatherless Families From Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers, 38 J. Child. Psychiat. 787 (1997) 6, 23, 27

John C. Gonsiorek, The Empirical Basis of the Demise of the Illness Model of Homosexuality, in Homosexuality: Research Implications for Public Policy 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991) 6, 8

Gail S. Goodman et al., Developmental Psychology and Law: Divorce, Child Maltreatment, Foster Care, and Adoption, in Handbook of Child Psychology 775 (William Damon et al. eds., 1998) 23

Julie S. Gottman, Children of Gay and Lesbian Parents, 14 (3/4) Marriage & Fam. Rev. 177 (1989), reprinted in Homosexuality and Family Relations (Frederick W. Bozett ed. 1990) 15, 17, 19, 21

G. Dorsey Green & Frederick W. Bozett, Lesbian Mothers and Gay Fathers, in Homosexuality: Research Implications for Public Policy 197 (J.C. Gonsiorek & J.D. Weinrich eds., 1991) 5, 6, 19, 27

Richard Green, The Best Interests of the Child With A Lesbian Mother, 10 Bull. AAPL 7 (1982) 17

Richard Green et al., Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children, 15 Archives of Sexual Behav. 167 (1986) 18, 23, 24

A. Nicholas Groth, Patterns of Sexual Assault Against Children and Adolescents, in Sexual Assault of Children and Adolescents (Ann Wolber Burgess et al. eds, 1978) 14

J. Hare & L. Richards, Children Raised by Lesbian Couples: Does the Context of Birth Affect Father and Partner Involvement?, 42 Fam. Relations 249 (1993) 12, 27

Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 (2) J. Homosexuality 101 (1985-86) 5, 11

Jeffrey J. Haugaard et al., Lesbian-Headed Households, 1 Adoption Q. 93 (1998) 23

Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 Law & Sexuality 133 (1991) 8, 14, 15

Beverly Hoeffer, Children's Acquisition of Sex-Role Behavior in Lesbian Mother Families, 51 Am. J. Orthopsychiatry 536 (1981) 11

Evelyn Hooker, The Adjustment of the Male Overt Homosexual, 121 J. Projective Tech. 18 (1957) 8

Sharon L. Huggins, A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, in Homosexuality and the Family 123 (Frederick W. Bozett ed., 1989) 17, 20, 26

Carole Jenny et al., Are Children at Risk for Sexual Abuse by Homosexuals?, 94 Pediatrics 41 (July 1994) 13

Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 Am. J. Orthopsychiatry 545 (1981) 12, 20

Edward O. Laumann, John H. Gagnon, Robert T. Michael & Stuart Michaels, The Social Organization of Sexuality: Sexual Practices in the United States 283 (1994) 15-16

Stuart Michaels, The Prevalence of Homosexuality in the United States, in Textbook of Homosexuality and Mental Health (Robert P. Cabaj & Terry S. Stein, eds. 1996) 16

Brian Miller, Gay Fathers and Their Children, 28 Family Coordinator 544 (1979) 14, 16, 24

Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992) 5

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 (Beverly Greene & Gregory M. Herek eds., 1994) . . . 22, 27

Charlotte J. Patterson & Richard Chan, Gay Fathers and Their Children, in Textbook of Homosexuality and Mental Health (Robert P. Cabaj & Terry S. Stein eds., 1997) 15, 16

Charlotte J. Patterson, Children of Lesbian and Gay Parents, in 19 Advances in Clinical Child Psychology 235 (T.H. Ollendick & R.J. Prinz eds., 1997) 14, 19, 23

Resolution of the American Psychiatric Association (Dec. 15, 1973), reprinted in 131 Am. J. Psychiatry 497 (1974) 7

S.M. Rogers & C.F. Turner, Male-Male Sexual Contact in the USA: Findings From Five Sample Surveys, 1970-1990, 28 J. Sex Research 491 (1991) 16

Fiona L. Tasker & Susan Golombok, Growing Up in a Lesbian Family 132 (1997) 14, 17, 18, 20

INTEREST OF AMICI CURIAE

The American Psychological Association ("APA"), a voluntary, nonprofit, scientific and professional organization founded in 1892, is the major association of psychologists in the United States, with more than 155,000 members and affiliates. Among the APA's major purposes is to increase and disseminate knowledge regarding human psychological behavior, and to foster the application of such psychological knowledge to important human situations and concerns. The issues at the heart of this case -- child development, the psychological well-being of children, human sexuality, and parenting -- have been the subject of significant research by psychologists, including many members of the APA.

The National Association of Social Workers ("NASW") is a professional organization of social workers, formed in 1955 by the merger of seven predecessor social work organizations, and has more than 155,000 members. NASW, like the APA, has participated in numerous cases involving mental health, science, family and discrimination cases and is committed to providing scientific information and empirical data to help inform courts on the issues before them.

The APA and NASW submit this brief to bring the body of specific research focusing on parenting by gay fathers and lesbian mothers and the outcomes for their children to the

Court's attention in order to provide a context for this Court's review of whether restrictions on a gay father's visitation with his children can be reasonably presumed to further the best interests of the children absent individualized evidence of actual harm which those restrictions will ameliorate.[1/]

1/ Research reviewed in this brief includes data from studies conducted using the scientific method. Such research typically is subject to critical review by outside experts, usually during the peer review process preceding publication in a scholarly journal.

QUESTION PRESENTED

Whether the Court of Special Appeals was correct in reversing the decision of the trial court to restrict Mr. Boswell's visitation rights on the ground that requiring his life partner to be absent during visits was not based on any evidence that the restriction was necessary to promote the best interests of the children?

ARGUMENT

The Maryland Court of Special Appeals held that, as a matter of law, courts cannot presume that children's best interests are not served by visits with their father in the presence of their father's same-sex partner. The appellate court's decision is supported by the scientific research on parenting by gay men and lesbians and on their children. Scientific investigation has consistently found that gay fathers and lesbian mothers are as good parents as their heterosexual counterparts and that their children do not differ appreciably from children raised by heterosexuals.[2/] Moreover, there is no empirical support for any presumption that a gay or lesbian parent's sexual orientation, or contact with that parent's same sex partner, is or will be harmful to the children. Thus, any assumption that restrictions on visitation are in the best interest of children is contrary to the relevant scientific research. Visitation decisions should be made on the basis of

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2/ Because of the impossibility of proving a negative, researchers have approached these questions by attempting to find differences between children of homosexual parents and those of heterosexual parents and differences between the parenting attitudes and responses of homosexual parents and heterosexual parents. The more that different studies by different researchers consistently fail to find statistically significant differences, the more likely it is that differences between groups truly do not exist. It is therefore useful to consider the entire body of empirical research in this area, to move beyond the idiosyncrasies of sample or methodology of any one study. A consistent pattern from different samples and different methods provides a basis for confidence in the results.

individualized, fact-based assessments without regard to sexual orientation.[3/]

I. GAY MEN AND LESBIANS ARE AS FIT PARENTS AS HETEROSEXUALS.

Scientific research indicates that gay parents are little different from heterosexual parents.[4/] The research provides no support for any belief that gay men or lesbians lack the parenting instincts and ability of heterosexuals. Indeed, two researchers reviewing the scientific literature in this area concluded: "It is evident . . . that both lesbians and gay men who are parents are as sufficient in the roles as heterosexuals, and that the home life they provide is at least of equal

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3/ These studies have looked at families in which the children reside primarily, or entirely, with a homosexual parent, and in many cases the parent's same-sex partner, and at families in which the children live primarily with a heterosexual parent but retain contact and visit with a gay father, and in many cases the father's same-sex partner. Although the question at issue in this case involves visitation only, not custody, the APA and NASW believe that studies of children in the custody of a homosexual parent also provide relevant information because visitation is a form of temporary custody. Evidence undermining a presumption against custody is therefore also evidence undermining a presumption against unrestricted visitation.

4/ See G. Dorsey Green & Frederick W. Bozett, Lesbian Mothers and Gay Fathers, in Homosexuality: Research Implications for Public Policy 197, 213 (John C. Gonsiorek & James D. Weinrich eds. 1991) (reviewing studies) [hereinafter Green & Bozett, Lesbian Mothers]; see also Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992) (reviewing studies); Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 (2) J. Homosexuality 101, 104 (1985-86) (study of gay, lesbian and heterosexual parents).

quality."[5/] The research to date also provides no support for a presumption that children should be restricted from contact with the partners of gay or lesbian parents. To the contrary, there is evidence suggesting that integration of the gay or lesbian parent's partner into the family unit will generally have a positive effect.[6/] Thus, the scientific research provides no empirical support for any categorical presumption about custody or visitation on the basis of a parent's sexual orientation.

A. Homosexuality Is Not A Mental Disorder.

The psychiatric and psychological professions have long rejected the view that homosexuality is a mental disorder, based on extensive empirical research demonstrating that earlier assumptions about homosexuality cannot be justified by scientific observation.[7/] A quarter century ago, the American Psychiatric Association removed "homosexuality" from its list of mental

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5/ Green & Bozett, Lesbian Mothers, supra, at 197; see also Susan Golombok et al., Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers, 38 J. Child. Psychiat. 787, 789 (1997) [hereinafter Golombok et al., Infancy] (finding the parenting skills of lesbians and female heterosexuals comparable).

6/ See, infra, pp. 21-24.

7/ See John C. Gonsiorek, The Empirical Basis of the Demise of the Illness Model of Homosexuality, in Homosexuality: Research Implications for Public Policy 115-36 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

disorders,[8/] declaring that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[9/] Following a rigorous review of the scientific evidence, in 1975, amicus APA adopted the same position, urging all mental health professionals to work to dispel the stigma of mental illness long associated with homosexual orientation.[10/]

In what is widely considered a landmark study on the subject, a researcher administered three projective tests to 30 homosexual and 30 heterosexual men matched for age, IQ, and education, none of whom were in therapy at the time. The results were evaluated by independent experts who were not told each subject's sexual orientation. The independent Rorschach experts evaluated the men's overall adjustment and found that two-thirds of each group were in the three highest categories of adjustment. When asked to identify which results were obtained from

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8/ A mental disorder is "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom." American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) at xxi (1994).

9/ Resolution of the American Psychiatric Association (Dec. 15, 1973), reprinted in 131 Am. J. Psychiatry 497 (1974).

10/ See American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 30 Am. Psychologist 620, 633 (1975).

homosexuals, the experts could not distinguish the subjects' sexual orientation at a level better than chance. A third expert used the Thematic Apperception Test and MAPS Test responses to evaluate the psychological adjustment of the men and similarly found no statistically significant differences between the two groups. The researcher concluded from this data that "homosexuality as a clinical entity does not exist."[11/] Dozens of empirical studies have since supported the conclusion that "no correlation exists between sexual orientation and psychopathology."[12/]

Thus, any question about the fitness of gay men and lesbians to be parents, if based on a belief that their sexual orientation indicates psychological dysfunction, is entirely unfounded. No scientific evidence supports a view that gay men and lesbians are categorically incapable of being good parents or that they are less likely to be good parents. Like heterosexuals, gay men and lesbians are a highly diverse group, having many different backgrounds, interests, occupations, and experiences.[13/]

11/ Evelyn Hooker, The Adjustment of the Male Overt Homosexual, 121 J. Projective Tech. 18, 30-31 (1957).

12/ Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 Law & Sexuality 133, 142 (1991); see also Gonsiorek, supra, at 115-36.

13/ See Alan P. Bell & Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women 229-31 (1978); Linda Garnets & Douglas Kimmel, Lesbian and Gay Male Dimensions in the

B. Gay Men and Lesbians Have Comparable Parenting Skills to Heterosexuals

Several studies have investigated the parenting philosophies and skills of gay men and have concluded that "gay fathers are similar to nongay fathers in their overall parenting abilities and skills."[14/] Such research suggests that the "gay fathers are at least equal to heterosexual fathers in the quality of their parenting."[15/] In fact, some investigators have found that gay fathers appear to make greater efforts to create a stable home environment and positive relationship with their children than heterosexual fathers.[16/]

Psychological Study of Human Diversity, in Psychological Perspectives on Human Diversity in America (Jacqueline D. Goodchilds, ed., 1991).

14/ Jerry J. Bigner & R. Brooke Jacobsen, Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 (1/2) J. Homosexuality 173, 181 (1989) [hereinafter Bigner & Jacobsen, Parenting Behaviors].

15/ Jerry J. Bigner & Frederick W. Bozett, Parenting by Gay Fathers, 14(3/4) Marriage & Fam. Rev. 155 (1989), reprinted in Homosexuality and Family Relations 155, 173 (Frederick W. Bozett & Marvin B. Sussman eds., 1990) [hereinafter Bigner & Bozett, Parenting by Gay Fathers]; see also Frederick W. Bozett, Gay Fathers: A Review of the Literature, 18 (1/2) J. Homosexuality 137 (1989), reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences 437, 453 (Linda D. Garnets & Douglas C. Kimmel eds., 1993) [hereinafter Bozett, Gay Fathers] (reviewing research).

16/ Robert L. Barret & Bryan E. Robinson, Gay Dads, in Redefining Families: Implications for Children's Development 157, 163 (Adele Eskeles Gottfried & Allen W. Gottfried eds., 1994) [hereinafter Barret & Robinson, Gay Dads]. As this makes clear, considering these parent and child development issues requires not only asking whether any differences are systematically associated with the sexual orientation of parents

One study found no differences between homosexual and heterosexual fathers in their degree of involvement with their children or in the level of intimacy they had with their children. The differences the study did find were that homosexual fathers were more likely to set and enforce limits on their children's behavior, were more responsive to their children's needs, and were more likely to explain the reasons for rules.[17/]

Another study comparing gay and heterosexual fathers' responses to standard measures of parental attitudes and responses concluded that "no discernible parenting style could be found to distinguish one group from the other"[18/] and that "sexual orientation of fathers is not a variable that significantly affects attitudes toward fathering nor responses to hypothetical

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but also asking whether any differences that are observed raise concerns with respect to the children's well-being. Difference is not the same as pathology or dysfunction. Any systematic differences that are observed between homosexual and heterosexual parents or between their children must be viewed in the broader context of psychological knowledge about mental health and human development to evaluate whether those differences are detrimental.

17/ Bigner & Jacobsen, Parenting Behaviors at 179-80 (comparing responses of 33 gay fathers and 33 heterosexual fathers on Iowa Parenting Behavior Inventory).

18/ Jerry J. Bigner & R. Brooke Jacobsen, Adult Responses to Child Behavior and Attitude Toward Fathering: Gay and Nongay Fathers, 23 (3) J. Homosexuality 99, 99 (1992) [hereinafter Bigner & Jacobsen, Adult Responses] (comparing 24 gay and 29 heterosexual fathers).

child behavior."[19/] Similarly, a study comparing gay and lesbian parents to heterosexual parents found "no significant differences in the relationships of the two sets of parents with their children."[20/] With respect to gender identity and sex role aspects of parenting, "no differences were found" in the parents' encouragement of same-sex friends or in their encouragement of gender-typed toys for their own children.[21/]

There is an even larger body of research on lesbian mothers that compares their parenting skills and attitudes to those of heterosexual mothers. These studies consistently demonstrate a "remarkable absence of distinguishing features between the life-styles, child-rearing practices, and general demographic data" of lesbian mothers and heterosexual mothers.[22/] This research provides additional support for the conclusion that sexual orientation is not an important variable in predicting parenting ability.

For example, in one study of lesbian and heterosexual mothers, the two groups were found to be similar in maternal

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19/ Id. at 108.

20/ Harris & Turner, supra, at 111.

21/ Id. at 110. As an overall matter, only a minority of heterosexual or homosexual parents of either gender encouraged play with gender-typed toys.

22/ Beverly Hoeffer, Children's Acquisition of Sex-Role Behavior in Lesbian Mother Families, 51 Am. J. Orthopsychiatry 536, 537 (1981).

interest, current lifestyles, and child-rearing practices.[23/] Another study found that lesbian mothers scored comparably to heterosexual mothers on the Parent Awareness Skills Survey ("PASS"), a standard tool for measuring the effectiveness and sensitivity with which a parent responds to typical child care situations.[24/] Interestingly, in light of the concerns that have sometimes been expressed in custody and visitation contexts, lesbian mothers, as a group, have been found to be more concerned with providing male role models for their children than the comparison heterosexual mothers.[25/]

23/ Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 Am. J. Orthopsychiatry 545, 546 (1981).

24/ David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children, 31 Dev. Psychol. 105 (Jan. 1995).

25/ Studies of children being raised by their mothers have found that children living with lesbian mothers actually visited with their fathers more often than children living with heterosexual mothers. Susan Golombok et al., Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. Child Psychol. & Psychiat. 551, 557 (1983) [hereinafter Golombok et al., Appraisal]; see also J. Hare & L. Richards, Children Raised by Lesbian Couples: Does the Context of Birth Affect Father and Partner Involvement?, 42 Fam. Relations 249-255 (1993) (90 percent of children being raised by lesbian mothers had contact with their fathers). In a third study, children of lesbians, in particular children being raised by their mother and her same-sex partner, had more men in their lives as family friends than did children being raised by divorced heterosexual mothers. And the lesbian mothers were more likely to include male relatives in their activities. Kirkpatrick et al., supra, at 549.

C. Gay Fathers and Lesbian Mothers Do Not Present a Heightened Danger of Sexual Abuse.

Scientific research also undermines an assumption sometimes expressed about gay fathers and lesbian mothers in the context of child-rearing, namely that they or their partners are more likely to be sexual abusers of children than heterosexuals. The research that has been done on this subject suggests exactly the opposite, that children are at far greater risk of abuse from heterosexual adults than from gay men or lesbians. For example, a study of all children seen for sexual abuse in a one-year period at a large urban hospital determined that less than one percent of the adult offenders that could be identified were gay or lesbian. Of the 219 abused girls, only one instance of abuse (0.4 percent) had been attributed to a lesbian. Of the 50 boys who had been abused, only one instance of abuse (2 percent) had been attributed to a gay man. In contrast, 88 percent of the offenders had documented heterosexual relationships and most were heterosexual partners of a family member (77 percent of those who abused the girls and 74 percent of those who abused the boys).[26/]

Researchers have concluded that "[g]ay parents and their lovers are involved in virtually no [reported] cases of

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26/ See Carole Jenny et al., Are Children at Risk for Sexual Abuse by Homosexuals?, 94 Pediatrics 41 (July 1994) (study of 269 sexually abused children where an adult offender was identified).

child sexual abuse"[27/] and that the "evidence indicates that fears of child sexual abuse by gay fathers or their gay friends are not warranted."[28/]

II. CHILDREN RAISED BY GAY OR LESBIAN PARENTS DO NOT DIFFER PSYCHOLOGICALLY AND SOCIALLY FROM CHILDREN RAISED BY HETEROSEXUAL PARENTS.

Research indicates that the sexual orientation of parents is not a predictive factor in the psychological and social development of their children. In the last two decades, a number of studies have been conducted on children of gay or lesbian parents. First, contrary to sometimes expressed fears, the research shows that children raised by, or otherwise regularly involved with, gay or lesbian parents are no more likely themselves to be homosexual than children raised by, or

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27/ Robert L. Barret & Bryan E. Robinson, Gay Fathers 80 (1990) [hereinafter Barret & Robinson, Gay Fathers].

28/ Brian Miller, Gay Fathers and Their Children, 28 Family Coordinator 544, 546 (1979) (emphasis in original). See also Charlotte J. Patterson, Children of Lesbian and Gay Parents, in 19 Advances in Clinical Child Psychology 235, 296 (T.H. Ollendick & R.J. Prinz eds. 1997) [hereinafter Patterson, Children] (summarizing research on sexual abuse); A. Nicholas Groth, Patterns of Sexual Assault Against Children and Adolescents, in Sexual Assault of Children and Adolescents 4-5 (Ann Wolber Burgess et al. eds, 1978) ("[T]he belief that homosexuals are particularly attracted to children is completely unsupported by our data."); Herek, supra, at 156 (research indicates that gay men are not more likely to molest children than heterosexual men).

regularly involved with, only heterosexual parents.[29/] Further, as researchers concluded from a review of the scientific literature: children raised in gay or lesbian households are just as likely to be well-adjusted as children raised in heterosexual households.[30/]

A. Sexual Orientation

Research into the sexual orientation of children of gay or lesbian parents indicates that these children are no more likely to be homosexual themselves than children of only heterosexual parents.[31/] For example, a study of 82 sons (17 years or older) of 55 gay or bisexual fathers concluded that only seven (nine percent of those for whom information about sexual orientation could be obtained) were not heterosexual (i.e., either bisexual or homosexual).[32/] Furthermore, the sons' sexual

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29/ See, e.g., Bozett, Gay Fathers at 442; Fiona L. Tasker & Susan Golombok, Growing Up in a Lesbian Family 132 (1997).

30/ Barret & Robinson, Gay Fathers, supra, at 80; Julie S. Gottman, Children of Gay and Lesbian Parents, 14 (3/4) Marriage & Fam. Rev. 177 (1989), reprinted in Homosexuality and Family Relations 191 (Frederick W. Bozett ed. 1990) ("children of lesbian mothers and gay fathers appear to be normal in gender identity, gender role, sexual orientation, and social adjustment").

31/ See Charlotte J. Patterson & Raymond W. Chan, Gay Fathers and Their Children, in Textbook of Homosexuality and Mental Health 371, 382 (Robert P. Cabaj & Terry S. Stein eds., 1997) (summarizing research); Herek, supra, at 133, 157-61; Bozett, Gay Fathers, supra, at 442.

32/ This proportion is consistent with national surveys that have attempted to identify the proportion of male adults who are homosexual or bisexual or have engaged in homosexual behavior,

orientations were unrelated to the amount of time they spent living with their fathers, the frequency of their contact with their fathers, the degree to which they accepted their father's sexual orientation or the quality of the father-son relationship.[33/]

In another study of 40 gay fathers and their children, in which fathers were asked to report on the sexual orientation of those children who were old enough to be assessed, the fathers reported that one of 21 sons was gay and three of 27 daughters were lesbian.[34/] These findings corroborate other research indicating that neither sons nor daughters of gay men are disproportionately likely to be homosexual.[35/]

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given the margin of error associated with a sample of this size and possible biases introduced by recruitment procedures. See Edward O. Laumann, John H. Gagnon, Robert T. Michael & Stuart Michaels, The Social Organization of Sexuality: Sexual Practices in the United States 283-320 (1994); Stuart Michaels, The Prevalence of Homosexuality in the United States, in Textbook of Homosexuality and Mental Health 43-63 (Robert P. Cabaj & Terry S. Stein, eds. 1996); S.M. Rogers & C.F. Turner, Male-Male Sexual Contact in the USA: Findings From Five Sample Surveys, 1970-1990, 28 J. Sex Research 491 (1991).

33/ Michael J. Bailey et al., Sexual Orientation of Adult Sons of Gay Fathers, 31 Dev. Psychol. 124, 126 (Jan. 1995) (finding that the few gay sons had actually lived for somewhat shorter periods with their fathers than the heterosexual sons but that the difference was not statistically significant).

34/ Brian Miller, supra, at 546-47. These proportions are also consistent with population estimates, given the sample size and recruitment methods.

35/ See Patterson & Chan, supra, at 382 (summarizing research); Bozett, Gay Fathers, supra, at 442; Barret & Robinson, Gay Dads, supra, at 161-62; Barret & Robinson, Gay Fathers,

Similarly, studies of children raised by lesbian mothers have found that these children "are generally no more likely than their peers from heterosexual mother families to identify themselves as gay or lesbian or to be attracted to someone of the same gender."[36/] A study comparing adult sons and daughters, some of whom had been raised by lesbian mothers and others by heterosexual mothers, found that the two groups did not differ significantly with respect to sexual orientation.[37/] A study comparing only adult daughters of lesbian and heterosexual mothers also found no statistically significant difference between the percentage of lesbian children in the two groups.[38/] Other studies of children raised by a lesbian parent or couple have likewise found no statistically significant difference between these children's expressed sexual orientation and that of children raised by a heterosexual parent or parents.[39/]

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supra, at 40-41.

36/ Tasker & Golombok, supra, at 132.

37/ Id. at 112-13 (data from 46 subjects in their mid-twenties). All of the sons and all but two of the daughters in the sample identified themselves as heterosexual. The researchers concluded that the percentage of daughters of lesbian mothers that identified themselves as lesbian did not appear to be inconsistent with general population norms. Id. at 113-114. The sample for the longitudinal study was recruited before the children's sexual orientation was established. Id. at 6.

38/ Gottman, supra, at 177.

39/ See, e.g., Richard Green, The Best Interests of the Child With A Lesbian Mother, 10 Bull. AAPL 7, 13-14; Sharon L. Huggins, A Comparative Study of Self-Esteem of Adolescent Children of

Thus, researchers have concluded: "The truth is that most children of homosexual men and women turn out to be heterosexual."[40/] A reverse study of the sexual orientation of 702 parents of gay men and lesbians revealed that 90 percent of the parents were heterosexual, 4 percent were bisexual, and only 6 percent were homosexual.[41/]

B. Psychological Development and Social Adjustment

As relatively few fathers generally, let alone gay fathers, have historically received custody of their children, research on children raised by homosexual parents has focused mostly on children being raised by a lesbian mother (and in many cases her partner). The consistent conclusion drawn from these studies is that the children demonstrate no appreciable differences in intellectual development[42/] or in psychological well-being or social adjustment from children raised by

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Divorced Lesbian Mothers and Divorced Heterosexual Mothers, in Homosexuality and the Family 123, 132-35 (Frederick W. Bozett ed., 1989).

40/ Barret & Robinson, Gay Fathers, supra, at 40.

41/ Id. (citing B.E. Robinson, et al., Response of Parents to Learning that their Child is Homosexual and Concern Over and AIDS: A National Study, 18 (1/2) J. Homosexuality 59-80 (1989)).

42/ Richard Green et al., Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children, 15 Archives of Sexual Behav. 167, 174 (1986) (reporting that the intelligence quotient of children is not appreciably influenced by being raised by a lesbian mother as opposed to a heterosexual mother).

heterosexual parents.[43/] Fewer studies have been made of children of gay fathers, but the results of those studies are consistent with the studies of children of lesbian parents.[44/]

Although concern is sometimes voiced that children of gay men and lesbians will suffer dysfunction as a result of their parents' sexual orientation, research does not bear this out.[45/] Rather, two scientists reviewing studies in this area commented:

> The most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to the heterosexual parents and their children that were included in the studies.[46/]

The more extensive research on children being raised by lesbian parents provides consistent evidence that the sexual

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43/ See, e.g., Tasker & Golombok, supra, at 1 (a twenty-year longitudinal study of parents and children in the UK); Flaks et al., supra (studying parents and children in Pennsylvania); Green et al., supra (studying parents and children in both rural and urban areas in Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin).

44/ See, e.g., Bozett, Gay Fathers, supra, at 454; Barret & Robinson, Gay Dads, supra, at 168.

45/ See Bigner & Bozett, Parenting by Gay Fathers, supra, at 163 ("There is no evidence of any kind that demonstrates that living with a homosexual parent has any significant negative effects on children."); Gottman, supra, at 191 ("Parental homosexuality does not appear to directly or indirectly harm the child.").

46/ Green & Bozett, Lesbian Mothers, supra, at 197, 213; see also Patterson, Children, supra, at 1036 (comprehensively reviewing research on the subject and drawing similar conclusion).

orientation of parents is not a predictive variable in the psychological and social development of children. In studies of single-parent households produced by divorce, children raised by lesbian mothers and by heterosexual mothers demonstrated largely identical levels of psychological adjustment.[47/] No statistically significant differences were found in the prevalence of emotional or behavioral problems such as unsociableness, emotional difficulty, hyperactivity, or conduct problems.[48/] Similarly, a study of children raised by divorced mothers in two-adult households concluded there was no difference in the self-concepts and levels of self-esteem of adolescents who lived with a lesbian mother and her same-sex partner and adolescents who lived with a heterosexual mother and her opposite-sex partner. All fell within the normal range.[49/]

Following such children into adulthood, researchers have found that those raised by lesbian mothers were no more likely to experience anxiety or depression, no more likely to have sought professional help for mental health problems, and no more likely to have experienced periods of unemployment than

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47/ See, e.g., Kirkpatrick et al., supra, at 545-51; Golombok et al., Appraisal, supra, at 565.

48/ Golombok et al., Appraisal, supra, at 565, 570.

49/ Huggins, supra, at 132-35.

adult sons and daughters raised by heterosexual mothers.[50/] Another study of adult daughters found no higher incidence of emotional problems among those who had been raised by a lesbian mother than among those raised by a heterosexual mother.[51/]

Consistent with the results of research on children of divorced parents, the research on children raised from birth in lesbian households has also found psychological parity between these children and their peers from heterosexual households. In a recent study comparing children raised from birth in lesbian households with matched children raised in heterosexual households, the researchers found it "impossible to distinguish" between the groups of children on the basis of social competence or behavior problems.[52/] The study concluded that "[p]resent data

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50/ Tasker & Golombok, supra, at 135, 138, 143-44 (data gathered from same sample in 1976 and 1991). Responses from children raised by lesbian mothers and from children raised by heterosexual mothers to standardized measures of anxiety and depression were not only comparable to each other, but also closely comparable to U.S. norms. Id. at 135. The young adults from both groups who had experienced mental health problems were those whose mothers had reported poor mental health at the time of the 1976 study. Id. at 144, 147.

51/ Gottman, supra, at 177-96. This study in fact concluded that adult daughters of lesbians felt more secure in relationships and in the world in general than adult daughters raised by heterosexual mothers. Adult daughters raised by heterosexual mothers exhibited greater apathy and cautiousness than their peers raised by lesbians, who were freer of disillusionment and doubt and tended to have fewer complaints and worries than the women raised by heterosexual mothers. Id. at 189-90.

52/ Raymond W. Chan et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and

are consistent with the notion that parenting ability and sexual orientation are unrelated."[53/]

Other studies have consistently yielded equivalent results. Children raised from birth in a lesbian household have been found to test the same as the general population with respect to behavioral problems and social competence;[54/] and to demonstrate the same levels of aggression, sociability, and desire to be the center of attention, as measured using a standard test for evaluating self-concept, as children raised by heterosexual mothers.[55/] And although the children of lesbians reported somewhat greater stress than their counterparts raised by heterosexual mothers, they also reported greater feelings of contentedness, comfort with themselves, and joy.[56/] Another study, comparing children raised from birth by a lesbian couple with matched children raised by married heterosexual parents, found no differences in behavioral functioning, cognitive

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Heterosexual Mothers, 69 Child Dev. 443 (April 1998).

53/ Id.

54/ 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, 165-67 (Beverly Greene & Gregory M. Herek eds., 1994) [hereinafter Patterson, Baby Boom]. Patterson's study included both children being raised by a single lesbian parent and children being raised by lesbian couples.

55/ Id. at 167.

56/ Id. at 168, 169-70.

abilities, developmental progress, social skills, or school performance.[57/] And a study comparing children raised from birth by a lesbian mother with children raised by a single heterosexual mother also found no differences in the children's psychological well-being or behavior.[58/]

Thus, recent reviews of the research have concluded that: "No differences between children of lesbian and single heterosexual mothers have been identified for emotional well-being, quality of friendships, or self-esteem;"[59/] and that the children raised by lesbian mothers or lesbian couples "have play and activity preferences that are similar to children raised in heterosexual households, and do not show heightened anxiety, depression, or behavior problems."[60/]

All the scientific research to date also indicates that children raised by lesbian parents do not differ appreciably from

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57/ Flaks et al., supra, at 16-20, 24.

58/ Golombok, Infancy, supra (the only statistically significant difference between the two groups was greater interaction between the lesbian mothers and their children than the heterosexual mothers and theirs).

59/ Id. at 784.

60/ Jeffrey J. Haugaard et al., Lesbian-Headed Households, 1 Adoption Q. 93, 100-01 (1998) (noting also that these children "do not show indications of abnormal development"). See also Gail S. Goodman et al., Developmental Psychology and Law: Divorce, Child Maltreatment, Foster Care, and Adoption, in Handbook of Child Psychology 775, 846 (William Damon et al. eds., 1998) ("there is no evidence that children raised by gay or lesbian parents develop abnormally").

children of heterosexuals in choice of friends,[61] or with respect to maternal ratings of the children's leadership qualities and popularity, the children's self-ratings of popularity, or overall social adjustment.[62]

C. The Gay or Lesbian Parent's Partner

The research does not indicate that exposure of children to their father's same-sex partner generally has negative effects. In fact, there is evidence that involvement of the partner in the children's lives may be beneficial for them. One of the earliest studies of gay fathers found that integration of the gay father's partner into the parent-child relationship reduced the father's need to segregate elements of his life and helped to increase the amount of time the father spent with his children.[63] That researcher found that "[h]aving a gay step-father also gave the children more resources and outlets for care and attention."[64]

An empirical study of 48 gay families throughout the United States provides further evidence that interaction with their gay father's partner can be a positive factor for children.

61/ Green et al., supra, at 178; Golombok et al., Appraisal, supra, at 564; Patterson, Children, supra, at 257.

62/ Green et al., supra, at 178; Golombok et al., Appraisal, supra, at 565-67.

63/ Brian Miller, supra, at 550.

64/ Id.

The study assessed aspects of family and individual member happiness and family relations using a variation of a standard test previously used with heterosexual stepfamilies.[65/] In each participating family, responses were gathered from the biological parent, his partner, and the oldest or only child. Of 30 male and 18 female children between the ages of 10 to 19 years in the study, 74 percent lived with their mothers and visited their fathers, and 26 percent resided with their father and his partner.[66/] The study revealed that the two most important factors in determining overall family happiness -- for each member of the family, and especially the children -- were "[t]he psychological inclusion of the stepfather into the father-child relationship and the creation of a good relationship between [the] stepfather and stepchild."[67/] These factors were "more important than relations with ex-wives, money issues, family cohesion, and (for the adolescents) even the father-child relationship" in determining family happiness.[68/] The researchers

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65/ Margaret Crosbie-Burnett & Lawrence Helmbrecht, A Descriptive Empirical Study of Gay Male Stepfamilies, 42 Family Relations 256, 262 (July 1993).

66/ Id. at 258.

67/ Id. at 260.

68/ Id. Interestingly, the study found that problems from the partner's attempts to discipline the child and unresolved feelings about the pre-divorce family appeared unrelated to overall family happiness.

found the results consistent with the results in empirical studies of heterosexual custodial stepfamilies.[69/]

Researchers have also found that "gay fathers who have disclosed their homosexuality to their children appear to have a closer relationship with them."[70/] Thus, the research does not support a rule against visitation in the presence of the father's same-sex partner on the grounds that children generally should be shielded from knowing their father's sexual orientation.

In addition, the research on children raised by lesbian parents suggests that the presence of a parent's same-sex partner may have a positive effect on the children, and in any event, cannot be assumed to be detrimental. One study of lesbian and heterosexual households that compared children living with a single parent and children living with their mother and their mother's partner found that the children of both lesbian and heterosexual mothers had higher self-esteem when their mother lived with a partner.[71/] Many of the other studies of the psychological development and social adjustment of children raised by lesbian parents, discussed infra pp. 16-21, indicate

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69/ Id. at 261.

70/ Bigner & Bozett, Parenting by Gay Fathers, supra, at 173; Barret & Robinson, Gay Fathers, supra, at 86 ("Study after study indicates that, in fact, children and fathers report they are closer after self-disclosure about the father's sexual orientation.").

71/ Huggins, supra, at 132-35.

that the presence of their mother's same-sex partner cannot be assumed to be harmful. Although most of this research did not compare children raised by single lesbian parents with children raised by lesbian couples, much of this research involved children raised by lesbian couples.[72/] The consistent conclusion reached by these researchers, that these children did not differ from children raised by heterosexual parents, suggests that neither the children's awareness that their mother had a same-sex partner nor their own continuing contact with that partner were associated with negative or atypical psychological or social development.

CONCLUSION

Scientific research has consistently found that the sexual orientation of parents is not a predictive factor as to the parenting ability of those parents or the psychological and social development of their children. There is no empirical basis, therefore, to presume that restricting visitation by a gay or lesbian parent is necessary to promote the best interests of a child. Two decades of scientific investigation have, in fact,

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72/ E.g., Flaks et al., supra (all children from a lesbian household in the study were being raised by a lesbian couple); Golombok et al., Infancy, supra (half of the lesbian families in the study included both the children's mother and her partner); J. Hare & L. Richards, supra (all couples); Patterson, Baby Boom, supra (26 of 37 lesbian families studied involved lesbian couples); Green & Bozett et al., Lesbian Mothers, supra (28 of the 50 lesbian mothers lived with same-sex partners).

provided considerable evidence for the opposite conclusion: that children who retain regular and unrestricted contact with a gay or lesbian parent are as healthy psychologically and socially as children raised by heterosexual parents, and that the parenting skills of gay fathers and lesbian mothers are comparable to their heterosexual counterparts. Further, there is evidence that including the gay or lesbian parent's partner in the child's life may generally have a positive effect.

The scientific research on gay or lesbian parents and their children provides support for the Court of Special Appeals' ruling that visitation and custody decisions which involve a gay or lesbian parent should be based upon individualized evidence with respect to the specific adults and children before the court, just as they are when both parents are heterosexual. The only restrictions, therefore, that should be imposed are those that appear necessary on the basis of that individualized evidence.

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