

August 1994

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David K. Flaks, *Gay and Lesbian Families: Judicial Assumptions, Scientific Realities*, 3 Wm. & Mary Bill Rts. J. 345 (1994), <https://scholarship.law.wm.edu/wmborj/vol3/iss1/11>

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GAY AND LESBIAN FAMILIES: JUDICIAL ASSUMPTIONS, SCIENTIFIC REALITIES

David K. Flaks*

I. INTRODUCTION

It is estimated that between 1.5 and 5 million lesbian mothers,¹ and between 1 and 3 million gay fathers,² live in the United States. These lesbians and gay men came to parenting through a variety of means, including heterosexual marriages, adoption, foster care, donor insemination, and co-parenting.³ Although accurate figures are difficult to obtain, estimates of the total number of children with a lesbian or gay parent range from six million to fourteen million.⁴ Many researchers expect these numbers to grow.⁵

As the population of gay and lesbian families increases, so too does the number of legal disputes concerning them. A review of family law decisions reveals a growing number of contexts in which judges have ruled on the legitimacy of homosexual parents. Most commonly litigated in this area are disputes over child custody and visitation when a marriage dissolves and one parent "comes out" as lesbian or gay.⁶ In addition, judges have ruled in cases where openly gay women and men have sought

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¹ See Patricia J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 AM. PSYCHOL. 941, 941 (1989).

² See Frederick W. Bozett, *Children of Gay Fathers*, in GAY AND LESBIAN PARENTS 39, 39 (Frederick W. Bozett ed., 1987); Pauline H. Turner et al., *Parenting in Gay and Lesbian Families*, 1 J. GAY & LESBIAN PSYCHOTHERAPY 55, 56 (1990).

³ See Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1026 (1992).

⁴ See Bozett, *supra* note 2, at 39; Richard Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 197, 198 (James D. Weinrich & John C. Gonsiorek eds., 1991) [hereinafter HOMOSEXUALITY]; Turner et al., *supra* note 2, at 56.

⁵ See Green & Bozett, *supra* note 4, at 198.

⁶ See ROBERTA ACHTENBERG, PRESERVING AND PROTECTING THE FAMILIES OF LESBIANS AND GAY MEN 2 (1990); Rhonda R. Rivera, *Legal Issues in Gay and Lesbian Parenting*, in GAY AND LESBIAN PARENTS, *supra* note 2, at 199, 206 [hereinafter *Legal Issues*]; Rhonda R. Rivera, *Sexual Orientation and the Law*, in HOMOSEXUALITY, *supra* note 4, at 81, 91-93.

to adopt children, to become foster parents, to utilize reproductive technology, or to maintain contact with the children they co-parented with same-sex partners, either following the termination of the couple's relationship, or after the death of the child's adoptive or biological parent.⁷ Often in these situations, lesbian and gay parents face judicial scrutiny that is more rigorous than that experienced by heterosexual individuals in similar circumstances. In fact, their claims are sometimes peremptorily dismissed by presumptions which *a priori* reject homosexuals as custodial parents.⁸

This Article shall review some of the reasoning proffered in judicial opinions to justify disparate treatment of lesbian and gay versus heterosexual parents. Specifically, it shall examine what appear to be the most common assumptions underlying decisions against lesbian and gay parents, and then compare these assumptions to available scientific evidence. This Article does not purport to survey all United States case law regarding lesbian and gay families, nor to offer a summary of the current state of the law in any particular jurisdiction. Such a review appears elsewhere in this issue. Rather, this Article attempts to present a scientific analysis of the concerns emanating from our nation's courtrooms regarding the legitimacy of lesbian and gay families.

Falk provides an excellent guideline for examining case law regarding gay and lesbian families.⁹ She reviewed family court cases involving lesbian mothers and identified two major categories of judicial assumptions: "those concerning the lesbian mother and her life-style, and . . . those concerning the effect of the lesbian mother and her life-style on the development of the child."¹⁰ Regarding lesbian mothers, Falk noted that judicial assumptions in the first category further subdivide into two groups: those concerning the parents as individuals, and those concerning their same-sex relationships. The second group of assumptions, about the children of gay and lesbian parents, also includes two components: concerns about the children's "general health and welfare," and issues related to the children's "gender or sexual development."¹¹

The assumptions identified by Falk with regard to lesbian mothers appear equally influential in judicial reasoning regarding gay fathers. In

⁷ See *Developments in the Law—Sexual Orientation and the Law*, 102 HARV. L. REV. 1508, 1629-60 (1989) [hereinafter *Developments in the Law*].

⁸ See, e.g., *S. v. S.*, 608 S.W.2d 64 (Ky. Ct. App. 1980), *cert. denied*, 451 U.S. 911 (1981); *G.A. v. D.A.*, 745 S.W.2d 726 (Mo. Ct. App. 1987); *S.E.G. v. R.A.G.*, 735 S.W.2d 164 (Mo. Ct. App. 1987); *Roe v. Roe*, 324 S.E.2d 691 (Va. 1985).

⁹ Falk, *supra* note 1, at 942-43.

¹⁰ *Id.* at 942.

¹¹ *Id.*

both cases, judges frequently present these assumptions as fact, without regard to the social science literature in this area. The goal of this Article is to subject these assumptions to scientific scrutiny, comparing each to currently available research evidence. Through this process, perhaps a more accurate portrait of lesbian and gay parents might find its way into the courtrooms of the United States.

II. ASSUMPTIONS AND EVIDENCE ABOUT LESBIAN AND GAY PARENTS

A. *Mental Illness*

Some courts base their decisions about gay or lesbian families on an assumption that gay men and lesbians are mentally unstable and therefore unfit to care for their children. Often in these cases, homosexuality itself is considered proof of the parent's mental illness.¹² At times, courts will allow lesbian or gay individuals to maintain parental rights, but only if they seek therapy.¹³

Extensive scientific literature refutes the assumption of some judges that homosexuals are psychologically inferior to their heterosexual counterparts.¹⁴ Gonsiorek, for example, cited a large body of research which concluded that "homosexuality per se is not related to psychopathology or psychological adjustment."¹⁵ The studies reviewed, which failed to find a relationship between homosexuality and psychopathology, employed a wide variety of psychological tests. Researchers using psychiatric interviews also found "few differences between homosexual and heterosexual individuals related to psychiatric symptomatology and essentially no differences in areas related to performance in key areas of life functioning."¹⁶ The differences that have been suggested, including possible higher rates of attempted suicide and substance abuse among gay men and lesbians, appear linked with "higher rates of external stress,"¹⁷ possibly a result of societal homophobia.

¹² See, e.g., *In re Matter of Jacinta M.*, 764 P.2d 1327, 1329 (N.M. Ct. App. 1988) (overturning the trial judge's refusal to place a neglected child with her gay brother and rejecting the trial court's finding that homosexuality is an illness).

¹³ See, e.g., *Nadler v. Superior Court*, 63 Cal. Rptr. 352 (Cal. Ct. App. 1967).

¹⁴ See ALAN P. BELL & MARTIN S. WEINBERG, *HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN 196-98* (1978) (citing studies); John C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *HOMOSEXUALITY*, *supra* note 4, at 115 (citing studies).

¹⁵ Gonsiorek, *supra* note 14, at 131.

¹⁶ *Id.* at 135.

¹⁷ *Id.*

In addition to the literature cited by Gonsiorek, other studies have looked specifically at the mental health of lesbian mothers as compared with their heterosexual counterparts and found no significant differences between the two groups of women in terms of overall mental health. For example, Rand et al. studied twenty-five lesbian mothers and found them to be within the normal range of psychological functioning.¹⁸ Interestingly, they concluded that the psychological health of lesbian mothers correlated positively with openness about their sexual orientation to employers, ex-husbands, children, and the lesbian community.¹⁹ Given the established positive relationship between the psychological health of parents and their children's development, the authors suggested that their results may contradict the assumptions of some judges that a mother's expression of her lesbianism is detrimental to her children.²⁰ Green et al. also evaluated the mental health of lesbian mothers, comparing fifty lesbian mothers with forty heterosexual mothers using psychological testing.²¹ The researchers found that lesbian mothers scored "higher on self-confidence, dominance (seeking leadership roles), and exhibition (eliciting attention from others)," and heterosexual mothers scored "higher on abasement (expressing feelings of inferiority) and deference (seeking subordinate roles in relation to others)."²² In addition, they found no significant differences between the groups in terms of their attitudes or sex roles.²³

Based on such evidence, every professional mental health organization in the United States has rejected a disease model of homosexuality. In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders, resolving that "a significant proportion of homosexuals are apparently satisfied with their sexual orientation, show no significant signs of manifest psychopathology . . . and are able to function socially and occupationally with no impairment."²⁴ The American Psychological Association reached a similar decision in 1975.²⁵ Additionally, homosexuality finally ceased to be classified as a mental

¹⁸ Catherine Rand et al., *Psychological Health and Factors the Court Seeks to Control in Lesbian Mother Custody Trials*, 8 J. HOMOSEXUALITY 27, 28 (1982).

¹⁹ *Id.* at 37.

²⁰ *Id.*

²¹ Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167, 168-70 (1986).

²² *Id.* at 173.

²³ *Id.* at 174.

²⁴ AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 380 (3d ed. 1980).

²⁵ See American Psychol. Ass'n, *Minutes of the Council of Representatives*, 30 AM. PSYCHOL. 620, 633 (1975).

disorder by the World Health Organization in January 1993—the organization had voted in May 1990 to remove it from its International Statistical Classification of Diseases and Related Health Problems (ICD).²⁶ Additionally, the American Psychological Association, the American Psychiatric Association, and the National Association of Social Workers have all passed resolutions decrying discrimination against lesbians and gay men.²⁷

B. *Parental Instincts and Skills*

“It is commonly assumed that lesbian women are less maternal than their heterosexual counterparts and thus are poor mothers.”²⁸ The same may be said about gay men as fathers. Some have posited that this assumption stems from another assumption—that homosexuals are chiefly concerned with their adult relationships to the exclusion of relationships with their children.²⁹ In the courts, judges have used such assumptions to disallow the formation of gay and lesbian families. For example, a trial court judge in Arizona, faced with deciding whether a bisexual man would be allowed to adopt children, ultimately decided that the man could not adopt. One of the judge’s main concerns was “whether an appropriate parent-child bond could be created with a bisexual or homosexual adoptive parent.”³⁰

Although some courts seem incapable of envisioning homosexual individuals who truly desire to raise children, the psychological literature suggests that lesbians and gay men are motivated by the same factors that prompt heterosexual individuals to become parents.³¹ For example, Pies interviewed participants in workshops on lesbian parenting and found that the women wanted children for a variety of reasons, including the wish to be pregnant and to give birth, the desire to recreate their memorable childhoods for another child, an aspiration to give a child a better life than they had growing up, and an interest in the experience of co-parenting a

²⁶ See *Homosexuality Not a Disorder*, AU COURANT, Feb. 3, 1992, at 6.

²⁷ See generally AMERICAN PSYCHIATRIC ASS'N, POSITION STATEMENT ON HOMOSEXUALITY (1993); COMMITTEE ON LESBIAN AND GAY CONCERNS, AMERICAN PSYCHOL. ASS'N, AMERICAN PSYCHOLOGICAL ASSOCIATION POLICY STATEMENTS ON LESBIAN AND GAY ISSUES (1991); DELEGATE ASSEMBLY, NATIONAL ASS'N OF SOC. WORKERS, POLICY STATEMENTS ON LESBIAN AND GAY ISSUES (1993).

²⁸ Falk, *supra* note 1, at 942.

²⁹ *Id.*

³⁰ *In re Appeal in Pima County Juvenile Action B-10489*, 727 P.2d 830, 837 (Ariz. Ct. App. 1986).

³¹ See, e.g., Cheri A. Pies, *Lesbians and the Choice to Parent*, in HOMOSEXUALITY AND FAMILY RELATIONS 137 (Frederick W. Bozett & Marvin B. Sussman eds., 1990).

child with their life partners.³² Patterson also reported in her study of thirty-seven lesbian-mother families that the focal children “had been very much wanted.”³³

Several other studies have considered the maternal attitudes of lesbian mothers. None have suggested that lesbians lack the requisite parenting skills or attitudes to raise children.³⁴ The same is true of the research regarding gay fathers.³⁵ Most recently, Flaks et al. found that lesbian

³² *Id.* at 138.

³³ Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-concepts, and Sex-role Identity*, in CONTEMPORARY PERSPECTIVES ON GAY AND LESBIAN PSYCHOLOGY: THEORY, RESEARCH, AND APPLICATIONS 156, 164 (Beverly Greene & Gregory Herek eds., 1994).

³⁴ See, e.g., Susan Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. CHILD PSYCHOL. & PSYCHIATRY 551, 568-71 (1983) (documenting a study of 27 lesbian and 27 heterosexual mothers in which the researchers could not differentiate the groups in terms of the warm feelings they showed toward their children); Judith A. Miller et al., *The Child's Home Environment for Lesbian Versus Heterosexual Mothers: A Neglected Area of Research*, 7 J. HOMOSEXUALITY 49, 55 (1981) (reviewing a study comparing 34 lesbian and 47 heterosexual mothers which found that in certain caregiver situations, the lesbian mothers were more child-centered and their responses “were characterized by overriding concern for the child’s long-range development”); Bonnie M. Mucklow & Gladys K. Phelan, *Lesbian and Traditional Mother’s Responses to Adult Response to Child Behavior and Self Concept*, 44 PSYCHOL. REP. 880, 880-82 (1979) (discussing a pilot study assessing the maternal attitudes of 34 lesbian mothers and 47 mothers who were married, heterosexual, and performing a traditional feminine role within the family which found no significant differences between the two groups in terms of their responses to children’s behavior or their maternal attitudes).

³⁵ See, e.g., Raymond M. Scallen, *An Investigation of Paternal Attitudes and Behaviors in Homosexual and Heterosexual Fathers*, 42 DISSERTATION ABSTRACTS INT’L SCI. & ENGINEERING 3809B (1982). Scallen compared the parenting attitudes and behaviors of 60 gay and heterosexual fathers recruited from father support groups. *Id.* Using self-report measures, Scallen found no differences between the two groups in paternal problem solving, in providing recreation for children, or in encouraging autonomy. *Id.* Differences between the two groups were noted in other areas, however. Gay fathers demonstrated greater emphasis on paternal nurturance and less on the economic providing role, were less traditional in their overall paternal attitudes, and assessed themselves as significantly more positive in the paternal role. *Id.*; see also Jerry J. Bigner & R. Brooke Jacobsen, *Parenting Behaviors of Homosexual and Heterosexual Fathers*, 18 J. HOMOSEXUALITY 173, 181 (1989) (finding no differences between the overall parenting abilities and skills of 33 gay and 33 heterosexual fathers). In addition, Bigner and Jacobsen found no differences in the fathers’ involvement with or intimacy toward their children. *Id.* at 180. The researchers did find that gay fathers tended to be more strict, more frequently explained rules to their children, and responded more to their children’s perceived needs. *Id.* They also discovered that the gay fathers did more to act as resources for activities with their children, were less willing to demonstrate affection with their partners in front of their children, and were more egalitarian and

couples raising children whom they conceived through donor insemination were more aware of the skills necessary for effective parenting than were heterosexual couples raising biological children.³⁶ Specifically, the lesbian couples proved to be superior in their ability to identify the critical issues in child-care situations and to formulate appropriate solutions to the problems they noticed.³⁷ Taken together, this body of evidence supports the conclusion of one study that "being gay is not incompatible with effective parenting, and certainly not the major issue in parents' relationships with their children."³⁸

C. Relationship Stability and Satisfaction

Some judges make decisions concerning gay and lesbian families based on a belief that homosexual relationships are abnormal, unsatisfying, and/or unstable. These problems in the couples' relationships, it is further assumed, will have detrimental effects on the children.³⁹ For example, the court in *S.N.E. v. R.L.B.*⁴⁰ overturned a trial judge's decision to change child custody from a lesbian mother to a father. In overruling the decision, the court noted that the lower court had improperly "relied on its own unsupported opinion that homosexual relationships are unstable and of short duration."⁴¹

more likely to act in a counselor role with their children than were their heterosexual counterparts. *Id.* at 181.

³⁶ David K. Flaks et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, DEV. PSYCHOL. (forthcoming 1994) (manuscript at 18-19, on file with author).

³⁷ *Id.* Further analysis revealed that these differences were related to the parents' gender rather than to their sexual orientation—both heterosexual and lesbian mothers demonstrated an awareness of parenting skills that was superior to that of heterosexual fathers. While this result may suggest that the heterosexual fathers were less capable in their ability to handle child-care problems, it may also represent a gender difference in their likelihood to verbalize their ideas about parenting. *Id.*

³⁸ See Mary B. Harris & Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. HOMOSEXUALITY 101, 112 (1986).

³⁹ Parental relationship quality has been found in heterosexual-parent families to be directly and/or indirectly related to child competence. See, e.g., Shirley S. Feldman et al., *Marital Satisfaction of Parents of Preadolescent Boys and its Relationship to Family and Child Functioning*, 4 J. FAM. PSYCHOL. 213 (1990); Paul L. Frick et al., *Conduct Problems in Boys: Relations to Maternal Personality, Marital Satisfaction, and Socioeconomic Status*, 18 J. CLINICAL CHILD PSYCHOL. 114, 118 (1989); Nancy B. Miller et al., *Externalizing in Preschoolers and Early Adolescents: A Cross-Study Replication of a Family Model*, 29 DEV. PSYCHOL. 3, 11 (1993).

⁴⁰ 699 P.2d 875 (Alaska 1985).

⁴¹ *Id.* at 879 n.6; see also *Constant A. v. Paul C.A.*, 496 A.2d 1 (Pa. Super. Ct. 1985). In this case, the court stated several times that a lesbian mother's same-sex relationship

Often courts are particularly disapproving of same-sex relationships when the partners demonstrate affection toward each other in front of the children. In *S.E.G. v. R.A.G.*,⁴² for example, the court denied child custody and placed rigid visitation restrictions on a lesbian mother who chose "not to make her sexual preference private,"⁴³ but rather created an "unhealthy environment for minor children" by showing affection toward her partner in front of the children and sleeping together in the same bed with her.⁴⁴ Likewise, in *M.A.B. v. R.B.*,⁴⁵ a case which awarded custody of a boy to his homosexual father, the court cited favorably the evidence that the father did not "flaunt" his homosexuality,⁴⁶ that he never embraced or touched his partner in front of the child, and that the child rarely saw the father's partner because of their different schedules.⁴⁷

In contrast to some courts' assumptions about gay and lesbian relationships, Peplau reviewed studies which collectively contradict several myths about homosexual relationships.⁴⁸ Based on the literature in this area, Peplau concluded that "a large proportion of homosexuals have stable close relationships," and that "relationships lasting 20 years or more are not uncommon."⁴⁹ Golombok et al. likewise concluded that "it seems doubtful whether transience is any more characteristic of lesbian relationships than of women's heterosexual relationships."⁵⁰ Golombok et al.'s study of lesbians raising children, fourteen of whom currently lived with another woman, found that "the great majority had a generally harmonious relationship with their sexual partner."⁵¹ To determine relationship satisfaction, the researchers used an interview which examined the reported behavior, feelings, and attitudes of the couple. Similarly, Flaks et al. reported that in comparing lesbian couples with fifteen heterosexual

was "illicit." *Id.* at 10. The court also concluded that "nowhere is there any hint that the relationship sanctified by tradition and law, the traditional family, is to be considered on an equal basis with a relationship which has received minimal social acceptance and no legal recognition." *Id.* at 6. This was the finding despite the dissenting judge's opinion that "the mother's life [was] stable," and that "she [had] an enduring relationship with another person." *Id.* at 13.

⁴² 735 S.W.2d 164 (Mo. Ct. App. 1987).

⁴³ *Id.* at 167.

⁴⁴ *Id.* at 166.

⁴⁵ 510 N.Y.S.2d 960 (N.Y. Sup. Ct. 1986).

⁴⁶ *Id.* at 968-69.

⁴⁷ *Id.* at 966.

⁴⁸ See Letitia A. Peplau, *Lesbian and Gay Relationships*, in *HOMOSEXUALITY*, *supra* note 4, at 177.

⁴⁹ *Id.* at 180.

⁵⁰ Golombok et al., *supra* note 34, at 553.

⁵¹ *Id.* at 559.

couples raising children aged three to nine years, there were no significant differences between the groups in terms of relationship quality as measured by a standardized questionnaire. In addition, both the lesbian and heterosexual couples revealed overall relationship quality that was significantly higher than a normative sample of divorced couples, while not significantly different from a normative sample of married couples.⁵²

In addition to the above studies, other research has evaluated the relationship quality of same-sex couples without children. Kurdek and Schmitt, for example, studied a sample of forty-four married, thirty-five heterosexual cohabitating, fifty gay male, and fifty-six lesbian couples, and found that they could not differentiate between the married partners and the gay and lesbian partners.⁵³ Likewise, Cardell et al., in a study of ten heterosexual, ten lesbian, and five gay male couples, found that relationship satisfaction was not related to couple type and that most of the couples were fairly satisfied with their relationships.⁵⁴ Other studies have also found high levels of satisfaction and love in lesbian relationships, contradicting stereotypes that gay and lesbian couples are more prone to dissatisfaction or problems than their heterosexual counterparts.⁵⁵

D. Community Rejection

In some cases, courts have based their decisions against gay and lesbian parents on a finding that the community at large rejects homosexuals and their relationships, and that therefore these relationships should not be condoned or supported. This finding is frequently premised on the existence of state sodomy statutes prohibiting homosexual conduct, despite the important and often overlooked fact that a "same-sex relationship is in no way defined by, nor dependent, upon sodomy."⁵⁶ In *Thigpen v. Carpenter*,⁵⁷ for example, the appellate court affirmed a trial court decision changing custody from a lesbian mother to a presumably heterosexual father. In so doing, a concurring judge stated that "[t]he people of both

⁵² Flaks et al., *supra* note 36, at 16-18, 20.

⁵³ Lawrence A. Kurdek & J. Patrick Schmitt, *Relationship Quality of Partners in Heterosexual Married, Heterosexual Cohabiting, and Gay and Lesbian Relationships*, 51 J. PERSONALITY & SOC. PSYCHOL. 711, 718 (1986).

⁵⁴ Mona Cardell et al., *Sex-role Identity, Sex-role Behavior, and Satisfaction in Heterosexual, Lesbian, and Gay Male Couples*, 5 PSYCHOL. WOMEN Q. 488, 488 (1981).

⁵⁵ See, e.g., Peplau, *supra* note 48, at 181-83 (citing studies); Letitia A. Peplau et al., *Satisfaction in Lesbian Relationships*, 8 J. HOMOSEXUALITY 23, 34 (1982).

⁵⁶ See *Custody Denials to Parents in Same-Sex Relationships: An Equal Protection Analysis*, 102 HARV. L. REV. 617, 625 (1989) [hereinafter *Custody Denials*].

⁵⁷ 730 S.W.2d 510 (Ark. Ct. App. 1987).

Texas and Arkansas have declared . . . [lesbian sexual conduct] to be so adverse to public morals and policy as to warrant criminal sanctions."⁵⁸

Far from condoning discrimination against homosexual families based on the existence of sodomy statutes, professional mental health organizations have opposed such intolerance. The American Psychological Association, for example, has taken a position opposing laws which criminalize consensual adult sexual behavior in private.⁵⁹ In addition, the organization has issued a statement that "the . . . sexual orientation of natural, or prospective adoptive or foster parents should not be the sole or primary variable considered in custody or placement cases."⁶⁰ These position statements by professional organizations promote tolerance and education of the community rather than blind adherence to societal prejudice.

Decisions based on judicial perceptions about a particular community's rejection of homosexuality may also have at their foundation fears about the nature and quality of social support available to lesbian and gay families. Available research suggests that this judicial concern is also unwarranted. In fact, lesbian and gay individuals appear to have adequate available support networks.⁶¹

⁵⁸ *Id.* at 514 (Cracraft, J., concurring); *see also* L. v. D., 630 S.W.2d 240, 244-45 (Mo. Ct. App. 1982) (restricting the visitation of two children with their lesbian mother based in part on the conclusion that the state's sodomy statute embodied a state interest against homosexuality); Constant A. v. Paul C.A., 496 A.2d 1, 5 (Pa. Super. Ct. 1985) (denying expanded custody to a lesbian mother partly because of fear that she might be subject to arrest if she traveled to states with sodomy laws).

⁵⁹ *See* COMMITTEE ON LESBIAN AND GAY CONCERNS, *supra* note 27, at 7.

⁶⁰ *Id.* at 1.

⁶¹ *See, e.g.*, Terrie A. Lyons, *Lesbian Mothers' Custody Fears*, 2 *WOMEN & THERAPY* 231, 232 (1983). Lyons found no differences between lesbian and heterosexual formerly-married single mothers in the area of social support systems. She reported that the 43 lesbian mothers in her comparative study were just as likely as their 37 heterosexual counterparts to seek support from their parents, ex-husbands, and co-resident partners. *Id.* at 232-33; *see also* Ellen Lewin, *Lesbianism and Motherhood: Implications for Child Custody*, 40 *HUMAN ORGANIZATION* 6, 9 (1981) (*cited in* Peplau, *supra* note 48, at 185); Ellen Lewin & Terrie A. Lyons, *Everything in its Place: The Coexistence of Lesbianism and Motherhood*, in *HOMOSEXUALITY: SOCIAL, PSYCHOLOGICAL, AND BIOLOGICAL ISSUES* 249 (William Paul et al. eds., 1982) (*cited in* Peplau, *supra* note 48, at 185) (citing studies which found that lesbian and heterosexual mothers were equally likely to turn to their parents or other family members for support).

Like the literature on lesbian mothers, research on gay and lesbian couples without children also refutes the myth that homosexuals have impoverished social support networks, although the sources of this support may be different. *See, e.g.*, Lawrence A. Kurdek & J. Patrick Schmitt, *Perceived Emotional Support from Family and Friends in Members of Homosexual, Married, and Heterosexual Cohabiting Couples*, 14 *J. HOMOSEXUALITY* 57, 65-66 (1987) (citing a study of 44 married, 35 heterosexual cohabiting, 50 gay male, and 56 lesbian couples which found that homosexual partners

III. ASSUMPTIONS AND EVIDENCE ABOUT CHILD DEVELOPMENT

A. *Psychological Development of Children*

A common assumption courts hold about children raised by lesbian mothers is that they are more likely to develop psychological problems.⁶² Although it is often difficult to determine from judicial opinions exactly what negative outcomes are expected, one might presume that it is the intellectual, emotional, behavioral, social, and moral development of children raised in homosexual families that some courts fear will be compromised.

In fact, a growing number of studies across the country have examined the psychological health of children raised by gay and lesbian parents. To date, there has been no evidence to suggest that these children are in any way inferior relative to their peers raised by heterosexual parents.⁶³ While most of the research completed to date has examined children raised by divorced lesbian mothers, several empirical studies have also explored children raised by gay fathers or by lesbians who decided to become parents after coming out. A review of this research follows.

In order to assess the emotional, behavioral, and relational development of children raised by homosexual parents, one study administered questionnaires to the parents and teachers of thirty-seven children raised by lesbian mothers and thirty-eight children raised by single heterosexual

were less likely than married partners to view their family of origin as an important source of emotional support—instead, the gay and lesbian couples saw their friends as more prominent providers of emotional support than their families); see also J. Aura, *Women's Social Support: A Comparison of Lesbians and Heterosexuals* (1985) (unpublished doctoral dissertation, University of California, Los Angeles) (cited in Peplau, *supra* note 48, at 185).

⁶² See, e.g., *Chaffin v. Frye*, 119 Cal. Rptr. 22, 26 (Cal. Ct. App. 1975); Falk, *supra* note 1, at 942.

⁶³ See Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 LAW & SEXUALITY 133, 157-61 (1991); Patterson, *supra* note 3, at 1036. Researchers have studied lesbian and gay families living in a variety of geographic locations. See, e.g., David K. Flaks, *Lesbian Couples and their Children: Psychological and Legal Implications* 102-03 (1993) (unpublished Psy.D. dissertation, Widener University) (on file with author) (researching families living in the District of Columbia, Kentucky, New York, Oklahoma, and Pennsylvania); Green et al., *supra* note 21, at 169 (researching families living in Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin); 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, 126 (Frederick W. Bozett ed., 1989) (studying families living in southern California); Miller et al., *supra* note 34, at 50 (obtaining sample through a "recreation center in a large western mountain city"); Patterson, *supra* note 33, at 158 (sampling families living within the greater San Francisco Bay area).

mothers. The researchers found no significant differences between the groups.⁶⁴ They also used parent interviews to rate the children's mental health and peer relationships, and found that of the small number of children exhibiting significant psychiatric problems, a greater number were found in the heterosexual-mother group.⁶⁵ In addition, a "majority of the children in both groups showed definite evidence of good peer relationships."⁶⁶ Other researchers have also found no differences in the type or frequency of psychopathology in the children of divorced lesbian and heterosexual mothers.⁶⁷

In another study, researchers compared the cognitive development of fifty-six children of lesbian mothers with that of forty-eight children of heterosexual mothers. The children's intelligence scores were in the average range, and revealed no significant difference between the groups.⁶⁸ The children were also indistinguishable in terms of emotional development⁶⁹ and self-ratings of popularity with peers.⁷⁰

Other studies have also evaluated the self-esteem of children raised by homosexual parents. Puryear, for example, examined children of lesbian mothers and found no differences in their self-concept or view of family when compared with children of heterosexual single mothers.⁷¹ Similarly, Huggins compared self-esteem in thirty-six adolescents, half of whom lived with divorced lesbian mothers and half with divorced heterosexual mothers.⁷² She found no differences in self-esteem between the boys or girls in either group.⁷³ Interestingly, children who had the highest self-esteem also reported positive feelings about their lesbian mothers' sexual orientation, and the mothers of these children had partners living in the home.⁷⁴ In order to assess the long-term social adjustment of the children

⁶⁴ Golombok et al., *supra* note 34, at 565.

⁶⁵ *Id.*

⁶⁶ *Id.* at 565-67.

⁶⁷ Martha Kirkpatrick et al., *Lesbian Mothers and Their Children: A Comparative Survey*, 51 AM. J. ORTHOPSYCHIATRY 545, 547 (1981); *see also* Katharine Virginia Rice Smith, *Children Raised by Lesbian Mothers*, 42 DISSERTATION ABSTRACTS INT'L 3444B (1981).

⁶⁸ Green et al., *supra* note 21, at 174.

⁶⁹ *Id.* at 175.

⁷⁰ *Id.* at 178.

⁷¹ D. Puryear, *A Comparison Between the Children of Lesbian Mothers and the Children of Heterosexual Mothers* (1983) (unpublished Ph.D. dissertation, California School of Professional Psychology). Interestingly, children in both groups were more affected by their father's availability than by their mother's sexual orientation.

⁷² Huggins, *supra* note 63, at 123, 126.

⁷³ *Id.* at 132-35.

⁷⁴ *Id.* This finding is consistent with the results of a 1979 study by Hotvedt et al., *cited in Legal Issues*, *supra* note 6, at 199. That research, which used a sample of 60 lesbian

of lesbian parents, Gottman studied a group of adult daughters who had lived with their divorced lesbian mothers and their mothers' partners during their upbringing.⁷⁵ Gottman found that they did not differ significantly from a control group of the adult daughters of divorced heterosexual mothers on their leadership ability, self-reliance, interpersonal flexibility, or self-confidence.⁷⁶ In addition, daughters of lesbian mothers, and daughters whose mothers had remarried or lived with a man after their divorce, appeared to feel more secure in the world and in relationships than daughters of mothers who remained single.⁷⁷

Another area in which courts have expressed concern about the children of gay and lesbian parents relates to their moral development.⁷⁸ Unfortunately, judges have often been idiosyncratic and unspecific in their concerns about the issue of moral development, possibly using the term "morality" to voice a fear that the children of lesbian and gay parents will develop a homosexual orientation.⁷⁹ In any event, research has examined the moral judgment of children raised by lesbian mothers. In a study by Rees, the author asked the ten to twenty-year-old children of both lesbian and heterosexual mothers to respond to hypothetical moral dilemmas.⁸⁰ No significant differences between the children's moral maturity were found.⁸¹

mothers and their children, found that children raised in two-adult homes were in better emotional health than children raised in single-parent homes, regardless of the parents' gender or sexual orientation. See also Julie S. Gottman, *Children of Gay and Lesbian Parents*, in *HOMOSEXUALITY AND FAMILY RELATIONS*, *supra* note 31, at 177, 190; Martha Kirkpatrick, *Clinical Implications of Lesbian Mother Studies*, 13 *J. HOMOSEXUALITY* 201, 204 (1986). These findings suggest "the possibility that judicial inclinations to award custody to lesbian mothers only with the stipulation that they not live with lesbian partners may be detrimental to the best interests of children in these families." Patterson, *supra* note 3, at 1035.

⁷⁵ Gottman, *supra* note 74, at 188.

⁷⁶ *Id.* at 189.

⁷⁷ *Id.* at 190. Gottman conjectured that "intimacy modeled in the home during a daughter's upbringing benefited her sense of security and well-being, regardless of the sex of the mother's partner." *Id.*

⁷⁸ See, e.g., *Chaffin v. Frye*, 119 Cal. Rptr. 22, 26 (Cal. Ct. App. 1975); *Kallas v. Kallas*, 614 P.2d 641, 645 (Utah 1980); *Roe v. Roe*, 324 S.E.2d 691, 693 (Va. 1985) (deciding that living with or visiting a gay or lesbian parent may harm the child's "moral" well-being).

⁷⁹ See generally *infra* notes 142-50 and accompanying text (discussing concerns of judges).

⁸⁰ See Richard L. Rees, *A Comparison of Children of Lesbian and Single Heterosexual Mothers on Three Measures of Socialization* (1979) (unpublished Ph.D. dissertation, California School of Professional Psychology).

⁸¹ *Id.*

While each of the studies described above examined children raised in post-divorce lesbian families, other studies have examined the psychological health of children raised from birth in planned lesbian families. The pioneering work in this context was a doctoral dissertation by Steckel, who compared how three and four-year-old children born to lesbian and heterosexual couples accomplished the developmental processes of separating from their parents and establishing their own sense of identity.⁸² Her interviews with parents, teachers, and children revealed no overall differences in the children's independence, ego functions, or relations with others.⁸³ In a second study, McCandlish interviewed five lesbian couples raising seven children born to them through donor insemination.⁸⁴ All of the children, each under seven years old, displayed normal development and no behavior problems.⁸⁵

Patterson examined a larger sample of planned lesbian-mother families, including single, coupled, and separated lesbians raising thirty-seven biological and adopted children aged four to nine years.⁸⁶ She found that the children's behavioral adjustment, self-concept, and sex-role identity as rated by the mothers were within the normal range when compared with the standardization samples for each of the measures used.⁸⁷

⁸² See Alisa Steckel, *Psychosocial Development of Children of Lesbian Mothers*, in GAY AND LESBIAN PARENTS 75 (Frederick W. Bozett ed., 1987) [hereinafter *Psychosocial Development*]; Alisa Steckel, *Separation-Individuation in Children of Lesbian and Heterosexual Couples* (1985) (unpublished Ph.D. dissertation, Wright Institute).

⁸³ *Psychosocial Development*, *supra* note 82, at 81. Interestingly, Steckel found differences in the children's experience of the separation process, characterizing the process as more aggressively tinged for the children of heterosexual parents. *Id.* at 81. She reported that these children had a more aggressive self-image and that their parents and teachers similarly saw them as more bossy, domineering, assertive, negativistic, and involved in power struggles. *Id.* In contrast, she described the children of lesbian mothers as having a more lovable self-image which corresponded to their parents' and teachers' views of them as more affectionate, responsive, verbal, and protective of younger children. *Id.*

⁸⁴ See Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in GAY AND LESBIAN PARENTS, *supra* note 2, at 23.

⁸⁵ *Id.* at 30.

⁸⁶ See Patterson, *supra* note 33, at 159-60.

⁸⁷ *Id.* at 12-19. Patterson also found that the children of lesbian mothers reported feeling more stress, but also a greater sense of well-being, than children of heterosexual parents. *Id.* at 19. She offered two hypotheses to explain these results: 1) that the children of lesbian mothers actually experience more stress than do other children, and/or 2) that these children may be more willing to express their experiences of intense emotion, both negative and positive. *Id.* at 19-20. Patterson's results did not replicate Steckel's finding that children of lesbian parents view themselves as less aggressive but more sociable than children of heterosexual parents. Compare Patterson, *supra* note 33, at 17 with *Psychosocial Development*, *supra* note 82, at 81.

Most recently, Flaks et al. examined the intellectual functioning, behavioral adjustment, and adaptive functioning of children born to lesbian and heterosexual couples.⁸⁸ Ratings of the children were made by parents and teachers as well as through psychological testing. Consistent with prior research, there were no statistically significant differences found between the children of lesbian and heterosexual parents.⁸⁹

B. *Sexual Molestation*

Some courts have contended that children living with gay or lesbian parents face an increased risk of sexual molestation in the home environment, either at the hands of the parent, or one of the parent's friends or associates. Such fears prompted the court in *J.L.P. (H.) v. D.J.P.* to significantly restrict a gay father's visitation with his child.⁹⁰ In that case, although the trial judge had heard expert testimony by two psychologists that "child molestation was approximately 95% heterosexual and that homosexual molestation is rare,"⁹¹ this evidence was rejected on appeal. Rather, the court concluded that "homosexual molestation is probably, on an absolute basis, more prevalent [than heterosexual molestation]," and that "the father's acknowledgement that he was living with an avowed homosexual certainly augurs for potential harm to the child that the trial court was perfectly competent to assess."⁹²

⁸⁸ See Flaks et al., *supra* note 36.

⁸⁹ See *id.* at 19-20. In addition, no gender differences were found between the children of lesbian and heterosexual parents. *Id.* In the areas evaluated, boys and girls in the two groups were extremely similar, and each group compared favorably to the standardization samples for the instruments used. *Id.* Furthermore, the children of lesbian parents actually scored higher on 17 of the 24 comparisons made between the children in the two groups. *Id.*

⁹⁰ 643 S.W.2d 865 (Mo. Ct. App. 1982).

⁹¹ *Id.* at 867.

⁹² *Id.* at 869. Similarly, the court in *In re Appeal in Pima County Juvenile Action B-10489*, 727 P.2d 830, 837 (Ariz. Ct. App. 1986), denied a bisexual man's petition to adopt children based on an expressed concern that the man's "interest in children include[d] an unnatural or abnormal sexual interest or intent." Despite the lack of evidence suggesting that the man had any sexual interest in children, the court asked the following questions:

[Would your] relationship with any adoptive child . . . be essentially or totally asexual? . . . Do you feel that you have any unusual urge or any unusual sexual attraction to younger boys? Do you feel the absence of any urge toward younger boys? Have you ever had any psychological tests that were intended to assess that relationship between you and younger boys?

Id. at 838.

It appears that preconceived ideas about pedophilia have led some judges to ignore or expressly contradict research findings in this area.⁹³ In fact, "child molestation is unrelated to adult (mature) sexual orientation and results from a fixation on childishness as a sexual object [T]he gender of the child is unimportant."⁹⁴

On the issue of whether children face an increased risk of sexual molestation from lesbian or gay individuals, the social science literature appears to support the statement of one court that the "vast majority of sex crimes committed by adults on children are heterosexual, not homosexual."⁹⁵ In fact, it has been reported that most child molesters are heterosexual men,⁹⁶ that gay men and lesbians are no more likely to molest children or to commit crimes with children than are heterosexual men and women,⁹⁷ and that "there are virtually no cases of pedophilia committed by gay parents or their lovers on their children."⁹⁸ In one study, interviews with forty gay fathers led a researcher to conclude that "fears

⁹³ See *J.L.P. (H.)*, 643 S.W.2d at 869 (citing a list of criminal cases involving the molestation of minor boys by adult males in support of the judge's belief that gay men are likely child molesters). The judge seemed to presume that the men in these cases were homosexual simply because their sexual misconduct involved male children—an assumption that is unsupported by the social science literature. In fact, adult males who sexual molest young boys typically report that they have no interest in, or are repulsed by, sexual activity with other men. A. NICHOLAS GROTH, *MEN WHO RAPE: THE PSYCHOLOGY OF THE OFFENDER* 148 (1979).

⁹⁴ See *Legal Issues*, *supra* note 6, at 211; see also AMERICAN PSYCHIATRIC ASS'N, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 284 (3d ed. 1987) ("[M]any people with Pedophilia are sexually aroused by both young boys and young girls.").

⁹⁵ See *Baker v. Wade*, 553 F. Supp. 1121, 1130 (1982), *rev'd on other grounds*, 769 F.2d 289 (1985). *But see* Herek, *supra* note 63, at 153-56 (noting that it is often difficult to evaluate the empirical research on child molestation because of lack of representative samples and ambiguous terminology describing the sexual orientation of the adult perpetrator).

⁹⁶ See, e.g., Bozett, *supra* note 2, at 47; D. FINKELHOR, *A SOURCEBOOK ON CHILD SEXUAL ABUSE* 109 (1986); A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation and Attraction to Underage Persons*, 7 *ARCHIVES SEXUAL BEHAV.* 175 (1978).

⁹⁷ See, e.g., A. Nicholas Groth, *Patterns of Sexual Assault Against Children and Adolescents*, in *SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS* 3, 4 (Ann W. Burgess et al. eds., 1978); Herek, *supra* note 63, at 152-56.

⁹⁸ See David Cramer, *Gay Parents and Their Children: A Review of Research and Practical Implications*, 64 *J. COUNSELING & DEV.* 504, 505 (1986) (citing a study by Richardson); see also Golombok et al., *supra* note 34, at 553 ("[T]here is no suggestion [in the literature] that lesbianism carries any risk of incestuous advances to the children.").

of child sexual abuse by gay fathers or their gay friends are *not* warranted."⁹⁹

C. AIDS

Recently, heterosexual individuals involved in divorce actions with their gay or lesbian spouses have argued that judges should deny custody to the homosexual spouse because of an increased risk of transmission of AIDS to the children.¹⁰⁰ Although some judges have expressly rejected this argument,¹⁰¹ others have accepted it—even in cases where the homosexual parent did not have AIDS and had not tested positive for HIV. One litigator, for example, described a case in which “a lesbian mother was forbidden to kiss her children or have them in her home because of the danger from AIDS.”¹⁰² Similarly, a dissenting judge in *In re Adoption of Charles B.*¹⁰³ wrote that a prospective adoption was not in the child’s best interest in part due to “his increased risk of exposure to the AIDS virus that would result from placement with the prospective [gay male] parent.”¹⁰⁴

Children living with HIV-negative lesbian or gay parents certainly face no greater risk of contracting AIDS than do other children. In addition, despite continued fear to the contrary, the scientific community has determined that AIDS is transmitted exclusively by injection of infected blood or blood products, or by intimate sexual contact with an individual who is infected, and *not* by casual contact.¹⁰⁵ Interactions such as hugging and kissing do not transmit the virus.¹⁰⁶ As such, children living with AIDS-infected parents are no more likely to contract the AIDS virus than other children.

⁹⁹ See Brian Miller, *Gay Fathers and Their Children*, 28 FAM. COORDINATOR 544, 546 (1979).

¹⁰⁰ See, e.g., ACHTENBERG, *supra* note 6, at 4; *Legal Issues*, *supra* note 6, at 215.

¹⁰¹ See, e.g., Conkel v. Conkel, 509 N.E.2d 983, 987 (Ohio Ct. App. 1987).

¹⁰² See *Legal Issues*, *supra* note 6, at 215.

¹⁰³ 50 Ohio St. 3d 88 (Ohio 1990).

¹⁰⁴ *Id.* at 95.

¹⁰⁵ See, e.g., Gerald H. Friedland et al., *Lack of Transmission of HTLV-III/LAV Infection to Household Contacts of Patients with AIDS or AIDS-Related Complex with Oral Candidiasis*, 314 NEW ENG. J. MED. 344, 348 (1986); Green & Bozett, *supra* note 4, at 212; Merle A. Sande, *Transmission of AIDS: The Case Against Casual Contagion*, 314 NEW ENG. J. MED. 380, 382 (1986).

¹⁰⁶ *Id.*

D. *Social Stigma*

Courts have taken widely divergent positions regarding the purported stigma that attaches to a child who lives with a gay or lesbian parent. For example, one appellate court reversed a lower court decision awarding custody to a lesbian mother because of its concern that the minor children might “suffer from the slings and arrows of a disapproving society.”¹⁰⁷ In contrast, other courts have refused to consider the social stigma that might attach to having a gay or lesbian parent,¹⁰⁸ and some have even suggested potential benefits from having a homosexual mother or father.¹⁰⁹

¹⁰⁷ See *Jacobson v. Jacobson*, 314 N.W.2d 78, 81 (N.D. 1981); see also *Thigpen v. Carpenter*, 730 S.W.2d 510, 514 (Ark. Ct. App. 1987) (citing fear that the child might be “exposed to ridicule and teasing by other children”); *M.J.P. v. J.G.P.*, 640 P.2d 966, 969 (Okla. 1982); *Dailey v. Dailey*, 635 S.W.2d 391, 394 (Tenn. Ct. App. 1981); *Roe v. Roe*, 324 S.E.2d 691, 694 (Va. 1985) (citing fear that “social condemnation . . . will inevitably afflict [the child’s] relationships with her peers and with the community at large”). Interestingly, in none of these cases did the court cite actual evidence of harassment of the child who was the subject of the litigation.

¹⁰⁸ See, e.g., *S.N.E. v. R.L.B.*, 699 P.2d 875, 879 (Alaska 1985).

¹⁰⁹ See, e.g., *M.P. v. S.P.*, 404 A.2d 1256, 1262-63 (N.J. Super. Ct. App. Div. 1979) (noting that taking custody of children from their lesbian mother would not remove the source of their stigma, as the mother would still be their parent). The court added that keeping custody with the mother might benefit the children by teaching them to define their values and overcome popular prejudices:

It is just as reasonable to expect that they will emerge better . . . able to perceive that the majority is not always correct in its moral judgments, and better able to understand the importance of conforming their beliefs to the requirements of reason and tested knowledge, not the constraints of currently popular sentiments or prejudice.

Taking the children from defendant [the lesbian mother] can be done only at the cost of sacrificing those very qualities they will find most sustaining in meeting the challenges inevitably ahead. Instead of forbearance and feelings of protectiveness, it will foster in them a sense of shame for their mother. Instead of courage and the percept that people of integrity do not shrink from bigots, it counsels the easy option of shirking difficult problems and following the course of expedience. Lastly, it diminishes their regard for the rule of human behavior, everywhere accepted, that we do not forsake those to whom we are indebted for love and nurture merely because they are held in low esteem by others.

We conclude that the children’s best interests will be disserved by undermining in this way their growth as mature principled adults.

Id. at 1263; see also *M.A.B. v. R.B.*, 510 N.Y.S.2d 960, 969 (N.Y. Sup. Ct. 1986).

The above reasoning is consistent with the Supreme Court’s opinion in *Palmore v. Sidoti*, 466 U.S. 429 (1984), where the Court held that it would be a violation of the Equal Protection Clause to deny a mother custody of her child because she was involved in an interracial marriage. *Id.* at 434. The Court stated, “The Constitution cannot control such prejudices but neither can it tolerate them.” *Id.* at 433.

Despite the relative frequency with which courts have anticipated potential harassment of a child living with a homosexual parent, some have noted that in only one reported case has there been evidence of such a situation occurring.¹¹⁰ Unfortunately, few researchers have attempted to measure the stigma faced by children of lesbians and gay men. Those studies that have addressed this issue have found only minimal amounts of teasing—which the children and parents were able to successfully manage.¹¹¹ Additionally, studies have examined the children's popularity,

A New York court in *In re Evan*, 583 N.Y.S.2d 997 (N.Y. Sup. Ct. 1992), took yet another position regarding potential stigmatization of children raised by homosexual parents—that judicial decisions restricting gay and lesbian families actually perpetuate stigma, contrary to the children's interests. *Id.* Partly to prevent such an outcome, the court allowed a second parent adoption by a non-biological lesbian mother, noting:

[The arrangement offers the child] the additional security conferred by formal recognition in an organized society. As he matures, his connection with two involved, loving parents will not be a relationship seen as outside the law, but one sustained by the ongoing, legal recognition of an approved, court ordered adoption.

Id. at 999.

¹¹⁰ See *Custody Denials*, *supra* note 56, at 634; *Developments in the Law*, *supra* note 7, at 1038. In *L. v. D.*, 630 S.W.2d 240 (Mo. Ct. App. 1982), the court heard evidence that the children were teased about their lesbian mother's lifestyle while in the custody of their heterosexual father. *Id.* at 244. Partly for this reason, the court denied a change of custody from the father to the mother. *Id.* at 245.

¹¹¹ See, e.g., Lonnie G. Nungesser, *Theoretical Bases for Research on the Acquisition of Social Sex-Roles by Children of Lesbian Mothers*, 5 J. HOMOSEXUALITY 177, 184 (1980) (citing B. S. Bryant's unpublished study of 185 lesbians who had raised or were then raising children). Bryant concluded that the majority of children combined any embarrassment or initial discomfort about revealing their mother's lesbianism with an understanding "that it is society, and not their mothers, that should re-examine its position." *Id.* at 184; see also Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or Transexual Parents*, 135 AM. J. PSYCHIATRY 692, 695-96 (1978) (stating that only 3 of 21 children were teased about their mothers' sexual orientation, and each handled this minor teasing in a mature way); Karen G. Lewis, *Children of Lesbians: Their Point of View*, 25 SOC. WORK 198, 200 (1980) (reaching similar conclusions based on interviews with 21 children of lesbian mothers); Miller, *supra* note 99, at 548 (pointing to interviews with 40 gay fathers and 14 of their children which suggested that gay fathers do not expose their children to homophobic harassment and that both fathers and children use discretion in revealing the fathers' homosexuality to minimize the possibility of negative reactions). Additionally, "gay fathers reported being prepared to give their children considerable support and resources should they be needed to counter community harassment." *Id.* at 548. It has been suggested that parental support might be most needed when a child reaches adolescence and is most sensitive to peer feedback. See Cramer, *supra* note 98, at 505; see also Herek, *supra* note 63, at 160 (concluding from a review of empirical research that "children of lesbian and gay parents often recognize the existence of societal stigma and understand the importance of exercising discretion in revealing their parents' sexual orientation to others; and [that] . . . although children sometimes experience harassment, the incidents appear to be usually infrequent and

social adjustment, and self-esteem, and have found no differences in these areas between the children of lesbian and heterosexual mothers.¹¹²

E. *Psychosexual Development*

In their examination of children raised in lesbian-mother families, Golombok et al. considered three components of psychosexual development: 1) gender identity, an individual's concept of himself or herself as male or female; 2) sex-typed behavior, how much an individual's activities are regarded by society as being masculine or feminine; and 3) sexual object choice or orientation—whether the person is homosexual, heterosexual, or bisexual.¹¹³ The following review of the literature on psychosexual development among the children of gay and lesbian parents shall follow this same organization.

1. *Gender Identity*

Although courts have not expressly articulated discomfort about the future gender identity of children raised by homosexual parents, this fact may reflect their unfamiliarity with psychosexual development rather than their lack of concern in this area. To illustrate, in *N.K.M. v. L.E.M.*¹¹⁴ the court denied custody to a lesbian because of a fear that her child may be "condemned . . . to sexual disorientation."¹¹⁵ Clearly the court had apprehensions about the child's psychosexual development, although it is difficult to determine from its language whether judicial concerns centered around gender identity, sex-typed behavior, sexual orientation, or some combination of these areas. Despite this ambiguity in judicial writings, this section shall address research regarding gender identity development in children raised by homosexual parents.

To date, several researchers have compared the gender identity of children raised by lesbian versus heterosexual parents. Each of these studies has concluded that the children of lesbian mothers suffer no adverse consequences as a result of their mothers' sexual orientation. Golombok et al., for example, interviewed children aged five to seventeen

relatively minor, such as name-calling"); Kirkpatrick, *supra* note 74, at 208 (concluding that a review of literature did not support an assumption that children of lesbian mothers become the targets of ridicule or discrimination).

¹¹² See, e.g., Flaks et al., *supra* note 36; Green et al., *supra* note 21, at 180; Huggins, *supra* note 63, at 131-34; Patterson, *supra* note 33, at 17.

¹¹³ Golombok et al., *supra* note 34, at 562.

¹¹⁴ 606 S.W.2d 179 (Mo. Ct. App. 1980).

¹¹⁵ *Id.* at 186.

years living in lesbian and heterosexual-mother families.¹¹⁶ The researchers concluded that none of the children in either group evidenced inappropriate gender identity. All of the children said they were "glad to be the sex they were and none would prefer to be the opposite sex."¹¹⁷ Similarly, Kirkpatrick et al. assessed gender identity using projective testing and clinical interviews, and concluded that they, too, could not distinguish the five to twelve-year-old children with lesbian mothers from their same-sex peers with heterosexual mothers.¹¹⁸

In addition to the above-cited studies of younger children, Gottman¹¹⁹ examined gender identity among adult daughters of divorced lesbian and heterosexual mothers. The daughters in her samples ranged in age from eighteen to forty-four years. Consistent with the other research in this area, the author found no differences between the women using a standardized scale measuring masculinity and femininity.¹²⁰

2. Sex-Typed Behavior

Courts' expectations about gender roles and family life also appear to contribute to their decisions regarding gay and lesbian families. Although many would argue that there is no societal interest in perpetuating rigid gender roles,¹²¹ others note that in American culture "the social institutions of family, economic and political life . . . are premised on gender inequality and differentiation."¹²²

¹¹⁶ Golombok et al., *supra* note 34, at 554.

¹¹⁷ *Id.* at 562.

¹¹⁸ Kirkpatrick et al., *supra* note 67, at 548; *see also*, Green et al., *supra* note 21, at 179-80 (concluding, by utilizing a semi-structured interview and projective testing, that there were no differences between the children of lesbian and heterosexual mothers in terms of their wish to be the other sex, and that none of the children met the criteria for a gender identity disorder of childhood); Green, *supra* note 111, at 695-96; McCandlish, *supra* note 84, at 30.

¹¹⁹ Gottman, *supra* note 74, at 189.

¹²⁰ *Id.*

¹²¹ *See, e.g.*, A. ELFIN MOSES & ROBERT O. HAWKINS, JR., COUNSELING LESBIAN WOMEN AND GAY MEN 199 (1982).

¹²² *See, e.g.*, Sylvia A. Law, *Homosexuality and the Social Meaning of Gender*, 1988 WIS. L. REV. 187, 208. Law's "central thesis is that contemporary legal and cultural contempt for lesbian women and gay men serves primarily to preserve and reinforce the social meaning attached to gender." *Id.* at 187. The connection between homosexuality and gender, she states, is that "[homosexual] relationships challenge the notion that social traits, such as dominance and nurturance, are naturally linked to one sex or the other." *Id.* at 208. Consistent with Law's thesis is evidence that homophobic individuals are also more likely to have strongly conformist attitudes regarding traditional gender roles. *See* MOSES & HAWKINS, *supra* note 121, at 199.

Case law regarding gay and lesbian families illustrates the link between judicial homophobia and the desire of courts to perpetuate gender role expectations. Perhaps the most explicit example may be seen in *In re Davis*.¹²³ In that case, the court refused to permit the Washington Department of Social and Health Services to place a sixteen-year-old boy who had "homosexual tendencies" with a gay male foster couple. Although numerous expert witnesses recommended that the boy be placed in this setting, and the Department stated that the only alternative might be to institutionalize the boy, the court denied the placement holding that the boy "should be encouraged to behave normally regardless of his sexual orientation."¹²⁴ Apparently, the court in *Davis* believed it important that the boy exhibit traditional sex-typed behavior—and that this was unlikely to happen if he were raised by two gay men.

Questions about the desirability of perpetuating traditional gender roles is beyond the scope of this Article. These questions need not be addressed here, however, because in contrast to judicial speculation, scientific evidence has consistently rejected the notion that children raised in homosexual homes will exhibit special difficulties in this area.¹²⁵ To date, the published literature on sex-typed behavior has focused on the children of lesbian mothers. For example, in their study of lesbian and heterosexual-mother families, Golombok et al.¹²⁶ found that mothers gave their children of both genders access to both non-sex-typed toys and activities and "traditionally masculine and feminine ones appropriate to their sex."¹²⁷ In the few families where the researchers found strong sex-typing in the pattern of the children's activities, it was in the direction of traditional gender roles.¹²⁸ Additionally, in looking at the children's actual behavior, the authors found in their interviews with both mothers and children that they could not distinguish boys or girls of lesbian-mother families from their peers of the same gender raised by heterosexual mothers.¹²⁹ Hoeffler,¹³⁰ Kirkpatrick et

¹²³ 1 Fam. L. Rep. (BNA) 2845 (Wash. Super. Ct. 1975).

¹²⁴ *Id.* at 2847.

¹²⁵ See, e.g., Golombok et al., *supra* note 34, at 562-64; Green et al., *supra* note 21, at 174-76; Green, *supra* note 111, at 696-97; Green & Bozett, *supra* note 4 (citing studies); Beverly Hoeffler, *Children's Acquisition of Sex-role Behavior in Lesbian-mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 542-43 (1981); Kirkpatrick et al., *supra* note 67, at 550-51; Patterson, *supra* note 33, at 18-19.

¹²⁶ Golombok et al., *supra* note 34, at 208.

¹²⁷ *Id.* at 561.

¹²⁸ *Id.*

¹²⁹ *Id.* at 562-64.

¹³⁰ Hoeffler, *supra* note 125, at 542. Hoeffler examined six to nine-year-old children's preferences for sex-typed and neutral toys and activities and found that "[i]rrespective

al.,¹³¹ Green,¹³² Green et al.,¹³³ and Patterson¹³⁴ also found no evidence of difficulties with sex-typed behavior among the children of lesbian mothers.

Some have suggested that, although not specifically expressed in judicial reasoning, questions about the sex-typed behavior of children raised by lesbian mothers arise at least in part from an assumption that "lesbians hate men and therefore deny their children access to positive male role models."¹³⁵ In contrast to this assumption, one study found that children of divorced lesbian mothers had contact with their fathers as well as with their mothers' adult friends who were both men and women,

of [their] mothers' sexual orientation, both boys and girls preferred toys traditionally associated with their gender, and boys more than girls preferred sex-typed toys more than neutral ones." *Id.* at 542. These conclusions are "consistent with those from other studies of American children's play interests." *Id.*

¹³¹ Kirkpatrick et al., *supra* note 67, at 548, conducted a blind assessment of gender identity using a variety of historical data including the children's favorite toys, characters chosen in fantasy play, special interests, gender of favored playmates, sex play, relationships with adults, and reports of cross-dressing or interest in cross-gender roles. Additionally, they conducted a playroom interview about sex, current interests, and future roles in life. These methods revealed no differences between their lesbian and heterosexual mother groups. *Id.*

¹³² Green, *supra* note 111, at 696, explored toy preferences, peer group composition, clothing preferences, roles played in fantasy games, and vocational aspirations of children, aged 5 to 14 years, raised by lesbian mothers. Green also used projective testing. His results revealed what appeared to be typical gender role development in at least 36 of the 37 children in his sample. *Id.* at 694-96.

¹³³ Green et al., *supra* note 21, at 170, interviewed children aged 3 to 11 years and their lesbian and heterosexual mothers about the children's favorite toys, activities, television shows and characters, and peer group relations. They found that, while daughters displayed a wider range of gender-role behaviors than sons, neither boys nor girls were beyond the normal range expected. *Id.* at 179. Overall, children with lesbian mothers reported fewer strictly sex-typed activity preferences at school and in their neighborhoods than children with heterosexual mothers. *Id.* at 177-78. Interviews with the mothers revealed no differences in the two groups of sons in their cross-dressing behavior, fantasy play, or participation in sports. *Id.* at 176-77. Moreover, 95% of all boys said that they desired to work in traditionally masculine jobs. On the other hand, the girls in the lesbian-mother group more frequently said that they aspired to traditionally masculine jobs such as doctors, lawyers, engineers, and astronauts than did the girls in the heterosexual-mother group. *Id.* at 176. Additionally, lesbian mothers more than heterosexual mothers reported that their daughters at times dressed in "traditionally boyish" clothes, were above average in their participation in "rough and tumble play," and sometimes played with guns or trucks. *Id.* at 175-77. These differences did not present a problem for either parents or children. *Id.* at 177.

¹³⁴ Patterson, *supra* note 33, at 156, interviewed children aged four to nine years about their peer friendships, favorite toys and games, and favorite characters in movies, books, and television. She found that most of the children in her lesbian-mother sample reported preferences for sex-role behaviors that were normative for their age. *Id.*

¹³⁵ Green & Bozett, *supra* note 4, at 203.

homosexual and heterosexual.¹³⁶ In addition, Kirkpatrick et al. found that "lesbian mothers tended to be more concerned with providing male figures for their children than were the comparison [heterosexual] mothers."¹³⁷

3. *Sexual Orientation*

Many researchers in the area of alternative families pose and attempt to answer questions regarding the eventual sexual orientation of children raised by gay and lesbian parents. This is a controversial area, however, because legislators and judges often use this assumption to deny homosexual parents custody, visitation, or other parental rights for fear that children raised by gay parents might themselves become gay in greater proportions. In fact, Falk noted that "judges often consider the possibility of a child's becoming homosexual to be one of the most undesirable and perhaps even 'tragic' outcomes of awarding custody to lesbian mothers."¹³⁸ In this regard, some have suggested that courts seem more concerned with the conventional sexual development of sons than of daughters.¹³⁹ "Implicit in this concern is the belief that homosexuality is a second-best erotic orientation"¹⁴⁰—an assumption without empirical support.¹⁴¹

Although some courts have been very clear about their desire to protect children from any increased possibility that they may become homosexual,¹⁴² they seldom articulate their reasons for this interest.¹⁴³ In *Opinion of the Justices*,¹⁴⁴ for example, the court determined in an advisory opinion that a state statute barring gay and lesbian adoption and foster care would be constitutional. The court, without further explanation, found that

¹³⁶ Golombok et al., *supra* note 34, at 561-62. In fact, children raised by a lesbian mother visited their fathers more frequently than children raised by divorced heterosexual women. *Id.* at 557.

¹³⁷ Kirkpatrick et al., *supra* note 67, at 549. *But cf.* Mary B. Harris & Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. HOMOSEXUALITY, 101, 111 (1985) (reporting research that heterosexual single parents made more of an effort to provide their children with a role model of the opposite sex from themselves than their gay and lesbian counterparts). Further research is necessary to explain the inconsistency in these findings.

¹³⁸ Falk, *supra* note 1, at 945.

¹³⁹ *See, e.g.*, Miller, *supra* note 99, at 546.

¹⁴⁰ Richard Green, *The Best Interests of the Child with a Lesbian Mother*, 10 BULL. AM. ACAD. PSYCHIATRY & L. 7, 7 (1982).

¹⁴¹ *See supra* notes 14-27 and accompanying text.

¹⁴² *See, e.g.*, J.L.P. (H.) v. D.J.P., 643 S.W.2d 865, 867-68 (Mo. Ct. App. 1982); *Dailey v. Dailey*, 635 S.W.2d 391, 394 (Tenn. Ct. App. 1981).

¹⁴³ *See Custody Denials, supra* note 56, at 620.

¹⁴⁴ 530 A.2d 21 (N.H. 1987).

“[g]iven the reasonable possibility of environmental influences, we believe that the legislature can rationally act on the theory that a role model can influence the child’s developing sexual identity.”¹⁴⁵

It appears that even those judges who would reject presumptions against gay and lesbian parents still harbor fears that the behavior or lifestyle of a homosexual parent will alter a child’s sexual orientation. For example, in *In re Appeal in Pima County Juvenile Action B-10489*,¹⁴⁶ a dissenting judge advanced the position that homosexuality or bisexuality standing alone should not render an applicant unfit as a matter of law to adopt children.¹⁴⁷ He also stated that “not . . . every homosexual or bisexual is acceptable to adopt.”¹⁴⁸ To support this position, he cited favorably the court’s decision in *In re J.S. & C.*,¹⁴⁹ which limited a gay father’s visitation with his children because the father attended gay rights marches with his children and was a leader of a gay rights activist organization. Like the trial court, the appellate judge seemed to fear that gay or lesbian parents “would ‘proselytize’ homosexuality to a child.”¹⁵⁰

Current thinking and research on the development of sexual orientation supports the conclusion that parental homosexuality is not a determinative factor in the development of homosexuality in children. Bell et al. suggest that “homosexuality may arise from a biological precursor . . . that parents cannot control.”¹⁵¹ Clearly, “the vast majority of lesbians and gay men are raised by heterosexual parents,”¹⁵² and those parents who have attempted to alter their gay children’s sexual orientation have met with “remarkably little success.”¹⁵³

In fact, researchers have found that gay and lesbian parents are no more likely to have gay or lesbian children than are heterosexual parents.

¹⁴⁵ *Id.* at 25; see also *In re Marriage of Cabalquinto*, 669 P.2d 886, 888 (Wash. 1983) (en banc) (remanding a determination of visitation to the trial court for further consideration, noting that the trial judge had stated in an oral opinion that “a child should be led in the way of heterosexual preference, not be tolerant of this thing [homosexuality]”).

¹⁴⁶ 727 P.2d 830 (Ariz. Ct. App. 1986).

¹⁴⁷ *Id.* at 842 (Howard, J., dissenting).

¹⁴⁸ *Id.* at 840.

¹⁴⁹ 324 A.2d 90 (N.J. Super. Ct. Ch. Div. 1974).

¹⁵⁰ *In re Appeal in Pima County*, 727 P.2d 830, 837 (Ariz. Ct. App. 1986) (Howard, J., dissenting).

¹⁵¹ See ALAN P. BELL ET AL., *SEXUAL PREFERENCE, ITS DEVELOPMENT IN MEN AND WOMEN* 192 (1980).

¹⁵² See MOSES & HAWKINS, *supra* note 121, at 199.

¹⁵³ *Id.* Moses and Hawkins state that, “those who believe that gay parents could somehow override what appears to be an early and unalterable determination of sexual preference must believe either that the gay lifestyle is extraordinarily attractive and desirable or that gay people are supremely persuasive.” *Id.*

One group of researchers,¹⁵⁴ after interviewing pubertal and post-pubertal children of lesbian and heterosexual mothers about “romantic crushes or friendships,”¹⁵⁵ concluded that “[t]he two groups did not differ on sexual orientation and the pattern in both seemed typical for the age groups.”¹⁵⁶ Similarly, Huggins interviewed thirteen to nineteen-year-old offspring of divorced lesbian and heterosexual mothers and found that the only homosexual child she spoke with had a heterosexual mother.¹⁵⁷ In the only published study of adult-aged daughters of lesbian mothers, Gottman found that they did not differ significantly in sexual orientation from a group of daughters of heterosexual mothers.¹⁵⁸

Studies have also found that children of gay fathers do not develop a homosexual orientation in greater proportion than children of heterosexual parents. One study of children of gay fathers found, for example, that none of the fathers reported having a gay or lesbian child.¹⁵⁹ In addition, Miller’s interviews with gay fathers and their adult sons and daughters aged twenty-four to sixty-four years, similarly revealed no “disproportionate amount of homosexuality among the children of gay fathers.”¹⁶⁰ Other studies of the children of gay fathers have also found no greater proportion of homosexually-inclined children than would be expected in the general population.¹⁶¹

¹⁵⁴ See Golombok et al., *supra* note 34, at 564.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* Although the sexual orientation of the pre-pubertal children in this study could not be directly assessed, by looking at the friendship patterns of the children, the researchers found that children in both the lesbian and heterosexual households had friends predominantly of their own gender, a typical pattern for this age group. *Id.*; see also Green, *supra* note 111, at 693 (citing interviews with four 11 to 14 year-old children raised in lesbian-mother families which found them all to be heterosexual); Rees, *supra* note 80, at 87 (citing interviews with adolescents of lesbian mothers which found them all to be heterosexual “with no inclination toward homosexuality”); Turner et al., *supra* note 2, at 63 (citing interviews with the lesbian and gay parents of children aged 12 years and older which found that only one daughter of a lesbian was herself a lesbian and that none of the boys were gay). These findings were well within expected limits.

¹⁵⁷ See Huggins, *supra* note 63.

¹⁵⁸ See Gottman, *supra* note 74, at 189 (measuring the sexual orientation of the daughters in her sample based on their fantasies as opposed to behavior). Because all of the mothers in Gottman’s study had been in heterosexual marriages during the daughters’ earliest years, however, the effects of the mothers’ homosexual orientation were not exclusively represented.

¹⁵⁹ See Bozett, *supra* note 2, at 47. Not all of the children in this study were old enough for their sexual orientation to be determined.

¹⁶⁰ Miller, *supra* note 99, at 547.

¹⁶¹ See, e.g., Bozett, *supra* note 2, at 47.

Recognizing that parents serve as important role models for their children, several researchers have asked lesbian and gay parents about their desires regarding their children's sexual orientation. Results of this research suggest that lesbian and gay parents do not express a preference for their children to be homosexual.¹⁶²

IV. CONCLUSION

The social science literature reviewed here demonstrates clearly that lesbians and gay men can and do raise psychologically healthy children. In fact, no evidence has emerged to date which suggests that homosexual parents are inferior to their heterosexual counterparts, or that their children are in any regard compromised. Taken as a whole, these findings have important implications in the legal arena. First, because no significant differences have been found between heterosexual and homosexual parent families, there exists no empirical support for the dissimilar treatment of lesbian and gay families under the law. Specifically, the literature does not support blanket policies or presumptions denying lesbian or gay couples the right to adopt children, become foster parents, retain child custody or visitation after divorce, or utilize reproductive technology.¹⁶³ On the other hand, the social science literature also does not support the position that every individual, heterosexual or homosexual, is suitable to raise children. Rather, what the evidence suggests is that courts determining parental fitness among lesbian and gay individuals need not apply special presumptions, nor require expert evaluations, which depart from typical

¹⁶² See, e.g., Golombok et al., *supra* note 34, at 560, who found that none of the lesbian mothers in their sample stated a preference for their children to be homosexual, and that none wished to influence their children in that direction. *Id.* In fact, 19 of 27 women in their sample had no clear preference about their children's future sexual orientation, while the remaining eight preferred that their children be heterosexual. *Id.* at 560-61. Likewise, Flaks, *supra* note 63, at 136, found that the majority of lesbian mothers in his sample had no preference about their child's sexual orientation, while the others hoped that their child would be heterosexual.

¹⁶³ See, e.g., Elizabeth A. Delaney, *Statutory Protection of the Other Mother: Legally Recognizing the Relationship between the Nonbiological Lesbian Parent and Her Child*, 43 HASTINGS L.J. 177, 216 (1991); *Developments in the Law, supra* note 7; Nancy D. Polikoff, *Lesbian Mothers, Lesbian Families, Legal Obstacles, Legal Challenges*, 14 N.Y.U. REV. L. & SOC. CHANGE 907 (1986); Nancy D. Polikoff, *This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L.J. 459 (1990) [hereinafter *Two Mothers*]; Wendell Ricketts & Roberta Achtenberg, *Adoption and Foster Parenting for Lesbians and Gay Men: Creating New Traditions in Family*, in HOMOSEXUALITY AND FAMILY RELATIONS 83 (Frederick W. Bozett & Marvin B. Sussman eds., 1990); David M. Rosenblum, *Custody Rights of Gay and Lesbian Parents*, 36 VILL. L. REV. 1665 (1991).

methods of psychosocial assessment.¹⁶⁴ Instead; the literature is consistent with appropriate case-by-case evaluations of lesbian and gay families based on the same criteria employed with heterosexual parent families. Moreover, once lesbian and gay families are formed, the available evidence offers no justification for withholding from them the same legal protection and benefits offered to heterosexual-parent families. Specifically, they provide no basis upon which to deny same-sex parents full parental status, either during the couple's relationship, or afterward—should it end.¹⁶⁵

Although further research is necessary to fully understand the functioning of families headed by lesbians and gay men, there already exists sufficient evidence to support judicial reassessment of the disparate treatment sometimes afforded lesbian and gay families within the American legal system.

¹⁶⁴ See David J. Kleber et al., *The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature*, 14 BULL. AM. ACAD. PSYCHIATRY & L. 81, 86 (1986).

¹⁶⁵ See Delaney, *supra* note 163, at 216; Polikoff, *Two Mothers*, *supra* note 163, at 573-75.