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IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JUVENILE DIVISION  
CASE NO.: 06-033881 FC 04

IN THE MATTER OF THE ADOPTION OF )  
 )  
 [John Doe] and )  
 [James Doe], )  
 minor children, )  
 )  
 \_\_\_\_\_ )

The above-entitled cause came on for  
hearing before THE HONORABLE CINDY S. LEDERMAN,  
in her courtroom at the Juvenile Justice Center,  
3300 Northwest 27th Avenue, Second Floor, Miami,  
Miami-Dade County, Florida, on Tuesday, October  
1, 2008, beginning at approximately 8:45 a.m.

- - -

1 APPEARANCES:

2 THE AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION OF FLORIDA, INC., by  
4 LESLIE COOPER, ESQ.,  
5 and  
6 ROBERT F. ROSENWALD, JR., ESQ.,  
7 and  
8 JAMES ESSEKS, ESQ.,  
9 and  
10 SHELBI D. DAY, ESQ.,  
11 Counsel for Petitioner, Frank Martin Gill  
12 and the ACLU.

13 OFFICE OF THE ATTORNEY GENERAL, by  
14 VALERIE J. MARTIN, ASSISTANT ATTORNEY GENERAL,  
15 and  
16 KIERNAN P. MOYLAN, ASSISTANT ATTORNEY GENERAL,  
17 and  
18 CHARLES M. FAHLBUSCH, ASSISTANT ATTORNEY GENERAL,  
19 Counsel for Department of Children & Families.

20 GREENBERG TRAUERIG, P.A., by  
21 HILARIE BASS, ESQ.,  
22 and  
23 RICARDO A. GONZALEZ, ESQ.,  
24 Counsel for the minor children.

25 JESSICA L. ALLEN, ESQ.,  
On behalf of the Guardian Ad Litem Program.

RONALD B. GILBERT, ESQ., GUARDIAN AD LITEM  
FRANK MARTIN GILL, PETITIONER

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1           THEREUPON:

2                   The following proceedings were had:

3                   THE COURT: All right, let's --  
4                   Shall we start with putting our  
5                   appearance on the record, please, and if  
6                   you want to call the case.

7                   THE CLERK: Okay. In the Interest  
8                   of [Doe] [Doe] [Doe] [Doe],  
9                   04-15840, on for trial.

10                  THE COURT: Ms. Martin?

11                  MS. MARTIN: Oh, I'm sorry. I'm  
12                  sorry. Valerie Martin, with the  
13                  Attorney General's Office, on behalf of  
14                  the Department of Children & Families.

15                  MR. MOYLAN: Kiernan Moylan. I'm  
16                  with the Attorney General's Office. I'm  
17                  also for the Department of Children &  
18                  Families.

19                  MR. FAHLBUSCH: Charles Fahlbusch,  
20                  with the Attorney General's Office, on  
21                  behalf of the Department of Children &  
22                  Families.

23                  MS. ALLEN: Jessica Allen, on  
24                  behalf of the Guardian Ad Litem Program.

25                  MR. GILBERT: Ronald Gilbert, the

1 guardian ad litem.

2 MS. BASS: Hillary Bass and Rick  
3 Gonzalez, from Greenberg Traurig, on  
4 behalf of the dependent children.

5 MS. COOPER: Leslie Cooper, on  
6 behalf of the petitioner.

7 MR. ROSENWALD: Robert Rosenwald,  
8 on behalf of the petitioner.

9 MR. ESSEKS: James Esseks, on  
10 behalf of the petitioner.

11 THE COURT: Okay. So the first  
12 issue is --

13 MR. GILL: I'm Frank, the  
14 petitioner.

15 MR. ROSENWALD: Frank Martin Gill.

16 THE COURT: Mr. Gill is here,  
17 right.

18 The first issue is the request from  
19 the Miami Herald. So what is your  
20 response to that?

21 MS. MARTIN: Would you like me to  
22 rise when I speak to you, Your Honor?

23 THE COURT: No.

24 MS. MARTIN: -- or can I be seated?  
25 It's a little crowded.

1 THE COURT: Right.

2 MS. MARTIN: DCF would oppose any  
3 media intervention or observation of  
4 this hearing, because I think by law it  
5 is closed.

6 THE COURT: For the child?

7 MS. BASS: Your Honor, my  
8 understanding is that Mr. Gill has an  
9 objection --

10 THE COURT: Okay.

11 MS. BASS: -- and therefore --

12 THE COURT: All right. I'm sorry.

13 THE HERALD REPORTER: Thank you.

14 THE COURT: Thank you.

15 Okay, let's begin.

16 MS. COOPER: We have a few  
17 administrative matters to take up --

18 THE COURT: Okay.

19 MS. COOPER: -- with the Court. We  
20 have a few documents we'd like to hand  
21 up as stipulated, a stipulated exhibit,  
22 which --

23 THE COURT: All right.

24 MS. COOPER: We have --

25 THE COURT: Okay, I'm going to need

1 the clerk for this. Laura, are you  
2 going to be the clerk?

3 THE CLERK: Yes, Judge.

4 THE COURT: Okay.

5 MS. COOPER: Okay. The first item  
6 is a copy of an excerpt of the  
7 children's case file that was produced  
8 in discovery, and the parties agree to  
9 have that entered into evidence.

10 THE COURT: Okay, so let's have  
11 that marked.

12 MS. COOPER: Uh-huh.

13 THE CLERK: A-1.

14 THE COURT: And that's a  
15 stipulation, so there's no issues, so  
16 we'll make that State -- Petitioner --

17 MS. COOPER: Petitioner -- well,  
18 Joint Exhibit 1, perhaps?

19 MR. ESSEKS: Well, whatever you  
20 want.

21 MS. MARTIN: I -- if I may have a  
22 say, I would do it as Petitioner's.

23 MS. COOPER: Okay.

24 MS. MARTIN: I think it's clearer  
25 that way for the record.

1 MS. COOPER: Okay.

2 THE COURT: Petitioner's 1.

3 MS. COOPER: And in addition, we'd  
4 like to submit responses to some  
5 interrogatories provided by the State,  
6 as well as a response to one particular  
7 request for production that had some  
8 material we thought would be useful to  
9 include in the record and to show those.

10 THE COURT: All right. So you've  
11 all agreed on this, as well?

12 MS. MARTIN: No, we have not. But  
13 if I could look at them, maybe we can.

14 THE COURT: We're going to mark  
15 this as 2.

16 MS. COOPER: And, Valerie, that --

17 MS. MARTIN: Oh, okay.

18 MS. COOPER: -- which is the  
19 Response to Request for Production 19,  
20 with the accompanying request, so that  
21 it will make sense.

22 MS. MARTIN: Give me just one  
23 minute --

24 MS. COOPER: Sure.

25 MS. MARTIN: -- just to clarify



1 something.

2 Your Honor, DCF has no objection to  
3 the interrogatories as they are  
4 submitted.

5 THE COURT: All right, so that will  
6 be Petitioner's 2.

7 Anything else? Well, there are  
8 other things in that package, as well.

9 MS. COOPER: Yeah, we have the  
10 second --

11 MS. MARTIN: I'm sorry --

12 MS. COOPER: -- response to a  
13 document --

14 THE COURT: You can identify them  
15 one by one.

16 MS. MARTIN: Pardon me, the next  
17 document that the petitioner offers to  
18 enter in, as stipulated, is a Request  
19 for Production on Number 19, and I have  
20 no objection if you're doing it only for  
21 the purposes of response to 19.

22 MS. COOPER: Absolutely.

23 THE COURT: Okay.

24 THE CLERK: Okay, so am I doing  
25 these separately?

1 THE COURT: I think so. Yes, do it  
2 separately. That's 3. This will be 3.

3 MS. MARTIN: Okay, great.

4 THE COURT: Okay, we're ready?

5 MS. MARTIN: No, Your Honor, I also  
6 have a couple of items.

7 THE COURT: Okay.

8 MS. MARTIN: I had previously  
9 filed, for the Court's record, four  
10 depositions taken by DCF officials.

11 THE COURT: Yes, I have those here.

12 MS. MARTIN: And I've provided  
13 copies of all those to the parties and  
14 we have stipulated that we'd like to  
15 enter them into evidence.

16 THE COURT: Okay. I've read them.

17 MS. MARTIN: May I just submit them  
18 as official documents for the record?

19 THE COURT: Sure, and I assume  
20 we're talking Waters, Frizzell, Gonzalez  
21 and Davis?

22 MS. MARTIN: Yes, Judge, that's  
23 correct.

24 THE COURT: Any objection?

25 MS. COOPER: No.

1 THE COURT: Okay.

2 MS. MARTIN: So we can mark those  
3 as DCF 1, 2, 3 and 4?

4 THE CLERK: No, A. We do A, B --

5 THE COURT: There are just a few  
6 pages missing from my copy, so are we  
7 using my copy or yours?

8 MS. MARTIN: Could you show me an  
9 example of what's missing from yours?

10 THE COURT: Page 40.

11 MS. MARTIN: Of what depo?

12 THE COURT: I think what someone  
13 did, which I was very grateful for, the  
14 part you didn't want me to read, they're  
15 not in here. For example, this goes  
16 from 37 to 42.

17 MS. COOPER: Yes, Petitioner had  
18 submitted designations of excerpts, and  
19 then DCF asked to -- chose to submit the  
20 entire depositions, in their entirety,  
21 and we have no objection, so I think  
22 you'll need a full copy.

23 THE COURT: So you need to give  
24 that to the clerk.

25 MS. MARTIN: Okay, that's what I --

1                   yeah, that's what I was hoping to do, is  
2                   just to mark them A, B, C and D.

3                   THE COURT:   Fine, fine.

4                   MS. MARTIN:   So you'll have the  
5                   entire depo.

6                   THE COURT:   Fine.

7                   MS. MARTIN:   Would you like to  
8                   catch up with that?

9                   THE CLERK:   No, I need to know what  
10                  the documents are.

11                  MS. MARTIN:   Sure.   This will be A.  
12                  This is the deposition of Kathleen  
13                  Waters.

14                  MR. ESSEKS:   Waters?

15                  MS. MARTIN:   Uh-huh.

16                  And B will be Davis.

17                  Number C will be Frizzel.

18                  And D will be Gonzalez.   Thank you.

19                  The only other thing I have, Your  
20                  Honor, is another housekeeping matter,  
21                  and that has to do with a Notice of  
22                  Supplemental Authority, filed by the  
23                  petitioner.   I don't know if Your Honor  
24                  has actually seen that yet.   It's a  
25                  rather new filing.

1 THE COURT: No, I haven't seen that  
2 yet.

3 MS. MARTIN: I have -- if you don't  
4 mind, I can submit mine. This is a copy  
5 of the Notice of Supplemental Authority,  
6 and in it, they attempt -- they would  
7 like to indicate that the same evidence  
8 that the petitioner and minor children  
9 will present at trial will demonstrate  
10 that the statute violates the right to  
11 equal protection and due process under  
12 the Florida Constitution and will also  
13 prove that the statute is an invalid  
14 special law, relying on the Bean case,  
15 recently issued out of Monroe County.

16 THE COURT: Yes.

17 MS. MARTIN: The Department has  
18 filed an opposition to that, that trying  
19 to create a new claim at this late  
20 juncture is prejudicial and fundamental  
21 error, and I have copies of both for the  
22 Court.

23 THE CLERK: So is this going to be  
24 E and F?

25 MS. MARTIN: No, it's just -- It's

1 not an exhibit.

2 THE CLERK: Okay.

3 MS. MARTIN: It's just for the  
4 Court's review. The Judge has not seen  
5 that yet.

6 THE COURT: Thank you.

7 MS. MARTIN: So we would oppose the  
8 Court's ability to determine, based upon  
9 the evidence presented here, that this  
10 would be in violation of a special law,  
11 since that was not pled throughout all  
12 these proceedings.

13 MS. BASS: Your Honor, a brief  
14 response. We don't believe it's going  
15 to alter -- your consideration of this  
16 legal issue will not alter the testimony  
17 that's going to be presented. So we  
18 would propose that we go forward with  
19 the trial, present the same testimony  
20 that was previously identified, and at  
21 the conclusion, when it comes to legal  
22 argument, Your Honor can consider at  
23 that point whether or not, by virtue of  
24 this new case, you could also consider  
25 additional legal issues.

1           THE COURT: Okay. That sounds  
2           logical, to let me just defer on that,  
3           okay, and we'll listen to all the  
4           testimony.

5           Okay, anything else? All right.

6           MS. COOPER: Not from us. May we  
7           call our first witness?

8           THE COURT: Yes.

9           MS. COOPER: Our first witness is  
10          Dr. Anne Peplau, who will testify on the  
11          topic of relationship stability and  
12          domestic violence.

13          MR. FAHLBUSCH: Your Honor, we  
14          would object to Dr. Peplau testifying at  
15          this time. Dr. Peplau was not in the  
16          petitioner's initial expert disclosures.  
17          She was, however, listed in the  
18          petitioner's rebuttal expert  
19          disclosures. However, it would be  
20          highly improper for a rebuttal witness  
21          to testify when there has been no  
22          respondent's case to rebut. Therefore,  
23          it would be inappropriate for Dr. Peplau  
24          to be testifying at this time.

25          MS. COOPER: Your Honor, Dr. Peplau





1           of those experts, so that opportunity  
2           was there.

3           THE COURT: Go ahead.

4           MS. COOPER: Okay.

5           THE CLERK: Raise your right hand,  
6           please.

7           THEREUPON:

8                         LETITIA ANNE PEPLAU, PH.D.

9           was called as a witness by the Petitioner and,  
10          having been first duly sworn, was examined and  
11          testified as follows:

12          THE CLERK: Thank you.

13                         DIRECT EXAMINATION

14          BY MS. COOPER:

15                 Q. Dr. Peplau, please state your full name  
16                 for the record, please.

17                 A. Yes, Letitia Anne Peplau.

18                 Q. And could you please tell the Court your  
19                 educational background?

20                 A. I have a Bachelor's degree in psychology  
21                 from Brown University, and I have a Ph.D. in  
22                 social psychology from Harvard University.

23                 Q. When did you get your Ph.D. from  
24                 Harvard?

25                 A. In 1973.

1 Q. Are you currently employed?

2 A. Yes. I'm a professor of psychology at  
3 the University of California Los Angeles.

4 Q. Okay, and how long have you been a  
5 professor of psychology at UCLA?

6 A. Since 1973.

7 Q. And can you describe generally how you  
8 spend your time professionally?

9 A. Yes. My time is really divided between  
10 research, teaching both graduate students and  
11 undergraduates, and service in administrative  
12 responsibilities.

13 Q. Okay. What classes do you teach at  
14 UCLA?

15 A. I teach graduate classes in social  
16 psychology and about interpersonal relationships.  
17 I teach undergraduate classes, primarily about  
18 the psychology of gender, but also from time to  
19 time about relationships and about social  
20 psychology.

21 Q. And are any of the classes that you  
22 teach or have taught at UCLA, classes that  
23 address couple relationships?

24 A. Yes, frequently.

25 Q. And does that include same-sex couple

1 relationships?

2 A. Yes, it does.

3 Q. And does that include violence within  
4 couple relationships?

5 A. Yes. Many of the courses that I teach  
6 would spend at least a day on that topic.

7 Q. You mentioned that you conduct research,  
8 as well. Can you describe generally the focus of  
9 your research activity?

10 A. My research has really been designed to  
11 help us understand the importance of close,  
12 caring relationships in people's lives, and  
13 that's led me to conduct studies of heterosexual  
14 relationships and also of same-sex relationships.

15 Q. Is any of your research published?

16 A. A good deal of it is published.

17 Q. About how many publications do you have?

18 A. There are probably about -- perhaps 120  
19 journal articles or chapters in edited handbooks  
20 and volumes.

21 Q. Okay, and are any of those articles  
22 published in peer-reviewed academic journals?

23 A. Yes. The empirical research papers are  
24 all published in peer-reviewed scientific  
25 journals.

1 Q. And have you authored any books?

2 A. Yes. I've either co-authored or  
3 co-edited about 10 books, and those include an  
4 introductory psychology textbook, a social  
5 psychology textbook, a book on close  
6 relationships, a book on gender, culture and  
7 ethnicity, and an edited volume on same-sex  
8 couples.

9 Q. Uh-huh, and in addition to that edited  
10 volume on same-sex couples, do any of your other  
11 publications address couple relationships of  
12 lesbians and gay men?

13 A. Yes, probably 35 or 40 of the journal  
14 articles and book chapters are on the experiences  
15 of lesbians and gay men.

16 Q. In couple relationships?

17 A. In couple relationships.

18 Q. And are your publications on couple  
19 relationships of lesbians and gay men cited by  
20 other academics in your field?

21 A. Yes, they are.

22 Q. Okay, and have you ever addressed the  
23 topic of domestic violence in couple  
24 relationships in your publications?

25 A. Yes. I've written a number of review

1 articles or review book chapters, most recently a  
2 chapter in the Annual Review of Psychology, and  
3 those have frequently included summaries of  
4 research on domestic violence.

5 Q. Have you received any grants for your  
6 work, to fund your work?

7 A. Yes. Currently, I am director of a  
8 rather large program funded by the National  
9 Science Foundation. I'm the principal  
10 investigator on this award. It's for more than  
11 two hundred and -- for more than two and a half  
12 million dollars, and the purpose of this funding  
13 is to train doctoral students to learn how to  
14 conduct cutting-edge research about  
15 relationships, and this includes research about  
16 heterosexual relationships but same-sex  
17 relationships, as well.

18 Q. Have you received any professional  
19 awards for your research?

20 A. I have. I've received several awards  
21 for my research, some for a particular piece of  
22 research or journal article, others have been  
23 lifetime achievement awards, and these are from  
24 the International Association for Relationship  
25 Research, from the Society for the Scientific

1 Study of Sexuality, and also from the American  
2 Psychological Association. In particular, the  
3 APA is divided into subsections for such a big  
4 group, and I've received research awards from two  
5 of those subgroups within the APA.

6 Q. Have you been invited to give any  
7 academic presentations?

8 A. Yes, I've given many more than a hundred  
9 presentations at universities or at scientific  
10 meetings, both in the United States and in  
11 Europe.

12 Q. And do any of those presentations  
13 address the subject of couple relationships of  
14 lesbians and gay men?

15 A. Yes.

16 Q. Now, in your work as a professor of  
17 psychology, do you keep up with colleagues' work  
18 in the field?

19 A. Yes, I do.

20 Q. Is that a routine part of your work?

21 A. It's a very important part.

22 Q. And how do you keep up with those? What  
23 do you do?

24 A. I subscribe to a number of professional  
25 journals and read them as they come in. One

1           reason for going to professional meetings is to  
2           attend lectures by experts in related fields and  
3           find out what the current research is. I  
4           correspond with researchers at other universities  
5           about current work they're doing that may not yet  
6           be published.

7           Q. And in the research that you keep up  
8           with in those ways, does that include the  
9           research on the couple relationships of lesbians  
10          and gay men?

11          A. Yes, it does.

12          Q. Does it include research on the couple  
13          relationships of people in other demographic  
14          groups?

15          A. Yes.

16          Q. Have you ever served on any editorial  
17          boards or been a peer reviewer for academic  
18          journals in the field?

19          A. Yes. I've been on the editorial boards  
20          of many journals, of the Journal of Personality  
21          and Social Psychology, the Journal of Social  
22          Issues, Social Psychology Quarterly, again, in  
23          personal relationships; Signs, which is a women's  
24          studies journal. Social Psychology Quarterly, I  
25          may have mentioned, and probably others I'm

1           forgetting.

2                   Q. Can you tell us what the peer review  
3 process is?

4                   A. The peer review process is really a  
5 cornerstone of science, and it applies both in  
6 reviewing journal articles for publication in  
7 scientific journals, but also in reviewing  
8 proposals for Federal funding for grants, and  
9 essentially, in journals, it means that when an  
10 article is submitted for publication, it would be  
11 sent to four or five or six other experts in the  
12 field who would review that manuscript very  
13 carefully to assess whether the methodology is  
14 sound, whether the statistics were appropriate,  
15 and then furthermore to make a judgment about  
16 whether the research is of sufficient quality and  
17 importance to be published, because space in  
18 scientific journals, especially the top journals,  
19 is very limited, and so it's a screening process.

20                   Q. Are most papers that are submitted to  
21 journals and subject to that peer-review process  
22 approved for publication?

23                   A. In most of the journals, the ones that  
24 I've worked with, the rejection rate is typically  
25 very high. It might be as high as 80 percent.



1           So only 20 percent or so of papers submitted  
2           would be accepted, and often not immediately.  
3           Often reviewers engage in a process of saying,  
4           "Well, this is good, but this isn't clear," or,  
5           "What if you added this control?" So it's really  
6           a dialogue among experts about making the work  
7           that's published of the highest possible quality.

8                     MS. MARTIN: Ms. Cooper, may I  
9                     interrupt for just a moment? I  
10                    apologize.

11                   Your Honor, may I inquire as to the  
12                   woman -- and of people in attendance?

13                   THE COURT: Sure.

14                   MS. ALLEN: This is a certified  
15                   legal internal from the Guardian Ad  
16                   Litem Program.

17                   MS. MARTIN: Okay.

18                   MS. ALLEN: And this is another  
19                   attorney who's with us.

20                   MS. MARTIN: Okay, thank you. I'm  
21                   sorry to interrupt.

22                   MS. COOPER: The other folks you  
23                   know, right?

24                   THE COURT: The lady next to Mr.  
25                   Gilbert, I don't know.

1 MS. DAY: Shelbi Day. I'm an  
2 attorney at the ACLU.

3 THE COURT: Okay.

4 MS. MARTIN: Thank you. My  
5 apologies.

6 MS. COOPER: That's fine. I'd like  
7 to mark, as Petitioner's 4, a CV of  
8 Letitia Anne Peplau.

9 MS. MARTIN: Thank you.

10 MS. COOPER: Thanks.

11 BY MS. COOPER:

12 Q. Dr. Peplau, do you recognize this  
13 document?

14 A. Yes. This is my CV, dated January 2008.

15 MS. COOPER: And I apologize that  
16 we have not provided a copy today. This  
17 is the copy that was provided in  
18 discovery.

19 Your Honor, I move to admit this CV  
20 as a summary of Dr. Peplau's testimony  
21 regarding her qualifications.

22 MR. FAHLBUSCH: No objection.

23 THE COURT: Okay.

24 MS. COOPER: And, Your Honor, I  
25 further move to qualify Dr. Peplau as an

1 expert in psychology, with a  
2 specialization in couple relationships,  
3 including violence within relationships  
4 and including same-sex couple  
5 relationships.

6 THE COURT: Any objection?

7 MR. FAHLBUSCH: No objection.

8 THE COURT: Okay, so ordered. Let  
9 me just put on the record the number  
10 of -- the CV is what number?

11 THE CLERK: Four.

12 THE COURT: State's -- State's 4.

13 I mean --

14 MR. ESSEKS: Petitioner's.

15 THE COURT: -- Petitioner's 4.

16 Okay. Go ahead.

17 BY MS. COOPER:

18 Q. Dr. Peplau, an issue that's been raised  
19 in this case by the other side is that a basis to  
20 exclude gay people from adopting children is that  
21 gay couples have unstable relationships.

22 MR. FAHLBUSCH: I'm going to object,  
23 Your Honor. No issue has been raised by the  
24 other side yet. The respondent hasn't had a  
25 chance to present its case.

1 MS. COOPER: Your Honor, in  
2 discovery, the issue was raised  
3 abundantly.

4 THE COURT: Overruled.

5 BY MS. COOPER:

6 Q. So I'm going to ask you some questions  
7 about that subject. Is there any research that  
8 has examined the relationships of same-sex  
9 couples?

10 A. Yes, there's quite a bit of research now  
11 on that topic.

12 Q. And is that research that has been  
13 published in the peer-reviewed academic journals?

14 A. Yes.

15 Q. And what types of questions have  
16 researchers explored with respect to same-sex  
17 couple relationships?

18 A. Researchers have been interested in  
19 understanding things about the quality of  
20 same-sex relationships, and also in understanding  
21 issues surrounding the stability or the  
22 durability of same-sex relationships. In  
23 general, researchers have taken questions that  
24 have been asked for decades about heterosexual  
25 couples and are now asking the same questions

1 about same-sex couples.

2 Q. I'm just going to pause for a moment and  
3 ask if you could speak up a little bit. I think  
4 the court reporter --

5 THE COURT REPORTER: Thank you.

6 Q. -- is having -- and I will try to do the  
7 same.

8 A. I'm sorry. I'll try to do that.

9 Q. I will do my best to speak up.

10 MR. ESSEKS: And while we're doing that,  
11 is that -- Would moving you around help?

12 (Discussion off the record)

13 BY MS. COOPER:

14 Q. Now, in that research that you  
15 described, does any of it compare the  
16 relationships of same-sex couples to those of  
17 different-sex couples?

18 A. Yes, it does.

19 Q. Who are some of the leading researchers  
20 who have looked at same-sex couple relationships?

21 A. That would include Pepper Schwartz and  
22 Phil Blumstein, Lawrence Kurdek, Gunnar  
23 Andersson, and more recently, work by Esther  
24 Rothblum and Kimberly Balsam.

25 Q. And you, yourself, have done research on

1           this topic?

2           A.  Yes, we have.

3           Q.  Okay.  And putting yourself aside, the  
4           folks you've described, can you tell us what  
5           their reputations are in the field of -- in your  
6           field?

7           A.  Yes.  They're all Ph.D. researchers who  
8           have very high reputations.  They're well  
9           respected in their fields.  They have academic  
10          appointments at research universities or, in the  
11          case of Gunnar Andersson, who does work on -- in  
12          Scandinavia, he's affiliated with the Max Planck  
13          Institute in Germany, which is a very highly  
14          regarded research institute.

15          Q.  Now, I'm going to ask you some specific  
16          questions about what is known from that research  
17          on same-sex couple relationships.

18                 First, what role do couple relationships  
19          play in the lives of lesbians and gay men?

20          A.  There's really growing evidence that  
21          close and caring relationships are enormously  
22          important for the psychological well-being and  
23          the physical health of everyone, and lesbians and  
24          gay men are no different in that respect.  Many  
25          lesbians and gay men seek to have long-term

1 relationships, and they often build their lives  
2 around a primary relationship with another  
3 person.

4 Same-sex couples do many of the same  
5 things that I and my husband of 27 years do.  
6 They buy houses together. They invite friends  
7 and relatives to dinner. They celebrate  
8 birthdays and promotions. They support each  
9 other in times of illness or crisis, and they try  
10 to build a future together.

11 Q. Do lesbian and gay couples ever publicly  
12 declare their commitment to one another?

13 A. Yes, they do. Of course, it's only  
14 recently that marriage and civil unions have been  
15 available in a few places in this country, but  
16 for a long time, many same-sex couples have had  
17 what are often called commitment ceremonies. It  
18 would be bringing together friends and family to  
19 celebrate their relationship. Some lesbians and  
20 gay men have had religious marriages performed by  
21 ministers or rabbis who are parts of religious  
22 groups that permit religious same-sex marriages.

23 Q. Does the term relationship quality, if  
24 you use that term, have a particular meaning in  
25 your field?

1           A. The term relationship quality is kind of  
2 a broad category, if you will, that would include  
3 how personally satisfying a relationship is, the  
4 extent to which partners are in love with each  
5 other, but which might also be assessed through  
6 standardized measures of relationship  
7 functioning. There are many, now, reliable,  
8 well-tested measures of relationship quality that  
9 have been used with heterosexual couples and used  
10 effectively with same-sex couples.

11           Q. Does any of the research compare or is  
12 there research that compares the quality of the  
13 relationship of same-sex couples to the quality  
14 of relationships of heterosexual couples?

15           A. Yes, there is. Research by Larry  
16 Kurdek, by Kimberly Balsam, and by many others.  
17 We've done, at UCLA, some research, as well.

18           Q. And how do the relationships compare,  
19 with respect to quality?

20           A. On quality -- well, on any measure  
21 that's been used, and there's been quite a number  
22 of different ways in which researchers have  
23 assessed, same-sex partners and heterosexual  
24 partners on average look very similar. In a few  
25 instances where differences have been found, they



1           tend to be small and they tend to favor the  
2           same-sex couples, who score higher than  
3           heterosexuals on measures of satisfaction or  
4           relationship functioning, but the big picture is  
5           similarity.

6           Q.    What about in the specific area of  
7           conflict?  Have any of the studies compared the  
8           issue of conflict on same-sex couples and  
9           heterosexual couples?

10          A.    Researchers have looked at two aspects  
11          of conflict.  One is the level of conflict, and  
12          by that we would mean, how often do couples have  
13          arguments or disagreements.  I think it's pretty  
14          common for most relationships to sometimes have  
15          areas where the partners see things differently  
16          or have disagreements, but certainly some couples  
17          manage to keep conflict to a minimum and other  
18          couples disagree a lot.

19          Again, we've developed some standardized  
20          measures to assess frequency of arguments and  
21          conflict, and in research by Kurdek, by Balsam  
22          and by others, gay couples, same-sex couples, and  
23          heterosexual couples look very similar in their  
24          level of conflict, and in a couple of studies  
25          where small differences have been found, the

1 same-sex couples have reported lower levels of  
2 conflict.

3 Q. And, Dr. Peplau, you had mentioned there  
4 are two ways conflict is measured?

5 A. Yes. I mean, obviously, if you assume  
6 that many couples experience conflict from time  
7 to time, then another very important question is,  
8 how do couples respond when conflict arises, and  
9 we know that some couples are able to discuss  
10 their disagreements thoughtfully, to try to seek  
11 compromises, to try to be respectful of each  
12 other's points of view, and in contrast, other  
13 couples turn nasty and have trouble reaching  
14 consensus or compromising, and so researchers  
15 have, again, found a variety of ways to assess  
16 how couples manage or respond to conflict, and in  
17 studies by John Gottman, by Roisman, by Julien  
18 and by others, when you compare same-sex and  
19 heterosexual couples, their responses to conflict  
20 look remarkably similar, and again, when there  
21 have been small differences found, if anything,  
22 they suggest that the same-sex couples may be a  
23 bit more positive or constructive in their  
24 responses to conflict.

25 Q. I'd like to turn to the issue of

1 stability within relationships. Is there any  
2 research on what predicts breakups in -- and  
3 let's start with heterosexual relationships.

4 A. Yes. Perhaps because of what some see  
5 as a very high divorce rate, there's been a great  
6 deal of interest in what predicts which marriages  
7 are going to last and which don't. There are  
8 several major predictors, and we could talk about  
9 those.

10 Q. Sure. Yes, please.

11 A. Some of the major predictors are things  
12 like age at marriage, race or ethnicity,  
13 education, family income, or religion.

14 Q. And what about factors within the course  
15 of a relationship? Are there any predictors of  
16 dissolution with respect to the quality of the  
17 relationship?

18 A. I see where you're going, yeah. I mean,  
19 researchers interested in the stability of  
20 relationships have suggested that there are two  
21 kind of broad reasons why couples stay together,  
22 that on the one hand, couples stay together  
23 because their relationships are happy and they  
24 want to be there, and on the other hand, they  
25 stay together because the costs of getting out of

1           the relationship are really high. And so both of  
2           these broad categories have been looked at in  
3           some detail.

4                        So first would be, what are factors that  
5           can cause satisfaction in married couples to  
6           erode or diminish over time -- most couples begin  
7           with optimism and love and high expectations --  
8           what factors get in the way of that continuing,  
9           and many have been identified. Some have to do  
10          with individual qualities that the partners bring  
11          into a marriage. An example would be the  
12          personality quality of neuroticism, that people  
13          who score high on measures of neuroticism are  
14          prone to feel anxious, to feel angry, to get  
15          depressed. They don't handle minor frustrations  
16          very well. And as you can imagine, it can be  
17          tough to live with a person who has those  
18          tendencies, and so neuroticism would be an  
19          example of a -- something the person brings to a  
20          marriage that is not a good predictor in terms of  
21          the stability of the marriage.

22                        Obviously, a second kind of thing that  
23          affects quality would be the level of conflict,  
24          the ways couples respond to conflict, the  
25          patterns of interaction, how they communicate

1 with each other.

2 Another factor that can affect quality  
3 would be the stress that a married couple is  
4 exposed to, that if your house has just been  
5 taken out by a hurricane or one of the partners  
6 has lost a job, it's hard sometimes to maintain a  
7 high-quality relationship.

8 And then the flip side of stress, of  
9 course, is social support and resources, that  
10 some couples have friends and relatives they can  
11 turn to in times of crisis, to buffer those  
12 stresses, and others don't. So these are all  
13 factors that affect the likelihood that a  
14 relationship stays at a high-quality level or  
15 diminishes.

16 And then the second big reason we talked  
17 about were staying in a relationship, even if  
18 it's what sometimes is called an empty shell  
19 marriage, because there are barriers to getting  
20 out, and obviously, for married couples, marriage  
21 is not only a commitment ceremony, if you will,  
22 but it's a legal arrangement and so there  
23 certainly are legal consequences of ending  
24 marriage. There may be other kinds of barriers,  
25 as well. Some people still view divorce as

1           stigmatizing. Some people stay together because  
2           they've invested so much in a relationship, in  
3           building a life together, that they feel they  
4           would just lose more than they're willing to  
5           lose, and of course, some people are fearful that  
6           they don't have a better alternative, this isn't  
7           great but it's better than being alone. So there  
8           would be a whole host of barriers that might keep  
9           people in a relationship.

10           Q. And do those barriers -- are there  
11           barriers to leaving a relationship that exist in  
12           the context of unmarried couples?

13           A. There certainly are. I mean, many  
14           unmarried couples have been together for periods  
15           of time, have started to have their lives be  
16           interconnected, maybe they've started a small  
17           business together, maybe they've purchased  
18           property together. Increasingly, unmarried  
19           couples are having children together. And they  
20           may have made a personal pledge to each other  
21           that they're going to stay together through thick  
22           and thin. And so there would certainly be many  
23           reasons why unmarried couples would feel  
24           deterrence to ending a relationship.

25           Q. So we've been focusing on heterosexual

1 couples, predictors of stability or instability  
2 for heterosexual couples. Have researchers  
3 explored predictors of breakups among same-sex  
4 couples?

5 A. They have.

6 Q. And what have they found?

7 A. This is another instance in which the  
8 similarity between same-sex couples and  
9 heterosexual couples has been a very consistent  
10 finding. That is, the same kinds of factors that  
11 affect the stability of married heterosexual  
12 couples also seem to predict the stability of  
13 same-sex couples.

14 Q. So, if someone needed to look at a  
15 couple to evaluate their likelihood of remaining  
16 stable, could that be done for same-sex couples  
17 as effectively as for heterosexual couples?

18 A. Absolutely.

19 Q. In discovery in this litigation,  
20 witnesses for the State have suggested that gay  
21 couples are incapable of having long-lasting  
22 relationships. Is there any population-based  
23 data that looks at the question of whether gay  
24 couples are, in fact, having long-lasting  
25 relationships?

1                   MR. FAHLBUSCH: I'm going to object  
2                   to that question. It relies on facts  
3                   not in evidence.

4                   MS. COOPER: I'm happy to reframe  
5                   the question.

6 BY MS. COOPER:

7                   Q. Is there any population-based data that  
8                   look at the question of whether gay couples have  
9                   long-lasting relationships?

10                  A. Excuse me.

11                  Yes, there is. The best evidence on  
12                  this point comes from recent research by  
13                  Christopher Carpenter and Gary Gates that's about  
14                  to be published in the journal, Demography. What  
15                  these researchers did was to look at two surveys  
16                  of residents of the State of California, so it  
17                  consists of Californians, but it is a  
18                  representative sample, so it has a sample of  
19                  lesbians and gay men who reflect the entire  
20                  population of California, and what the  
21                  researchers found in those two surveys was that  
22                  substantial proportions of lesbians and gay men  
23                  were currently living with a same-sex partner.

24                  Excuse me. I'm very sorry.

25                  THE COURT: Do you want some water?



1                   THE WITNESS:  Approximately 40  
2                   percent -- it varied a little bit  
3                   between the two surveys, but about 40  
4                   percent of the gay men were living with  
5                   a same-sex partner, about perhaps 55  
6                   percent of the lesbians were living with  
7                   a same-sex partner, and then, of course,  
8                   many others had committed relationships,  
9                   but were not living in the same  
10                  residence with that partner.

11                 BY MS. COOPER:

12                   Q.  And did that data provide any  
13                   information about the longevity of those  
14                   relationships?

15                   A.  It did, and here I think it's important  
16                   to note that these were surveys of people between  
17                   the ages of 18 and 59.  The average age of gay  
18                   men in the sample was 40.  And those gay men were  
19                   currently in relationships that had already  
20                   lasted, on average, eight years.  So, if you  
21                   think about it, they may have had a period when  
22                   they were young of dating or whatever, and then,  
23                   when they were about 32, found a partner they  
24                   really cared about and have been living with that  
25                   same partner for, on average, eight years.

1                   And for lesbians in this population-  
2                   based sample, who also were, on average, 40 years  
3                   old, the relationships that were still going on  
4                   had been together for seven years.

5                   Q.   So these were individuals who were still  
6                   currently in their --

7                   A.   Exactly.

8                   Q.   -- relationships.

9                   Now, you mentioned that was a  
10                  population-based study.  Are population-based or  
11                  representative samples necessary for all  
12                  scientific research?

13                 A.   No.  Relationship researchers, and  
14                 really researchers in general, make a distinction  
15                 that if you want to know about a question like  
16                 what percent of the American people do something,  
17                 then you need a sample that's representative of  
18                 the American population.  But if you're not  
19                 interested in prevalence or percentages, if you  
20                 want to know, does an individual's level of  
21                 neuroticism influence the likelihood that their  
22                 relationship is going to be stable, for those  
23                 questions about the association or the  
24                 correlations between factors, relationship  
25                 researchers do not typically use population-based

1 or representative samples.

2 Q. In the field of psychology, generally,  
3 is most research done with population-based  
4 samples?

5 A. No, not at all. Most is not population-  
6 based.

7 Q. Okay. I would like to ask you some  
8 questions now about comparisons between gay and  
9 heterosexual couples with respect to longevity --

10 A. Uh-huh.

11 Q. -- or stability. Is there research that  
12 has actually looked at that question and compared  
13 the longevity of gay couple relationships to  
14 heterosexual couple relationships?

15 A. Yes, there is.

16 Q. Okay, and are those the same researchers  
17 you've discussed earlier?

18 A. They are, Schwartz and Blumstein,  
19 Kurdek, Andersson, Balsam.

20 Q. And in these studies, if they're  
21 comparing gay couples to heterosexual couples,  
22 are the heterosexual couples married couples or  
23 unmarried couples?

24 A. It differs from study to study.

25 Q. Okay, and then what about the gay

1 couples? I gather they're typically not married,  
2 in the studies?

3 A. In the earlier studies, they were not  
4 married. In more recent times, there have been  
5 studies looking at gay and lesbian couples who  
6 have obtained civil unions in Vermont, which  
7 became legal around 2001, and also looking at  
8 same-sex couples in Scandinavia, who have become  
9 registered partners.

10 Q. Uh-huh. In order to determine any  
11 effect of sexual orientation, per se, on couple  
12 stability, which kinds of comparisons are the  
13 best comparisons?

14 A. Well, the best comparison would be ones  
15 in which the same-sex couples and the  
16 heterosexual couples are as similar as possible  
17 on everything else. So, if we're looking at  
18 married heterosexuals, the best comparison, which  
19 we'll have down the road, would be married  
20 same-sex couples in California or Massachusetts,  
21 at the moment. Those -- that research hasn't  
22 been done. So it would be couples in civil  
23 unions or who have registered partnerships, or  
24 unmarried heterosexuals and lesbian and gay  
25 couples that are not -- that don't have a legal

1 recognition.

2 Q. Why wouldn't or why isn't a comparison  
3 between heterosexual married couples and gay  
4 couples who have no legally recognized union as  
5 good a comparison?

6 A. Many heterosexual couples choose not to  
7 get married. There are many heterosexuals who  
8 date, who live together without the benefit of  
9 marriage, and so those who choose to get married  
10 are a select group. We're kind of narrowing all  
11 the heterosexual couples into couples who are  
12 more highly committed to each other and who are  
13 willing to make, want to make, a commitment that  
14 this will be a long-term relationship and that  
15 they want to cast their lots together for the  
16 rest of their lives. So it's a -- it's only a  
17 subset of all the heterosexual couples.

18 Q. And on the gay couple side of the  
19 equation?

20 A. Well, the problem would be that if you  
21 just have a sample of gay and lesbian couples,  
22 that sample will include some who are highly  
23 committed, some who are maybe beginning a  
24 relationship, and some who met yesterday. So you  
25 really would want to be comparing apples and

1 apples, not very different groups, if you're  
2 interested in understanding what sexual  
3 orientation contributes to the picture.

4 Q. Do any of the studies in this body of  
5 research, this subset of research you've been  
6 describing, compare unmarried gay couples to  
7 unmarried heterosexual couples?

8 A. Yes.

9 Q. Who did that?

10 A. Some of that would be the research of  
11 Philip Blumstein and Pepper Schwartz.

12 Q. And can you describe their study,  
13 generally?

14 A. Yes. Their study was conducted in the  
15 mid-1970s. It was funded by the National Science  
16 Foundation. It was really a landmark study of  
17 American couples. What they wanted to do was to  
18 recruit a large sample of cohabiting lesbian  
19 couples, cohabiting gay male couples, cohabiting  
20 heterosexual couples, and then married  
21 heterosexual couples. And they did this by a  
22 variety of means. They advertised in national  
23 newspapers. They targeted certain cities. They  
24 were based in Seattle. They went to New York.  
25 They went to Los Angeles. They went on

1 television and on the radio, to try to get the  
2 word out that there was this big survey being  
3 conducted, and what they wound up with was quite  
4 a large sample of hundreds and hundreds of gay  
5 and lesbian couples, I believe more than 3,000  
6 married heterosexual couples. It was not a  
7 random sample or representative sample, but it  
8 was the first really large-scale study conducted  
9 of the comparisons.

10 Q. And did they evaluate the breakup rates  
11 among the couples in the various groups?

12 A. They did do that, or not for all of the  
13 couples, but for a subset of the couples, they  
14 were able to follow them over an 18-month period  
15 and to look at the breakup rates among these four  
16 types of couples they were studying.

17 Q. Uh-huh. And can you tell us what  
18 Blumstein and Schwartz found with respect to  
19 breakup rates of -- focusing for now on the  
20 unmarried heterosexual couples and the -- as well  
21 as the unmarried gay couples and the unmarried  
22 lesbian couples?

23 A. Yes, and out of deference to the limits  
24 of my memory, I do have notes with those figures.

25 MS. COOPER: And I'm happy to -- I

1           made copies that I can share, two copies  
2           I can share. Sorry.

3           MS. BASS: It's okay.

4           MS. MARTIN: Thank you.

5           MS. COOPER: Okay, and Your Honor,  
6           shall I pass up some of these notes  
7           or --

8           THE COURT: I think I'm going to  
9           listen to the testimony.

10          MS. COOPER: Okay, I'll keep it.  
11          Thank you.

12         BY MS. COOPER:

13                 Q. So, can you tell us what Blumstein and  
14                 Schwartz found with respect to the breakup rates,  
15                 again, of unmarried heterosexual couples compared  
16                 to the unmarried gay and unmarried lesbian  
17                 couples?

18                 A. Right, so just reminding us that all of  
19                 these are cohabiting couples, but none of them  
20                 are married, the breakup rate for the  
21                 heterosexuals was 14 percent, the breakup rate  
22                 for the gay men was 13 percent, and the breakup  
23                 rate for the lesbians was 19 percent. So, in all  
24                 of these cases, the majority of the couples, more  
25                 than 80 percent, stayed together, but the rates



1 of breakup for the unmarried heterosexuals and  
2 the gays and lesbians were fairly similar.

3 Q. Now, is there any research that compares  
4 married heterosexual couples to gay or lesbian  
5 couples who have a legally recognized union?

6 A. Yeah. There are two studies currently  
7 available, more in the works, but only two at the  
8 moment.

9 Q. Uh-huh.

10 A. One is a study by Kimberly Balsam and  
11 her associate, conducted in Vermont, and what  
12 they did was to look at the first cohort of  
13 couples -- excuse me, Your Honor, I'm very  
14 sorry -- to obtain civil unions in Vermont in  
15 2001.

16 Because civil unions are public records,  
17 they could go to the court and get the names and  
18 addresses of these couples, so they contacted  
19 them and invited them to participate in a  
20 research study. They wound up with a sample of  
21 about 200 gay and lesbian couples who had  
22 obtained civil unions. For comparison, they also  
23 identified a sample of gay and lesbian couples  
24 who had chosen not to have civil unions, and they  
25 did that by asking their core group if they had

1        gay and lesbian friends who were in couple  
2        relationships, but who had not obtained a civil  
3        union, and contacted those people.

4                    And then they also wanted a comparison  
5        group of heterosexual married couples, and so  
6        they asked their core group of civil-unioned  
7        lesbian and gay couples if they had a  
8        heterosexual brother or sister who was married  
9        and who was willing to participate in a study,  
10       and so the final sample, that is, same-sex  
11       couples with civil unions, same-sex couples  
12       without civil unions, and heterosexual married  
13       couples who came from the same background, grew  
14       up more or less in the same homes, were the same  
15       ethnicity and so on, they then recontacted these  
16       couples three years later. So they had breakup  
17       rates over a three-year period.

18                    And what they found was that the highest  
19        breakup rate was for the gay and lesbian couples  
20        who had not obtained civil unions, and the  
21        breakup rate for that group was 9.3 percent. In  
22        contrast, the breakup rate for same-sex couples  
23        with civil unions and married couples was lower  
24        and very similar. For gays and lesbians with  
25        civil unions, the rate was 3.8 percent. For the

1 married heterosexuals, it was 2.7 percent, and  
2 when they did statistical tests to see whether  
3 that small difference was statistically  
4 significant, it was not. So, essentially,  
5 breakup rate for the married couples and the gay  
6 couples in civil unions was indistinguishable.

7 Q. And, Dr. Peplau, you mentioned that  
8 there was a second study that made a comparison  
9 between married heterosexuals and gay couples  
10 with legally recognized unions?

11 A. Yes. This is research by Gunnar  
12 Andersson on couples in Norway and in Sweden. In  
13 both Norway and Sweden, beginning in the mid-  
14 1990s, it's been possible for same-sex couples to  
15 register as registered partners, and registered  
16 partnerships carry with them essentially the same  
17 benefits as marriage in Scandinavia.

18 And so what Andersson did then was,  
19 again, to go to the records of registered  
20 partnerships and to look at which of those  
21 couples over time broke up, and they were able to  
22 do that because in order to dissolve a registered  
23 partnership, you have to go back to court, as you  
24 would for a divorce here. So they -- their study  
25 is based on an analysis of essentially legal

1 records.

2 In the case of Norway, they had only  
3 data available to them on same-sex couples, and  
4 what they found was that over a period of six  
5 years, which was the interval between when  
6 registered partnerships became legal and when  
7 they did the research, over six years, eight  
8 percent of the gay male registered partnerships  
9 ended and 11 percent of the lesbian couples in  
10 registered partnerships ended that relationship,  
11 okay? So, again, to phrase that the other way  
12 around, close to 90 percent of all of those  
13 couples stayed together.

14 The researchers also looked at data from  
15 Sweden, and in Sweden they also had available to  
16 them data about heterosexual married couples, so  
17 in some ways the Swedish data provided very  
18 useful additional comparison. So they then did  
19 the same comparison, and what they found was that  
20 in general, breakup rates were higher in Sweden  
21 over the same time period. The breakup rate for  
22 gay male partnerships was 14 percent; for lesbian  
23 registered partnerships was 20 percent; and for  
24 the married couples was eight percent.

25 And then they did one other analysis

1           that's worth mentioning for the Swedish data.  
2           The percentages that I just gave you are based on  
3           couples, some of whom were registered in 1995,  
4           some in '96, some in '97, some in '98. So they  
5           had been together for different lengths of time.  
6           And the researchers wanted to know, well, if all  
7           of the couples had been together for a standard  
8           length of time, for the same five years, what can  
9           we estimate that those breakup rates would have  
10          been? So they used the technique that is widely  
11          used by demographers, called life table analysis,  
12          to come up with an estimate of, if all of these  
13          partnerships had started at the same time and we  
14          studied them five years later, what percent would  
15          have broken up?

16                         And when you do those analyses, what  
17                         they estimated was that the breakup rates would  
18                         be a little higher, and that specifically, they  
19                         would be 20 percent for the gay male couples, 30  
20                         percent for the lesbian couples, and 13 percent  
21                         for the heterosexual married couples.

22                         Q. And just for the sake of comparison, do  
23                         you know what the divorce rate is in the United  
24                         States for the same five-year period?

25                         A. The five-year divorce rate in the U.S.

1           for couples would probably be something like 20  
2           percent, maybe a little higher, but probably  
3           about 20 percent.

4           Q. Now, did Andersson, in his study,  
5           discuss what might account for the disparity that  
6           he found in breakup rates between the lesbian  
7           couples and of gay couples, on the one hand, and  
8           heterosexual married couples, on the other hand?

9           A. He did, and essentially, what he  
10          discussed was the possibility that even though  
11          both groups had legal recognition, there might  
12          still be greater normative or social pressure on  
13          married heterosexual couples to stay together,  
14          that if you imagine, for example, the role that  
15          extended families may play, families often do  
16          their best to keep heterosexual couples,  
17          particularly young couples, together, to kind of  
18          urge the couple to seek counseling, to try to  
19          make the relationship work. And families may be  
20          less likely to do that, to give that kind of  
21          pressure, for same-sex couples. So these were  
22          the kinds of speculations that Andersson raised.

23          Q. Now, did Andersson look within each of  
24          the groups at what tended to predict breakup  
25          among those couples that --

1           A. He did. He did, and he found the same  
2 predictors for the same-sex couples and for the  
3 heterosexual couples, and those predictors were  
4 how old the partners were when they entered into  
5 the marriage or the registered partnership, which  
6 we found in the United States, their level of  
7 education, that couples with low levels of  
8 education were more likely to break up, and then  
9 they also looked at couples in which one partner  
10 was Scandinavian and the other was from another  
11 country, and that was actually fairly common  
12 among the same-sex couples, and that was also  
13 predictive. Couples were more likely to stay  
14 together if both partners were Scandinavian, less  
15 likely if one person was from another country.

16           Q. Did he look at whether the presence or  
17 absence of children affected breakup rates among  
18 those groups?

19           A. He did, and in the Scandinavian context,  
20 it did not make a difference and Andersson  
21 speculates that that's because the legal and  
22 social supports available for children in  
23 Scandinavia don't depend on the marital status of  
24 the parents.

25           Q. Uh-huh. Now, you mentioned, I think,

1           that there's some research that does comparisons  
2           between married heterosexual couples and then gay  
3           couples who don't have legal unions; is that  
4           right?

5           A. Yes.

6           Q. Okay. Whose research was that?

7           A. That's primarily research by Larry  
8           Kurdek.

9           Q. And then you mentioned that Blumstein  
10          and Schwartz have --

11          A. Have also done it.

12          Q. Had the married couples in that group?

13          A. Both of them, that's correct.

14          Q. Okay. Well, I'd like to ask you about  
15          those. Let's start with the Blumstein and  
16          Schwartz --

17          A. Sure.

18          Q. -- since we've already talked about  
19          that. Did Blumstein and Schwartz report any  
20          disparities in the longevity of the  
21          relationships, married heterosexuals on the one  
22          hand and lesbian, gay and married couples on the  
23          other?

24          A. Yes. The married heterosexuals had the  
25          lowest breakup rate, which was five percent, and



1           if you remember, the breakup rate for the  
2           lesbians and gay men were in the teens, 13  
3           percent for lesbian -- I mean, 13 percent for gay  
4           men and 19 percent for lesbians, so the gap  
5           between the married heterosexuals and the  
6           same-sex couples was greater than the lack of a  
7           gap between the cohabiting heterosexuals and the  
8           same-sex couples.

9           Q. Now, did Blumstein and Schwartz -- were  
10          the couples in those studies couples who at the  
11          time of the study had been together a long time,  
12          a short time? How did they -- how can you  
13          describe their couples?

14          A. They ranged all over the place. Some of  
15          the couples had just gotten together, others had  
16          been together 20 years.

17          Q. And were there differences in the  
18          breakup rates, depending upon that factor?

19          A. Absolutely.

20          Q. Now, can you tell us what they showed  
21          with respect to breakup rates of married  
22          heterosexual couples, on the one hand, and gay  
23          and lesbian couples, on the other hand, who have  
24          been together short periods versus long periods?  
25          Do you have that data?

1           A. Yes, I do, not in my head, but what I  
2           have, and you probably have copies, is a table  
3           from their -- from a book called American  
4           Couples, that summarizes their findings.

5           MS. COOPER: Do you want a copy?

6           MS. MARTIN: Do you need to see a  
7           copy, Chuck?

8           MR. FAHLBUSCH: I would like to see  
9           a copy.

10          MS. MARTIN: Thank you.

11          BY MS. COOPER:

12          Q. If you could tell us what they reported,  
13          again focusing on the couples who had been  
14          together shorter periods versus longer periods  
15          within each group.

16          A. Okay. Well, first, we might look at  
17          couples who had already been together for a long  
18          period of time, and in this study, the category  
19          they used was if the couple had already been  
20          together for 10 years or longer, and what they  
21          find, not surprisingly, is that the breakup rates  
22          for those couples who have already weathered 10  
23          years are very low. So, for the married  
24          heterosexuals, the breakup rate was four percent.  
25          For the gay men who'd already been together for

1           10 years, the breakup rate was identical, at four  
2           percent. And for lesbians who'd been together  
3           for 10 years, the breakup rate was very similar;  
4           it was six percent.

5                        Okay, so you're really not finding  
6           differences. Now, they did not have data for  
7           cohabiting heterosexual couples, because the  
8           cohabiters either broke up or got married, but  
9           weren't living together for more than 10 years,  
10          at least not in the 1970s, when they were  
11          collecting these data.

12                       If we look at the other end of the  
13          equation, at couples who'd been together two  
14          years or less, we find that the breakup rate for  
15          married couples is, again, quite low. They're in  
16          the honeymoon, the first couple of years of those  
17          marriages. The breakup rate is four percent.  
18          But for the other groups, it's much higher. So  
19          for cohabiting heterosexuals, it's 17 percent;  
20          for gay men, it's 16 percent; and for lesbians,  
21          it's 22 percent.

22                       Q. And earlier you gave numbers that the  
23          rate per married -- I'm sorry, for married  
24          couples was five percent and for gay male couples  
25          13 percent, lesbian couples 19 percent, and then

1 cohabiting heterosexuals -- I'm sorry --

2 A. Fifteen percent. Fourteen, actually.

3 Q. Fourteen percent, okay. How did you get  
4 those numbers, given that the way the chart is  
5 organized, it breaks it down in subgroups.

6 A. Yeah --

7 MR. FAHLBUSCH: Since Dr. Peplau is  
8 testifying off this chart, could we get it  
9 admitted?

10 MS. COOPER: I have no objection.

11 THE COURT: Then I can look at it.  
12 So that's Number -- What are we on,  
13 five?

14 MR. ESSEKS: Five.

15 THE CLERK: Is it DCF or  
16 Petitioner's?

17 THE COURT: It's Petitioner's.

18 THE CLERK: Petitioner's 5.

19 THE WITNESS: The data on this  
20 table from the Blumstein and Schwartz  
21 study breaks people down by how long  
22 they've already been together.

23 Based on this table, I was able to  
24 calculate for all of the people in each  
25 category, if we ignored how long they've

1           been together, what's the -- what would  
2           the overall percentage be, and so when I  
3           was giving numbers earlier that were  
4           saying, for example, that the overall  
5           breakup rate for married couples is five  
6           percent, you would get that by looking  
7           at the actual number of couples in each  
8           of these categories and then calculating  
9           what the average would be, and you can  
10          see, just if you eyeball it, that it  
11          would be very plausible that if you've  
12          got two groups that are four percent,  
13          and that's about 600 couples, and  
14          400-some that are six percent, you kind  
15          of calculate how that plays out. It  
16          comes out to five percent, and if you do  
17          the math on the other groups, you come  
18          up with the overall stats I gave you  
19          earlier.

20         BY MS. COOPER:

21                 Q. And you mentioned earlier that Blumstein  
22                 and Schwartz found a combined 14 percent breakup  
23                 rate for the unmarried heterosexuals, and you  
24                 reported five percent for married heterosexuals?

25                 A. Yes.

1           Q. So, just within the group of  
2 heterosexuals, there's a nine-point difference  
3 between married and unmarried; is that right?

4           A. Yes.

5           Q. You also mentioned research by Larry  
6 Kurdek. Can you describe generally his research  
7 that makes these comparisons?

8           A. Yes. Larry Kurdek has been really a  
9 pioneer in doing longitudinal studies of same-sex  
10 couples, and by longitudinal, I mean that he  
11 recruited samples of lesbian couples and gay male  
12 couples, and also married couples, and then he  
13 followed all of those couples over an 11 or  
14 12-year period, and he had repeated contact with  
15 the couples and assessed them at frequent points  
16 during that time period. So this enabled him to  
17 ask the question of the couples who started in  
18 his research at one point in time, how many were  
19 still together 11 or 12 years later, and did  
20 sexual orientation make a difference.

21          Q. Okay, and can you tell us what he found?

22          A. Yes. What he found, and again, this is  
23 on the notes, the Xerox notes that I think some  
24 of you have copies of, was that among the lesbian  
25 couples, none of whom had children -- that's



1 stability?

2 A. Promotes stability, yeah.

3 Q. Based on this body of research and your  
4 experience in the field generally, are gay  
5 couples able to have stable, committed  
6 relationships?

7 A. Absolutely.

8 Q. Is it unusual?

9 A. No.

10 Q. Has your field reached any consensus  
11 about the nature and stability of same-sex couple  
12 relationships?

13 A. Yes, it has, and one way to identify the  
14 consensus in the field is to look at a recent  
15 statement made by the American Psychological  
16 Association. The American Psychological  
17 Association is the largest and oldest  
18 organization of Ph.D. psychologists in the world,  
19 and from time to time, they ask teams of experts  
20 to review research in an area and to summarize  
21 what they've found, and then the council of  
22 representatives of the organization reviews those  
23 documents and decides whether to support them as  
24 a resolution or not.

25 And so in 2004, the American



1           psychological Association.

2                   MR. FAHLBUSCH: I'm going to object  
3                   to this testimony, Your Honor, unless we  
4                   know the process by which such -- such  
5                   statements are adopted.

6                   THE WITNESS: Oh, I could tell you  
7                   that, if you'd like. They're voted on  
8                   by the council of representatives of the  
9                   American Psychological Association.

10                  THE COURT: And you can cross, as  
11                  well.

12                  MR. FAHLBUSCH: Okay.

13                  THE WITNESS: So, in 2004, the APA  
14                  adopted a statement about same-sex  
15                  relationships and in that statement,  
16                  they emphasized four points. One was  
17                  that based on the scientific evidence,  
18                  many lesbians and gay men want to have a  
19                  primary committed relationship and are  
20                  successful in doing so.

21                  A second point was that there is no  
22                  evidence that the relationships of  
23                  lesbians and gay men are more  
24                  dysfunctional or unhappy than the  
25                  relationships of heterosexuals.

1           A third point was that many  
2           lesbians and gay men form stable,  
3           enduring relationships.

4           And the fourth point was that the  
5           processes that affect relationships, for  
6           example, this would mean the factors  
7           that predict stability over time, the  
8           processes in relationships of same-sex  
9           couples and heterosexual couples are  
10          very similar.

11         BY MS. COOPER:

12           Q. Now, switching gears away from the  
13           specific comparisons we've been looking at  
14           between gay and heterosexual couples, I'd like to  
15           ask some questions about the longevity of couples  
16           in other groups that are not excluded from  
17           adopting in Florida.

18           Is there any research that has explored  
19           whether there are any demographic characteristics  
20           that correlate with higher rates of divorce?

21           A. Yes.

22           Q. And how substantial is that research?

23           A. A great deal of research on demographic  
24           predictors of divorce.

25           MR. FAHLBUSCH: I'm going to object to

1           this on relevance, Your Honor.

2                   THE COURT:   Why is it relevant?

3                   MS. COOPER:   Excuse me?

4                   THE COURT:   Why is it relevant?

5                   MS. COOPER:   Yeah, sure.   Your  
6                   Honor, the statute that's being  
7                   challenged excludes only gay people from  
8                   adopting, and one of the arguments being  
9                   raised by the other side is that gay  
10                  couples have unstable relationships, and  
11                  to the extent the State is singling out  
12                  one group based on the purported  
13                  instability of their relationships,  
14                  that's the relevance, whether there are  
15                  other groups that have similar or higher  
16                  breakup rates than gay people.

17                  There's case law, including the  
18                  Cleburne case, that makes it very clear  
19                  that if you're going to single out a  
20                  group for disfavored treatment, it must  
21                  pose a unique threat not posed by other  
22                  groups.

23                  THE COURT:   Anything else you want  
24                  to say?

25                  MR. FAHLBUSCH:   The legitimate

1 legislative objective need not be unique  
2 to a specific group. It only has to  
3 bear some relationship. Here, there's  
4 only one group concerned. If people  
5 from a specific country or a specific  
6 religion have less stable relationships,  
7 that would be irrelevant on numerous  
8 bases, including the fact that those  
9 classifications are constitutionally  
10 suspect classifications.

11 MS. COOPER: Well --

12 MR. FAHLBUSCH: Such other groups  
13 aren't concerned in this litigation,  
14 Your Honor.

15 MS. COOPER: Your Honor, first of  
16 all, the groups to be addressed are not  
17 limited to groups that are identified as  
18 suspect classifications, but even if  
19 that were the case, even if we were  
20 under the rational basis test, which has  
21 not been decided yet, but even under the  
22 most deferential standard, the first  
23 question is whether the classification  
24 itself is rational, and at least in an  
25 analogous case in the U.S. Supreme

1 Court, they made clear that it is not  
2 rational to exclude only one group from  
3 a number of groups that pose the same  
4 threat if the goal is to protect against  
5 that threat. In that case, it was about  
6 zoning that kept out homes for  
7 developmentally disabled adults, based  
8 on reasons such as risk of flood plain  
9 and traffic congestion, et cetera, but  
10 they didn't exclude group homes for  
11 fraternity houses, hospitals, nursing  
12 homes, and so therefore, the exclusion  
13 of just group homes for the  
14 developmentally disabled did not  
15 explain -- or it was not explained by  
16 concerns about traffic congestion, when  
17 other multiple-use facilities were  
18 allowed in the same area.

19 So the court has made it very clear  
20 that, at a minimum, when you're singling  
21 out a group of people for disfavored  
22 treatment, that choice has to be, at a  
23 minimum, rational, in rationally related  
24 scope.

25 THE COURT: I'm going to allow it

1           for -- I think, can we just quickly deal  
2           with it?

3           MS. COOPER: Uh-huh.

4           THE COURT: Thank you.

5           MS. COOPER: Okay.

6           BY MS. COOPER:

7           Q. Dr. Peplau, can you tell us if there are  
8           any demographic characteristics that have been  
9           found to predict divorce?

10          A. Yes, there are quite a few: Age at  
11          marriage, education, family income, race or  
12          ethnicity, religion.

13          Q. Let's start with the age of marriage,  
14          and I'd like to run through these  
15          characteristics. I think we can do this very  
16          quickly. What does the data show regarding the  
17          correlation between age at marriage and rate of  
18          divorce?

19          A. The data, and I should just say that the  
20          data on the demographics of divorce are based on  
21          Government statistics collected by the Bureau of  
22          Vital Statistics, the Center for Disease Control,  
23          by other Federal agencies, and that are then  
24          analyzed by demographers and sociologists. So  
25          these are population-based, large surveys.

1                   It's very clear that the younger  
2 partners are when they get married, the higher  
3 the probability of divorce.

4                   Q. And do you have specific numbers you can  
5 report to us?

6                   A. Yes. Again, I have some notes on this,  
7 and my notes are based on looking at divorce  
8 rates after 10 years. We could do it for five  
9 years or 20 years, but 10 years seemed a  
10 reasonable benchmark, and there are two major  
11 studies. Looking at this one by Bramlett and  
12 Mosher, and just to quickly give you some  
13 illustrations of this effect, what they find is  
14 that if the partners are 18 to 19 years old when  
15 they get married, that the divorce rate is about  
16 40 percent. If they're 20 to 24, the divorce  
17 rate drops to 29 percent, and if they're 25 or  
18 older, it drops to 24 percent.

19                   A similar study, using a different data  
20 set, by Raley and Bumpass takes the age group and  
21 makes a little finer distinctions, and they also  
22 find that 18 and 19 year-olds have a divorce rate  
23 of about 43 percent, but at the other end, if  
24 you're 30 years or older when you get married,  
25 the divorce rate is only 20 percent. So there

1           are quite large gaps based on age at marriage.

2           Q. So for the youngest group, based on the  
3           Raley and Bumpass set, is, the youngest group has  
4           a breakup rate that's over twice the rate of the  
5           oldest group?

6           A. That's correct.

7           Q. Is this a consistent finding in cross  
8           studies?

9           A. Yes, it is.

10          Q. Turning to ethnicity, can you tell us  
11          what the data show regarding the correlation  
12          between ethnicity and rate of divorce?

13          A. Yes. Again, the study by Bramlett and  
14          Mosher finds that the 10-year divorce rate for  
15          African-Americans is about 47 percent; for  
16          Hispanics, it's about 34 percent; for Whites,  
17          it's 32 percent; and for Asian-Americans, it's 20  
18          percent. So, again, the gap between the lowest  
19          group, which is Asian-Americans at 20 percent,  
20          and African-Americans at 47 percent, is very  
21          large.

22          Q. Okay, and did you have other data on  
23          that?

24          A. Yes. The researchers in this case,  
25          Bramlett and Mosher, also looked at whether it



1 matters if the husband and wife are of the same  
2 ethnic background or different, and what they  
3 find is that similarity is associated with a  
4 lower risk of divorce. So, when both partners  
5 were of the same race or ethnicity, the divorce  
6 rate was 31 percent. When they were of a  
7 different ethnicity, it was 41 percent. So, a  
8 10-point spread.

9 Q. And are these disparities you've  
10 reported consistent across studies?

11 A. They are. The Raley and Bumpass study  
12 we mentioned earlier reported very similar  
13 statistics.

14 Q. What about education? What's the --  
15 What is the data on the impact of education  
16 level?

17 A. The data are very consistent here that  
18 higher levels of education are associated with  
19 greater marital stability. So, for example,  
20 Bramlett and Mosher tell us that if the partners  
21 have less than a high school education, the risk  
22 of divorce is 42 percent; if they're high school  
23 graduates, it drops to 36 percent; and if they  
24 have more than a high school degree, it drops to  
25 29 percent.

1                   And then again, Raley and Bumpass give  
2                   us finer gradations, and what they show is,  
3                   their -- the data always vary tiny bits from  
4                   study to study, but less than high school is 39  
5                   percent; high school grad, 35; college, 32 --  
6                   some college; and then college graduates, it goes  
7                   down to 20 percent. So, a big difference between  
8                   who don't finish high school versus college  
9                   degree.

10                  Q. That's nearly twice the rate of divorce?

11                  A. Exactly.

12                  Q. Is this an association that has been  
13                  found consistently across studies?

14                  A. Yes, it has.

15                  Q. What about -- you mentioned family  
16                  income. What is the data on that?

17                  A. Family income also makes a big  
18                  difference. Bramlett and Mosher looked at  
19                  married couples in which the household income was  
20                  less than \$25,000 a year, data published in 2002,  
21                  and they found that the divorce rate in this  
22                  low-income group was 53 percent. For those  
23                  making between 25 and 50,000, the divorce rate  
24                  dropped to 31 percent. And for those making  
25                  50,000 or more, it drops still further, to 23

1           percent. So it was more than double between the  
2           highest income and the lowest.

3           Q. And is this a consistent finding across  
4           studies?

5           A. Yes, it is.

6           Q. And just to make clear, you've been  
7           speaking about a number of different categories.  
8           Over how many years did they measure the divorce  
9           rate?

10          A. This is the 10 -- This is always, all of  
11          these numbers --

12          Q. All of these.

13          A. -- are for a 10-year divorce rate.

14          Q. Okay. And --

15          A. Or, to be specific, dissolution, because  
16          in some cases it's separation rather than  
17          divorce.

18          Q. Can you tell us what the data show  
19          regarding religious -- the impact of religion on  
20          divorce rates?

21          A. Yes. Bramlett --

22          Q. Or, I should ask that differently. The  
23          correlation between religion and divorce.

24          A. The Bramlett and Mosher study compared  
25          those couples who reported any religious

1           affiliation with those who reported no  
2           affiliation, and they found that identifying with  
3           a religion, regardless of what that group was,  
4           was associated with a lower divorce rate, in this  
5           case, 32 percent if you had a religious  
6           affiliation, 46 percent if you did not.

7                         Other researchers, and an example here  
8           would be work by Lehrer and Chiswick, have looked  
9           at interfaith marriages, as well, but looked at  
10          more specific groups. So they report, for  
11          example, that if you have two Mormons who marry,  
12          that they have a very low divorce rate of 13  
13          percent, but if a Mormon marries a non-Mormon,  
14          the divorce rate shoots up to 40 percent.

15                        So there are many illustrations of this  
16          general point, that same-faith marriages tend, on  
17          average, to last -- to be less vulnerable to  
18          divorce than marriages from different faiths.

19                        Q. And is this a consistent finding across  
20          studies?

21                        A. (Nods head).

22                        Q. You have to --

23                        A. Yes, it is. Yes. Sorry.

24                        Q. And is there any data that looks at the  
25          divorce rates of individuals whose parents have

1 divorced, compared to those whose parents are  
2 still married --

3 A. Yes.

4 Q. -- or who never divorced?

5 A. Yes. Coming from an intact, two-parent  
6 family is associated with a lower risk that you,  
7 yourself, will get divorced than if you grew up  
8 in a family where you experienced the divorce of  
9 your parents. In the Bramlett and Mosher study,  
10 they compared wives who came from intact families  
11 and found that those women had a 29 percent  
12 10-year divorce rate. Wives who came from -- who  
13 did not come from an intact family, whose parents  
14 divorced, had a 43 percent divorce rate.

15 And in another project, using different  
16 data, Paul Amato has predicted that if your  
17 parents divorced before you are age 12, that the  
18 risk that you, yourself, will divorce is  
19 increased about 60 percent.

20 Q. Is this a consistent finding across  
21 studies?

22 A. Yes.

23 Q. And one last question. Is there any  
24 data that looks at the divorce rate of service  
25 members who have served in combat?

1           A. Yes, there are. Again, using these same  
2 national large data sets, researchers have been  
3 able to separate men who have been -- served in  
4 the military, from men who have not, and then  
5 further broken it down into those who have  
6 actually been in combat, and the finding is that  
7 simply being in the military is not associated  
8 with a higher divorce rate, but having served in  
9 combat was associated with a 62 percent increase  
10 in divorce.

11           Q. Okay. Now, you've identified a number  
12 of demographic characteristics that correlate  
13 with different rates of divorce. Is it known why  
14 certain groups tend to have higher rates of  
15 divorce than others?

16           A. Yeah, I think there would be several  
17 things to say about that. One would be that  
18 these demographic factors we've talked about tend  
19 to be interrelated. So, for example, people who  
20 have lower levels of education tend to have lower  
21 income. So it's sometimes hard to tease out or  
22 separate the impact of one thing or another. And  
23 so, for example, if we're looking at the higher  
24 divorce rate among African-Americans, it's  
25 difficult to separate out how much of that is due

1 to their ethnicity as opposed to the fact that  
2 they may have lower levels of education or lower  
3 incomes. So that would be one factor.

4 A second explanation that would be given  
5 with the commentary about the demographics is  
6 that the success of marriage is affected by both  
7 the stresses the couples are under and their  
8 resources for coping with those stresses, so  
9 low-income families are more likely to experience  
10 the loss of a job or have trouble paying their  
11 bills. They may be less able to cope with having  
12 a sick child if they're fearful of paying the  
13 medical bills. So the demographic factors can  
14 affect both exposure to stress and ability to  
15 respond to that.

16 And then finally, I think it's important  
17 to emphasize that there are sometimes cultural  
18 differences. One example of that comes from a  
19 phenomenon that some people are calling the  
20 Hispanic paradox, which is that some Hispanic  
21 families, Mexican-American families, for example,  
22 tend to be lower in education and lower in  
23 income, which should predict high rates of  
24 divorce, and yet their rates of divorce are not  
25 the highest. Their rates are lower than we might

1           expect based on the education and income. And in  
2           order to explain that, researchers have really  
3           pointed to features of the culture that value the  
4           family, family ahead of the individual, the  
5           crucial importance of family staying together.  
6           So cultural factors are also part of the  
7           equation.

8           Q. Now, given that relationship instability  
9           has been raised in discovery by the experts on  
10          the other side as a basis for this exclusion,  
11          this adoption exclusion, you know, it seems that  
12          the implication of that argument is a notion that  
13          gay couples are perhaps the least stable of all  
14          demographic groups. Is there any basis to say  
15          that sexual orientation is the strongest  
16          demographic predictor of relationship  
17          dissolution?

18          A. Not in my --

19          MR. FAHLBUSCH: I'm going to object on  
20          that, that was very leading, Your Honor.

21          THE COURT: Okay. Could you  
22          rephrase it, please?

23          MS. COOPER: Sure.

24          BY MS. COOPER:

25          Q. You've discussed a number of demographic



1 characteristics. Well, first you discussed the  
2 data on sexual orientation, impact of sexual  
3 orientation, or correlation, I should say,  
4 between sexual orientation and breakup rates, and  
5 then you discussed correlation between various  
6 other demographic characteristics and breakup  
7 rates.

8 Is there any basis to say that sexual  
9 orientation is the strongest predictor of breakup  
10 among all the different demographic  
11 characteristics?

12 A. No, I don't think there is. I think  
13 we've reviewed some other demographic factors  
14 that seem to have as strong or even stronger  
15 correlations with breakups.

16 Q. So, for example, is there any basis to  
17 say that sexual orientation is a stronger  
18 predictor of breakup than race or education?

19 A. I don't believe so, no.

20 Q. Now, I want to ask you just a few  
21 questions about the rates of entry into marriage  
22 or civil union or registered partnership we  
23 anticipate that may be raised as an issue in this  
24 case.

25 Can you tell us if there's any data

1 available on the percentage of gay couples who do  
2 enter into a marriage or civil union or domestic  
3 partnership, where they have that option?

4 A. Yes.

5 MR. FAHLBUSCH: We'd like to  
6 continue having on objection on this,  
7 both on relevance.

8 THE COURT: I'm going to -- I'll  
9 sustain the objection, okay. I don't  
10 think it's relevant. Can you move on?

11 MS. COOPER: Your Honor, if we can  
12 bring that in as rebuttal if it becomes  
13 raised by the other side --

14 THE COURT: Fine. Fine.

15 MS. COOPER: I really do only have  
16 a couple of questions that might save  
17 the trip or the appearance in rebuttal  
18 testimony.

19 THE COURT: I just don't see how  
20 it's relevant.

21 BY MS. COOPER:

22 Q. Another issue that we anticipate being  
23 raised, based on discovery in this case, is the  
24 issue of the number of sex partners that gay  
25 people have, compared to heterosexuals. And

1           there's been a study, the National Survey of  
2           Health and Social Life, by Laumann, that has been  
3           raised in discovery by the other side as a -- in  
4           support of the exclusion.

5                     MR. FAHLBUSCH: Your Honor, this  
6                     amount of leading is highly  
7                     objectionable.

8                     MS. COOPER: Your Honor, I don't  
9                     understand how it's leading. I'm --

10                    MR. FAHLBUSCH: She --

11                    MS. COOPER: -- addressing an issue  
12                    that we expect to be raised by the other  
13                    side.

14                    MR. FAHLBUSCH: Counsel is  
15                    summarizing all of the research she  
16                    intends -- she wants her witness to use  
17                    in answering the question, in her  
18                    question.

19                    MS. COOPER: I'm -- I was hoping  
20                    just to give the context of why I'm  
21                    asking. I'll be happy to jump right  
22                    into the question.

23                    THE COURT: Please.

24                    MS. COOPER: Okay, sure.

25                    BY MS. COOPER:

1           Q. Are you familiar with data by Laumann  
2           from the National Survey of Health and Social  
3           Life?

4           A. Yes, I am.

5           Q. And does that data support the notion  
6           that gay -- sorry -- say anything about the  
7           stability of gay couple relationships, when gay  
8           people perform relationships?

9           A. No, it doesn't. The Laumann data are  
10          based on individuals, and there is no information  
11          that would bear on the stability of same-sex or  
12          for that matter heterosexual relationships, in my  
13          opinion.

14          Q. So you're saying Laumann looked -- asked  
15          questions of individuals, as opposed to couples?

16          A. Yes.

17          Q. And did he look at heterosexual and gay  
18          individuals?

19          A. Yes.

20          Q. Okay, and in that study, did he measure  
21          the number of partners that people have?

22          A. Yes. This was really a study that  
23          focused on sexual behavior. They gave it a  
24          different name, for funding reasons, but it was  
25          really focused on sexual behavior, and one of the

1 questions that they asked -- they asked in  
2 several different ways -- concerned the number of  
3 sex partners that individuals had had, both  
4 during their lifetime and during specific periods  
5 of time.

6 Q. And can you tell if Laumann's subjects  
7 were single or in couple relationships at the  
8 time they had the various partners they reported?

9 A. No.

10 Q. So, if someone had, say, 15 partners,  
11 they could have been spread out, they could have  
12 been at any time in their life?

13 A. That's correct.

14 Q. Okay. And did Laumann's data count  
15 someone as a sexual partner only if it was a  
16 serious relationship, or could it have been any  
17 kind of --

18 MR. FAHLBUSCH: Objection, leading.

19 THE COURT: I'm -- Go ahead.

20 BY MS. COOPER:

21 Q. Yeah, did he count sexual partners  
22 whether -- only if they were in serious  
23 relationships?

24 A. No.

25 Q. Did he count any sexual partner?

1           A. He counted any sexual partner, so I  
2 mean, it could have been a male partner, it could  
3 have been a female partner.

4           Q. Are you familiar with a publication by  
5 Bell and Weinberg, called Homosexualities?

6           A. Yes.

7           Q. And can you tell us generally about that  
8 publication and the research it reports?

9           A. The Bell and Weinberg research was  
10 published in a book. It was one of the earliest  
11 publications about lesbians and gay men. The  
12 research was conducted around 1970. The sample  
13 of lesbians and gay men and heterosexuals were  
14 all recruited from the San Francisco Bay area,  
15 and then the researchers asked many questions of  
16 the people in that project.

17          Q. I have a few questions for you about the  
18 study of the gay men in that study, okay? First  
19 of all, can you tell us where they were recruited  
20 from?

21          A. They were all from the Bay area, but  
22 they were recruited in a variety of ways. So the  
23 researchers put advertisements in newspapers, in  
24 underground newspapers. They recruited through  
25 bars and clubs. They recruited through bath

1 houses for gay men. They recruited through  
2 friendship networks. They kind of did their best  
3 to cast a wide net in the San Francisco area.

4 Q. You mentioned a bath house. What's  
5 that?

6 A. My understanding of the 1970s in San  
7 Francisco was that bath houses were places that  
8 gay men went to, in order to have sex with other  
9 men in a very casual way.

10 Q. Are men who went to gay bath houses to  
11 have casual sex representative of the general  
12 population, in terms of the number of sex  
13 partners they have?

14 A. No, they're not.

15 Q. Are there places where heterosexuals go  
16 to have casual sex?

17 A. There are. There are today. There were  
18 then. There's sex clubs. There are clubs in San  
19 Francisco -- there were clubs in San Francisco at  
20 that point, and probably still are, for  
21 bisexuals. The Playboy Mansion in Los Angeles  
22 could be considered such a place.

23 Q. And are heterosexuals who go to  
24 heterosexual sex clubs of this nature  
25 representative of the general population of

1           heterosexuals, in terms of the number of sex  
2           partners they have?

3           A. No.

4           Q. Okay. So the number of partners that  
5           Bell and Weinberg report concerning number of  
6           partners that gay men have, is -- that included  
7           people from bath houses, as well as these other  
8           sets?

9           A. That's correct.

10          Q. And what years were that data gathered?

11          A. The data were gathered around 1970.

12          Q. What were the sexual attitudes in the  
13          1970s like, compared to today?

14          A. Well, the early 1970s were really a time  
15          when many people, especially but not exclusively  
16          young people, were challenging traditional  
17          attitudes about sexual behavior.

18                 MR. FAHLBUSCH: I'm going to object  
19                 to the relevance of this testimony.

20                 THE COURT: Okay, I'm going to  
21                 sustain it. I think you can ask it, you  
22                 know, what were the deficits of the  
23                 study. I mean, you know --

24                 MS. COOPER: Your Honor, we're  
25                 raising this because this is an issue we



1 expect to bring up and for efficiency --

2 THE COURT: Doctor, what are the  
3 deficits in that study?

4 MS. COOPER: Well, that's not --  
5 We're not raising deficits in the study.  
6 We're contextualizing it.

7 THE COURT: Well, I'm sustaining  
8 the objection.

9 MS. COOPER: Okay.

10 BY MS. COOPER:

11 Q. If I may ask just one more question  
12 related to that study, which is, in your view, is  
13 it appropriate to look at Bell and Weinberg's  
14 data from the 1970s in this publication,  
15 Homosexualities, to make an assessment about the  
16 number of sex partners that gay men have today,  
17 on average?

18 A. No.

19 Q. And are there other demographic groups  
20 that are known to have higher numbers of sexual  
21 partners, on average, than the general  
22 population?

23 A. Yes, there are.

24 Q. Which groups?

25 A. One big difference that's been found is



1 difference was gender. So, when you turn to  
2 men --

3 MR. FAHLBUSCH: I'm going to  
4 continue to object on relevance, Your  
5 Honor. I don't know why we're going  
6 there.

7 MS. COOPER: Well, Your Honor,  
8 based on the discovery in this  
9 litigation, we anticipate that a  
10 significant argument that would be made  
11 by the other side is that --

12 THE COURT: This, I'm going to  
13 allow.

14 MS. COOPER: Sorry?

15 THE COURT: I'm going to allow  
16 this.

17 THE WITNESS: So we were talking  
18 about male/female differences, and what  
19 Laumann reports is that 16.6 percent of  
20 the men in his study said they had had  
21 21 or more partners, but only 3.2  
22 percent of the women said they'd 21 or  
23 more partners.

24 If we look now at education,  
25 Laumann found a very clear pattern that

1           the higher a person's level of  
2           education, the more likely they were to  
3           report having had many sex partners.  
4           So, among those people who had less than  
5           a high school education, only 5.8  
6           percent said they'd had many sex  
7           partners. Among those with some  
8           college, it goes up to 9.3 percent. If  
9           you finish college, it goes up to 13  
10          percent, and among those with a Master's  
11          or advanced degree, it goes up to 13.2  
12          percent. So increasing levels of  
13          education increase the percent of people  
14          who say they've had many sex partners.

15        BY MS. COOPER:

16            Q. Can you tell us what Laumann found with  
17        respect to the religious correlation?

18            A. Yes. He also found differences here,  
19        and one pattern was that people who reported  
20        having no religion were more likely to be in this  
21        21 plus category. So, for people who had no  
22        religious affiliation, the percent reporting 21  
23        or more partners was 15.9 percent. In contrast,  
24        for Protestants, which he broke into two  
25        categories, it was either 8.3 percent or 7.0

1           percent. For Catholics, it was 9.1 percent.

2                       So these rates are about half those of  
3           people who report no religion, and then for the  
4           Jewish individuals in the sample, the number was  
5           16.7 percent, so higher among Jews.

6                       Q. Okay, and you mentioned ethnicity. Did  
7           he report the data on that?

8                       A. Yes. The final category he looked at  
9           was ethnicity, and here, he found that the  
10          rates -- that the percentages were as follows:  
11          Among Whites, about 9.1 percent said they'd had  
12          21 or more partners. Among African-Americans, it  
13          was about 10.5 percent; among Hispanics, 8.5  
14          percent; and then the group that -- the groups  
15          that are really different are the  
16          Asian-Americans, where it's 3.1 percent, a much  
17          lower percentage, and Native Americans, where  
18          it's 5.0 percent.

19                      Q. Now, any of these variables that you  
20          just -- demographic variables you just discussed,  
21          do any of them possibly account for higher rates  
22          of partners among gay people, compared to  
23          heterosexuals?

24                      A. They might, because data published  
25          elsewhere in Laumann's book and in other sources

1 indicates that on average, lesbians and gay men  
2 tend to be higher in education than the general  
3 population, and may also consequently be higher  
4 in income, and those are both factors associated  
5 with a higher likelihood of having many sex  
6 partners.

7 Q. Uh-huh. I want to just ask you a few  
8 questions now, switching gears from sex partners  
9 to Census data. Is there any Census data on the  
10 percentage of Florida homes that are married  
11 couples versus other kinds of households, like  
12 single people or unmarried couples?

13 A. There are data. Again, I have some  
14 notes. In this case, these are notes summarizing  
15 U.S. Census data, that the 2000 U.S. Census  
16 included questions that enable researchers to  
17 identify same-sex couples who are cohabiting, and  
18 so -- but they tell us about different kinds of  
19 couples, so these useful available data are  
20 Federal statistics.

21 Q. Uh-huh, and can you tell us what the  
22 data show regarding percentages of Florida  
23 households that are married couples versus  
24 households without married couples?

25 A. Yes. Just over half the couples in the

1 households in Florida are married-couple  
2 households.

3 Q. Uh-huh, okay, and so that means just  
4 under half are other kinds of households?

5 A. Exactly.

6 Q. And what percentage of Florida  
7 households are not in adult -- not headed by  
8 adults in couples relationships at all, what we  
9 call single?

10 A. About 44 percent.

11 Q. Uh-huh, and what percentage are  
12 unmarried-couple households?

13 A. About six percent.

14 Q. And of those unmarried-couple households  
15 in Florida, what percentage are same-sex versus  
16 different sex?

17 A. The majority of the unmarried couples  
18 are heterosexual couples, and that would be 89  
19 percent, but same-sex couples account for 11  
20 percent of the unmarried couples.

21 Q. Does the data tell you how many same-sex  
22 couples were counted in Florida?

23 A. Yes, as of 2000 --

24 Q. Yeah.

25 A. -- there were about 41,000 same-sex

1 couples in Florida.

2 Q. And those are couples living together?

3 A. Those are couples who were living  
4 together and they're also couples who were  
5 willing to tell -- willing to report on the  
6 Census that they were living together, so it's a  
7 conservative estimate. It's probably a bit of an  
8 underestimate.

9 Q. Okay. Does the Census data count single  
10 gay individuals?

11 A. No.

12 Q. So we don't know?

13 A. We don't know.

14 Q. So, according to that Census data, the  
15 ban on adoption by gay people would exclude, as a  
16 floor, 41,000 households?

17 MR. FAHLBUSCH: Objection. The  
18 data says what it says. We don't  
19 know --

20 THE COURT: I'll sustain.

21 MS. COOPER: Okay.

22 BY MS. COOPER:

23 Q. I want to ask you now just a few  
24 questions on the topic of domestic violence.

25 Is there any basis for the assertion



1           that gay people or gay couples have higher rates  
2           of domestic violence than heterosexual couples?

3           A. In my opinion, there isn't. That is,  
4           there have been a number of studies now that have  
5           looked at domestic violence among same-sex  
6           couples. The results of those studies have been  
7           very inconsistent. Researchers have reported  
8           rates of domestic violence as low as seven or  
9           eight percent and as high as 60 or more percent.

10           If you try to figure out why you're  
11           getting such different rates, one reason is that  
12           researchers have been very inconsistent in how  
13           they define domestic violence, so some  
14           researchers consider domestic violence if you  
15           yell at your partner -- that would be considered  
16           verbal abuse -- or if you use insulting language.  
17           Other researchers would require that you do  
18           something more, like push or shove or break a  
19           dish, and other researchers are looking at  
20           instances of physical assault or rape. And  
21           obviously, depending on how you define, for your  
22           research, domestic violence, you're going to get  
23           very different numbers.

24           Another point would be that when we want  
25           to know these questions about percentages, what

1 percentage of these -- this kind of couple or  
2 that involves domestic violence, you really  
3 should have population-based, representative  
4 surveys, and the vast majority of the research on  
5 same-sex couples has not done that. To my  
6 knowledge, there's only one study that's a  
7 population-based study.

8 Q. And in that one, what were the findings?

9 A. In that study, the highest rate of  
10 domestic violence, defined as physical assault or  
11 rape -- the highest rate was 20 percent, and that  
12 was for women in heterosexual relationships being  
13 attacked by their male partner. The rates of  
14 domestic violence in that study for same-sex  
15 couples and for men being attacked by a  
16 girlfriend or wife were all lower.

17 Q. Dr. Peplau, are you familiar with a  
18 report called -- by the Centers for Disease  
19 Control, called 2001 Surveillance for Homicide  
20 Among Intimate Partners, United States, 1981 to  
21 1998?

22 A. Yes, I've read that.

23 Q. Okay. I'd like to just ask you a few  
24 questions about the information reported in that.

25 The first question is, how many cases of

1 intimate partner homicides did the CCD find from  
2 that 1981 to 1998 period?

3 A. Okay. Now, do we have notes on this  
4 one?

5 Q. Well, you gave me some notes. I can --  
6 if you don't have a copy with you, I can give  
7 that to you.

8 A. Great.

9 MS. COOPER: Here's for you.

10 THE WITNESS: Okay, so these are  
11 now, again, Federal data for  
12 approximately a 17 or 18-year period,  
13 and if I remember your question, it was,  
14 how many cases were there of domestic  
15 homicide during that time period.

16 BY MS. COOPER:

17 Q. That's right.

18 A. And the answer is that there were about  
19 45,500.

20 Q. And what percentage of those figures  
21 were women?

22 A. Two thirds, about 63.7 percent.

23 Q. Uh-huh, and in that data, were women,  
24 that group of women who were killed, at greater  
25 risk of being killed by a male or female partner?

1           A. Overwhelmingly by men; 95 percent of  
2 those deaths were women killed by a male domestic  
3 partner.

4           Q. How many women were killed by a male  
5 partner during that period?

6           A. 28,900 and some.

7           Q. And do you have that average by year?

8           A. The average number of women killed by a  
9 male partner every -- on average, was 1,610.

10          Q. Uh-huh, and does the data show how many  
11 men were killed by a male partner during the 1981  
12 to '98 period?

13          A. The total number was 1,024.

14          Q. And how did -- what did that come out  
15 to, per year, on average?

16          A. About 60.

17          Q. Okay.

18                 I just have a few more questions and  
19 we'll be through. I want to ask you, have you  
20 reviewed a manuscript prepared for this  
21 litigation by Dr. Walter Schumm, called  
22 Relationship Stability?

23          A. Yes, I have.

24          Q. Okay, and just to make sure we're clear,  
25 I want to show you a document bearing Bates

1           Number 70 -- the first page, Bates Number 7009,  
2           titled Stability of Relationships, Walter Schumm,  
3           2008. Is that the document you saw? Oh, I'm  
4           sorry.

5                       MR. FAHLBUSCH: We would like to  
6                       continue our objection with regard to  
7                       rebuttal testimony concerning testimony  
8                       that hasn't happened.

9                       MS. COOPER: Your Honor, this is a  
10                      question of efficiency, but the State  
11                      are putting on these experts, and  
12                      something about his experts is --

13                     THE COURT: Overruled. I know he's  
14                     on the list. I'll allow it. He's on  
15                     the list.

16                     Are you marking that or --

17                     MS. COOPER: We don't need to have  
18                     it admitted --

19                     THE COURT: Okay, go ahead.

20                     MS. COOPER: -- just for  
21                     identification.

22           BY MS. COOPER:

23                     Q. And this manuscript, you've seen this  
24                     before?

25                     A. I have seen this before, yes.

1           Q. Okay, and just for clarification, is  
2           this a document that was -- that appears to be  
3           published in a journal?

4           A. No.

5           Q. Now, you have reviewed this manuscript.  
6           Can you tell us, in your view, if Dr. Schumm  
7           presented an objective review of the evidence on  
8           gay couple relationships?

9           A. I had several concerns about the  
10          manuscript. One -- a first comment would be that  
11          I often actually found it difficult to follow the  
12          logic of this paper, that toward the end of the  
13          paper, Dr. Schumm suggests that he's presented a  
14          theory, but I would have trouble restating for  
15          you just what that theory was, that I'm used to  
16          reading articles published in professional  
17          scientific journals, and as was mentioned, this  
18          is not a published paper, but it doesn't have  
19          some of the crispness and the logical flow of  
20          ideas that I would expect.

21                 I certainly understood many of the  
22          points he was making, and I felt that at least on  
23          occasion he was not presenting prior research in  
24          a way that seemed fair to me, and one of the  
25          examples of that concerns his description of a

1 study by Larry Kurdek that looked at what some of  
2 the deterrents are, or barriers, that couples  
3 report keep them in a relationship, and I wish  
4 this were marked, because I'd like to give you  
5 the exact quotation.

6 Q. And I'm sorry, I may have given you the  
7 updated, revised version, because there were two  
8 versions submitted, so let me see. Let's see if  
9 we can find that in a moment.

10 A. Well, let me tell you the gist of it --  
11 and recognize that I may not be able to -- I  
12 haven't memorized the quotation. But  
13 essentially, the point that Dr. Schumm makes is  
14 that for heterosexuals asked, "What are reasons  
15 that you stay together," that one important  
16 reason that was cited by heterosexuals was  
17 responsibility to family and children.

18 And a second point that he makes is that  
19 heterosexual married couples were more likely to  
20 mention moral values, and that this was not  
21 typically mentioned by same-sex couples.

22 And a third point he makes is that  
23 same-sex couples tended to emphasize intimacy as  
24 a reason for staying together.

25 And I think if you put all of that

1           together, the impression that might be conveyed  
2           is that gay and lesbian couples are telling us  
3           that they stay together because of intimacy or  
4           the pleasure of a relationship, whereas  
5           heterosexuals are telling us that they stay  
6           together because of obligations to kids or  
7           because of their moral principles.

8                        But if you look at what Kurdek actually  
9           reported, it's a little different. First of all,  
10          intimacy was the top-rated reason given by  
11          heterosexuals as well as by same-sex couples. So  
12          to say that it was the highest for same-sex  
13          couples sort of implies it was different for  
14          heterosexuals, but it wasn't.

15                       Second, among the heterosexual couples  
16          in this study, 81 percent of them were raising  
17          children, and among the gay and lesbian couples,  
18          none of them were raising children. So it  
19          doesn't seem surprising to me that people not  
20          raising children don't mention staying together  
21          for the kids, essentially.

22                       And then turning to the issue of moral  
23          values or morality, the way in which Kurdek  
24          thought about that was, did people, in their  
25          discussions about why they stayed together, talk





1 moral reason is the statement about the sanctity  
2 of marriage?

3 A. That would be an example -- it's an  
4 example he gave of the statement. What Kurdek  
5 did was to ask people in their own words to tell  
6 him why they stayed together, and then he  
7 categorized them, and the sanctity of marriage  
8 was one of the things that came up in  
9 heterosexual -- in married heterosexuals'  
10 answers.

11 Q. And presumably did not come up for the  
12 gay couples?

13 A. Did not come up.

14 Q. And now I want to ask you if you have  
15 reviewed Dr. Rekers' article, published in the  
16 St. Thomas Law Review, that has the title -- I'll  
17 have to read this, it's long -- "An empirically  
18 supported rational basis for prohibiting  
19 adoption, foster parenting and contested child  
20 custody by any person residing in a household  
21 that includes a homosexually-behaving member."  
22 Have you reviewed any part of this paper?

23 A. I've looked at the whole paper, and I've  
24 read in some detail the section on the stability  
25 of relationships.

1           Q. Okay, and that's the piece I actually  
2 want to ask you about, since that's the topic  
3 you're covering. In your view, did --

4           MS. COOPER: You all have a copy of  
5 this, right?

6           MS. MARTIN: I don't have it with  
7 me, I don't think.

8           MS. COOPER: Okay.

9 BY MS. COOPER:

10           Q. In your view, did Dr. Rekers present an  
11 objective review of the evidence of couple  
12 relationships of same-sex couples, putting aside  
13 the rest of the article?

14           A. I was concerned with his presentation,  
15 for two reasons. One is that Dr. Rekers cites  
16 three studies to support his point that same-sex  
17 relationships are unstable. Two of those three  
18 studies are about the number of sex partners that  
19 gay men have had during their lifetime, and that  
20 really seems to me a poor way to go about  
21 learning or providing information about the  
22 stability of partner relationships. I think  
23 there are many people, heterosexuals as well as  
24 lesbians and gay men, who, early in their lives,  
25 have periods of sexual experimentation, have many

1 partners. On college campuses today,  
2 heterosexuals talk about "hooking up," which  
3 means having sex with someone you may never see  
4 again, and yet many of these people go on to  
5 establish long-term, enduring relationships. So,  
6 if you want to know about relationship stability,  
7 looking at a history of sex partners seems to me  
8 a pretty odd place to look.

9 One of the three papers Dr. Rekers cites  
10 does seem to me directly relevant, and that's  
11 research by Gunnar Andersson that we've talked  
12 about this morning. But here, my concern is  
13 that, although Dr. Rekers talks about the  
14 Andersson study, he doesn't include in his review  
15 other published, widely cited studies on the  
16 stability of actual relationships over time,  
17 including ones that we've talked about by Larry  
18 Kurdek or by Blumstein and Schwartz. So there  
19 are other important papers that he fails to  
20 mention, and I found that troublesome.

21 Q. And one last question. Do academics in  
22 your field typically rely on articles published  
23 in Law Reviews for scientific conclusions?

24 A. No.

25 MS. COOPER: Nothing further.

1 THE COURT: Okay. I'd like to go  
2 around. Ms Bass, do you have any  
3 questions?

4 MS. BASS: No, I don't. Thank you.

5 THE COURT: Okay. The guardian,  
6 Ms. Allen?

7 MS. ALLEN: I have no questions,  
8 Judge.

9 THE COURT: Okay. Mr. Fahlbusch.

10 MR. FAHLBUSCH: Yes, Your Honor.

11 CROSS EXAMINATION

12 BY MR. FAHLBUSCH:

13 Q. How did you first become involved in the  
14 case, Doctor?

15 A. I received, I believe, a telephone call,  
16 possibly an e-mail, from Ms. Cooper, and that was  
17 probably seven months ago, something like that.

18 Q. And she was your first contact?

19 A. Exactly.

20 Q. Are you being paid for your work and  
21 your testimony in this case?

22 A. I'm being paid for my time. I'm being  
23 paid an hourly rate.

24 Q. And what's that hourly rate?

25 A. It's \$200 an hour.

1           Q. And how many hours have you accumulated  
2 so far?

3           A. Prior to the actual trial, probably 70  
4 hours.

5           Q. And that's for both preparation and  
6 testimony?

7           A. No, that would be preparation -- that  
8 would be preparation.

9           Q. Are you -- are you being paid for your  
10 testimony?

11          A. I'm being paid for the time I'm spending  
12 here today, yes. I think -- I want to be very  
13 clear. I'm being paid to be here, but what I'm  
14 saying are really my opinions.

15          Q. I understand, and -- but that rate is  
16 different?

17          A. No, the rate is the same.

18          Q. The rate is the same, okay. Very good.

19                   (Discussion off the record)

20 BY MR. FAHLBUSCH:

21          Q. Can you explain, with regard to  
22 information on quality of relationships,  
23 stability of relationships, commitment of  
24 relationships, that you relied on studies,  
25 correct, Doctor?

1 A. Yes, that's correct.

2 Q. A number of these studies were based  
3 upon convenience samples, weren't they?

4 A. Yes.

5 THE COURT: What kind of samples?

6 MR. FAHLBUSCH: Convenience.

7 THE COURT: Convenience samples?

8 BY MR. FAHLBUSCH:

9 Q. What is a convenience sample?

10 A. A convenience sample is a sample that's  
11 not a representative, population-based sample,  
12 and so it might be people recruited in other  
13 ways, but non-representative would be the proper  
14 way to think about it.

15 Q. Okay, and by their very nature, they are  
16 not representative of a specific population,  
17 correct?

18 A. Yes. Not necessarily. We don't know  
19 the degree to which they're representative or  
20 not.

21 Q. Right. For example, a study of gay  
22 males in San Francisco might reflect gay males  
23 nationally or internationally, but we can't know?

24 A. But it might not, exactly.

25 Q. Some of the other studies were

1 geographically limited and may not be nationally  
2 representative, correct?

3 A. Correct.

4 Q. Such as, a study of persons in Vermont  
5 is more likely to reflect the persons in Vermont  
6 than persons nationally or internationally, for  
7 example, correct?

8 A. Right.

9 Q. There were low response rates in some of  
10 those studies that you're relying on, also,  
11 weren't there?

12 A. I'm not sure what you mean by that.

13 Q. That a wide number of people were  
14 contacted, but a relatively low percentage  
15 responded.

16 MS. COOPER: Objection.

17 "Relatively low"? Vague.

18 THE WITNESS: Well, I could give  
19 you --

20 THE COURT: How much --

21 THE WITNESS: -- a specific  
22 example. In the study by Balsam that I  
23 discussed, approximately 400 couples who  
24 had obtained civil unions were invited  
25 to participate, and about 200 of those



1 couples actually participated, for a  
2 variety of reasons.

3 BY MR. FAHLBUSCH:

4 Q. So that would be a 50 percent response  
5 rate?

6 A. Give or take.

7 Q. And you're relying on studies where the  
8 response rate is significantly lower than 50  
9 percent, as well, aren't you?

10 A. Do you have a particular study -- I'm  
11 not sure that other studies have lower  
12 response -- I mean --

13 Q. You don't know that?

14 A. Well, there's sort of this universe of  
15 studies out there, and it's a little difficult  
16 for me to --

17 Q. Well, but I'm only interested in the  
18 ones you're relying on, Doctor.

19 A. I could not say that -- I would not say  
20 that most of them or many of them have response  
21 rates that are lower than that.

22 Q. Any of them?

23 A. I don't know.

24 Q. You don't know.

25 THE COURT: What happened over

1           there, Laura?

2                   THE CLERK: They're on speaker  
3           phone with someone.

4 BY MR. FAHLBUSCH:

5           Q. Do you know what I would mean if I used  
6           the phrase "low sample size"?

7           A. No, I don't, actually, because the size  
8           of a sample that you need depends a great deal on  
9           the kind of research that you're conducting. I  
10          mean, certainly one could say that, you know,  
11          some samples are bigger than others, but I don't  
12          think we have a standard criterion, at least in  
13          the studies I know, for what constitutes low  
14          sample size.

15          Q. Are any of the studies that you're  
16          relying on -- have a sample size of less than a  
17          hundred?

18          A. Yes, I believe that the Kurdek studies,  
19          for example, have sample sizes that are more like  
20          80 or 90, something like that.

21          Q. Among the factors that can influence the  
22          results of a study can be bias of a researcher,  
23          can't it?

24          A. Potentially, yes.

25          Q. Or bias of interviewer?

1 A. Yes.

2 Q. And this can affect the responses that  
3 people can get, can't it?

4 A. Potentially so.

5 Q. And this encourages people to respond  
6 towards a specific conclusion that the researcher  
7 or the interviewer is in bias for, doesn't it?

8 A. It could, yes.

9 Q. What's a suppressor effect, Doctor?

10 A. I'm not sure exactly what you're  
11 referring to, but it would typically, I think, be  
12 a factor that reduces something, rather than  
13 increases something, but without the context, I'm  
14 not --

15 THE COURT: Doctor, one moment.

16 I'm going to fix this.

17 (Thereupon, a brief recess was  
18 taken.)

19 THE COURT: Okay, we're back.

20 BY MR. FAHLBUSCH:

21 Q. As you pointed out, Doctor, there are  
22 numerous factors that can affect such outcomes as  
23 relationship stability, relationship quality,  
24 such as income, race, education. Are these  
25 factors which should be controlled for, in doing

1 a study to make a comparison?

2 MS. COOPER: Objection, vague.

3 MR. FAHLBUSCH: Okay.

4 MS. COOPER: A comparison of --

5 BY MR. FAHLBUSCH:

6 Q. Oh, a comparison of differences between  
7 people of different gender orientation, for  
8 example.

9 A. So, if I get -- Let me see if I  
10 understand the question. In doing a study,  
11 perhaps comparing same-sex couples and  
12 heterosexual couples, would it be desirable to be  
13 able to control for race?

14 Q. Yes.

15 A. Yes.

16 Q. As an example.

17 A. Yes.

18 Q. Or income?

19 A. Sure.

20 Q. Or religion?

21 A. If you're trying to identify the unique  
22 contribution of sexual orientation, yes, that  
23 would be helpful.

24 Q. And a number of the studies you've  
25 relied on in your testimony with regard to

1           quality and longevity of relationships, to a  
2           significant extent, that wasn't done, was it,  
3           Doctor?

4           A.   Some of the studies, for example, the  
5           Kurdek study, essentially compare -- controlled  
6           for some of those things, because the samples,  
7           for example, tend to be of White participants, so  
8           there wasn't variation among the sample in  
9           ethnicity, so it wasn't necessary to control for  
10          or to look specifically at it.

11          Q.   Failure to control for the significant  
12          differences can lead to an invalid conclusion,  
13          can't it?

14          A.   If you're trying to make a conclusion  
15          about the unique contribution of sexual  
16          orientation and you have -- and you have groups  
17          that are very different, for instance, in  
18          ethnicity or marital status, I think that could  
19          affect your conclusion, yes, your interpretation  
20          of the finding.

21          Q.   When a researcher chooses to rely on  
22          some studies but deliberately ignores another  
23          study, based upon that researcher's attitudes,  
24          this is called cherry-picking research, isn't it?

25          A.   It could be called that. I mean, I

1 haven't personally used that term, but that  
2 would --

3 Q. That wouldn't be inaccurate, would it?

4 A. No.

5 Q. And such cherry-picking can result in  
6 flawed conclusions, can't it?

7 A. Yes.

8 Q. When you state that, for example, in a  
9 study where unmarried cohabiting heterosexual  
10 couples were compared with unmarried cohabiting  
11 same-sex couples, that meant that a substantial  
12 number of heterosexual couples were not involved  
13 in that comparison, correct, the married ones?

14 A. Correct.

15 Q. And that can skew the comparison, can't  
16 it?

17 A. I'm not sure -- I'm really not following  
18 your question.

19 Q. Well, you've stated that essentially,  
20 that because only recently were civil unions and  
21 marriages permitted to same-sex couples, a  
22 very -- a comparatively small percentage of the  
23 studies involved married or civil union same-sex  
24 couples?

25 A. Yes, I have said that.

1           Q. So, when you try to compare -- when  
2           you're studying cohabiting same-sex couples,  
3           you're studying -- at least until very recently,  
4           and probably currently -- a very high percentage  
5           of same-sex couples overall, aren't you?

6           MS. COOPER: Objection to the form.

7           THE COURT: Sustained.

8           BY MR. FAHLBUSCH:

9           Q. A study which only eliminated same-sex  
10          couples involved -- that were in a civil  
11          commitment or a marriage, would still have a  
12          population of probably the majority of same-sex  
13          couples, correct?

14          MS. COOPER: Objection --

15          THE COURT: I'm going to sustain.

16          MS. COOPER: -- to form.

17          BY MR. FAHLBUSCH:

18          Q. Are the majority of same-sex couples in  
19          civil unions or marriages?

20          A. No. I mean, the majority are not in  
21          same-sex unions or in same-sex marriages.

22          Q. Are close to half involved in such  
23          unions or marriages?

24          A. I don't think so. Nationwide, we're  
25          talking about.

1 Q. Yes.

2 A. No.

3 Q. Are the majority of heterosexual  
4 cohabiting couples married?

5 A. Probably. I mean, I would think so.  
6 But it's certainly not all of them.

7 Q. Right.

8 Studying persons located in the San  
9 Francisco Bay area, you testified, would not be  
10 representative, correct?

11 A. Of the whole country, right.

12 Q. And --

13 A. And we said not necessarily  
14 representative; could be, might not be.

15 Q. Right, and when you were talking about  
16 the Bell and Weinberg study, where they  
17 recruited in a lot of different ways, exclusively  
18 in the San Francisco Bay area, the same thing  
19 could be said with regard to recruitment; it may  
20 or may not be representative of the nation,  
21 correct?

22 A. No, the recruitment was not  
23 representative of the nation, because recruitment  
24 was only done in San Francisco.

25 Q. Yeah, but we don't know whether the



1 persons recruited would be representative of the  
2 nation or not, with regard to their attitudes in  
3 the study, do we?

4 A. No, nor do we know whether they're  
5 representative of lesbians and gay men in San  
6 Francisco, who, had we had a representative  
7 sample, it might have looked different than their  
8 non-representative sample.

9 Q. Right.

10 A. We don't know.

11 Q. Would you explain what a longitudinal  
12 study is?

13 A. A longitudinal study is a study in which  
14 you follow an individual or a couple over time,  
15 meaning that you assess them at one point in  
16 time, and then perhaps a year later or five years  
17 later, you assess them again, over several points  
18 of time, usually.

19 Q. Would an 18-month study be considered a  
20 longitudinal study?

21 A. It would be more common to call that  
22 kind of a study a follow-up study, because there  
23 weren't repeated assessments. They're studied at  
24 one point in time and then they were followed up  
25 18 months later.

1           Q. You cited a CDC study on intimate  
2 partner homicides.

3           A. Yes.

4           Q. Do you consider the CDC a reputable  
5 conductor of studies?

6           A. Yes, our Center for Disease Control  
7 collects reputable data.

8           Q. What's a cross-sectional study?

9           A. A cross-sectional study, as I would use  
10 it, is a study conducted at one point in time.

11          Q. And so it's -- it doesn't tell us  
12 anything about what happened to a person or  
13 relationship over a period of time; it tells us  
14 what a number of people are doing at a specific  
15 point in time?

16          A. Yes. It's a kind of one-time snapshot.

17          Q. Which may or may not be representative  
18 of what people do over time, correct?

19          A. I'm not entirely clear understanding  
20 your question, only because the CDC data we were  
21 talking about were data asking people not, was  
22 there domestic -- I mean, it's kind of -- The CDC  
23 data we were talking about were data about  
24 homicides, so once a person is murdered -- I'm  
25 trying to figure out, kind of --

1 Q. Oh, I wasn't referring to the CDC study  
2 in the question.

3 A. Oh, okay.

4 Q. I was asking --

5 A. More generally.

6 Q. -- more generally, cross-sectional  
7 studies don't -- aren't designed to tell us and  
8 don't tell us what happened to people over time,  
9 correct?

10 A. They don't tell us what happens to  
11 people going forward. We might ask people  
12 retrospective questions about what they did at an  
13 earlier period of time, but we would be obtaining  
14 that information at a single point of time,  
15 whether we asked only about what's going on  
16 currently or whether we asked what's going on  
17 now, but what happened a week ago or 10 years  
18 ago.

19 MR. FAHLBUSCH: Okay, I have no  
20 further questions at this time, Doctor.

21 THE COURT: Anyone else?

22 Thank you, Dr. Peplau.

23 MS. COOPER: Oh, actually, I'm  
24 sorry, I didn't speak fast enough.

25 Might I ask one question on redirect?

1 Just a moment.

2 MR. ESSEKS: Could we confer for a  
3 minute, Your Honor?

4 (Discussion off the record)

5 THE COURT: Actually, I do have one  
6 request.

7 MS. COOPER: Oh, sure.

8 THE COURT: The APA statement that  
9 you testified about, can I have a copy  
10 of that? Can we have a copy of that?

11 THE WITNESS: Yes.

12 MS. COOPER: We'll get that for  
13 you.

14 THE WITNESS: Yes, absolutely.

15 THE COURT: Okay.

16 MS. COOPER: And if I may, just  
17 one -- I think what will be one question  
18 on redirect.

19 REDIRECT EXAMINATION

20 BY MS. COOPER:

21 Q. You spoke earlier in the cross about,  
22 you know, sometimes -- not in every study is  
23 there a perfectly -- I'm paraphrasing a little  
24 bit -- a perfectly matched comparison, that  
25 there's some times you don't control for

1 everything, like education or whatever. Are  
2 there ways that researchers can control for those  
3 disparities, even if the samples themselves are  
4 not perfectly matched?

5 A. Yes. Particularly in studies where  
6 there's a large enough sample, researchers can  
7 introduce statistical controls, so if one group  
8 is lower in education than another group and you  
9 want to sort of get over that fact of difference,  
10 you can use statistical techniques to control  
11 after the fact for the effect of education, if  
12 you will, take that out of the -- take that out  
13 of the equation. That's very commonly done in  
14 studies by demographers who have large data sets.

15 Q. And when you were discussing the  
16 Andersson study, earlier, you talked about  
17 estimates. Assuming everybody had been together  
18 the same amount of time at the start, is that a  
19 statistical control? Is that what you're talking  
20 about?

21 A. Yeah, that would be an example of taking  
22 available data and introducing some controls,  
23 yes.

24 MS. COOPER: Nothing further.

25 THE COURT: Okay. Mr. Fahlbusch,

1 anything else on that?

2 MR. FAHLBUSCH: Nothing more.

3 THE COURT: Thank you, Doctor.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you very much.

6 MS. COOPER: Your Honor, we have  
7 our next witness here. Might I request  
8 that we take a very short break?

9 THE COURT: Sure. Five minutes, is  
10 that --

11 MS. COOPER: That would be great.

12 THE COURT: All right. Let me just  
13 tell you, my staff is telling me there  
14 are news reporters in the lobby, okay?

15 MS. COOPER: Excuse me, Your Honor?

16 THE COURT: There are news  
17 reporters in the lobby.

18 MR. GILL: Yeah, I went to the rest  
19 room and they jumped on me, so if  
20 there's a private rest room you might  
21 use --

22 THE COURT: Yes. I'll have my  
23 bailiff help you, and remember, you can  
24 go down to 1124, as well.

25 MS. COOPER: Thank you.

1 THE COURT: So we'll be back in  
2 five minutes.

3 MS. COOPER: Great.

4 (Thereupon, a brief recess was taken.)

5 THE COURT: Okay, we're back,  
6 everybody. Who's our next witness?

7 MS. COOPER: Your Honor, our next  
8 witness will be Dr. Susan Cochran, who  
9 will address the subject of, in broad  
10 strokes, mental health problems and  
11 health disparities, generally.

12 I believe a colleague went to go --  
13 Here she comes, great.

14 THE COURT: Doctor, we have a chair  
15 at the end for you, and would you raise  
16 your right hand, please.

17 THE CLERK: Raise your right hand,  
18 please.

19 THEREUPON:

20 SUSAN D. COCHRAN, PH.D.  
21 was called as a witness by the Petitioner and,  
22 having been first duly sworn, was examined and  
23 testified as follows:

24 THE CLERK: Thank you.

25 MS. COOPER: Okay, sorry about

1 that.

2 DIRECT EXAMINATION

3 BY MS. COOPER:

4 Q. Dr. Cochran, can you please state your  
5 full name for the record?

6 A. Susan D. Cochran.

7 Q. And I'm going to just point out to you  
8 that the stenographer is sitting right over  
9 there, so if you could keep your voice up --

10 A. Okay.

11 Q. -- that would be helpful for her.

12 Dr. Cochran, can you tell the Court your  
13 educational background, please?

14 A. I have a Ph.D. in clinical psychology  
15 from UCLA in 1982. I have a Master's degree in  
16 counseling psychology, and I have a Master's  
17 degree in epidemiology, in I think 1994, from  
18 UCLA School of Public Health.

19 Q. And are you currently employed?

20 A. Yes, I'm a professor of epidemiology and  
21 statistics at UCLA School of Public Health.

22 Q. How long have you held that position?

23 A. I've been there since 1996.

24 Q. And can you tell us what positions you  
25 held from the time you completed your Ph.D. in --



1 when did you say that was?

2 A. 1982.

3 Q. From 1982 until your current position?

4 A. I was a post-doctoral fellow with the  
5 American Cancer Society for two years, and then I  
6 was an assistant professor of family medicine at  
7 USC for a year, and then I was a professor at  
8 California -- of psychology, at California State  
9 University for about 11 years.

10 Q. Going back to your current position at  
11 UCLA, can you tell us generally how you spend  
12 your time, professionally?

13 A. Like most professors at UCLA, I spend my  
14 time doing research, teaching and participating  
15 in administration of the university.

16 Q. What classes do you teach?

17 A. At the undergraduate level, I teach  
18 introductory statistics, survey sampling. At the  
19 graduate level, I teach psychiatric epidemiology,  
20 management of complex data sets, and science  
21 writing.

22 Q. And you mentioned research activities.  
23 Can you describe generally the focus of your  
24 research?

25 A. My research is focused on the ways in

1           which social adversity affects health, so I look  
2           at populations that are likely to experience  
3           social adversity in the world, ethnic and racial  
4           minorities, sexual orientations, immigrant  
5           populations, and look to see what impacts that  
6           might have on their health, their mental health,  
7           their physical health, and their access to health  
8           care.

9           Q.    And in -- Does the scope of that work  
10          include looking at substance abuse?

11          A.    Yes.

12          Q.    Can you describe what it means to do  
13          epidemiological research?

14          A.    Epidemiology is a discipline that  
15          believes that if you can understand factors  
16          associated with diseases at the population level,  
17          you can get a handle over what's causing  
18          diseases, and so epidemiologic research typically  
19          looks for relationships between factors in people  
20          and health outcomes.  Many of the health outcomes  
21          that we're looking at are pretty rare, so we have  
22          a variety of methodological techniques that we  
23          use to do this effectively.

24          Q.    Do you use population-based research in  
25          the --

1 A. Yes.

2 Q. -- field of epidemiology?

3 A. Yes. Population-based research is  
4 pretty common in the field of epidemiology.

5 Q. Uh-huh, and what does that mean?

6 A. Population-based research means that you  
7 highly articulate the population that you're  
8 sampling from and then you use specific  
9 techniques to try and get a sample that's  
10 representative of that population.

11 Q. And why is that kind of research used  
12 within the field of epidemiology?

13 A. Because our interest is in being able to  
14 extrapolate from our studies to the population,  
15 and oftentimes we're coming in at the end of a  
16 process, so we might already know that smoking  
17 causes lung cancer, but we want to know what the  
18 rate of smoking is in the population.

19 Q. Uh-huh. So, going back to the -- to  
20 your research --

21 A. Uh-huh.

22 Q. Your research, does that include  
23 population-based study?

24 A. Yes.

25 Q. Uh-huh, and does your research include

1 research on the prevalence of physical or mental  
2 health disparities between lesbian and gay people  
3 as compared to heterosexuals?

4 A. Yes.

5 Q. Approximately how many papers of yours  
6 or publications of yours have addressed those  
7 kinds of disparities?

8 A. I think about 10.

9 Q. How have your studies been funded?

10 A. My work is funded by different agencies  
11 in the National Institute of Mental Health --  
12 National Institute of Health, so I've been funded  
13 by the National Institute of Mental Health, the  
14 National Institute of Drug Abuse, the National  
15 Institute of Allergy and Infectious Disease.

16 Q. And the National Institute of Health, is  
17 that a Federal agency?

18 A. That's a large Federal agency, yes.

19 Q. And have you published any of your  
20 research in academic journals?

21 A. Yes.

22 Q. Uh-huh, and about how many studies do  
23 you have in peer-reviewed academic journals?

24 A. I think about sixty -- more than 65.

25 Q. Can you tell us some of the more

1           prestigious academic peer-reviewed journals that  
2           have published your work?

3                   A.   New England Journal of Medicine,  
4           American Psychologist, Journal of Consulting and  
5           Clinical Psychology, Archives of General  
6           Psychology, American Journal of Public Health.

7                   Q.   Have you authored any chapters in  
8           scientific books?

9                   A.   Yes.

10                   Q.   About how many?

11                   A.   A little more than 20.

12                   Q.   Uh-huh.  Now, your publications, whether  
13           they're journal articles or book chapters, do  
14           they include reports on any research on the  
15           health of ethnic minority communities?

16                   A.   Yes.

17                   Q.   And do they include reports on your  
18           research on the health of lesbians and gay men?

19                   A.   Yes.

20                   Q.   Do other people in the field make use of  
21           your work on the -- focusing on the health of  
22           lesbians and gay men?

23                   A.   Yes.

24                   Q.   How do you know that?

25                   A.   You know that by whether or not people

1 cite your work, so my work is heavily cited. You  
2 know when people take papers and they reprint  
3 them in other forms, like into books, and that  
4 happens. And you know when you get major  
5 national awards for your work.

6 Q. And have you received any major national  
7 awards?

8 A. Yes.

9 Q. Can you tell us about those?

10 A. I received the 2001 award for  
11 distinguished contributions in research on public  
12 policy, from the American Psychological  
13 Association. This is an award that's given to  
14 one psychologist a year.

15 Q. And what work was that for?

16 A. For my body of work on lesbian and gay  
17 mental health issues.

18 Q. Uh-huh. Have you ever been invited to  
19 give presentations by any public health  
20 authorities or other public health organizations?

21 A. Yes.

22 Q. Can you tell us about some of those?

23 A. I was invited by the Institute of  
24 Medicine to come and give a talk on methods of  
25 doing research on lesbian health. I was invited

1 by the National Institute of Mental Health to  
2 come back and give a talk on training  
3 psychologists in public health.

4 Q. Okay. I think it would be helpful if  
5 you could speak up just a little more, if you  
6 would do that. I know it feels like you're  
7 shouting.

8 A. It does.

9 Q. And I'm sorry if I didn't follow --  
10 These presentations that you've been invited to  
11 give, approximately how many have addressed the  
12 issue of health issues of lesbians, do you know?

13 A. Quite a number of them do. I've been --  
14 you know, I gave a talk at the International AIDS  
15 Conference on lesbian participation in HIV  
16 prevention activity. Oftentimes that's what I'm  
17 invited to talk on.

18 Q. Now, in your work as an epidemiologist  
19 and a psychologist -- Would that be a fair way to  
20 describe --

21 A. Yes.

22 Q. -- what you are?

23 A. Yes.

24 Q. Okay. Do you keep up with your  
25 colleagues' research in the field?

1           A. Yes, I do.

2           Q. And is that something that's a routine  
3 part of your work?

4           A. Yes.

5           Q. For what purpose?

6           A. I keep up with what other people are  
7 writing and doing to help my own work, my own  
8 research. I also do quite a bit of reviewing of  
9 articles that have been submitted for  
10 publication, and I review grant applications of  
11 different agencies.

12          Q. You mentioned reviewing articles for  
13 peer review. Have you ever served on editorial  
14 boards of journals?

15          A. Yes.

16          Q. Which ones?

17          A. Journal of Personality and Social  
18 Psychology. I'd have to see my resume to  
19 remember.

20          Q. Okay. We'll be introducing that --

21          A. Okay.

22          Q. -- so we can save you the time.

23          A. Okay.

24          Q. And have you done peer review for other  
25 journals?



1           A. Yes, quite extensively.

2           Q. Okay. Have you ever been on a  
3 scientific review panel?

4           A. Yes.

5           Q. Can you tell us what that means?

6           A. When people submit grant applications to  
7 NIH, the first review for whether or not they're  
8 going to be funded is done by a committee of  
9 scientists, so each application is read by three  
10 or four scientists, very extensive reviews are  
11 written of them, and then a committee judges them  
12 and ranks them for funding.

13          Q. Uh-huh, and how is it that you were  
14 chosen to be on these panels?

15          A. Scientists are picked to be on these  
16 panels on the basis of their reputation. They're  
17 initially invited in, they do a couple of  
18 reviews, people see whether or not there's good  
19 quality to their reviews, and then if everything  
20 goes right, they're invited to sit on these  
21 panels.

22          Q. And have you been on any scientific  
23 review panels that consider grant applications  
24 for research on health disparities among any  
25 demographic groups?

1 A. Yes.

2 Q. Okay. Have you ever been qualified by a  
3 court as an expert witness?

4 A. Yes, once before.

5 Q. And what case was that?

6 A. That was the Howard case in Arkansas.

7 Q. And generally, what was that case about?

8 A. I think it was -- it was related to  
9 foster parenting and homosexuality.

10 Q. And what subjects did you testify about  
11 in that case?

12 A. Substance abuse, substances and health.

13 MS. COOPER: I'd like to mark as  
14 Petitioner's --

15 THE CLERK: 6.

16 MS. COOPER: -- 6, thank you, a  
17 copy of Dr. Cochran's CV.

18 BY MS. COOPER:

19 Q. Dr. Cochran, do you recognize this  
20 document?

21 A. Yes.

22 Q. And what is it?

23 A. This is my CV.

24 Q. Okay. I've been asked to remind you to  
25 speak up again. Sorry.

1                   MR. MOYLAN: She's all the way over  
2 here.

3                   THE WITNESS: You're way over  
4 there.

5                   MS. COOPER: I know. Feel free to  
6 shout right over them.

7                   THE WITNESS: Okay.

8                   MS. COOPER: So, Your Honor, I move  
9 to admit Petitioner's 5 -- no, sorry, 6,  
10 as a summary of Dr. Cochran's testimony  
11 regarding her qualifications.

12                   THE COURT: Any objection?

13                   MR. MOYLAN: No, Judge.

14                   THE COURT: So ordered.

15                   MS. COOPER: Thank you, and I also  
16 move to qualify Dr. Cochran as an expert  
17 in psychology and epidemiology, with a  
18 specialization in health disparities  
19 among minority communities, including  
20 lesbians and gay men, as well as an  
21 expert in the use of statistical  
22 analysis in social science research.

23                   MR. MOYLAN: If I may, I'd like to  
24 ask the potential witness some  
25 questions.

1 THE COURT: Go ahead.

2 MR. MOYLAN: Thank you.

3 Dr. Cochran, we all appreciate you  
4 coming. Do you prefer to be called Dr.  
5 Cochran or Professor Cochran?

6 THE WITNESS: Either one.

7 MR. MOYLAN: Okay, Dr. Cochran,  
8 that's fine with me. Are there any  
9 papers listed on your CV regarding  
10 homosexual behaviors, homosexually-  
11 behaving individuals, where your opinion  
12 has significantly changed or has  
13 significantly developed?

14 MS. COOPER: Objection, form.

15 MR. MOYLAN: Again, are there any  
16 papers listed on your CV that you have  
17 published regarding homosexually-  
18 behaving individuals where your opinion  
19 has significantly changed than as is  
20 listed in that publication?

21 MS. COOPER: Excuse me, Your Honor,  
22 this doesn't seem to go to voir dire of  
23 the witness's qualifications.

24 THE COURT: You can cross on this.

25 MR. MOYLAN: Okay. Okay.

1 THE COURT: I'm going to grant the  
2 motion, and Dr. Cochran is qualified as  
3 the expert.

4 MS. COOPER: Thank you, Your Honor.

5 THE COURT: Okay.

6 BY MS. COOPER:

7 Q. Okay, Dr. Cochran, an issue that has  
8 been raised in this case is the status or the  
9 data on the mental health of lesbians and gay men  
10 compared to heterosexuals, so I'm going to ask  
11 you a series of questions about that topic.

12 Are psychiatric disorders distributed  
13 evenly throughout the population?

14 A. No.

15 MR. MOYLAN: Your Honor, I'd like  
16 to object. She was offered, she was  
17 proffered, on substance abuse and solely  
18 on substance abuse.

19 MS. COOPER: No, that's not  
20 correct.

21 THE COURT: No, that was in the  
22 case in -- where was that?

23 MS. COOPER: That was Arkansas.

24 THE COURT: Arkansas.

25 MR. MOYLAN: Could we --

1 MS. COOPER: Sure.

2 (Discussion off the record)

3 THE COURT: This is an  
4 epidemiological question, I think, we're  
5 starting about.

6 MR. MOYLAN: Okay, thank you, Your  
7 Honor.

8 THE COURT: Uh-huh.

9 BY MS. COOPER:

10 Q. And are there differences in rates of  
11 psychiatric disorders associated with any  
12 demographic characteristics of individuals?

13 A. Yes, that there are a number of  
14 demographic characteristics that are routinely  
15 associated with different psychiatric disorders.  
16 There's variations due to race. There's  
17 variations due to gender, age, socioeconomic  
18 status.

19 Q. And what are the sources of information  
20 that you have that tell you about the  
21 associations between these demographic  
22 characteristics and rates of psychiatric  
23 disorders?

24 A. The Federal Government routinely  
25 collects very high-quality data looking at rates

1 of psychiatric disorders in the population. The  
2 National Institute of Health also funds studies.  
3 Other foundations fund studies to estimate the  
4 occurrence of psychiatric disorders.

5 Q. And which psychiatric disorders are  
6 typically measured in these studies?

7 A. The most common disorders, so typically  
8 surveys will study major depression, generalized  
9 anxiety disorder, panic, and alcohol and drug use  
10 disorders.

11 Q. I want to talk about depression, first.

12 A. Uh-huh.

13 Q. Which of the demographic characteristics  
14 that you've mentioned, or any others, are  
15 associated with elevated rates of depression?

16 A. There are a number of factors associated  
17 with elevated rates of depression: Race, gender,  
18 age, sexual orientation, SES -- that's  
19 socioeconomic status.

20 Q. Okay, and I'd like to ask you about what  
21 the data shows specifically regarding these  
22 disparities. In this case, I'm holding some  
23 notes that may be useful for refreshing  
24 recollection that I want to make sure you have.

25 MS. COOPER: Here's for you.

1 MS. MARTIN: Thank you.

2 BY MS. COOPER:

3 Q. And Dr. Cochran, can you tell us what  
4 these notes are?

5 A. These were notes that I made to -- This  
6 is a lot of detail, and I have not memorized  
7 these details.

8 Q. Specifically, the numbers?

9 A. The numbers.

10 Q. Okay, so can you tell us what the  
11 percentages are with respect to rates of major  
12 depression among different races, race and ethnic  
13 groups in the country?

14 A. The prevalence varies by survey. It  
15 varies by how you measure the disorder. It  
16 measures (sic) a little bit by the way you  
17 measure it. There are a number of surveys, and  
18 what I've picked to report out a particular  
19 prevalence is out of the 2006 National Survey on  
20 Drug Use and Health, which is a survey that's  
21 conducted annually by the Federal Government  
22 to -- as a surveillance survey for mental health  
23 morbidity and substance use morbidity in the  
24 population.

25 This survey estimates that about 12



1 percent of American Indians and Alaska Natives  
2 have a -- meet criteria for a diagnosis of major  
3 depression in the year prior to interview, in  
4 contrast to about eight percent of non-Hispanic  
5 Whites, six percent of Blacks, six percent of  
6 Native Hawaiians, five and a half percent of  
7 Hispanics, and three percent of Asian-Americans.

8 Q. So, if you look at the two extremes,  
9 African-American -- I'm sorry, Native -- American  
10 Indians and Alaska Natives have about four times  
11 the rate as Asian-Americans?

12 A. Yes.

13 Q. Can you tell us what the percentages are  
14 with respect to the rates of depression between  
15 men and women?

16 A. Women are more likely to have a  
17 diagnosis of major depression than men. The 2006  
18 NSDUH estimates that it's about nine percent of  
19 women versus about five percent of men.

20 Q. And how about age? Any disparities with  
21 respect to age?

22 A. Yes. The highest rate is among  
23 individuals 18 to 25 years of age, who have a  
24 rate of about nine percent. People age 50  
25 percent and over have a rate of about five

1           percent.

2           Q.   And is there any data on the correlation  
3           between income level and rate of depression?

4           A.   Yes.   Income is related to diagnosis of  
5           depression.   If I use information from NESARC,  
6           which is the National Epidemiologic Survey on  
7           Alcohol-Related Conditions, which is conducted by  
8           NIAAA, National Institute of Alcoholism and  
9           Alcohol Abuse, from the Federal Government, they  
10          estimate that the incidence, the one-year  
11          incidence of major depression among people who  
12          earn less than 20,000 a year is two and a half  
13          percent.   With people with incomes above 70,000 a  
14          year, they have an incidence rate of about .9  
15          percent.

16          Q.   And in that NESARC, to use the acronym,  
17          data, does that measure all cases of depression  
18          within the past year, regardless of when they  
19          were diagnosed?

20          A.   Incidence that is new cases of disorder  
21          in a group of people who have never had the  
22          disorder before.   So any new cases over the  
23          course of a year.

24          Q.   So that would be -- Would it be fair to  
25          say that's a subset of all the cases of the

1 disorder?

2 A. Yes.

3 Q. And are there similar disparities with  
4 respect to anxiety, with respect to the various  
5 demographic characteristics?

6 A. Yes. Yes.

7 Q. Is there -- Are there any demographic  
8 characteristics that correlate with elevated  
9 rates of eating disorders?

10 A. Yes.

11 Q. What are those?

12 A. The most prominent is gender. Women are  
13 much more likely to have an eating disorder than  
14 men are.

15 Q. And is there any data you can report to  
16 us to show the extent of that disparity?

17 A. Eating disorders are fairly rare. In  
18 the National Comorbidity Survey Replication  
19 study, which was conducted out of Harvard Medical  
20 School, with funding from the National Institute  
21 of Mental Health, they estimated that about .9  
22 percent of women, versus about .3 percent of  
23 women (sic), had a lifetime incidence of  
24 anorexia.

25 Q. I think you may have misspoke. Did you

1 mean .3 percent of men?

2 A. Uh-huh. Did I say women twice?

3 Q. Yes.

4 A. Oh, okay.

5 Q. I'm sorry, I interrupted you.

6 A. .9 percent of women, .3 percent of men.

7 Q. Okay.

8 A. And for bulimia, about one and a half  
9 percent of women have a lifetime history of  
10 bulimia, versus about half a percent of men.

11 Q. So for both anorexia and bulimia, it's  
12 about three times for women, compared to men?

13 A. Yes.

14 Q. I want to focus on the issue of  
15 substance use and dependency now.

16 First, can you tell us what it means to  
17 have a substance dependency disorder?

18 A. Substance dependency, to meet criteria  
19 for substance dependency disorder, you have to  
20 have three or more of seven core symptoms that  
21 include things like having to use a drug in  
22 larger amounts, spending a lot of time using  
23 drugs, getting over using drugs, things like  
24 that.

25 Q. Uh-huh, and what does it mean to have a

1 substance abuse disorder?

2 A. Substance abuse disorders are defined as  
3 not having a substance dependency disorder, but  
4 you're using substances in a way that causes harm  
5 by not going to work, getting arrested for DUIs,  
6 things like that.

7 Q. And are there any demographic  
8 characteristics that are associated with elevated  
9 rates of substance abuse or dependency?

10 A. Yes.

11 Q. And what are they?

12 A. Many of the same characteristics that  
13 are associated with other disorders: Race,  
14 gender, age, things like that.

15 Q. Okay. Can you tell us what the data  
16 show regarding any racioethnic disparities in  
17 rates of substance abuse or dependency?

18 A. Estimates from the 2006 National Survey  
19 on Drug Use and Health suggest that about 19  
20 percent of American Indians and Alaska Natives  
21 had a substance abuse or dependency disorder, the  
22 year prior to interview, as compared to nine  
23 percent of non-Hispanic Whites, nine percent of  
24 Blacks, 10 percent of Hispanics, and four percent  
25 of Asian-Americans.

1           Q. Uh-huh, and can you tell us what the  
2 data show regarding gender disparities in rates  
3 of substance use and dependence?

4           A. Men are more likely to have a substance  
5 abuse and dependency problem. In the 2006  
6 National Survey on Drug Use and Health, the  
7 estimate is that about 12 percent of men meet  
8 criteria for substance abuse or dependency  
9 disorder, versus about six percent of women.

10          Q. Are there any age disparities?

11          A. Yes. It's much more common among  
12 younger people. In the 18 to 25 year-olds, the  
13 estimates are that about 21 percent meet criteria  
14 for a substance abuse or dependency disorder.  
15 Among people who are 26 and older, the rate is  
16 about seven percent.

17          Q. So it goes down by about two thirds?

18          A. Yes.

19          Q. Is there any data on employment status  
20 and how that correlates with rates of substance  
21 use or dependency?

22          A. Yes. People who are unemployed have a  
23 higher rate. The estimate from the 2006 NSDUH is  
24 about 19 and a half percent of unemployed people,  
25 versus about 10 percent of employed people.

1           Q. And one last category, is there data on  
2 education level and rates of substance abuse or  
3 dependency?

4           A. Yes. People with less education are  
5 more likely to have a substance abuse and  
6 dependency problem diagnosis. The estimate is  
7 about 10 percent of people who didn't finish high  
8 school, versus about seven percent of college  
9 graduates.

10          Q. I want to ask you a few questions about  
11 the specific mental health issue of suicidality.  
12 Are there any demographic characteristics that  
13 are known to correlate with elevated rates of  
14 suicidality?

15          A. Yes.

16          Q. What are they?

17          A. Gender has different relationships, age  
18 has different relationships, and race and  
19 ethnicity.

20          Q. Uh-huh. Does sexual orientation have --

21          A. Yes, sexual orientation, as well.

22          Q. I know we've been focusing on some of  
23 these other categories. Can you tell us what the  
24 racial or ethnic disparities are in terms of  
25 rates of committing suicide?

1           A. The rate -- the rates of committing  
2           suicide estimated by the Government -- and they  
3           do this by looking at death certificates and  
4           what's written on death certificates as a cause  
5           of death -- the rate among American Indians is  
6           about 15 per hundred thousand people. Among  
7           Whites, it's about 11.8 per hundred thousand.  
8           And among Blacks, Asian-Americans and Hispanics,  
9           it's about six per hundred thousand.

10          Q. And is there any data on rates of  
11          suicide attempts associated with different ethnic  
12          groups?

13          A. Yes.

14          Q. And what does that data show?

15          A. Estimates from the Epidemiologic  
16          Catchment Area Survey, which is a large  
17          multi-site epidemiologic population-based survey,  
18          suggest that about 3.3 percent of Whites had a  
19          lifetime history of attempting suicide, versus  
20          2.7 percent of Blacks, 3.7 of Hispanics, and nine  
21          percent of Puerto Ricans.

22          Q. And do you have data or is there data on  
23          gender disparities with respect to completed or  
24          attempted suicides?

25          A. Yes. Men are much more likely, in fact,



1 four times more likely than women, to complete  
2 suicide, but women are two to three times as  
3 likely as men to attempt suicide.

4 Q. And where does that data come from?

5 A. From the Centers for Disease Control.

6 Q. Okay, now, you've identified a number of  
7 demographic characteristics that correlate with  
8 elevated rates of various mental health problems.  
9 How robust are those findings?

10 A. They're very robust.

11 Q. What does that mean in your field, when  
12 you say findings are robust, or in science  
13 generally?

14 A. In science, we know that -- we call  
15 findings robust if they are persistent across  
16 various methodologies, across various studies,  
17 across various laboratories. If you see the same  
18 thing over and over again, it's robust.

19 Q. So these disparities that you've  
20 described, are they widely acknowledged in your  
21 field?

22 A. Yes.

23 Q. I want to switch now from these other  
24 demographic characteristics and focus  
25 specifically on sexual orientation. Is there

1 research that compares the mental health of gay  
2 people to that of heterosexuals?

3 A. Yes.

4 Q. You talked about doing some of that  
5 research?

6 A. Yes.

7 Q. And is this epidemiologic and  
8 population-based research?

9 A. There's some of it.

10 Q. Approximately how many studies are there  
11 that are population-based studies that compare  
12 the health -- the mental health of gay and  
13 heterosexual people?

14 A. There's probably, right now, in the  
15 United States, six, maybe seven data sets that  
16 have information on it.

17 Q. And can you give us some examples of  
18 these data sets in the United States that provide  
19 this information and tell us who funded them?

20 A. Okay. The 1996 National Survey on Drug  
21 Abuse, which was conducted by NIAAA -- no, by  
22 SAMHSA, Substance Abuse and Mental Health  
23 Services Administration of the Federal  
24 Government, has information in there on sexual  
25 orientation. They asked genders of sexual

1 partners in the past year.

2 The National Comorbidity Survey, which  
3 was funded by NIMH and conducted out of Harvard  
4 Medical School, has information on sexual  
5 orientation, genders of partners in the past five  
6 years. The Midlife Survey of Adult Development,  
7 the MIDUS, which was funded by the MacArthur  
8 Foundation, has information on sexual orientation  
9 identity.

10 The NHANES III, National Health and  
11 Nutrition Examination Survey, which is conducted  
12 by the National Center for Health Statistics,  
13 which is a branch of the Centers for Disease  
14 Control, has information on sexual orientation.  
15 The Add Health Cohort study, that was funded by,  
16 I think, National Institute of Child Health and  
17 Development, NICHD, has information. The  
18 California Quality of Life Survey, which was  
19 funded by the National Institute of Drug Abuse,  
20 has information, and the National Latino and  
21 Asian-American Survey, which was funded by NIMH,  
22 has information.

23 Q. And approximately how many subjects were  
24 included in each of these data sets?

25 A. It varies from about 3,000 up to 10,000,

1 around 10,000, more or less.

2 Q. And why are such large samples used in  
3 this type of research?

4 A. In epidemiologic studies, they're very  
5 expensive. We're looking at rare outcomes, so we  
6 need large samples to look at rare outcomes, and  
7 we oftentimes, for public health reasons, want to  
8 come up with sub-population estimates, so if you  
9 want to do an estimate for Hispanics, you have to  
10 have enough Hispanics in the data set.

11 Q. And are samples of this size typically  
12 used in other areas of psychological research?

13 A. No. These sample sets are much larger  
14 than is typically used in most studies.

15 THE COURT: I think we have a case  
16 worker here, the man in the back.

17 Are you related to the case?

18 MR. FRANCOIS: I am the case worker.

19 THE COURT: Oh, okay. All right, fine.

20 Go ahead.

21 BY MS. COOPER:

22 Q. Now, turning back to the population-  
23 based studies you were just describing, the six  
24 or seven, you mentioned that some of them asked  
25 the gender of partners --

1 A. Yes.

2 Q. -- over a period of time?

3 A. Different time frames, yes.

4 Q. But at least one of them, I think you  
5 said, asked about their sexual orientation  
6 identity. Does that mean they just asked, "Are  
7 you gay?"

8 A. Right.

9 Q. So you have both kinds of studies?

10 A. Yes.

11 Q. And these data sets that you just  
12 described, have you used them in your own  
13 research?

14 A. Yes.

15 Q. And have you published reports --

16 A. Yes.

17 Q. -- from them?

18 A. Uh-huh.

19 Q. Okay. Now, of the population-based  
20 studies done by you and other researchers, have  
21 they found any differences in the rates of  
22 psychiatric disorders between heterosexuals and  
23 gay people, or, I guess that's more properly  
24 described in some of the studies, those who  
25 engage in same-sex partnerships and those who

1 don't?

2 A. Yes.

3 Q. Have they found disparities?

4 A. Yes, there's some elevation in rates.

5 Q. Uh-huh, and which disorders were found  
6 to be elevated?

7 A. It varies from study to study, but it  
8 might be major depression, general anxiety  
9 disorder, manic --

10 Q. And when you say --

11 A. Substance use.

12 Q. I'm sorry.

13 A. Substance abuse, alcoholism.

14 Q. And when you say it's elevated, do you  
15 mean it's elevated among those who are identified  
16 as gay or had same-sex relationships, compared to  
17 the heterosexual group, comparatively?

18 A. Not always, but yes.

19 Q. Now, I'd like to ask you to quantify  
20 these disparities.

21 A. Uh-huh.

22 Q. And rather than go study by study, is it  
23 possible to combine these studies together and  
24 report the conclusions of the body of research as  
25 a whole?

1 A. Yes.

2 Q. Have you done this with respect to these  
3 studies?

4 A. Yes.

5 Q. Okay. Do you have --

6 A. I think you have it in the --

7 Q. Do you have those numbers available?

8 A. I have a sheet, but it's not here.

9 Q. Okay, sorry about that.

10 Are these the notes you're referring to?

11 A. Yes.

12 Q. All right. Can you tell us what the  
13 data from these studies show with respect to the  
14 disparities of rates of major depression between  
15 the -- I'll use the shorthand -- the gay group  
16 and the heterosexual group? I understand that  
17 it's slightly imprecise language.

18 A. If you look at the -- the five surveys  
19 that have been reported to date, looking at rates  
20 of major depression in the United States, if you  
21 combine it, the estimate is that about 17 percent  
22 of men who are classified as gay meet criteria  
23 for a diagnosis of major depression, versus about  
24 eight percent of heterosexual men. 27 percent of  
25 women who are classified as lesbian or bisexual,

1           versus about 14 percent of heterosexual women.

2           Q.   So, for both men and women, it's about  
3           twice the rate for the gay group compared to the  
4           straight group?

5           A.   Right, uh-huh.

6           Q.   What about the rate of anxiety?  What  
7           did the data show?

8           A.   That the rate among gay-classified men  
9           is about 5.6 percent, 2.8 percent among  
10          heterosexual men; about 11 percent among lesbians  
11          and bisexual women, versus about four and a half  
12          percent among heterosexual women.

13          Q.   Is there a comparison data on the rates  
14          of alcohol dependency?

15          A.   Yes.  The rate among gay bisexual men is  
16          about 9.2 percent.  Among heterosexual men, it's  
17          about six and a half percent in these surveys,  
18          and that's not a statistically significant  
19          difference.  The rate among lesbian-classified  
20          women is about nine percent, versus 2.7 percent  
21          among heterosexual women, and that is  
22          statistically significant.

23          Q.   And is there data on rates of drug  
24          dependency?

25          A.   Yes, there are those rates, as well.



1           It's about seven and a half percent among gay/  
2           bisexual men, versus three percent among  
3           heterosexual men; about five percent among  
4           lesbian/bisexual women, and about one and a half  
5           percent among heterosexual women, and that last  
6           comparison is not statistically significant.

7           Q.    Okay.  Is there data with respect to  
8           suicide attempts, comparing these groups?

9           A.    Yes.

10          Q.    And what does it show?

11          A.    The estimate is about 14 percent of  
12          gay-classified respondents in these surveys  
13          report a lifetime history of attempting suicide,  
14          versus about four and a half percent of  
15          heterosexuals.

16          Q.    Uh-huh.  Is there any information  
17          available on what ages these attempts tend to  
18          occur?

19          A.    They -- There is some suggestion in  
20          these studies that the age of attempting is  
21          relatively young, that it occurs early.

22          Q.    And do you know why that is?

23          A.    Suicide attempts are much more prevalent  
24          among younger people than older people, in  
25          general, so that would make sense, those numbers.

1           Q. Is there any reason among gay people  
2 that it would be during this age period?

3           A. The current belief in the field right  
4 now is that the elevation of rates of suicide  
5 attempts are associated with coming out, coming  
6 to terms with being gay.

7           Q. Do you know what percentage of suicide  
8 attempts among younger people are actually  
9 successful attempts?

10          A. It's pretty rare. The CDC estimates  
11 that among young people, maybe one -- there's one  
12 completed suicide for every 100 to 200 attempts.

13          Q. Now, earlier, when you were talking  
14 about some of the other demographic  
15 characteristics, you reported some data on  
16 completed suicide rates with respect to certain  
17 demographic characteristics. Is there any data  
18 on completed suicide rates of gay people,  
19 compared to heterosexuals?

20          A. The CDC estimates completed suicides  
21 from death certificates. There's no information  
22 on death certificates about sexual orientation.

23          Q. So you don't have data on it?

24          A. No.

25          Q. Now, you've been talking about data from

1 population-based surveys on these various mental  
2 health disorders. Is there a similar body of  
3 population-based research comparing gays, gay men  
4 and women, and heterosexuals with respect to the  
5 prevalence of eating disorders?

6 A. You know, eating disorders are pretty  
7 rare. I know that the National Latino and Asian-  
8 American Survey compared rates of eating  
9 disorders by sexual orientation, and there were  
10 no differences. They're pretty rare. It was  
11 less than one percent.

12 Q. And so the other population-based  
13 studies you discussed didn't ask that question?

14 A. No, because they don't tend to ask  
15 questions. They don't do -- It's very expensive  
16 to add those questions to the survey and it's a  
17 pretty rare disorder.

18 Q. Now, the various -- I guess I'll call it  
19 the combined numbers that you reported, were  
20 they -- did all of the six or seven studies you  
21 identified include each of these pieces, meaning  
22 did each report combine data from all six or  
23 seven studies?

24 A. You mean, for the --

25 Q. The data you provided on the disparities

1           between gay people and heterosexuals with respect  
2           to --

3           A. I used different studies that had the  
4           information. It's the same body of six or seven  
5           surveys, but not all of them had the same  
6           diagnoses.

7           Q. So the ones that had -- for example, if  
8           three or four of them had rates of depression,  
9           you reported those?

10          A. Oh, yeah.

11          Q. Are you familiar with a recent review  
12          article authored by King and Colleagues, called A  
13          Systemic -- or Systematic, I guess, Review of  
14          Mental Disorders, Suicide and Deliberate  
15          Self-harm in Lesbian, Gay and Bisexual People?

16          A. Yes.

17          Q. When was that published?

18          A. In August.

19          Q. Of this year?

20          A. This year.

21          Q. Did that article compile data on the  
22          mental health problems of gay versus heterosexual  
23          people?

24          A. Yes. They used data from -- I just used  
25          the information from the United States. They

1           also used data from Australia, maybe New  
2           Zealand -- Australia and countries in Europe, as  
3           well, so they had more samples that they were  
4           using.

5           Q. Uh-huh, and were King's conclusions any  
6           different than what you just stated generally  
7           before about the disparities in mental health  
8           problems between gay and heterosexual people?

9           A. The conclusions are very similar.  
10          There's some small elevation rates, and that's  
11          what the King survey -- his meta-analysis showed.  
12          He's using a slightly different set of studies,  
13          but the findings are pretty much the same.

14          Q. Now, you've testified about the  
15          disparities in prevalences of a range of  
16          psychiatric disorders among different demographic  
17          groups, such as ethnic groups, gender, men and  
18          women, ages, incomes, et cetera, and sexual  
19          orientation, as well. How does the sexual  
20          orientation effect on the rates of psychiatric  
21          disorders compare to the effect of other  
22          demographic characteristics that you discussed?

23          A. It's very similar to the elevation  
24          that's generated by gender for some of these  
25          disorders, age. It's not that much different.

1           Q. Okay. Now, have scientists who study  
2 health disparities among groups, such as gay and  
3 heterosexual people -- have they attempted to  
4 learn what the cause of these kinds of  
5 disparities is, or the causes?

6           A. (Nods head).

7           Q. And -- You have to say out loud.

8           A. Yes.

9           Q. Is that something you, yourself, have  
10 looked into?

11          A. Yes.

12          Q. And among scientists, what is thought to  
13 contribute to these disparities, at least with  
14 respect to gay people and heterosexuals, with  
15 respect to psychiatric disorders?

16          A. The assumption is that one of the major  
17 causes of these disparities is social adversity,  
18 anti-gay stigma.

19          Q. And --

20          A. Discrimination.

21          Q. Has anyone who's done research on the  
22 mental health of gay people attempted to control  
23 for experiences of discrimination?

24          A. Yes, I did, in a study that was  
25 published in the American Journal of Public

1 Health.

2 Q. And what were the findings?

3 A. That when you adjust for differences in  
4 levels of discrimination, that you attenuate much  
5 of the difference. It doesn't go away  
6 completely, but it certainly probably halves it.

7 Q. Has research on other minority groups  
8 controlled for the impact of discrimination on  
9 mental health outcomes?

10 A. Yes. There's been studies on  
11 African-Americans and discrimination in Asian-  
12 Americans and discrimination in mental health  
13 outcomes.

14 Q. And what were the findings of those  
15 studies?

16 A. The same findings, that discrimination  
17 is associated with elevation of rates.

18 Q. Uh-huh. Have any studies looked at the  
19 impact of anti-gay prejudice experienced by  
20 heterosexuals who are perceived to be gay?

21 A. Yes. There was a study done in Seattle  
22 of high school -- school students, middle and  
23 high school students, where they were asked their  
24 sexual orientation and they were also asked if  
25 they had been bullied because of being gay, and

1           then they looked at rates of attempted suicide  
2           and suicide symptoms, and the children, young  
3           people, who were identified as heterosexual but  
4           had been bullied for being gay showed suicide  
5           attempt rates that were equal to the gay  
6           students.

7           Q. An expert for the State has written and  
8           may raise in this litigation an argument based on  
9           social exchange theory, and the idea of being  
10          that the elevated rates of mental health problems  
11          among gay people may be due to gay people being  
12          overbenefited in society.

13          A. Uh-huh.

14          Q. First of all, are you familiar with  
15          social exchange theory?

16          A. Yes.

17          Q. And do you have any reaction to this  
18          notion that social exchange theory would predict  
19          that gay people might have elevated rates of  
20          mental health problems because they're  
21          overbenefited in society?

22          A. I was --

23                 THE COURT: Can you --

24                 THE WITNESS: I was surprised --

25                 THE COURT: Can you first explain,



1           what does overbenefited mean in this  
2           context?

3                   MS. COOPER: We'll have to ask --  
4           we'll have to ask Dr. Schumm.

5           BY MS. COOPER:

6                   Q. Do you understand what that term means?

7                   A. I -- my -- probably he knows better than  
8           I do what he means by overbenefited, but social  
9           exchange theory is usually used to predict  
10          people's behavior in close, intimate  
11          relationships, so how a husband and wife exchange  
12          goods and services and things back and forth  
13          and -- or somebody you have repeated interactions  
14          with, which it matters. I've never seen social  
15          exchange theory applied to an interaction between  
16          a person and society. On the face of it, it  
17          doesn't make sense. I mean, if I pay less  
18          property tax than my neighbor, so I'm, I guess,  
19          overbenefited, I don't think I'd feel bad about  
20          it. So it's an odd application of social  
21          exchange theory.

22                  Q. And just to make sure we understand what  
23          social exchange theory -- how it's typically  
24          used, you said it's used in the context of  
25          intimate family relations?

1           A. Frequent exchanges that are going on,  
2           where people have a sense that it's got to be  
3           balanced, otherwise there are going to be issues,  
4           and in that context, if you -- if there is an  
5           imbalance that favors you, you might experience  
6           some negative consequences, but I don't think  
7           it's going to happen in individuals' relationship  
8           with society.

9           Q. Have any scientists that you're aware of  
10          ever applied social exchange theories -- the  
11          social exchange theory, rather, to relationships  
12          between an individual and society?

13          A. Not that I'm aware of.

14          Q. Okay. Another witness for the State has  
15          written in a publication, the St. Thomas Law  
16          Review article that we discussed earlier, that  
17          the majority of gay people have a lifetime  
18          prevalence of psychiatric disorders, but the same  
19          is not true of heterosexuals. Can you tell us  
20          your reaction to that?

21          A. Well, I think that's a bit misleading,  
22          for a number of reasons. One is that lifetime  
23          prevalence of any disorders in a study depends on  
24          how many disorders you measure, so that's going  
25          to change that lifetime prevalence. And the

1           other is that one of the -- an estimate, for  
2           example, from the National Comorbidity Survey is  
3           that about 48 percent of Americans have a  
4           lifetime experience of having a psychiatric  
5           disorder. So the average for the population is  
6           right around 50 percent, it's 48 percent. If you  
7           compare one group to another, one might be a  
8           little bit above 50 percent, one might be a  
9           little bit below, and so to say the majority have  
10          a disorder versus a majority doesn't is somewhat  
11          misleading.

12                 Q. Are you familiar with a study by Perry  
13                 Halkitis and Jeffrey Parsons, looking at rates of  
14                 alcohol and drug problems among gay versus  
15                 heterosexual men?

16                 A. Yes.

17                 Q. You didn't include that in your --

18                 A. No.

19                 Q. -- report of the data?

20                 A. (Shakes head).

21                 Q. Sorry, I've got to finish the question,  
22                 so -- but in your report, you didn't include that  
23                 study in your report of the data, combining the  
24                 data, rather, on rates of mental health problems  
25                 between -- comparing between gay people and

1 straight people; is that right?

2 A. Right.

3 Q. Okay, and why not?

4 A. That study was a convenience-based  
5 sample. The purpose of that study was to  
6 estimate the association between substance abuse  
7 and HIV risk, and so Perry went to very -- you  
8 know, went to places where he thought he would  
9 find people who were at risk. So he recruited  
10 samples from bars and social venues and so on,  
11 where you would expect a higher rate of substance  
12 use disorders.

13 It would be as if you wanted to estimate  
14 the prevalence of alcoholism in Miami and you  
15 went down to the local bar and evaluated whether  
16 or not people were alcoholics.

17 Q. So was the purpose of the study in any  
18 way to estimate the prevalence of substance abuse  
19 or alcohol abuse in the general population of gay  
20 people?

21 A. No.

22 Q. I want to switch gears. We've been  
23 talking about a range of mental health issues. I  
24 want to now talk about physical health, some  
25 physical health issues that have been raised in

1 this litigation.

2 The first one is life expectancy. I'll  
3 put it under the umbrella of physical health, if  
4 you will. First of all, is life expectancy  
5 evenly distributed throughout the population?

6 A. No.

7 Q. Are there any differences in life  
8 expectancy that are associated with any  
9 demographic characteristics?

10 A. Yes. It varies between men and women.  
11 It varies by race. It varies by age.

12 Q. And can you tell us what racial  
13 differences exist with respect to life  
14 expectancy?

15 A. I think it might help if I had some  
16 notes.

17 Q. Oh, you had the notes on that, too,  
18 sorry. There we go. We're getting into numbers  
19 again.

20 Are these notes that you --

21 A. Yes.

22 Q. -- had prepared?

23 A. Yes.

24 Q. And can you tell us what the racial  
25 differences -- which racial -- I'm sorry, I've

1 done a lot of talking -- what racial differences  
2 exist with respect to life expectancy?

3 A. The CDC estimates that Blacks live five  
4 to six years less than Whites do. They also  
5 estimate that women live about five years longer  
6 than men do.

7 Q. Uh-huh.

8 A. Education also has an impact, that among  
9 White women who are highly educated, they can  
10 expect five years of greater life expectancy than  
11 less-educated similar women.

12 Among White men with education, the  
13 education gap between highly educated and less  
14 highly educated men is about 7.8 years, among  
15 White men, and the education gap is about 8.4  
16 years among Black men.

17 Q. And this data that you just reported,  
18 where does that come from?

19 A. The Centers for Disease Control. They  
20 generate this data from death certificates.

21 Q. And what about with respect to the data  
22 on education level? Where is that from?

23 A. That came from a study by Meara.

24 MS. COOPER: M-E-A-R-A.

25 BY MS. COOPER:

1           Q. Are there any differences in life  
2           expectancy associated with socioeconomic status?

3           A. Yes. It's been estimated that people  
4           who are in the most privileged group can expect  
5           to live four and a half years longer than people  
6           who are in the most deprived group.

7           Q. So let's talk about life expectancy of  
8           gay people. Is there any population-based data,  
9           as you were describing earlier about other  
10          groups, that actually looks at the life  
11          expectancy of gay people compared to  
12          heterosexuals?

13          A. No, because again, it would have to come  
14          from death certificates, and there's no  
15          information on death certificates.

16          Q. Now, is it reasonable to look at  
17          obituaries in gay newspapers to reach conclusions  
18          about the life expectancy of gay people?

19          A. No.

20          Q. Why is that?

21          A. Obituaries are a function of all sorts  
22          of things, like how famous someone is or how many  
23          people are in their peer group. So we would  
24          expect that if you're famous, if you achieve  
25          things, if you're young, you would be more likely

1 to have an obituary in the paper.

2 Q. Have you reviewed a manuscript prepared  
3 for this litigation by Dr. Schumm, called  
4 Homosexuality and Mortality?

5 A. Yes.

6 Q. Okay, and let's just -- Did we use this  
7 one? I'm sorry, let me just -- Sorry about that.

8 And just to make sure we're clear, I'm  
9 going to show you a manuscript entitled  
10 Homosexuality and Mortality, Walter Schumm, 2008.  
11 The first page is Bates Number 6511.

12 MS. COOPER: I'm sorry, I don't  
13 have additional copies.

14 BY MS. COOPER:

15 Q. Is that the paper you reviewed?

16 A. Yes, uh-huh.

17 Q. All right. Now -- sorry, my chair is  
18 very squeaky. I want to ask you, is the -- One  
19 of the things reported in there has to do with  
20 comparing average age of gay subjects and average  
21 age -- sorry, average age of gay subjects as to  
22 population-based studies or other studies, and  
23 compare that to Census data and concluding that  
24 gay people have a shorter life --

25 MR. MOYHAN: Objection. That's --



1           Counsel is not only testifying, but  
2           leading.

3           THE COURT: Sustained.

4           MS. COOPER: Okay.

5           BY MS. COOPER:

6           Q. Is it possible to fairly measure life  
7           expectancy by comparing the ages of subjects of  
8           any particular study out there, population-based  
9           study, to the life expectancy we find in the  
10          Census data?

11          A. No. There's a number of reasons why  
12          samples that are drawn would have automatically  
13          younger ages than what you see in death  
14          certificates. People have to be able to answer  
15          questions, so you're going to lose older people.  
16          Oftentimes these studies explicitly exclude what  
17          are called institutionalized populations, people  
18          who are living in nursing homes, hospitals. And  
19          so it is very common in sampling that our samples  
20          are a little bit younger than what we think is  
21          the average age of the population we're sampling  
22          from, and we adjust for that by weighting.

23          Q. I want to switch to another physical  
24          health issue, smoking. Are smoking rates  
25          distributed evenly across the population?

1 A. No.

2 Q. And are there elevated rates of smoking  
3 associated with any demographic characteristics  
4 of individuals?

5 A. Yes, many of those same demographics.

6 Q. Uh-huh, and where do you get data on  
7 that?

8 A. This information is tracked annually by  
9 the National Survey on Drug Use and Health.

10 Q. And I hope you have notes there --

11 A. I have notes, yeah.

12 Q. -- on the specific numbers of this,  
13 because I'd like to ask you to report to the  
14 Court the disparities, the specific numbers of  
15 disparities that exist with respect to any racial  
16 differences in rates of smoking.

17 A. The 2006 NSDUH estimates that about 42  
18 percent of Native Americans have used tobacco  
19 products in the month prior to interview, versus  
20 about 31 percent of non-Hispanic Whites, 29  
21 percent of Blacks, 24 percent of Hispanics, and  
22 16 percent of Asian-Americans.

23 Q. And is there data on rates of smoking  
24 among men compared to women?

25 A. Yes. Men are more likely to smoke.

1 About 36.4 percent of men used tobacco products  
2 in the month prior to interview, versus about 23  
3 percent of women.

4 Q. Is there data on education level and  
5 smoking rates?

6 A. Yes. High school dropouts, about 36  
7 percent smoked cigarettes in the month prior to  
8 interview, versus about 14 percent of college  
9 graduates.

10 Q. Uh-huh, and is there data on employment,  
11 being employed versus unemployed and smoking  
12 rates?

13 A. Yes. The unemployed are more likely to  
14 smoke. About 48 percent are current smokers,  
15 versus about 29 percent of full-time employed  
16 people.

17 Q. And one last question. Are there any --  
18 Is there any data on rates of smoking among  
19 military service members, versus civilians?

20 A. Yes.

21 Q. And what is that?

22 A. There was a study that was conducted by  
23 Nelson and Peterson that showed that 41 percent  
24 of military personnel aged 18 to 25 were current  
25 smokers, versus about 28 percent of their

1 equivalent peers.

2 Q. Is there any data on the rate of smoking  
3 among gay people, compared to heterosexuals?

4 A. Yes.

5 Q. And where does that data come from?

6 A. There have been a small number of  
7 surveys, three that I'm aware of, a Kaiser -- a  
8 survey done by Kaiser Foundation, the California  
9 Health Interview Survey, and the California  
10 Tobacco Survey, that looked at differences.

11 Q. And are you able to report on the  
12 combined results of those studies?

13 A. Yeah, if you average across those three  
14 studies, the estimate of smokers among gay/  
15 bisexual men is about 28 percent, versus 19  
16 percent among heterosexual men. Among lesbians,  
17 it's about 23 percent, versus about 13 percent of  
18 heterosexual women.

19 Q. Switching to another physical health  
20 issue that has been raised, sexually-transmitted  
21 diseases. I am not going to be -- Another expert  
22 who will be testifying for the petitioner will be  
23 addressing sort of -- she's an M.D. and will be  
24 addressing issues related to that, but I want to  
25 ask you just a few questions based on what the

1 epidemiological research shows on rates of STDs,  
2 and I'm going to put HIV aside, because that will  
3 be addressed separately, okay?

4 Are STD rates evenly distributed across  
5 the population?

6 A. No.

7 Q. Are there elevated rates of STDs and  
8 sexually-transmitted diseases associated with any  
9 demographic characteristics?

10 A. Yes, about half of STIs, sexually-  
11 transmitted infections, occur in individuals  
12 between the ages of 15 and 24. Blacks are eight  
13 times more likely than whites to have a diagnosis  
14 of Chlamydia. They're 18 times more likely to  
15 have a diagnosis of gonorrhea, and 33 times more  
16 likely than Asian-Americans to have a diagnosis  
17 of gonorrhea.

18 Q. I want to make sure I heard correctly.  
19 Blacks have rates of gonorrhea that are 18 times  
20 greater than --

21 A. Than Whites.

22 Q. Than Whites, and 33 times greater --

23 A. Right.

24 Q. -- than Asians?

25 A. Right.

1           Q. Okay, and focusing on sexual  
2 orientation, do gay men have higher rates of  
3 STIs, sexually-transmitted infections, than  
4 heterosexual men?

5           A. Yes.

6           Q. And one of those is syphilis; is that  
7 right?

8           A. Uh-huh.

9           Q. Now, how common is syphilis among gay  
10 men?

11          A. It's not that common. I mean, to come  
12 up with an estimate of how common it is among gay  
13 men, you first have to estimate how many gay men  
14 there are in the population, and you might use  
15 the general social surveys' estimate of how many  
16 men are having sex with men, which is around six  
17 percent, and then you would take the number of  
18 cases of syphilis that are reported every year,  
19 and so it's probably somewhere about -- take  
20 those two pieces of information and put them  
21 together, maybe a hundred gay men per hundred  
22 thousand gay men.

23          Q. Have syphilis?

24          A. Have syphilis.

25          Q. So am I right that that's one tenth of

1 one percent --

2 A. Yes.

3 Q. -- of gay men. Now, if you -- so, in  
4 this context, there's a disparity in the rate  
5 between gay men and heterosexual men --

6 A. Uh-huh.

7 Q. -- but the total number of gay men,  
8 you're saying, is very small?

9 A. Uh-huh.

10 Q. When you report odds ratios of a  
11 particular disorder that -- say, this topic, gay  
12 men versus heterosexuals -- if you just report  
13 the odds ratio, does that tell you anything about  
14 the actual prevalence of a condition --

15 A. No.

16 Q. -- in a group?

17 A. No.

18 Q. So even if you had an odds ratio that  
19 was something really high, like you gave the 33  
20 number for rates of gonorrhoea among  
21 African-Americans compared to Asian Americans, it  
22 could be 33 times a very low percentage or a high  
23 percentage?

24 A. Yes.

25 Q. Now, I want to focus specifically -- we

1           were talking about men, gay men, versus  
2           heterosexual men. I want to talk about women  
3           now. Are there estimates of the rates of STDs or  
4           STIs among lesbians, compared to heterosexual  
5           women, in the general population?

6                   A. There's no good study that I'm aware of  
7                   for population-based rates, and the reason is  
8                   that rates are probably pretty low, pretty low,  
9                   and so no one has put the effort into doing a  
10                  population-based study.

11                  Q. And why do you say the rates are pretty  
12                  low?

13                  A. You would see it in reporting. You  
14                  would see it, because STIs, many of them, are  
15                  mandated to be reported to the State. They would  
16                  see it in the tracking.

17                  Q. And when you say reported to the State,  
18                  reported to --

19                  A. Public health departments, the Federal  
20                  Government.

21                  Q. Are you familiar with research by  
22                  researchers named Marrasso and Fethers on STI  
23                  rates among women who have sex with women?

24                  A. Yes.

25                  Q. Does their research demonstrate that



1 women who have sex with women have higher  
2 rates --

3 MR. MOYLAN: Objection. She's  
4 testifying again, Your Honor.

5 MS. COOPER: I don't think --

6 MR. MOYLAN: She can ask what the  
7 research demonstrates.

8 THE COURT: Well, I think she's  
9 doing that.

10 Go ahead.

11 MS. COOPER: Well, I'm happy to ask  
12 it differently, if it will help.

13 BY MS. COOPER:

14 Q. Does the research by Marrazzo and  
15 Fethers say anything about the rates of STDs  
16 among women who have sex with women, compared to  
17 heterosexual women in the population?

18 A. No. The purpose of that study, they  
19 actually went out -- because people believed that  
20 there were -- that sexually transmitted diseases  
21 did not occur among lesbians, and so they went  
22 out to basically prove, yes, they do, and so they  
23 went out and recruited a very higher risk sample,  
24 in the hopes of finding these STDs, and they  
25 recruited women into their study who were

1           probably not representative of the lesbian  
2           population.

3           Q.    In what ways?

4           A.    Some of them were being paid to have  
5           sex.

6           Q.    Now, you've talked about a range of  
7           different health issues and disparities that  
8           exist across different demographic lines.  Do  
9           researchers have any understanding of why we see  
10          these disparities in health in the population?

11          A.    Well, the assumption is, it's generated  
12          by differences in vulnerability that exist within  
13          the population.  We don't typically think of many  
14          of these characteristics as causal.  We think of  
15          them as proxies.  They're associated with other  
16          factors that might be related to health problems.

17          Q.    Could you give an example?

18          A.    For example, the high rates of disorders  
19          among Native Americans is thought to occur  
20          because many Native Americans are poor and they  
21          live on reservations, some of them where there's  
22          very little opportunity for employment and  
23          education, and that these disadvantages  
24          accumulate and cause these high numbers.

25          Q.    Is there any evidence that homosexual

1 orientation, as compared to other demographic  
2 characteristics, is correlated with the greatest  
3 number of health problems across the board?

4 A. No, that wouldn't be how we would  
5 think about that. That wouldn't be how we would  
6 conceptualize it. We --

7 Q. Do you -- go ahead.

8 A. And there would be reasons why it  
9 wouldn't be so, because of -- probably the most  
10 important factor is poverty, and so that's going  
11 to impact other groups probably more.

12 MS. COOPER: Just a moment.

13 (Discussion off the record)

14 BY MS. COOPER:

15 Q. Okay. So you mentioned Native Americans  
16 having elevated rates of some disorders. Which  
17 disorders are those?

18 A. Many of the disorders that we already  
19 talked about here, depression, substance abuse,  
20 smoking.

21 Q. Have you reviewed an article by  
22 Dr. Rekers, published in the St. Thomas Law  
23 Review?

24 A. Yes.

25 Q. Okay.

1 THE COURT: We're going to try to  
2 break about 1:00, okay, but not before.

3 MS. COOPER: Okay, I show you a  
4 copy.

5 Do you want a copy here?

6 BY MS. COOPER:

7 Q. And I want to call your attention to  
8 Page 340.

9 MS. COOPER: And would Your Honor  
10 like a copy?

11 MS. MARTIN: Are you entering it  
12 into evidence or what?

13 THE COURT: I'll listen.

14 MS. COOPER: I don't think we need  
15 to enter it into evidence, no. Okay.

16 All right, I'll go on.

17 BY MS. COOPER:

18 Q. If I can call your attention to the  
19 bottom paragraph of Page 340, and specifically  
20 the second sentence, if you'll read along with  
21 me, it says --

22 MS. MARTIN: I'm sorry --

23 Object, it's not in evidence.

24 MR. MOYLAN: Object, it's not in  
25 evidence. Objection. It's not in

1 evidence at this point.

2 MS. COOPER: I'm just going to ask  
3 her a question about it.

4 THE COURT: Overruled. Go ahead.

5 BY MS. COOPER:

6 Q. If you'll read with me, in the second  
7 sentence, beginning with the word "Compared."

8 A. Yeah.

9 Q. "Compared to heterosexual adults, these  
10 doctors and research scientists at the CDC and  
11 associated universities have determined that a  
12 higher proportion of homosexually-behaving adults  
13 are 'mired in the combined effects of depression,  
14 substance abuse and violence.'"

15 Continuing on, "which forces them to  
16 have to battle multiple additive health problems,  
17 an endemic which makes it different for them to  
18 have the capacity to implement needed adaptive  
19 behaviors, such as HIV prevention."

20 Now, there's a footnote, Number 78, that  
21 was in the text that I read, and if you look down  
22 with me, it looks like that refers to -- an id,  
23 had going up to Footnote 72, which is Ron Stall,  
24 et al., Association of Co-occurring Psychosocial  
25 Health Problems and Increased Vulnerability to

1 HIV/AIDS Among Urban Men Who Have Sex With Men,  
2 '93, I guess American Journal of Public Health,  
3 939 to 42, 2003.

4 Okay, first of all, are you familiar  
5 with the Ron Stall paper cited here?

6 A. Yes.

7 Q. Okay. Is this assertion in this article  
8 correct, that Ron Stall and his colleagues  
9 concluded that a higher proportion of  
10 homosexually-behaving adults have the combined  
11 set of problems identified, compared to  
12 heterosexuals?

13 A. No.

14 Q. What did he say?

15 A. Ron was using data where there was no --  
16 there were no heterosexual men, but he was  
17 talking about men within his sample, all of whom  
18 had sex with men, and the effects of having  
19 comorbid conditions and how that affected their  
20 capacity to engage in HIV prevention.

21 Q. Was the purpose of the study to estimate  
22 rates of these particular disorders --

23 A. No.

24 Q. -- in any group?

25 A. No. There was no effort to -- there was

1 no capacity to come up with a comparative rate.

2 Q. Now, again, going back to the various  
3 demographic groups you've talked about, if you  
4 excluded, for example, every demographic group  
5 with elevated rates of depression from adopting  
6 children, which groups would be left to adopt  
7 children?

8 A. Probably Asian-American men.

9 Q. And what if you excluded every  
10 demographic group with elevated rates of  
11 substance abuse from adopting?

12 A. Asian-American women.

13 Q. Given the epidemiological data on mental  
14 health problems that you've discussed quite a bit  
15 today, if you excluded just gay people from  
16 adopting, would that serve to screen out most  
17 people who have mental health problems or  
18 psychiatric disorders?

19 A. No.

20 Q. And given the data on the various  
21 health -- physical health issues you've raised  
22 and you've discussed, which included -- life  
23 expectancy, smoking and STDs were all of them --  
24 would excluding just gay people from adopting  
25 serve to screen out most people with shorter life

1 expectancies, STDs or smokers?

2 A. No.

3 Q. Is there any reason gay people couldn't  
4 be individually screened for mental health issues  
5 or physical health as effectively as  
6 heterosexuals?

7 A. Not to my knowledge.

8 Q. Have you reviewed a paper by Dr. Schumm  
9 that was prepared for this litigation, called  
10 Problems, Questions and Overlooked Results in  
11 Recent Same-sex Parenting Research?

12 A. Yes.

13 MS. COOPER: Just a moment.

14 (Discussion off the record)

15 MS. COOPER: Let me grab that --  
16 We'll come back to that, to identify it,  
17 in a moment, just to make sure we're on  
18 same page.

19 BY MS. COOPER:

20 Q. And can you tell us what that paper --

21 MS. COOPER: Thank you.

22 BY MS. COOPER:

23 Q. I'll show it to you now. It's a  
24 document with the title, Problems, Questions and  
25 Overlooked Results in Recent Same-sex Parenting



1 Research, Walter Schumm, Kansas State University,  
2 updated 12 May 2008, first Bates Page Number  
3 6231. This is the paper you saw?

4 A. Yes.

5 Q. Okay, and can you tell us what he says  
6 regarding statistical analysis of gay parenting  
7 studies?

8 A. He was going back through studies,  
9 trying to reanalyze them.

10 Q. Uh-huh, and did he reach any conclusions  
11 about the statistical analysis used in the gay  
12 parenting studies?

13 A. I'm sure he did, but I was very  
14 surprised, when I read this, to see some of the  
15 mistakes that he was making, very fundamental  
16 mistakes in statistics.

17 Q. And I guess the question I have for  
18 you -- well, let me let you comment on the  
19 mistakes that you were about to discuss.

20 A. One of the mistakes he made was that he  
21 used the Fisher's Exact Test, which calculates  
22 the exact probability of something, and it didn't  
23 come out quite the way he wanted to, and so he  
24 said, "Well, if you use a Pearson correlation or  
25 a chi square test, you'll have a smaller p

1 value." But both those tests are inappropriate  
2 in this situation. The Pearson requires  
3 something other than count data. The chi square  
4 is only approximation of a Fisher's Exact Test,  
5 and with a small sample, it over estimates the  
6 significance of findings, and this is taught in  
7 first-year statistics. So I was surprised he  
8 would do that.

9 Q. I'm going to need to -- I'm going to  
10 need to ask you to back up to the -- we probably  
11 all didn't take statistics here. I didn't take  
12 it.

13 MS. MARTIN: Well --

14 BY MS. COOPER:

15 Q. Well, yeah, some of us did.

16 Now, if you can say specifically, in the  
17 example you're referring to --

18 A. Yes.

19 Q. -- what the specific study he was  
20 talking about, or not -- you don't have to name  
21 it, but just sort of describe the context of what  
22 he was comparing so we can have a sort of  
23 concrete idea of what analysis he engaged in.

24 A. In the Wainwright paper, they did not  
25 report a particular finding that he felt they

1           could have reported, so he engaged in a process  
2           of hypothetical, "Well, what if it was this and  
3           what if it was that?"

4           Q.    What was that finding about?

5           A.    This was a finding about whether or not  
6           the adolescents in the study reported same-sex  
7           attraction.

8           Q.    Okay.

9           A.    And he was trying to make the case  
10          that -- that children of parents that were  
11          lesbian would have greater rates of same-sex  
12          attraction.  So he was saying, "Well, if you dice  
13          it this way" -- if it was this way, it was a  
14          hypothetical approach, then this would be  
15          statistically significant.  But it's just bizarre  
16          to say that you would substitute a test that's  
17          inappropriate.

18          Q.    So, using the first test that you  
19          mentioned -- the Fisher's Exact?

20          A.    Fisher's Exact Test.

21          Q.    -- that was the appropriate test to  
22          evaluate --

23          A.    That calculates -- that's why they call  
24          it the Fisher's Exact Test, it calculates the  
25          exact probability.

1           Q. But you're saying he then went on to  
2           apply two other statistical tests to that same  
3           data?

4           A. That would give him an answer that was  
5           better in terms of rejecting the null hypothesis,  
6           but neither one of those tests are appropriate.

7           Q. And if you could try to explain to us  
8           one more time why they're not appropriate?

9           A. They're not appropriate because either  
10          the data is the wrong form, so it doesn't have  
11          the -- you can't make an assumption about the  
12          underlying population distribution, or it's just  
13          well known that the chi square is an  
14          approximation of the Fisher's Exact Test, and it  
15          only works as a good approximation when the  
16          sample size is a lot larger.

17          Q. Okay. And are these -- knowing when to  
18          use the tests, is that something that -- How do  
19          you know that those are the right tests to use?

20          A. It's taught in first-year statistics.

21          Q. If you received a paper by a student  
22          with this kind of statistical analysis, how would  
23          you react to that?

24          A. They would have a hard time -- you know,  
25          if they did this in an Intro Stat course, they'd

1 have a hard time getting credit for that problem.

2 Q. Now, I think you mentioned that there  
3 were a couple of concerns you had.

4 A. Uh-huh.

5 Q. Was there another one you could share?

6 A. Later on in the paper, he used the  
7 central limit theorem to make a point. The  
8 central limit theorem is at the core of all  
9 statistical analysis. Central limit theorem -- I  
10 don't know if anyone here is a statistician, but  
11 the central limit theorem says, if you take a  
12 sample of a hundred, a fixed size, over and over  
13 and over again, randomly, from a population, that  
14 the means in all these samples would have a  
15 particular distribution. It's going to look like  
16 a bell-shaped curve. It's going to be centered  
17 right at the population value. And so half the  
18 time, you'll be on one side and half the time  
19 you'll be on the other side.

20 He used that here to say, well, if in  
21 fact there is no difference in the population, so  
22 the mean is zero, then half the time we should  
23 see that the lesbian parents look better and half  
24 the time we should see that the heterosexual  
25 parents look better, if in fact the central limit

1 theorem is working.

2 The problem is, he doesn't have multiple  
3 samples, over and over again, from the  
4 population. He has one sample. And in the  
5 population, these eleven measures are all  
6 correlated, they're all measures of childhood  
7 adjustment, so they should be associated with  
8 each other. They're not independent. So, in a  
9 single sample, the central limit theorem does not  
10 apply.

11 This is fundamental statistics. This is  
12 taught in first-year statistical training, and  
13 it's taught again in graduate student training.  
14 So I don't know on what basis he's making this  
15 argument, but there is no math behind it.

16 Q. I want to switch gears briefly to  
17 another manuscript prepared by Dr. Schumm for  
18 this litigation, and I'll show it to you. It  
19 says on the outside, Dr. Walter Schumm, Expert  
20 Opinion Number 4, revisions to "Distressing  
21 Conditions" authorities, and then attached  
22 underneath, a paper with the heading, Distressing  
23 Conditions, Walter Schumm, 2008.

24 MS. COOPER: I'll get you yours.

25 BY MS. COOPER:

1 Q. And have you -- have you reviewed this  
2 paper?

3 A. Yes.

4 Q. Okay, and -- I'm sorry, I'm pulling the  
5 wrong paper. There was another paper  
6 published -- or not published, but -- there was  
7 another one published -- I'm sorry -- prepared by  
8 Dr. Schumm for this litigation, called  
9 Distressing Conditions and Comorbidity Among  
10 Bisexual, Homosexual and Heterosexual Identified  
11 Men, Evidence from the 2002 National Survey of  
12 Family Growth.

13 A. Yes.

14 Q. Have you reviewed that?

15 A. Yes.

16 Q. That one, okay. I don't think we need  
17 to look at it for this, but I'm happy to show  
18 counsel, if they would like a copy.

19 First of all, are you familiar with the  
20 National Survey of Family Growth?

21 A. Yes.

22 Q. And do you have access to that data?

23 A. Yes, it's public data.

24 Q. Uh-huh, and can you tell us your  
25 impression of Dr. Schumm's use of statistical

1 analysis, discussing that data set, based on your  
2 review of the paper?

3 A. When you receive the National Survey of  
4 Family Growth data set, you're told explicitly by  
5 the National Survey of Family Growth how you are  
6 to analyze the data. They tell you you have to  
7 weight it and you have to use the right  
8 statistical program, otherwise your results are  
9 inappropriate. They're not correct. And I was  
10 very surprised that he did not follow those  
11 instructions.

12 Q. Now, I'd like to go back to the paper I  
13 just showed you earlier, Revisions to Distressing  
14 Conditions Authorities, prepared for this  
15 litigation by Walter Schumm. You have reviewed  
16 that one, as well; is that right?

17 A. Yes, uh-huh.

18 Q. All right, and in that paper -- well,  
19 has he discussed any of your research?

20 A. Yes.

21 Q. And has he criticized any of your  
22 research?

23 A. Yes.

24 Q. And can you tell us about your -- any  
25 reactions you have to this criticism of your



1 research?

2 A. Well, I was surprised that he was -- he  
3 thought that weighting was inappropriate. You  
4 can't -- you can't use these data sets without  
5 weighting, because there's problems with non-  
6 response bias, there's problems with how many  
7 people are in a household when you sample them.  
8 So you have to use weights to come up with  
9 accurate estimates. This is normal survey  
10 research methodology.

11 He was uncomfortable with the weighting.  
12 He was also uncomfortable with controlling for  
13 confounding. These are not experiments. These  
14 are observational studies, where if you're going  
15 to contrast one group, one type of sexual  
16 orientation versus another, you want those groups  
17 to be equivalent on all the other variables that  
18 are going on in the data set that are relevant,  
19 and so epidemiologists always control for  
20 confounding. It's a way of adjusting rates so  
21 that when you make that comparison, you're making  
22 a comparison simply on the basis of sexual  
23 orientation, not on differences.

24 Q. And when you say controlling for  
25 confounding, I'm not sure that's a term we all

1 understand. Can you explain what that means?

2 A. You adjust for the variance that's --  
3 the effect in the data set that's due to gender.  
4 You adjust for differences in age. You adjust  
5 for differences in racial background. And so  
6 you're trying to make the two groups equivalent  
7 as possible, net of all these other demographic  
8 differences that exist at the same time.

9 Q. And was he criticizing how you did the  
10 control or the fact that you did it?

11 A. The fact that I did it.

12 Q. And the last thing I want to ask you  
13 about is something about the Dr. Rekers paper  
14 that we briefly looked at before. Did you review  
15 the portion of this lengthy paper that discussed  
16 psychiatric disorders, substance abuse and  
17 physical health disparities that correlated with  
18 sexual orientation?

19 A. Yes.

20 Q. And in your view, did he present an  
21 objective review of the evidence on those  
22 subjects?

23 A. No, I don't think he did.

24 Q. And why is that?

25 A. When you -- when you undertake doing a

1 review of an area, you have an obligation to  
2 present findings that both confirm and disconfirm  
3 the point you're trying to make. You have to  
4 deal with all of it. And he would take studies  
5 where one gender had an effect he wanted -- I  
6 guess wanted to see there, and the other gender  
7 didn't, and he would talk about what he sees in  
8 men and he wouldn't talk about what -- when there  
9 was no difference in women. So that -- that's  
10 not appropriate for you to do.

11 He also had shifting standards, so he  
12 would criticize one study because of its design,  
13 it was convenience-based, but he would accept  
14 another -- findings from another convenience-  
15 based study. You have to -- when you write a  
16 review, you have to pick your position and you  
17 have to stick to it.

18 He did not contextualize the quality of  
19 the findings that he was presenting. So, you  
20 know, if my Uncle Ned says that psychotherapy  
21 doesn't work and the Institute of Medicine says  
22 that psychotherapy works, yes, I can say there's  
23 a divergence of opinion, but I have to qualify  
24 the quality of the opinions that are being  
25 expressed, and he did not do that very well.

1                   And then he said things that just were  
2                   not true. That Stall comment was just not  
3                   correct.

4                   Q. How does this review compare to the  
5                   standards in your field of review?

6                   A. If I had a graduate student write this,  
7                   I would make him go back and rewrite it.

8                   MS. COOPER: Just a moment, Your  
9                   Honor.

10                   (Discussion off the record)

11                   MS. COOPER: That's all, Your  
12                   Honor.

13                   THE COURT: Ms. Bass?

14                   MS. BASS: No questions of this  
15                   witness.

16                   THE COURT: Ms. Allen?

17                   MS. ALLEN: No questions, Your  
18                   Honor.

19                   THE COURT: And --

20                   Mr. MOYLAN: It's me. Your Honor, I  
21                   would suggest we go to lunch, because if you're  
22                   pushing it, my cross may be a little bit lengthy.

23                   THE COURT: Okay, because I have a  
24                   conference call at 1:05, so you can't  
25                   finish between then?

1                   MR. MOYLAN: I would hate to commit  
2 to that, Judge --

3                   THE COURT: Okay.

4                   MR. MOYLAN: -- and it would be an  
5 uncomfortable situation.

6                   THE COURT: All right. So let's  
7 take a break. Do you want to come back  
8 in an hour? Is that okay?

9                   MS. MARTIN: Uh-huh.

10                  THE COURT: Do you need more time  
11 or --

12                  MR. ESSEKS: No, that's fine.

13                  MS. COOPER: Well -- oh, more time  
14 to go out? No.

15                  THE COURT: I'll be doing my  
16 detentions at 1:30, and I'm told I have  
17 just a simple one, so I'll be finished  
18 by then.

19                  MS. BASS: 12:45 -- 1:45?

20                  THE COURT: 1:45.

21                  MS. COOPER: Thank you.

22                  (Thereupon, the lunch recess was  
23 taken.)

24

25                  THE COURT: We were about to do the

1 cross examination of Dr. Cochran.

2 MR. MOYLAN: Okay.

3 THE COURT: Uh-huh.

4 CROSS EXAMINATION

5 BY MR. MOYLAN:

6 Q. As you were, Dr. Cochran, you're still  
7 under oath.

8 A. Uh-huh.

9 Q. Okay.

10 THE COURT: Just -- I don't  
11 recognize everyone. Is everyone okay  
12 with who's in the audience?

13 MR. MOYLAN: Oh, we have a new  
14 members of the ACLU's team here.

15 THE COURT: Oh, that's -- okay, so  
16 you're okay?

17 MR. MOYLAN: Yes.

18 MS. MARTIN: We're okay.

19 MS. COOPER: Yeah.

20 BY MR. MOYLAN:

21 Q. Dr. Cochran, your CV was entered into  
22 evidence, earlier on in this proceeding. Are  
23 there any papers on your CV that regard  
24 homosexually-behaving individuals where your  
25 opinion has significantly changed?

1 MS. COOPER: Object to form.

2 THE COURT: She can answer.

3 MS. COOPER: Go ahead.

4 THE WITNESS: Is there a particular  
5 paper that you're concerned with?

6 BY MR. MOYLAN:

7 Q. No, I'm asking you in general, are there  
8 any papers that your opinion may have changed  
9 significantly on regarding homosexually-behaving  
10 individuals?

11 A. Well, you know, the CV is a record of 20  
12 years of work, and science moves. So I -- you  
13 know, things are -- Not that I'm aware of, but I  
14 have to say that my thinking has changed over  
15 20 -- a 20-year period, sure.

16 Q. So it's fair to say your thinking has  
17 developed over time, has changed?

18 A. As does science.

19 Q. Okay. That's fine. Are there any  
20 papers that are not listed on your CV that you've  
21 recently published?

22 A. You mean, that have come out since that  
23 CV?

24 Q. Or have been published that aren't  
25 included on your CV, that are recently published,

1 within the past five years?

2 A. Not -- not that I know of.

3 Q. Okay. I'm not necessarily suggesting  
4 anything in asking you these questions.

5 A. Yeah.

6 Q. I'm just asking you questions about your  
7 CV, if something comes up that I want to ask  
8 about.

9 A. Yeah. Yeah, okay.

10 Q. Are there any awards listed on your CV  
11 that you would not want listed there or remove at  
12 this time?

13 A. Not that I'm aware of.

14 Q. Okay. All right. Are there any  
15 organizations on your CV which you wish to no  
16 longer be associated with?

17 A. I don't think so.

18 Q. Okay. Under editorial and peer review  
19 experience --

20 A. Uh-huh.

21 Q. -- I see some interesting titles. Are  
22 there any of these publications that you do not  
23 consider, yourself, professional?

24 A. I don't know what you mean by  
25 professional.



1 Q. First of all, you're welcome to a copy  
2 of your CV, if you'd like to look at it to  
3 refresh your memory. Are there any -- are there  
4 any of the editorial and peer-reviewed experience  
5 journals that you list here that you would not  
6 consider mainstream or recognized by the  
7 scientific community?

8 A. I review for a number of different  
9 journals that vary in their quality.

10 Q. Okay.

11 A. You know, some are what are considered  
12 top-tier journals, some are considered not --  
13 certainly not as good.

14 Q. Okay, but --

15 MS. COOPER: Kiernan, can we get a  
16 copy, just so she can --

17 MR. MOYLAN: Oh, certainly.

18 MS. COOPER: -- have that handy?

19 MR. MOYLAN: Oh, certainly, she can  
20 answer -- certainly, I have no problem  
21 with that.

22 MS. COOPER: Thanks.

23 MR. MOYLAN: Okay.

24 BY MR. MOYLAN:

25 Q. So you're saying that -- again, the

1 question is, are there any -- you've recognized  
2 that some are top tier and some are not top tier?

3 A. Uh-huh.

4 Q. Are there any that you wouldn't consider  
5 professionally or recognized journals?

6 A. I don't know what you mean by  
7 professionally or recognized journals.

8 Q. Amongst your peers.

9 A. You mean, that have subscriptions in the  
10 library? Is that what you're --

11 Q. Or any of your peers utilize these  
12 journals, or are any journals not utilized by  
13 your peers because they don't believe they're  
14 mainstream or professional in nature?

15 A. All of these journals that are listed  
16 here, I provided reviews for papers that were  
17 submitted for publication to those journals.  
18 They vary in quality. Some of them are really  
19 quite good. Some are not good at all. Some, the  
20 editors make use of the reviews they get back,  
21 and some don't.

22 Q. Okay, so you would actually review for  
23 something that you don't view as quality as a  
24 journal?

25 A. Yes.

1 Q. Okay.

2 A. That's my role, as a professor, to  
3 review the research literature that is being  
4 developed.

5 Q. Okay. I've read some of your  
6 publications listed on your CV here. A lot of  
7 your studies, in fact, I'd say most of your  
8 studies, just analyze data collected by others  
9 and then you reanalyze it or you analyze the data  
10 that you have from another source, some of these  
11 sources that you've listed earlier on. I guess  
12 you listed about seven sources before.

13 Does the scientific community just  
14 generally recognize this practice?

15 A. Yes. That's called secondary data  
16 analysis, and those data sets are created to be  
17 used by researchers for a variety of purposes.

18 Q. Okay. Does the State of California  
19 license psychologists?

20 A. Yes.

21 Q. Yes. Are you licensed?

22 A. Yes.

23 Q. Okay. Would you consider yourself a,  
24 quote, friend of the gay and lesbian community?

25 MS. COOPER: Objection to the form.

1 MR. MOYLAN: It goes to bias.

2 BY MR. MOYLAN:

3 Q. Would you consider yourself an  
4 advocate --

5 MS. MARTIN: Wait. You need to  
6 wait for a ruling.

7 MR. MOYLAN: Okay, sure.

8 THE COURT: The first question, I  
9 didn't really know what that meant. I'm  
10 going to allow you to ask the second  
11 question.

12 MR. MOYLAN: Okay.

13 BY MR. MOYLAN:

14 Q. Would you consider yourself an advocate  
15 for the gay and lesbian community?

16 A. You mean, professionally employed as an  
17 advocate?

18 Q. No, in general, as an individual, your  
19 personal preference. Would you consider yourself  
20 an advocate? Do you seek to advocate for the  
21 bettering of the gay and lesbian community?

22 A. I think, as an individual, I participate  
23 in a number of things to seek to better life for  
24 other folks. That includes the gay community,  
25 sure.

1 Q. Okay. Would you say that it is a focus  
2 of yours, the gay and lesbian community?

3 MS. COOPER: Objection, vague.

4 THE COURT: I'm going to allow  
5 "focus." Go ahead.

6 THE WITNESS: I think it's a  
7 focus -- sexual orientation is a focus  
8 of my research.

9 MR. MOYLAN: Okay.

10 THE WITNESS: I don't -- I mean, I  
11 give money to the public library. I  
12 don't know --

13 BY MR. MOYLAN:

14 Q. Well, that's a good cause.

15 A. Yeah. Yeah.

16 Q. As well as the gay and lesbian  
17 community.

18 A. Yeah.

19 Q. So I'm not suggesting anything or  
20 intending in any way --

21 A. Yeah.

22 Q. Okay. Would you think that your  
23 feelings towards moving along or bettering the  
24 gay and lesbian community could bias your  
25 opinions?

1           A. You know, I think as a researcher -- any  
2 researcher who studies human beings is either  
3 going to share or not share characteristics with  
4 the human beings they're studying, and that's why  
5 we have graduate training. We train people to  
6 engage in behaviors that are more objective than  
7 just coming in off the street and doing things.  
8 I -- People are people. They bring to their work  
9 who they are. Now, this can both improve what  
10 they're doing and it can also be harmful, and  
11 people have to engage in a number of behaviors to  
12 make it more objective, and if their work doesn't  
13 stand, it's not robust. It doesn't stand up to  
14 peer review. It doesn't stand up to other people  
15 coming up with similar findings across other  
16 studies. So, you know, bias is something that  
17 permeates the sciences. We're all well aware of  
18 it.

19           Q. Okay. Would you suggest that in some of  
20 your writings, you've suggested that you have a  
21 bias in this grouping?

22           A. You mean, I've written I have a bias?

23           Q. Or suggested that you don't want to  
24 admit the -- or tip the review article with the  
25 bias?

1           A. I don't think I understand that  
2 question.

3           Q. Have you published, in any of your  
4 articles, the sense that you have a bias and that  
5 you fear that if you continue down this line of  
6 thinking or even suggest that you may have a bias  
7 that you don't want to reveal or that you fear  
8 may be implicated in what you're saying?

9           A. I think in -- I think in my award  
10 address that I wrote for the American  
11 Psychologist, I certainly talked about the bias  
12 that exists in the academic world when one is gay  
13 and one studies gay topics. Yes, I have talked  
14 about that.

15          Q. Okay. Have you written in your articles  
16 about a bias?

17          A. A bias of what?

18          Q. Of how you feel on a certain article --  
19 a certain -- whether there are social stigmatism  
20 that affect gay and lesbian individuals?

21           MS. COOPER: Objection, vague.

22           THE COURT: I'll allow it.

23           THE WITNESS: I've -- I've written  
24 about discrimination against gays.

25           That's based in empirical findings. You

1 know, when you write an article, you  
2 express opinions.

3 BY MR. MOYLAN:

4 Q. Okay.

5 A. These articles all go through peer  
6 review.

7 Q. Okay.

8 A. So --

9 Q. So, in answering that question yes or  
10 no, would you say you've done that or have not  
11 done that?

12 MS. COOPER: Objection. Done what?

13 THE WITNESS: I don't -- I don't  
14 qualify it as -- I don't -- to me, it's  
15 not bias.

16 THE COURT: I'm sustaining the  
17 objection.

18 MR. MOYLAN: Okay.

19 THE COURT: You may want to restate  
20 the question.

21 BY MR. MOYLAN:

22 Q. Yes or no, have you stated in your  
23 articles that you have a bias in this issue and  
24 do not -- are fearing -- Yes or no, have you  
25 stated in an article that you may have a bias



1           regarding the subject matter of distressing  
2           conditions regarding social stigmatization of gay  
3           and lesbian individuals?

4           A. I think, in my award address, I did -- I  
5           did raise this. This is an issue. This is an  
6           issue for anyone doing research on topics that --  
7           where they share characteristics with the  
8           population they're studying, and I raised this  
9           as a -- you know, I think disclosing this as an  
10          issue does not mean that you are biased in what  
11          you're writing, so --

12          Q. Let me read a quote to you --

13          A. Okay.

14          Q. -- and see if this may help, and this is  
15          somewhere around November of 2001.

16          A. Uh-huh.

17          Q. "At risk of displaying my own bias in  
18          this debate." Does that sound like words you may  
19          have used?

20          A. Yes, I wrote that.

21          Q. Okay. All right. Now, one of the  
22          things that you, early on, criticized Dr. Rekers  
23          for is that he may have a bias in this, selecting  
24          which articles to use and which articles not to  
25          use. Did that sound correct?

1           A. I don't think I talked about his bias.  
2 I think I said that he selected some findings to  
3 present and some findings not to present.

4           Q. Okay.

5           A. And actually, if you read further into  
6 that article, I present the findings on both  
7 sides.

8           Q. Okay, well, we'll --

9           A. So I don't --

10          Q. Okay. No, thank you, that's all right.  
11 Can you tell me what you think the question at  
12 hand is in front of the Court today?

13           MS. BASS: Objection to the form,  
14 irrelevant.

15           MS. COOPER: He hasn't --

16           THE COURT: Sustained.

17           MR. MOYLAN: Okay.

18 BY MR. MOYLAN:

19          Q. You mentioned that there are other  
20 groups which have a higher percentage of  
21 substance abuse than homosexually-behaving  
22 individuals.

23          A. Uh-huh.

24          Q. Is this indicative on whether  
25 homosexually-behaving individuals should be able

1 to adopt or not adopt?

2 MS. COOPER: Objection, beyond the  
3 scope.

4 THE COURT: Well, it was addressed,  
5 so -- I don't know if you can answer the  
6 question. Can you, Doctor?

7 THE WITNESS: I think, when it  
8 comes to adoption, I would screen for  
9 substance-using disorders.

10 BY MR. MOYLAN:

11 Q. Okay. Okay, all right. As a --

12 A. Everyone, I would screen everyone. I  
13 mean, I don't think that if a Native American  
14 walked into this courtroom, you would reject them  
15 from adopting because they're part of a group  
16 that has the highest rate of substance abuse.

17 Q. I won't -- and fortunately, they have  
18 other protections that aren't necessarily  
19 addressed here, but as a psychologist, do you  
20 agree the standard of review for adoption should  
21 be what's in the best interest of the child?

22 A. I'm not an expert on adoption, and as a  
23 psychologist, I don't see children. I don't see  
24 adolescents, families.

25 Q. Okay. Is it fair to say that most, if

1 not all, of the studies in your publications,  
2 referred to in your publications, find a higher  
3 percentage of substance abuse for homosexually-  
4 behaving individuals, compared to heterosexually-  
5 behaving individuals?

6 A. Probably as a summary across all the  
7 studies, yes.

8 Q. Okay. Are there any of these studies  
9 that you believe are incorrect that you've cited  
10 in your publications?

11 A. You mean, studies that I've referenced  
12 inside my studies?

13 Q. Correct, or that you utilized to analyze  
14 data. I understand that you do criticize  
15 outwardly certainly studies, but any that you --  
16 the seven studies that you suggested, are there  
17 any of them that you find are incorrect?

18 A. No.

19 Q. Okay. Now, you presented some  
20 statistics from these seven studies.

21 A. Uh-huh.

22 Q. Would it be fair to say that this is  
23 what's called a blended rate?

24 A. The work that I did actually did not  
25 blend rates. I used odds ratios from the studies

1 that adjusted for confounding.

2 Q. Okay, so adjusted for confounding.

3 A. Uh-huh.

4 Q. Now, would it be fair to say that those  
5 surveys asked the questions in different ways?

6 A. Yes.

7 Q. Okay. So then would it be fair to say  
8 that if someone responded to a question of being  
9 a substance abuser in one study, that may not be  
10 equal to being a substance abuser in another  
11 study?

12 A. All of those studies use standard  
13 instruments to come to a diagnosis. So they  
14 either use the CD, the Composite Interview --  
15 Composite International Diagnostic Interview, or  
16 they use the CDSF --

17 Q. Okay.

18 A. -- which are standard instruments.

19 Q. Okay, but --

20 A. And they --

21 Q. -- they're not identical?

22 A. They're not identical.

23 Q. Okay. So you've actually brought data  
24 forward that actually may not be representative  
25 of what actually is found there, due to these

1 differences?

2 MS. COOPER: Objection, vague, and  
3 a mischaracterization of previous  
4 testimony.

5 THE COURT: Can you answer, Doctor?

6 THE WITNESS: Any time you combine  
7 rates from multiple studies -- and this  
8 is done in a lot of different areas.  
9 They do it in trying to figure out  
10 what's the risk of lung cancer from  
11 smoking, and they'll combine information  
12 across a lot of different studies.  
13 People know that each study is not  
14 perfect. I mean, they just aren't.  
15 They have measurement error, they have  
16 all kinds of different issues, and so  
17 when we look at these rates that are  
18 reported, we think of them as ballpark  
19 rates. So, if I say, well, this group  
20 is 22 percent, you know, in my head, I'm  
21 thinking, well, you know it's somewhere  
22 between 18 and 24. It's not exact.  
23 It's certainly not 90 percent, but  
24 it's -- you know, it's in that ballpark.

25 BY MR. MOYLAN:

1           Q. Okay. Now, I understand that there are  
2           statistical errors involved --

3           A. Uh-huh.

4           Q. -- in these type of things, and I  
5           appreciate you addressing that.

6           A. Uh-huh.

7           Q. What I'm actually interested in is the  
8           fact that these datas were elected under, as  
9           you've already suggested to me, two different  
10          surveys, if you're saying that they were only  
11          utilizing these two standard surveys.

12          Since there are differences in those two  
13          surveys in the way they ask the questions --

14          A. Uh-huh.

15          Q. -- is it fair to say that these -- that  
16          this data is not representative, due to the fact  
17          that that represents errors on differing studies?

18          A. I think, with that standard, you'd have  
19          to disqualify most research that's done, you  
20          know, because all research has measurement error.  
21          All research has -- is an approximation of what's  
22          really going on in the world, all of it.

23          Q. That's interesting, because some of your  
24          studies only utilize one of these, of the seven  
25          studies that you've offered, but yet here you've

1 combined all of these studies. So you're saying  
2 that that's apples to apples, as a statistical  
3 simplicity?

4 A. Those are two different methods. You're  
5 referring to a paper where I took a single  
6 study --

7 Q. Right.

8 A. -- and I did a comparison. And this is  
9 summarizing across multiple studies.

10 Q. Correct.

11 A. Would I trust the rate in an average of  
12 rates in individual studies more than I would  
13 trust the rate in a single study? I'd probably  
14 trust the average.

15 Q. You would? Even though you know that  
16 that average was derived from surveys that were  
17 not identical and possibly not presented  
18 identically?

19 A. What I said was, would I trust the  
20 average of all these relatively -- you know, as  
21 perfect as we can get, but not perfect  
22 measurements, the average of all the slightly  
23 imperfect measurements, or one of those  
24 individual slightly imperfect measurements? I  
25 would trust the average.



1           Q. Okay. So why then would you focus some  
2 of your papers on single studies, then?

3           A. That's how papers are published.

4           Q. Okay. Okay. So would you believe that  
5 the studies that you've -- in your papers, are  
6 statistically significant to represent actual  
7 data in society?

8           A. Information from a population-based  
9 sample, does it -- can I --

10          Q. I mean --

11          A. -- generalize those findings to the  
12 population that someone was sampled from? Yes.  
13 That's common.

14          Q. Okay, so then looking at some of your  
15 individual studies, can you tell me some of the  
16 different -- the findings that you have of how  
17 much greater the possibility of a homosexually-  
18 behaving individual would suffer from substance  
19 abuse than a heterosexually-behaving individual?

20          A. I'd have to -- you'd have to give me the  
21 papers to see. I don't -- I haven't memorized  
22 these.

23          Q. Well, I'll help you, that's okay. How  
24 about, would you say that some of them find  
25 smoking and drinking have two times --

1 A. Yeah.

2 Q. -- as you suggested?

3 A. Yeah, uh-huh.

4 Q. Okay. Would you suggest that some of  
5 them find three times dependency on alcohol and  
6 drug dependency?

7 A. Yeah.

8 Q. Okay, and when you talk about drug  
9 dependency of homosexually-behaving individuals,  
10 what type of drugs are we talking about?

11 A. Usually what happens in those surveys  
12 is, people are first asked a list of drugs that  
13 they might have used that are either illicit  
14 drugs or they're drugs -- they're medically  
15 prescribable drugs, but they're using them in a  
16 non-medical way, and so they'll be asked a list  
17 of drugs, and then depending on the survey, they  
18 will then take anyone who's used any drugs and  
19 they'll ask the dependency questions.

20 If it's a survey -- if it's coming out  
21 of the National Survey on Drug Use and Health or  
22 the National Survey on Drug Abuse, they have much  
23 more explicit measurements, and so they will  
24 measure dependency in each of the drug categories  
25 for people who use the drug, and then at the end,

1 summarize for people who evidence drug dependency  
2 for any one of those drugs.

3 Q. Okay, so what type of drugs are we  
4 talking about?

5 A. The most common drug that's used is  
6 marijuana.

7 Q. Okay. Other drugs?

8 A. I think that cocaine, nonprescription  
9 use of pain medication, and things like that.

10 Q. I'm going to read a statement to you,  
11 and tell me if this sounds familiar.

12 A. Uh-huh.

13 Q. "For example, in a study by Cochran,  
14 women who have reported female sexual partners in  
15 the prior 12 months were more likely than women  
16 who reported exclusively male sexual partners to  
17 evidence lifetime use of marijuana, hallucinogen,  
18 cocaine, inhabitants (sic), sedatives,  
19 stimulants, and tranquilizers."

20 A. Uh-huh.

21 Q. Does that sound correct?

22 A. Yeah, right.

23 Q. Is that a statement from one of your  
24 papers --

25 A. Yes.

1 Q. -- that you actually cite, yourself?

2 A. Well, I don't know if I cited it myself,  
3 but yes. Yes.

4 Q. Okay. All right. Can you tell me what  
5 lifetime use is?

6 A. They -- People are asked, "In your life,  
7 have you ever used marijuana?" That's lifetime  
8 use.

9 Q. Okay.

10 A. But the rates -- you know, the rates are  
11 very low. Not for marijuana, in general.  
12 Marijuana is a pretty commonly used drug. But  
13 the rates are low for those other drugs.

14 Q. Okay.

15 A. I don't know if you have the percentage  
16 there.

17 Q. I do, in fact.

18 A. Uh-huh.

19 Q. So you said that marijuana is a high use  
20 of drugs, relatively?

21 A. I said -- relative to other illegal  
22 drugs, yes.

23 Q. Okay, and marijuana is an illegal drug?

24 A. In Florida? I don't know. I mean --

25 Q. I'm just asking.

1 A. It is in California.

2 Q. Okay.

3 A. But I don't know.

4 Q. I think it is in every state, right now.

5 Okay. Can you talk about -- In some senses, you  
6 talk about psychiatric disorder as a whole --

7 A. Uh-huh.

8 Q. -- in some of your studies. Do you  
9 realize -- you remember referencing sometimes  
10 psychological disorders as a whole?

11 A. Yes.

12 Q. And that means what?

13 A. That's psychological morbidity. It's --  
14 it includes affective disorders. It includes  
15 disorders -- other kinds of disorders that people  
16 might have. Most of the disorders that are  
17 measured in these surveys tend to be the very  
18 common disorders that people have.

19 Q. Okay, and what would you suggest the  
20 prevalence -- what would you suggest the  
21 prevalence, relative to heterosexually-behaving  
22 individuals, it is for homosexually-behaving  
23 individuals to have any psychological disorder  
24 whatsoever?

25 A. You have to give me a time frame,

1           because lifetime is certainly a much higher  
2           prevalence than past year.

3           Q.   Okay, lifetime for whom?  If I  
4           say lifetime, who would have a higher prevalence  
5           over a lifetime?

6           A.   People who are classified as lesbian or  
7           gay have a higher prevalence, yes.

8           Q.   How much higher?

9           A.   I think, you know, it depends on the  
10          studies.

11          Q.   Okay.

12          A.   So, let's see, in the National  
13          Comorbidity study, I think the prevalence was 55  
14          percent among homosexually-behaving women and 36  
15          percent among heterosexually-classified women,  
16          and among men it was something like 42 percent  
17          versus 28 percent, something like that.

18          Q.   Okay, so approaching 40 some percent?

19          A.   Yeah, something like that.

20          Q.   Just speaking as a blended rate, without  
21          weighting it for --

22          A.   No, that's a -- you know, that paper was  
23          written, what, seven years ago?

24          Q.   Okay.

25          A.   If you want me to give you the exact

1 number, hand me the paper.

2 Q. Oh, that's okay. That's fine. I can  
3 find it.

4 MS. BASS: Excuse me. Could you  
5 just let the witness finish her answer  
6 before you interrupt her?

7 MR. MOYLAN: Sure.

8 MS. BASS: I think it would create  
9 a better record.

10 THE WITNESS: Yeah.

11 BY MR. MOYLAN:

12 Q. Speaking to one study specifically, and  
13 I'm going to refer to a November 2001 article,  
14 you rate the characteristics of the MIDUS sample,  
15 as you --

16 A. Uh-huh. Uh-huh.

17 Q. And this indicated that, for mental  
18 health indicator, any psychiatric disorder in the  
19 past, quote, why. As you qualified, homosexuals  
20 or bisexuals qualified at 41.8 percent. Does  
21 that sound about right?

22 A. Uh-huh. Uh-huh.

23 Q. And then you qualified heterosexuals as  
24 a group, qualifying that they had 21.2 percent.  
25 Does that sound about right?

1 A. Uh-huh. Uh-huh.

2 Q. So can I derive from that data that  
3 there's twice as much chance that a homosexual or  
4 bisexual, as qualified in this study, showed that  
5 they would suffer from any psychiatric disorder  
6 within the past year?

7 A. Any disorder that was measured within  
8 the MIDUS.

9 Q. Okay. What disorders were those, again?

10 A. They used the CDFS, so they measured  
11 major depression, generalized anxiety disorder,  
12 panic, probably alcohol and drug dependency.

13 Q. Okay.

14 A. So any of those, probably any of those  
15 five disorders, that's probably what was  
16 measured. Yeah, that would be correct.

17 Q. Okay. Would it be fair to say that  
18 you've qualified that almost -- or you qualified,  
19 let me say it, that 58 percent of homosexually-  
20 behaving individuals or, as you qualified,  
21 heterosexuals -- homosexuals and lesbians have  
22 not been found to have psychiatric disorders in  
23 their lifetime?

24 A. Where?

25 Q. During their lifetime, in a study you --



1           Let me again -- let me ask the question. 58  
2           percent of those surveyed in this study have not  
3           been found to have any psychiatric disorder  
4           whatsoever during their lifetime; is that  
5           correct? That sounds right?

6           A. Is this the MIDUS?

7           MS. COOPER: Could I ask you if  
8           you'd show her the study, so she knows  
9           which one you're talking about?

10          MR. MOYLAN: Oh, okay.

11          THE WITNESS: The MIDUS --

12          MS. COOPER: There are a lot of  
13          them.

14          MR. MOYLAN: There are a lot of  
15          them.

16          THE WITNESS: I don't think the  
17          MIDUS asked lifetime disorders, and it's  
18          hard to say people don't have a disorder  
19          that was not measured. So, you know, I  
20          can say how many people are positive for  
21          the disorders that were measured in the  
22          MIDUS, within the time frame that the  
23          MIDUS measured, you know.

24          MR. MOYLAN: Okay.

25          MS. BASS: I'm sorry, Your Honor, I

1 think we've asked twice for the witness  
2 to be given a copy of supposedly her  
3 paper.

4 MR. MOYLAN: I'm not asking the  
5 question --

6 THE COURT: Are you done?

7 MR. MOYLAN: Yeah, I'm done with  
8 that question. It's fine.

9 THE COURT: So the next question  
10 that relates to a study, she needs to  
11 see the study.

12 MR. MOYLAN: Okay, thank you.

13 BY MR. MOYLAN:

14 Q. Okay. At what age -- from your studies  
15 and from your profession, at what age is a  
16 homosexually-behaving individual no longer  
17 susceptible to having alcohol abuse issues?

18 A. I don't -- I don't think that people of  
19 any age are not susceptible to developing an  
20 alcohol-related problem. You're most likely --  
21 most people are most likely to develop a problem  
22 in the college age range, 18 to 25. It drops as  
23 you get older, and it probably drops more  
24 precipitously for heterosexual women than it does  
25 for other groups of people.

1           Q. At what age is a homosexually-behaving  
2 individual no longer susceptible to having  
3 illicit drug use issues?

4           A. I don't think any human being is no  
5 longer -- well, as soon as they die. Then you  
6 can't develop --

7           Q. Okay. Now, one of the issues that we  
8 spoke about briefly here today and that you  
9 mentioned in your articles is an understanding or  
10 a belief that higher levels of discriminations  
11 against homosexuals and lesbians may be the cause  
12 of the stress which leads to elevated levels of  
13 mental disorders and substance abuse.

14          A. Uh-huh.

15          Q. Can you explain that?

16          A. You mean, the theoretical thinking  
17 that's going on with that?

18          Q. The premise, just in general.

19          A. The premise is that when people are  
20 exposed to higher rates of discrimination, that  
21 it creates a vulnerability to developing, in  
22 particular, internalizing disorders, depression,  
23 anxiety disorders, panic.

24          Q. And this is a result of a social stigma?

25          A. Yes.

1           Q. Okay, and could it be that the  
2           homosexually-behaving community just simply leads  
3           a riskier life?

4           A. You'd have to define what you mean by  
5           riskier. I don't know what is riskier for  
6           creating major depression.

7           Q. Do you remember your article of --

8           MS. MARTIN: You have to show it to  
9           her.

10          MR. MOYLAN: Oh, excuse me, I do,  
11          I'm sorry. I forgot already. I'm  
12          sorry.

13          MS. MARTIN: Do you want to show it  
14          to Leslie first?

15          MR. MOYLAN: Yes, Leslie. Let me  
16          let me show it to Leslie first --

17          THE WITNESS: Yeah.

18          MR. MOYLAN: -- so that she can see  
19          it. It's listed as Tab 5.

20          MS. COOPER: Uh-huh. Okay.

21          MR. MOYLAN: Okay.

22          BY MR. MOYLAN:

23          Q. All right. I'm going to -- I'll show  
24          you this first.

25          A. Just tell me what the article is.

1 Q. Oh, okay. It is --

2 MS. MARTIN: Could you identify it  
3 for the record, please?

4 MR. MOYLAN: Yeah, I will. For the  
5 record, it is Risk of Psychiatric  
6 Disorders Among Individual Reporting  
7 Same-sex Sexual Partners in the National  
8 Comorbidity Survey.

9 THE WITNESS: Yes.

10 BY MR. MOYLAN:

11 Q. Okay, do you want to see the --

12 A. Yes, sure.

13 Q. I'm going to refer to this right here.

14 A. Uh-huh. Yeah.

15 Q. Okay. So let me ask the question again,  
16 okay --

17 A. Okay.

18 Q. -- now that we've referred you to this  
19 article. Could it be fair to say that this  
20 social -- that the distressing conditions that  
21 are created, or these disorders, excuse me --  
22 could it be said -- could it be fair to say that  
23 these social disorders, drug abuse issues and  
24 alcohol abuse issues, are simply because the  
25 homosexually-behaving community simply leads

1 riskier lives?

2 A. It may be that alcohol and drug use  
3 disorders have somewhat of a less strong  
4 relationship with discrimination effects, but let  
5 me clarify what I mean by riskier. We know that  
6 one of the best ways to keep the population from  
7 drinking is to have small -- is to raise small  
8 children. You know, when you've got -- when  
9 you're a women at home with small children,  
10 you're out of the work force, your rate of  
11 drinking, it really drops. And to be employed,  
12 to not be raising small children, these things  
13 put you more at risk, everybody more at risk, for  
14 problems with using alcohol.

15 MR. MOYLAN: Off the record, Your  
16 Honor? I'd like to say, I've got two of  
17 them at home, and I may drink more as a  
18 result.

19 Back on the record.

20 BY MR. MOYLAN:

21 Q. All right. So, when you talk about this  
22 higher level of discrimination against  
23 homosexually-behaving individuals, you then are  
24 talking more about the mental disorders and not  
25 necessarily about alcohol abuse and drug abuse?

1           A. Alcohol and drug abuse are mental  
2 disorders.

3           Q. Okay.

4           A. But you can divide mental disorders into  
5 internalizing types of mental disorders versus  
6 externalizing types of mental disorders, and  
7 probably the relationship between discrimination  
8 and alcohol and drug abuse is probably less  
9 prominent in this regard. It's there --

10          Q. Okay.

11          A. -- but it's probably less prominent.

12          Q. Now, regarding the other issues that  
13 we've qualified as mental disorders --

14          A. Uh-huh.

15          Q. -- you believe that that discrimination  
16 is the leading cause of those mental disorders?

17          A. Of depression and anxiety?

18          Q. Correct.

19          A. I -- my best estimates, at the moment,  
20 is that about 50 percent of the elevation is due  
21 to discrimination.

22          Q. Okay, and how do you come about that  
23 best estimate? Have you done a study on this?

24          A. Yes.

25          Q. Okay, and what study did you do on that?

1           A. It's not published yet.

2           Q. It's not published yet?

3           A. So it hasn't gone through peer review,  
4 so this is just my opinion.

5           Q. Okay. In your past studies, how do you  
6 think you would qualify your understanding that  
7 higher levels of discrimination against  
8 homosexually individuals -- homosexually-behaving  
9 individuals leads to elevated mental disorders,  
10 and specifically the ones that we've referred to  
11 as --

12          A. Well, we looked at the relationship  
13 between discrimination and these disorders, using  
14 the MIDUS data, and when you adjust for  
15 differences in levels of discrimination, it  
16 greatly attenuates the risk.

17          Q. Okay. Is it fair to say you don't know?

18          A. No.

19          Q. So you're saying that at this point --  
20 or you were suggesting that there is more data  
21 suggesting that this is a correlated variable to  
22 the fact that this causes these distressing  
23 conditions?

24                 MS. COOPER: Yeah, objection,  
25 that -- What is the "this" here you're



1                   referring to?

2                   MR. ESSEKS:  There were a lot of  
3                   thises in there.

4                   MR. MOYLAN:  That's okay.  I'll ask  
5                   it again, okay.

6  BY MR. MOYLAN:

7                   Q.  You're saying that although -- In your  
8                   previous studies --

9                   A.  Yes.

10                  Q.  -- okay, you're saying that you have  
11                  found --

12                  A.  Uh-huh.

13                  Q.  -- that there is a statistically  
14                  significant correlation --

15                  A.  Right.

16                  Q.  -- of discrimination adding to the  
17                  distressing conditions that create these mental  
18                  disorders?

19                  A.  Yes.

20                  Q.  Okay.  Now, I'm going to read you a  
21                  couple of statements, and then you can tell me if  
22                  these sound familiar, okay?

23                  A.  Uh-huh.

24                  Q.  I'll actually give you -- again, I will  
25                  give you the papers --

1 MS. COOPER: Thank you.

2 BY MR. MOYLAN:

3 Q. -- if you'd like to see them, but I'm  
4 not actually specifically referring to data,  
5 but you'll see the --

6 MS. MARTIN: Show it to counsel  
7 first.

8 MR. MOYLAN: Oh, excuse me. I'm  
9 sorry. It's the same article.

10 MS. COOPER: The same one?

11 MR. MOYLAN: Yeah, it's the same  
12 one. I have a couple more for you.  
13 I'll get them out.

14 (Discussion off the record)

15 THE WITNESS: I don't know which  
16 one you want me to look at.

17 BY MR. MOYLAN:

18 Q. Okay. It's down at the bottom. You've  
19 already read that one. It's this one.

20 A. Uh-huh.

21 Q. Okay. I'm going to read you this quote.  
22 This is from a 2001 -- June of 2001 article that  
23 was referenced before, Risk of Psychiatric  
24 Disorders Among Individuals Reporting Same-sex  
25 Sexual Partners, in the National Comorbidity

1 Survey. "There are clearly many remaining  
2 research questions worthy of the further study."

3 What do you think you were referring to  
4 in that situation?

5 A. This was a very early paper, looking at  
6 differences in rates of psychiatric disorders,  
7 and there wasn't much research literature at that  
8 time and it was a call to say we needed to do  
9 more research, and since that time, more research  
10 has been done.

11 Q. Okay, and one of those research -- and  
12 I'm going to again refer to another article.

13 MR. MOYLAN: Leslie, this is, for  
14 the record, Drug Use, Drug Severity and  
15 Help-seeking Behaviors of Lesbian and  
16 Bisexual Women. It's going to be Tab 7,  
17 just so you know.

18 MS. COOPER: Uh-huh.

19 Are you going to show it to the  
20 witness?

21 MR. MOYLAN: Let me show it --

22 MS. MARTIN: Yeah.

23 MR. MOYLAN: Let me reference it  
24 for her to see.

25 This is the wrong study. Excuse

1 me, Leslie, I'm sorry -- or excuse me,  
2 Ms. Cooper. Six, because it was your  
3 seven --

4 Sorry, Your Honor. Let me correct  
5 that previous reference.

6 BY MR. MOYLAN:

7 Q. It is the Physical Health Complaints  
8 Among Lesbian, Gay Men and Bisexual and  
9 Homosexually Experienced Heterosexual Individuals  
10 Resulting from the California Quality of Life  
11 Survey, June of 2007, and this is the article I  
12 think you referred to before?

13 A. Uh-huh.

14 Q. Okay, and it's this one down there.

15 MR. MOYLAN: Sorry, Ms. Cooper.

16 BY MR. MOYLAN:

17 Q. Okay, and you'll see down here, it says,  
18 "Although -- " and then you'll read it. You can  
19 read it, if you'd like. It's the underlined  
20 thing.

21 A. Right.

22 Q. Okay. So you actually referred to this  
23 study, and I'm going to read what it says. It  
24 says, "Although explaining the reason for these  
25 distressing -- these distresses were beyond the

1 scope of our study."

2 A. Uh-huh.

3 Q. You refer to this as defining that there  
4 are these things --

5 A. No. There was another AJPH paper --

6 Q. Okay.

7 A. -- that looked at discrimination. That  
8 one doesn't.

9 Q. Okay. All right, and -- okay. Can you  
10 tell me what reference that is?

11 A. That's the Mays and Cochran paper.

12 Q. Actually, almost all of them are Mays  
13 and Cochran.

14 A. Well, no, that one is Cochran and Mays.  
15 It was Mays and Cochran, AJPH, something about  
16 perceived discrimination.

17 Q. Is it listed on your CV for me?

18 A. Yes, I'm sure.

19 Q. Okay. Could you just point it out to  
20 me? I may have a copy of it.

21 A. Yeah.

22 Q. I may have it referenced.

23 A. It's called Mental Health Correlates of  
24 Perceived Discrimination Among Lesbian, Gay and  
25 Bisexual --

1           Q. I have that. That's what I'm going to  
2 talk about. Okay. What year was that published?

3           A. I don't -- I don't know. 2002? 2002,  
4 2003.

5           Q. That's okay. No problem, okay.

6                   Talking again about this discrimination,  
7 have you found that a lot of the homosexually-  
8 behaving community perceives to be subjected to  
9 discrimination?

10           A. In surveys of -- in population-based  
11 surveys, people who are classified lesbian, gay  
12 or bisexual report higher levels of  
13 discrimination than other people, yes.

14           Q. Do those studies qualify how these  
15 people are identified or how they believe people  
16 identify them as homosexual or gay, to  
17 discriminate against them?

18           A. Usually, what's asked in the survey is,  
19 they're asked a number of different events that  
20 might have happened. "Have you been -- Have you  
21 lost a job? Have you been forced to move out of  
22 a neighborhood?" You didn't get a scholarship.  
23 So there are events that are happening, and then  
24 they're asked, "How much, on a day-to-day basis,  
25 are you treated with less courtesy than other

1           people? How much, on a day-to-day basis, are you  
2           threatened or harassed by other people?" And so  
3           there's a series of questions about that, and  
4           then at the end of this whole process, they're  
5           asked, "Why do you think this happened?" And  
6           they're given different options, was it because  
7           of your gender, your race, your age, your  
8           physical appearance, your sexual orientation, and  
9           so they're read a whole laundry list of reasons.

10           Q. Is there a way to identify sexual  
11           orientation, looking at somebody?

12           A. I don't -- I don't believe that I'm an  
13           expert on that. I don't know.

14           Q. In the gay -- in your experience in the  
15           homosexually-behaving -- or the gay and lesbian  
16           community, since you've spent a lot of time  
17           there, can you identify someone who is a  
18           homosexual by looking at them?

19           A. That would really depend. I mean, if  
20           they're wearing a T-shirt that says, "I'm a  
21           homosexual," that might be a clue, but I don't  
22           consider myself an expert on that.

23           Q. Okay.

24           A. I don't --

25           Q. All right.

1           A. And that's not an area that I do  
2 research on.

3           Q. Okay, that's fair enough. Have you  
4 found that most of these homosexually-behaving  
5 individuals that perceive to have been subjected  
6 to discrimination are subjected by strangers? I  
7 mean, is it strangers that are discriminating  
8 against them, as a majority of people? A  
9 majority of those discriminating, are they  
10 strangers to the individual who feels that they  
11 are -- or perceives that they have discrimination  
12 against them?

13          A. I'm -- you know, I'm not aware of any --  
14 I'm not aware of research that has actually  
15 looked at who the people are that people are  
16 saying -- they're -- when they're reporting,  
17 they're reporting whether they perceive that  
18 people in general are treating them a certain  
19 way. I'm not aware of research that says, "And  
20 who was this person who discriminated against  
21 you?" That, I don't think exists at the moment.

22          Q. Okay. Do you find, in your times in the  
23 homosexually-behaving community, that people feel  
24 discriminated against from their co-workers?

25           MS. COOPER: Objection, beyond the



1                   scope, where she testified about  
2                   scientific research.

3                   THE COURT: Sustained. Sustained.

4                   MR. MOYLAN: Okay. All right.

5                   Okay.

6                   BY MR. MOYHAN:

7                   Q. Do you believe that the types of  
8                   discrimination that are out there cause the  
9                   homosexually-behaving community to become a  
10                  tighter community, to want to maintain amongst  
11                  themselves because they feel discriminated  
12                  against and they feel comfortable amongst other  
13                  homosexually-behaving individuals?

14                  MS. COOPER: Objection. Are you  
15                  asking based on the scientific research?

16                  MR. MOYHAN: As well as her  
17                  experience in the community. She is a  
18                  professional. She's a psychologist.

19                  THE COURT: Why is this relevant?

20                  MR. MOYLAN: It goes to suggesting  
21                  of other possible exposures to a child's  
22                  life. If we're going to screen for  
23                  individuals, but we know that those  
24                  individuals spend other times with the  
25                  same characteristics that may be

1 significantly higher, there's a concern  
2 that that child will be subjected to  
3 other individuals that we're not  
4 screening to.

5 THE COURT: Sustain the objection.

6 MR. MOYLAN: Okay. All right.

7 BY MR. MOYLAN:

8 Q. During -- from your years in these  
9 studies, have you seen the number of mental  
10 disorders and substance abuse in the  
11 homosexually-behaving community going up or down?

12 A. I don't think that -- I don't think  
13 there's any -- I mean, these studies have only  
14 existed for the last -- in the literature since  
15 1998. It would be -- I don't --

16 Q. Not regarding discrimination, but  
17 substance abuse -- substance abuse, have you  
18 seen, over time, issues of --

19 A. That the rates of substance abuse are  
20 getting higher?

21 Q. Or lower.

22 A. Or lower?

23 Q. In the homosexually-behaving community.

24 A. I don't think there's good data at this  
25 moment to even answer that, because these are --

1           these are data sets that have only been around  
2           for 10 years. You would have to have a lot more  
3           data sets over a longer period of time to detect  
4           some type of temporal change like that.

5           Q. Okay. Have you seen any studies from  
6           year to year that show numbers on whether  
7           discrimination is going up or down, against  
8           homosexually-behaving individuals?

9           MS. COOPER: Objection, beyond the  
10          scope of her testimony.

11          THE COURT: I'll sustain it.

12          MR. MOYLAN: Okay.

13          BY MR. MOYLAN:

14          Q. Do you think adopting a child, as you  
15          mentioned, reduces -- excuse me. You mentioned  
16          earlier that adopting a child reduces alcohol  
17          abuse and substance abuse when it comes to --

18          MS. COOPER: Objection,  
19          mischaracterization of the testimony.

20          MR. MOYLAN: I said adopting --  
21          okay, having a child, excuse me.

22          BY MR. MOYLAN:

23          Q. Excuse me, you said, earlier on, that  
24          members of the homosexually-behaving community --  
25          or you said having a child in general, excuse me.

1 Having a child in general, excuse me.

2 A. Raising small children.

3 Q. Okay.

4 A. Women who raise -- if you look at data  
5 from the National Survey on Drug Use and Health,  
6 women who are raising small children have the  
7 small -- the lowest rate of alcohol misuse  
8 problems, yes.

9 Q. Okay. Do you think that adopting a  
10 child -- Is there studies that show adopting a  
11 child will have the same effect?

12 A. Not that I -- I don't -- I don't think  
13 they asked in these data sets if the child is  
14 adopted or not.

15 Q. Okay. All right. So in -- if an  
16 individual who is homosexually-behaving, who has  
17 a higher prevalence of substance abuse  
18 possibility, adopts a child, there's nothing to  
19 suggest that by adopting that child, that  
20 prevalence will be reduced as a statistical  
21 study?

22 MS. COOPER: Objection, vague.

23 THE COURT: Do you understand the  
24 question?

25 THE WITNESS: I understand it, but

1 I think you're confusing an individual  
2 with a population. An individual, which  
3 I presume an adoption agency is going to  
4 screen --

5 BY MR. MOYLAN:

6 Q. Uh-huh.

7 A. -- as an individual, may or may not have  
8 high or low substance abuse rates. The data I've  
9 been presenting is about groups of people, not  
10 individuals.

11 Q. Is that data representative of  
12 individuals within that group?

13 A. It's representative of groups.

14 Q. Okay. So, if it's not representative of  
15 individuals, it's not representative of a  
16 statistical probability of an individual in that  
17 group, what's the value of the data?

18 A. For public health. It tells us what  
19 kinds of populations we need to intervene with.  
20 It tells us -- I mean, if we find out how many  
21 people have had a flu vaccine and how many people  
22 live in that area and haven't had a flu vaccine,  
23 we have a sense of how many vials of flu vaccine  
24 we need to deliver to that area, but it doesn't  
25 tell us at the individual level whether that

1 individual person has had a flu vaccine or not.

2 Q. No, but does it tell you that at the  
3 individual level, speaking for your study  
4 specifically, that that individual has a higher  
5 prevalence of being a homosexually-behaving  
6 individual than a heterosexually-behaving  
7 individual to have substance abuse issues?

8 A. It tells us substance abuse issues are  
9 more common in that group of people, but at the  
10 individual level, it's not going to reduce your  
11 uncertainty very much. It would be the same  
12 thing as saying, "Well, does watching television  
13 cause violence," and maybe in populations that  
14 are watching a lot of TV, you see higher rates of  
15 violence, but any individual who's in that  
16 population, you'd still have to see what that  
17 person is doing.

18 Q. Sure, but --

19 A. That's the purpose of screening.

20 Q. -- would an individual in that community  
21 that's been watching television, in your  
22 example --

23 A. Yeah.

24 Q. -- compared to one that hasn't been  
25 watching television, because he doesn't share

1           that characteristic -- is there a higher  
2           probability that the individual who watches  
3           television is going to be subjected to violence  
4           in the future, or be an actor of violence?

5           A.    At a hands-off, distant level, you might  
6           say, "Well, I would make a bet that this person  
7           is more likely to," but that would be a pretty  
8           uncertain bet.  You know, the better bet is to  
9           screen.

10          Q.    Okay.

11          A.    Because this is all group data.  This is  
12          not individual-level data.

13          Q.    Screening is a good question.  Can you  
14          tell me if the current review process in the  
15          State of Florida is sufficient to screen  
16          candidates for the issues you've mentioned?

17          A.    I'm not -- I don't know the mechanisms  
18          of the screening process here.

19          Q.    Okay.  All right.  What do you think it  
20          would take to make the process efficient to  
21          screen for substance abuse?

22          A.    I don't think I'm an expert in that.

23          Q.    You've given an opinion that they can be  
24          screened, correct, for these issues?

25          A.    No, I think I've given an opinion that

1 screening -- that screening won't be  
2 differentially effective for groups whether  
3 they're gay or not gay. And I base that opinion  
4 on, I don't know any evidence that says there  
5 would be a difference.

6 Q. In the sense that you've offered  
7 evidence that suggests that homosexually-behaving  
8 individuals as a community --

9 A. Yeah.

10 Q. -- have double the prevalence of, let's  
11 say, smoking, or almost triple the prevalence of  
12 substance abuse?

13 MS. COOPER: Objection,  
14 mischaracterization.

15 THE COURT: Go ahead.

16 MR. MOYLAN: What's that?

17 THE COURT: Go ahead.

18 MR. MOYLAN: Okay.

19 BY MR. MOYLAN:

20 Q. You don't have a basis to understand  
21 that there may be a need to screen those  
22 individuals for more?

23 A. I wasn't against screening. I didn't --  
24 I'm not -- I guess I'm getting really confused.  
25 I'm don't -- This is group data. This is



1 predicting prevalence in a group.

2 Q. Uh-huh.

3 A. You're a White male. I don't -- I can  
4 say, well, you know, White males are more likely  
5 to have this or that, but I don't know what's  
6 going on inside of your body, are you going to  
7 have a heart attack or are you not going to have  
8 a heart attack, and so it's better to screen you.

9 Q. Okay, but you don't have any suggestions  
10 on how we actually may be able to screen for  
11 these things. You suggest we could screen for  
12 them, but you don't have a practical opinion --

13 A. I think there are better experts than me  
14 in how to put in place screening procedures that  
15 work.

16 Q. Okay. Would you suggest you're an  
17 expert on substance abuse?

18 A. I'm an expert on the epidemiology of  
19 substance abuse, yes.

20 Q. Okay. So you have a pretty good  
21 understanding. Would it be possible for me to be  
22 screened one day as non-substance abuser, and  
23 then two years later, become a substance abuser  
24 for other reasons, maybe distressing conditions?

25 A. Presumably, yes.

1           Q. Okay, and if I had a higher prevalence  
2           of that, as being subjected to these distressing  
3           conditions, would there be something that you  
4           think you could do to screen for me, or we just  
5           don't know, there's no way to tell?

6           A. I don't --

7           Q. Okay, let me ask the question a  
8           different way. I'm sorry. That may not have  
9           been very clear. Okay. You've said that I could  
10          become a substance abuser two years from now,  
11          correct?

12          A. Uh-huh.

13          Q. If I was in a classification of higher  
14          prevalence, would you say it is more likely that  
15          I would become a substance abuser than someone  
16          who was in a classification of a lesser  
17          prevalence of a substance abuser?

18          A. Uh-huh.

19          Q. You would?

20          A. Uh-huh.

21          Q. Okay. So --

22                 MS. MARTIN: She needs to answer.

23                 BY MR. MOYLAN:

24                 Q. Oh, yeah, sorry, you need to answer so  
25                 the reporter can --

1 A. Yes.

2 Q. Okay. So it would be fair to say that  
3 if there's a higher prevalence of me becoming a  
4 substance abuser, that again, you can't predict  
5 at what point in the future I would become, but  
6 there's a higher prevalence that I would become a  
7 substance abuser?

8 A. Higher probability.

9 Q. Probability, excuse me.

10 A. Probability, yeah.

11 Q. Probability that I would become a  
12 substance abuser, compared to someone that is in  
13 a less classification?

14 A. If I'm using group information to make  
15 that prediction, yes.

16 Q. Okay. All right.

17 Would it be fair to say that you often  
18 advocate for the needs -- for the need to address  
19 health concerns in the homosexually-behaving  
20 community that are not currently being addressed  
21 by the medical community?

22 A. Yes.

23 Q. Yeah, I saw your project. That's very  
24 neat. And it's called Whisper?

25 A. Uh-huh.

1 Q. And then C.A.R.E. -- okay, I'm sorry.

2 Would it be fair to say your assessment  
3 of the need to address the concerns is based on  
4 your opinion that the homosexually-behaving  
5 community's needs are different than  
6 heterosexually-behaving individuals, as regarding  
7 health care?

8 A. The -- the needs -- I don't -- I don't  
9 understand.

10 Q. Does the homosexually-behaving community  
11 have different medical needs than the  
12 heterosexually-behaving community?

13 A. You mean, do they need different  
14 interventions? Do they need different health  
15 care?

16 Q. Any of those things.

17 A. For what? I mean, for heart disease? I  
18 mean, I don't --

19 Q. I think, in fairness, you've advocated  
20 that the homosexually-behaving community's needs  
21 aren't being met, correct?

22 A. Yes.

23 Q. Okay. In what way are they not being  
24 met?

25 A. You're referring to a page on my website

1           that is a recruitment for subjects, and we are  
2           interested, in that study, in looking at what  
3           happens to lesbians when they come into the  
4           health care setting and they're trying to get  
5           their health care needs met, and there are some  
6           interesting issues that come up for lesbians in  
7           health care settings, for example, how to handle  
8           questions around contraception, how to handle  
9           disclosing to your provider that you're gay.  
10          Those are interesting questions, and that's one  
11          of the questions we were studying in that study.

12                 Q.   Okay, that's different than what's being  
13                 met by the heterosexual medical community -- the  
14                 heterosexually-behaving -- the medical community  
15                 directed at the heterosexually-behaving  
16                 community? I'm sorry. Is it different -- Do  
17                 they have different needs as a result of that?

18                 A.   Well, when you go in to see your  
19                 gynecologist and you don't have contraceptive  
20                 needs, your needs are different than the woman  
21                 next to you who has contraceptive needs.

22                 Q.   Okay. Would it be fair to say that  
23                 these changing needs or the needs that you've  
24                 identified --

25                 A.   Uh-huh.

1 Q. -- will be met in the next five years?

2 MS. BASS: Objection to the form.

3 THE COURT: I'm going to sustain  
4 the objection.

5 MR. MOYLAN: Okay. All right.

6 All right, we'll finish up here,  
7 then.

8 BY MR. MOYLAN:

9 Q. If there's a higher prevalence of mental  
10 disorders and substance abuse in the  
11 homosexually-behaving community, and there's no  
12 way to tell, you know, when a prospective parent  
13 may develop these issues, is it in the best  
14 interest of the child to be subjected to that?

15 MS. COOPER: Objection, beyond the  
16 scope.

17 MS. BASS: Objection to the form of  
18 the question.

19 THE COURT: Sustained.

20 MR. MOYLAN: Okay.

21 THE COURT: Anything else?

22 MR. MOYLAN: Let me think for  
23 minute. Okay.

24 THE COURT: No?

25 MR. MOYLAN: No, that's it. Thank

1                   you, Judge.

2                   THE COURT: Anything, quickly?

3                   MS. COOPER: One moment, please.

4                   (Discussion off the record)

5                   MS. COOPER: Nothing, Your Honor.

6                   THE COURT: Thank you, Dr. Cochran.

7                   THE WITNESS: Thank you very much.

8                   MR. MOYLAN: Thank you.

9                   THE COURT: Who's next?

10                  MR. ROSENWALD: Professor Lager is  
11 next, Your Honor.

12                  THE COURT: Professor Lager, is  
13 that it?

14                  MS. COOPER: Lager.

15                  MR. MOYLAN: What's the name?

16                  THE COURT: Professor Lager?

17                  MR. ROSENWALD: Lager.

18                  MS. MARTIN: May I ask a

19 question --

20                  THE COURT: Uh-huh.

21                  MS. MARTIN: -- while we're on a  
22 break? I need to establish a time for a  
23 telephone conference, Judge, sometime  
24 tomorrow. Would there be a time that  
25 you could offer up to me, and may I

1 suggest that to him?

2 THE COURT: Do you want to do it at  
3 lunchtime?

4 MS. MARTIN: I could ask him. I'll  
5 ask him. I'm not so sure people need to  
6 do it at lunch, but I will inquire.

7 THE COURT: But I expect you to eat  
8 in 35 of them.

9 MS. MARTIN: No, that's fine.  
10 Could you advise me what time -- Are you  
11 going to do lunch again at 1:00 or so?

12 THE COURT: I think tomorrow -- I  
13 don't think I have anything tomorrow, so  
14 it depends on the flow of the witnesses.

15 MS. MARTIN: Okay.

16 THE COURT: I hate to break in the  
17 middle of one if I don't have to.

18 MS. MARTIN: No, I understand. I'm  
19 just trying to find times --

20 THE COURT: I would guess, what do  
21 you think, 12:45 would be safe?

22 MS. MARTIN: Sure. I'll just say,  
23 then, between 12:30 and 1:00, and we'll  
24 see how that works. Okay, thank you.

25 THE COURT: Is the professor here?



1                   MR. ROSENWALD: She is, yes.  
2                   They're getting her. While we're  
3                   getting her, we're running a little  
4                   behind with witnesses today. Is the  
5                   Court determined to end exactly at five  
6                   o'clock or --

7                   THE COURT: No, I can go a little  
8                   later, but we are ending on the 6th,  
9                   okay? So you need to keep that in mind,  
10                  in terms of the way you present your  
11                  case, et cetera, but we're ending on the  
12                  6th, okay.

13                  Is this the witness?

14                  MS. DAY: She'll be right here.

15                  THE COURT: Are you sure she's not  
16                  missing?

17                  MS. DAY: She was in the rest room.

18                  THE COURT: Ma'am, do you want to  
19                  come to the end of the table, please?

20                  THE CLERK: Raise your right hand,  
21                  please.

22                  THEREUPON:

23                                 PATRICIA B. LAGER, PH.D.  
24                  was called as a witness by the Petitioner and,  
25                  having been first duly sworn, was examined and

1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. ROSENWALD:

4 Q. Good afternoon, Professor Lager. How  
5 are you today?

6 A. Fine, thank you.

7 Q. I'm going to ask you to speak clearly  
8 and speak up, because this room has bad  
9 acoustics.

10 Could you please summarize for the Court  
11 your educational background, starting with your  
12 undergraduate degree?

13 A. Yes. I have an undergraduate degree in  
14 social work from Florida State University in  
15 1967, and I have a Master's degree in social work  
16 from Florida State University in 1983.

17 Q. Are you a member of any professional  
18 associations?

19 A. Yes. I'm a member of the National  
20 Association of Social Workers and the Council on  
21 Social Work Education. I'm also a member of  
22 several international organizations, the  
23 International Association of Schools of Social  
24 Work, the International Federation of Social  
25 Workers, and the International Consortium for

1 Social Development.

2 Q. Are you licensed or certified by any  
3 professional organizations?

4 A. I'm licensed by the State of Florida as  
5 a clinical social worker, and I'm also a member  
6 of the Academy of Certified Social Workers,  
7 through NASW, National Association of Social  
8 Workers.

9 Q. Could you please summarize for the Court  
10 your relevant professional experience in the  
11 field of child welfare as it relates to children  
12 in foster care and their subsequent adoption?

13 A. Yes. I actually began my career in the  
14 late '60s, working as a psychiatric social worker  
15 with children, adolescents, and then I went on to  
16 become a social worker with the -- what was then  
17 Division of Family Services and became the  
18 Department of Health & Rehabilitative Services,  
19 and is now the Department of Children & Families  
20 for 10 years. Five years, I spent working with  
21 children in child protection, foster care,  
22 adoption, divorce custody.

23 Q. At some point, did you move to an  
24 academic setting?

25 A. Yes. I joined the faculty -- after my

1 graduate training, I joined the faculty at  
2 Florida State University, in 1988, and at that  
3 time, I was a part-time faculty member and I also  
4 had a part-time private practice, working with  
5 children in the child welfare system, in addition  
6 to children who have experienced trauma, divorce  
7 and such. I maintained the private practice for  
8 four years when I became full time at the  
9 university.

10 Q. What was your initial placement at FSU  
11 focused on? What work did you do?

12 A. Initially, I was -- I placed children --  
13 students, actually, in field placements,  
14 internships, the majority of which were in child  
15 welfare settings, and I also set up internships  
16 for students in child welfare settings and other  
17 settings, as well. I taught courses in social  
18 work, practice courses, as well.

19 Q. Did you have an opportunity to  
20 collaborate with members of the Department of  
21 Children & Families, through your work at the  
22 University?

23 A. Yes, yes. We have a training grant with  
24 the Department of Children & Families and faculty  
25 that are based at Children & Families, and so we

1 work as a team and collaborate together, yes.

2 Q. Did the change to an academic setting  
3 broaden your knowledge of child welfare practice  
4 and policy?

5 A. Yes, it did. It gave me the opportunity  
6 to teach students and apply the theoretical  
7 information from the classroom setting into the  
8 real world of practice and help them to  
9 understand what a good system looks like.

10 It also gave me the opportunity to work  
11 on a broader level, internationally, providing  
12 assistance to various countries, governments and  
13 organizations in other countries, in the  
14 development of their child welfare laws and  
15 procedures and policies.

16 Q. As a professor in the School of Social  
17 Work at Florida State University, what courses  
18 have you taught relating to child welfare best  
19 practices with regard to adoption?

20 A. I've taught social work with individuals  
21 and families and groups. I've taught social work  
22 practice courses that have a component of child  
23 welfare content. I've taught all of the child  
24 welfare courses, child welfare practice and  
25 mental health and child welfare, that are

1 required for our certificate program in child  
2 welfare. I've also taught social work with  
3 families and a number of courses abroad, in child  
4 welfare.

5 Q. Have you been given any professional  
6 awards?

7 A. I was given the outstanding achievement  
8 Award by the Florida International Volunteer  
9 Corps, in 1999.

10 Q. Have you authored any professional  
11 publications?

12 A. Yes. I've authored a number of  
13 publications in child welfare. I've authored two  
14 textbooks on child welfare practice, one in 2001  
15 and one in 2007.

16 Q. Are those textbooks widely used in child  
17 welfare courses?

18 A. Yes, they are.

19 Q. And do they include chapters on  
20 adoption?

21 A. Yes.

22 Q. Have you given any presentations  
23 relevant to child welfare in the adoption  
24 context?

25 A. I've given a number of presentations,

1           both within the U.S. and abroad. Those  
2           presentations have focused on a variety of  
3           topics, child welfare in particular, and I've  
4           done a number of trainings on child welfare  
5           policies and procedures.

6           Q. How long have you been a professor of  
7           social work?

8           A. Twenty years.

9           Q. And what are your responsibilities in  
10          that role today?

11          A. Well, at the moment, I place students in  
12          child welfare settings in other countries,  
13          predominantly, and set up child welfare  
14          placements abroad for students, as well as  
15          placements in other areas.

16                 I also teach the child welfare courses  
17          at FSU for students that are required, for  
18          students who are seeking a certificate in child  
19          welfare. And I serve on various committees and  
20          such.

21          Q. Do you regularly read academic  
22          literature regarding child welfare policy and  
23          practice?

24          A. Yes.

25          Q. As a social work professor, do you

1 participate in the Florida child welfare system?

2 A. Yes. Because of my teaching, it's very  
3 important for me to maintain close contact with  
4 colleagues in the system and collaborate with  
5 them on various changes in the system. I also  
6 review the academic literature regularly,  
7 particularly as it relates to child welfare in  
8 Florida.

9 Q. Does this involvement keep you apprised  
10 of the state of affairs of Florida's child  
11 welfare system?

12 A. Yes.

13 MS. MARTIN: Object as vague. I  
14 don't know what he means by affairs.

15 THE COURT: I don't know what that  
16 means, either.

17 BY MR. ROSENWALD:

18 Q. Does your involvement keep you apprised  
19 with the availability of adoptive children,  
20 foster care children for adoption in Florida?

21 A. Yes.

22 Q. Do you serve as a peer reviewer for  
23 professional publications?

24 A. Yes, when I'm asked to do so, I review  
25 abstracts that are being proposed for publication



1 in journals and also abstracts being -- of  
2 various textbooks that are being proposed for  
3 publication in child welfare.

4 Q. With the Court's permission, I'm going  
5 to show you a document and ask you if you  
6 recognize --

7 MS. MARTIN: Thank you.

8 BY MR. ROSENWALD:

9 Q. -- that document.

10 MS. MARTIN: Are we marking it?

11 MR. ROSENWALD: We will, yes.

12 THE WITNESS: Yes.

13 MS. COOPER: Petitioner's 7.

14 THE CLERK: Petitioner's 7.

15 BY MR. ROSENWALD:

16 Q. Can you tell me what this document is?

17 A. It's my vita.

18 Q. Is it a true and accurate copy?

19 A. Yes.

20 MR. ROSENWALD: At this time, I'd  
21 move to admit Professor Lager's CV as a  
22 summary of her qualifications.

23 THE COURT: So ordered.

24 MS. MARTIN: DCF has no objection.

25 MR. ROSENWALD: And also, at this

1           time, I would to move to qualify  
2           Patricia Lager as an expert in child  
3           welfare policy and practice, adoption  
4           best practices, and the Florida child  
5           welfare system.

6           MS. MARTIN: May I ask you to  
7           repeat that for me?

8           MR. ROSENWALD: Sure. Child  
9           welfare policy and practice, adoption  
10          best practices, and the Florida child  
11          welfare system.

12          MS. MARTIN: No objection.

13          THE COURT: Okay, thank you. So  
14          ordered.

15          MR. ROSENWALD: Your Honor, I'll  
16          preface my questions by saying that I  
17          realize that a lot of the questions I'll  
18          be asking her, you probably know the  
19          answer to, and are very basic, but for  
20          the sake of the record, I have to ask  
21          them. But I will go through it as  
22          quickly as I can.

23          THE COURT: Okay.

24          BY MR. ROSENWALD:

25          Q. Professor Lager, what are the qualities

1 of a good adoptive parent?

2 A. Well, there are a number of qualities of  
3 a good adoptive parent, the primary one being  
4 that the adoptive parent has the capacity and  
5 willingness and skills to provide a nurturing,  
6 loving, stable, permanent home for a child.

7 Q. Is there one kind of family that is best  
8 for all children?

9 A. No.

10 Q. Why is that?

11 A. Because families have unique  
12 characteristics and circumstances and dynamics  
13 that really make them suitable or not suitable  
14 for certain children, and children likewise have  
15 unique circumstances, unique characteristics,  
16 needs. So it's very important to look at the  
17 individual assessment of both family and child  
18 and determine how there is a fit between the two.

19 Q. Can you give the Court some examples of  
20 when a certain kind of family might be best for a  
21 certain kind of child?

22 A. Yes. Well, based on those individual  
23 circumstances and those individual assessments,  
24 it would be important to look at the child's best  
25 needs, and in certain cases, single parents may

1 be appropriate for certain types of children who  
2 have specific needs and require the individual  
3 attention of a single parent.

4 There may be situations where a disabled  
5 parent might be the best fit for a child who has  
6 a disability, or perhaps a parent who's  
7 experienced some of the loss that a child might  
8 feel and has a certain level of empathy to be  
9 able to understand the circumstances that have  
10 precluded this child's placement in foster care.

11 In addition, there's certain families  
12 that represent certain racial and ethnic groups  
13 that might be appropriate for a child who may be  
14 a member of that particular group.

15 Q. Are there certain kinds of families that  
16 a victim of sexual abuse might do better in --

17 A. Yes.

18 Q. -- at some time, depending on the  
19 individual valuation?

20 A. Yes, certainly, if a child has  
21 experienced sexual abuse or other types of abuse  
22 by a particular gender, it may be more  
23 appropriate to place that child with someone who  
24 is not of that gender.

25 Q. Are there children who need to be in

1 families without children, other children?

2 A. Yes. There are certainly children who  
3 have unique needs, that require families in which  
4 there are no other children, for varying reasons.  
5 That would be more suitable.

6 Q. Are there some groups of people who make  
7 better adoptive parents than others?

8 A. No. Essentially, there are bad parents  
9 and there are good parents in all groups, and  
10 it's really important to conduct the  
11 individualized assessment on each individual  
12 parent and adoptive applicant and child, in order  
13 to determine which -- what a suitable fit would  
14 be between the two.

15 Q. Do you, in the course of your work, have  
16 reason to know when experts in your field have  
17 reached consensus in any given area in your  
18 field?

19 A. Yes. Actually, the national  
20 organizations that relate to the field of child  
21 welfare certainly would be a source of  
22 information on consensus in various areas. And  
23 the literature that I review regularly would  
24 provide information on the consensus.

25 Q. Is there a professional consensus within

1 the child welfare field with respect to the  
2 validity of categorical exclusions from adoption  
3 like Florida's ban on adoption by gay people?

4 A. Yes. There is consensus in the child  
5 welfare field that categorical exclusions are not  
6 in the best interest of children and do not  
7 support their welfare.

8 Q. And why are categorical exclusions  
9 disfavored?

10 A. Well, given the fact that we have a  
11 shortage, an acute shortage, of adoptive homes,  
12 particularly in Florida, to exclude a large group  
13 of individuals from adopting would significantly  
14 reduce the pool of qualified applicants and  
15 therefore deny many children permanency.

16 Q. And conversely, why are individualized  
17 evaluations preferred in your field?

18 A. Individualized evaluations are mandated,  
19 they're a standard that we follow in child  
20 welfare, and that standard is actually supported  
21 by the organizations, the national organizations,  
22 and it's important to conduct an individualized  
23 assessment to see what strengths and  
24 characteristics a parent might have that match  
25 the specific needs of a child. So that's a well

1           accepted and adopted standard in the field.

2           Q.   Is the process that's used to screen  
3           heterosexuals from adopting sufficient to screen  
4           homosexuals who are trying to adopt?

5           A.   Yes.   Following the protocols and the  
6           standards of assessment that are in place, they  
7           are -- can be applied to any group, and certainly  
8           screen out any individuals that would not be  
9           appropriate to adopt, irregardless of what group  
10          they represent.

11          Q.   Turning to Florida's child welfare  
12          system, is there a shortage of adoptive parents  
13          for children in the child welfare system in  
14          Florida?

15          A.   Yes.   Yes.

16          Q.   Can you please describe that shortage?

17          A.   Well, actually, Florida has the third-  
18          largest number in the country of children who are  
19          certainly available for adoption and have not  
20          been placed for adoption.  There are roughly,  
21          according to Child Welfare League of America,  
22          over 7,400 children in the child welfare system  
23          in Florida that are -- where either the goal is  
24          to place them for adoption or parental rights --  
25          and/or parental rights have been terminated.

1                   The Department of Children & Families  
2 reports over 4,000 children in the foster care  
3 system alone who are free for adoption.

4                   Q. Why does the CWLA report one number and  
5 DCF reports another number?

6                   MS. MARTIN: Object to form. I  
7 mean, object. I'm sorry, that was an  
8 improper objection. I don't believe  
9 that's the testimony she gave. What  
10 you're asking for is the numbers on the  
11 record.

12                  THE COURT: I'm going to overrule  
13 the objection.

14 BY MR. ROSENWALD:

15                  Q. Well, let me clarify. Was that your  
16 testimony, that there are different numbers  
17 reported by DCF?

18                  A. The numbers that are reported by DCF  
19 reflect the numbers that are in foster care. The  
20 numbers that are reported by Child Welfare League  
21 of America reflect the numbers that are -- of  
22 children who -- for which adoption is the goal  
23 and/or parental rights have been terminated, so  
24 that could include children in foster care,  
25 children who may be with families who have not



1           adopted them. At this point, that isn't broken  
2           down, and I don't have that information.

3           Q. Can you please describe for the Court  
4           how, if at all, categorical exclusions affect  
5           resources for children in the child welfare  
6           system?

7           A. Well, to exclude large groups of people  
8           obviously reduce resources significantly, due to  
9           the fact that there are so many children who are  
10          available for adoption, but also the fact that  
11          children, large numbers of children, would be  
12          denied permanency as a result.

13          Q. Are there other reasons besides the fact  
14          that there are a lot of kids who are waiting to  
15          adopt (sic) that categorical exclusions are  
16          disfavored?

17          A. Well, yes. Categorical exclusions do  
18          not serve the best interests of children. There  
19          are certainly many individuals that represent  
20          certain groups that would be very suitable to  
21          adopt children and would be able to offer a  
22          loving, supportive home for a child.

23          Q. Is the adoptive parent pool affected by  
24          categorical exclusions?

25          A. Most definitely, yes.

1 Q. How so?

2 A. Well, the potential -- the pool is  
3 diminished significantly when you exclude a large  
4 number of individuals from adopting.

5 Q. Is the quality of the adoptive parent  
6 pool lessened by categorical exclusions?

7 A. Yes, most definitely.

8 Q. How so?

9 A. Because every group of individuals have  
10 individuals within them that are suitable and  
11 would be able to provide loving, nurturing homes  
12 for children. So, when you exclude a large  
13 number of people, you're diminishing the numbers  
14 of people in that -- within those groups.

15 Q. What happens to kids when there aren't  
16 enough adoptive families available?

17 A. Well, unfortunately, the majority of  
18 them oftentimes are moved and experience multiple  
19 placements in foster care, which results in a  
20 significant number of negative outcomes for  
21 children. Many of these children age out of the  
22 system with few resources to prepare them for  
23 independent living.

24 Q. What does "age out of the system" mean?

25 A. It means that they reach the age of

1 majority while they're in the system and then  
2 are -- then have to go -- move into independent  
3 living, while -- from foster care into  
4 independent living, without significant resources  
5 to prepare them.

6 Q. I'm sorry, I interrupted you. You said  
7 multiple moves was a consequence; kids aging out  
8 of the system was a consequence. Were there any  
9 other consequences --

10 A. Yes.

11 Q. -- to kids?

12 A. Some children are placed in residential  
13 settings, where they remain, similar to what we  
14 used to refer to as orphanages, many years ago,  
15 and unsuitable settings, as well.

16 Q. What, if any, effect is there on a child  
17 who has these things happen to him or her?

18 A. There are a number of negative outcomes  
19 relating to mental health in a variety of other  
20 areas. For example, children who experience  
21 these multiple moves oftentimes develop  
22 attachment problems that are lifelong, as a  
23 result of being rejected over and over again.  
24 Serious problems result in terms of attachment  
25 disorder among some children.

1                   It's well-established in the literature  
2                   that children who are not placed for adoption and  
3                   grow up in foster care many times have substance  
4                   abuse problems, experience problems in  
5                   educational programs. Many of them drop out.  
6                   They have lifelong difficulties, sometimes, in  
7                   terms of interpersonal relationships and  
8                   developing trust with other individuals and so --  
9                   and developmental problems, as well, in terms of  
10                  their ability to, for example, cope with everyday  
11                  crises. Sometimes they don't learn the coping  
12                  skills. So there are many negative outcomes for  
13                  those children.

14                 Q. What are the employment -- what is the  
15                 employment outlook for someone who ages out of  
16                 the system?

17                 A. Many of them have difficulty seeking  
18                 employment and maintaining employment because of  
19                 these factors.

20                 Q. And can you describe the outlook as far  
21                 as being involved with the criminal system, for  
22                 children who --

23                 A. Yes.

24                 Q. -- age out of the system?

25                 MS. MARTIN: Objection, lack of

1 foundation.

2 THE COURT: Overruled. Let's see  
3 what she says.

4 THE WITNESS: Many of these  
5 children become involved in juvenile  
6 delinquency, and which oftentimes leads  
7 to criminal activity as adults, so yes,  
8 there's significant --

9 BY MR. ROSENWALD:

10 Q. Now, let's assume that there was no  
11 shortage --

12 A. Uh-huh.

13 Q. -- of adoptive parents. Would  
14 categorical exclusions make sense then?

15 A. No, because when there is no shortage of  
16 adoptive parents, sometimes you have the risk of  
17 children still being placed in homes that are not  
18 suitable. To explain further, you may have, say,  
19 a group, a number of children, who are available  
20 for adoption with an even number of homes that  
21 are willing to take children. However, many of  
22 these homes may not be suitable for the children,  
23 but under the permanency guidelines, it would be  
24 necessary and agencies would feel it necessary to  
25 place them anyway. So, therefore, the matching

1 process would not be given the need -- the  
2 attention that would need it to be given.

3 Q. Have there, in the past, been any  
4 categorical exclusions from adoption in Florida  
5 that may have taken away the best unique matches  
6 for some children?

7 A. Yes. Years ago, foster parents weren't  
8 allowed to adopt, and now they're encouraged to  
9 adopt. Years ago, we wouldn't allow single  
10 parents to adopt, and over a period of years,  
11 we've determined that single parents fill an  
12 important need and are able to be suitable and  
13 very caring, loving parents for certain types of  
14 children.

15 Q. Are there any circumstances you can  
16 think of in which a gay parent might be the  
17 placement of choice for a particular child?

18 A. Well, the first -- the first priority to  
19 consider in placing children is minimizing  
20 trauma, and so if a gay parent is a family member  
21 and has a strong relationship with the child,  
22 that would be a priority, in order to minimize  
23 the trauma of placement, but also preserve the  
24 family ties, so -- in other situations, there may  
25 be a gay parent who is a foster parent and has a



1 see.

2 THE WITNESS: Again, as I said, the  
3 important thing is to minimize the  
4 trauma, and so -- and to preserve family  
5 ties, if possible, in adoptions. So the  
6 family member who is gay would be  
7 considered over a non-family member.  
8 That would be -- that would, in turn,  
9 cause a child to feel a sense of  
10 connectedness to the family, as well as  
11 minimize trauma from not being placed  
12 with a non-family member.

13 BY MR. ROSENWALD:

14 Q. Turning now to the child welfare  
15 organizations that you referred to earlier, tell  
16 me, are there any professional organizations that  
17 guide child welfare practice across the country?

18 A. Yes. The Child Welfare League of  
19 America, in terms of child welfare practice, and  
20 the National Association of Social Workers, in  
21 terms of social work practice and child welfare.

22 Q. What is the Child Welfare League of  
23 America?

24 A. It is the nationally recognized  
25 organization that develops and disseminates



1 policies and standards on child welfare practice.

2 Q. And what is CWLA's reputation in your  
3 field?

4 A. Well, it's certainly the organization  
5 that mandates how we practice in child welfare,  
6 so it's highly regarded in our field and it's one  
7 that we look to, to provide the certainly best  
8 practice guidelines and standards in the way we  
9 practice.

10 Q. Now, who are members of the CWLA?

11 A. There are virtually 800 child welfare  
12 agencies within the country that belong to the  
13 Child Welfare League of America.

14 Q. Is the respondent here, Florida's  
15 Department of Children & Families, a member --

16 A. Yes.

17 Q. -- of the Child Welfare League of  
18 America?

19 A. Yes.

20 Q. Does the CWLA put out any standards for  
21 child welfare policy and practice as it relates  
22 to adoption?

23 A. Yes. They publish and -- they've  
24 developed and published standards of excellence  
25 in adoption services.

1           Q. Are those standards that are relied upon  
2 by members of the child welfare profession?

3           A. Yes, they are.

4           Q. Does CWLA have any mandates relating to  
5 individual assessments of adoption applicants?

6           A. Yes. The standards mandate that  
7 individual assessments be conducted on both  
8 adoptive applicants, all adoptive applicants, and  
9 also on children who are being placed for  
10 adoption.

11          Q. How well-established in the child  
12 welfare field is the preference for individual  
13 evaluations of adoptive applicants?

14          A. It's very well-established. It's been  
15 established since the existence of CWLA, which  
16 has been 85 years, so it's -- it's a standard  
17 that we follow, yes.

18          Q. Does the CWLA have any views about  
19 whether excluding gay people from fostering or  
20 adopting benefits children?

21          A. Yes.

22          Q. And could you summarize for the Court  
23 what those -- what that position is?

24          A. Well, to be precise, they've actually  
25 developed a position statement on parenting by



1 couples from parenting based solely on  
2 their sexual orientation is not in the  
3 best interests of children.

4 BY MR. ROSENWALD:

5 Q. You mentioned that you are a member of  
6 the National Association of Social Workers.

7 A. Yes.

8 Q. What is the NASW?

9 A. It is the nationally-recognized  
10 organization that develops and disseminates  
11 standards in social work practice.

12 Q. Do child welfare professionals rely on  
13 the practices and policies set by NASW?

14 A. Yes, they do.

15 Q. Does the NASW offer any guidance to its  
16 members regarding best practice in the field of  
17 child welfare?

18 A. Yes. NASW has specific standards that  
19 we follow in the field of child welfare that  
20 relate to individualized assessments and other  
21 areas of practice.

22 Q. Has the NASW developed any policy about  
23 the suitability of lesbians and gay men to foster  
24 or adopt?

25 A. Yes. NASW states that gay people should

1           be given the same consideration in terms of  
2           parenting as other groups of individuals.

3           Q. As part of your normal duties, do you  
4           have reason to know how the NASW goes about  
5           forming such a policy?

6           A. Yes. There is a delegate assembly that  
7           meets periodically, and this delegate assembly is  
8           composed of roughly 200 members that are voted  
9           upon or not voted upon, and this membership group  
10          develops policies, based on the consensus of the  
11          membership in each state and also on the  
12          scientific evidence.

13          Q. What role, if any, does political  
14          pressure from special interest groups play in the  
15          NASW's decision whether or not to adopt a  
16          position policy on any given issue?

17          MS. MARTIN: Object. There's a  
18          lack of foundation, lack of personal  
19          knowledge.

20          THE COURT: Can you answer that,  
21          Professor?

22          THE WITNESS: Beg your pardon?

23          THE COURT: Can you answer that,  
24          Professor?

25          THE WITNESS: I'm sorry, I can't

1           hear.

2           THE COURT: Can you answer that?

3           THE WITNESS: Oh, yes, yes. It is  
4           not the policy of NASW to base decisions  
5           on policy as a result of pressure from  
6           political groups. The policies are  
7           based on, certainly, the consensus of  
8           its membership and the scientific data  
9           as it relates to the issue.

10          BY MR. ROSENWALD:

11                 Q. What is the significance of the CWLA and  
12                 the NASW issuing a policy on the suitability of  
13                 gay parents?

14                 A. The significance is that their policies  
15                 reflect the consensus of the organizations and  
16                 other related organizations in terms of the  
17                 suitability and the appropriateness of gay  
18                 parents being allowed to adopt.

19                 In addition to that, these decisions of  
20                 the other organizations are based on scientific  
21                 evidence in the area of adoption. So these two  
22                 things are considered.

23                 Q. Are there any other professional  
24                 organizations within your field that you know of  
25                 that have positions on the suitability of gay

1 people to parent?

2 A. Yes. The International -- well, the  
3 National Association of Social Workers, and of  
4 course CWLA, but also the American Psychological  
5 Association, the American Medical Association,  
6 the American Academy of Pediatrics, and the -- if  
7 I can refer to my list here -- the American  
8 Association of Psychotherapists, and the North  
9 American Council on Adoptable Children.

10 Q. And what are those groups' positions on  
11 adoptions by gays and lesbians?

12 A. Essentially, they believe that gays and  
13 lesbians should be afforded the same support as  
14 other individuals and other groups when it comes  
15 to parenting and adoption.

16 Q. Do you know if these groups have any  
17 position on whether excluding gay people from  
18 adopting benefits children?

19 A. Yes. Essentially, there is the  
20 consensus that to exclude gay people from  
21 adopting is not in the best interests of  
22 children.

23 MR. ROSENWALD: That's all, Your  
24 Honor.

25 Thank you, Professor.

1 THE WITNESS: Uh-huh.

2 THE COURT: Okay.

3 MS. BASS: I have no questions.

4 Thank you.

5 THE COURT: Ms. Allen?

6 MS. ALLEN: I have no questions.

7 THE COURT: Is it going to be Ms.

8 Martin on this one?

9 MS. MARTIN: Yes, Your Honor, it

10 is.

11 THE COURT: All right, go ahead.

12 CROSS EXAMINATION

13 BY MS. MARTIN:

14 Q. Hello, Ms. Lager.

15 A. Hi.

16 Q. Nice to see you again.

17 A. Thank you.

18 Q. I do have a couple of questions for you.

19 A. Uh-huh.

20 Q. I have a couple of questions, first of  
21 all, on your CV. Do you have a copy of that --

22 A. Yes.

23 Q. -- in front of you that you can  
24 reference?

25 A. Yes.



1           Q. You have been in the position of the  
2           director of international programs since 2004; is  
3           that correct?

4           A. Right.

5           Q. And prior to that, you were the director  
6           of the field education program, correct?

7           A. Right.

8           Q. Is it fair for me to say that those two  
9           programs, one grew into the other, essentially,  
10          the same duties?

11          A. One -- the director of the field  
12          program, obviously, was expanded to include the  
13          director of international programs, as well, yes.

14          Q. All right, and the purpose of asking  
15          that question, and I'm trying to determine, since  
16          you've been in the field education program, so if  
17          we can look at that from -- I suspect from --  
18          let's look at it from August of 1993, when you  
19          were an associate. When you were an associate in  
20          the field program, how much time did you spend  
21          teaching?

22          A. I -- 50 percent of my time was spent  
23          teaching and 50 percent in the field education.

24          Q. The 50 percent that you spent time  
25          teaching, could you share with me the types of

1 courses you taught then?

2 A. Yes. I taught the social work practice  
3 course. I taught, also, a field seminar for  
4 students who were in internships, to include  
5 child welfare placements, yes.

6 Q. Did any of the teachings that you spent  
7 50 percent time as an associate in the field  
8 education deal with gay or lesbian parenting?

9 A. I really don't recall, honestly. I  
10 really couldn't say. I don't know. I don't  
11 recall. It's been a while.

12 Q. Would it be fair to say that when you  
13 worked as the director of the field program, from  
14 2000 -- and your resume says to present; is that  
15 correct?

16 A. Yes.

17 Q. Could you explain it to me? I'm a  
18 little confused --

19 A. I'm sorry.

20 Q. -- how you work two jobs.

21 A. Would you repeat your question, please?

22 Q. Sure. In looking at your CV --

23 A. Right.

24 Q. -- I'm perplexed, because you have two  
25 positions at the top of Page 2, if you want to

1 reference that.

2 A. Oh, it's this one, okay.

3 Q. You have, I believe, April 2004 to  
4 present that you're the director of the  
5 international programs, correct? Are we on the  
6 same page?

7 MR. ROSENWALD: You might be  
8 looking at two different versions.

9 THE WITNESS: This is Page 2.

10 MS. MARTIN: I am. I beg your  
11 pardon, ma'am. I'm on the wrong  
12 version. I'm sorry.

13 THE WITNESS: Okay.

14 MS. MARTIN: I apologize. I had an  
15 old CV in front of me.

16 THE WITNESS: Oh, okay.

17 BY MS. MARTIN:

18 Q. In looking at the time that you've been  
19 in your present position, director of  
20 international programs --

21 A. Uh-huh.

22 Q. -- how much time do you spend teaching  
23 that program, in that capacity?

24 A. Approximately 25 percent of the time.

25 Q. And the other 25 percent of the time,

1           how would you characterize that?

2           A. Well, administrative, predominantly,  
3           yes, student advising and committee work and that  
4           sort of thing.

5           Q. In the 25 percent you spend as the  
6           director of international programs, teaching, are  
7           any of those courses dealing with gay or lesbian  
8           parenting?

9           A. It's a curriculum requirement that we  
10          incorporate in all of our courses a component of  
11          content on a variety of different groups of  
12          individuals, to include those with -- who are gay  
13          and lesbian, yes, so that's a curriculum  
14          standard.

15          Q. Understanding that it's a curriculum  
16          standard, but do you, as a professor, teach any  
17          courses on gay and lesbian parenting?

18          A. I teach the child welfare practice  
19          course, and we do talk about gay and lesbian  
20          adoption in particular, and gay and lesbian-  
21          headed households.

22          Q. In looking at some of your publications,  
23          I have a question for you. Do you have your  
24          publications in front of you? Hopefully we're on  
25          the same page of the right CV.

1           A. Okay, let's see. Yes.

2           Q. You have a book that is titled -- and I  
3 believe you said it's a textbook, the 2007  
4 version of Child Welfare Practices and Best  
5 Practices, Second Edition.

6           A. Policies and Best Practices, yes.

7           Q. You indicated that's a textbook,  
8 correct?

9           A. Yes.

10          Q. There are more authors than just you; do  
11 you see that?

12          A. Correct, uh-huh.

13          Q. And in this textbook for child welfare  
14 practices, what articles or sections did you  
15 author, yourself?

16          A. I authored the chapter on permanency  
17 planning and adoption. I authored the chapter on  
18 sexual abuse, physical abuse, neglect. I'd have  
19 to look at my table of contents to be able to  
20 quote the others.

21          Q. I understand it's difficult to come from  
22 memory. I do. Trust me, I understand. In  
23 looking at your list of publications that you  
24 have in front of you, could you identify any of  
25 them for me that discusses gay or lesbian

1 parenting?

2 A. We do have -- in the Child Welfare  
3 Policies and Best Practices, we do talk about  
4 varying groups of individuals, to include gay and  
5 lesbian parents, and we do have -- make reference  
6 to the fact that gay and lesbians have been very  
7 successful at parenting, in the first chapter in  
8 particular.

9 I really -- In the Child Welfare  
10 Unifying Model of Practice, we also talk about  
11 individuals with different lifestyles who can  
12 provide suitable homes and are suitable and  
13 positive influences on children.

14 So I couldn't exactly identify where in  
15 that content specifically, but to be consistent  
16 with the standards of social work education, we  
17 have to include content and we do include content  
18 on practice models and theories that apply to  
19 certainly -- certain oppressed groups, as well as  
20 traditional families, so --

21 Q. What I'm trying to get at, Professor,  
22 is, I'm looking at your list of publications and  
23 I'm trying to determine which of those that you  
24 have written on gay and lesbian parenting, and  
25 what I note in that is that you've indicated thus

1 far two.

2 A. Uh-huh.

3 Q. One is a Unifying Model of Practice that  
4 is dated 2000 --

5 A. Uh-huh.

6 Q. -- and a Child Welfare Practices and  
7 Best Practices that's dated 2007. Is that  
8 correct?

9 A. Right.

10 Q. Is it fair to say that the 2000 (sic) is  
11 an updated version of the 2000 publication?

12 A. Yes, it is, uh-huh.

13 Q. And of both of those publications, did  
14 you author -- I know you've talked about the  
15 2007, but did you author anything on gay and  
16 lesbian parenting and/or adoption?

17 MR. ROSENWALD: Your Honor, I'm  
18 going to object. We been haven't  
19 offered Professor Lager as an expert in  
20 gay and lesbian parenting. She's here  
21 to talk about the standards of practice  
22 and procedure within the field.

23 THE COURT: I agree. So just do  
24 this question and then we'll move on?

25 MS. MARTIN: Uh-huh.

1 THE COURT: Okay, great.

2 MS. MARTIN: May I have an  
3 answer or am I moving on?

4 THE COURT: Yes.

5 BY MS. MARTIN:

6 Q. May I have an answer?

7 A. Would you repeat your question, please?

8 MR. ROSENWALD: Sorry, Valerie.

9 MS. MARTIN: That's quite all  
10 right.

11 BY MS. MARTIN:

12 Q. I believe my question was, in talking  
13 about the textbooks, you have a 2000 version and  
14 a 2007, and what I'm trying to ascertain is, did  
15 you author any chapters in those books on gay and  
16 lesbian parenting and/or adoption?

17 A. Not entire chapters, no.

18 Q. All right, thank you.

19 There was some discussion about  
20 categorical exclusions. Do you remember your  
21 testimony on that?

22 A. Yes.

23 Q. And the question was, there was  
24 consensus that categorical exclusions are  
25 disfavored. Am I representing your testimony



1           correctly?

2                   A.   Yes, uh-huh.

3                   Q.   And I believe the testimony was dealing  
4           with the exclusion of homosexuals, as the statute  
5           is defined, correct?  The exclusion we are  
6           talking about was homosexuals, gay and lesbian?

7                   A.   Yes.

8                   Q.   If I use the word homosexual, will you  
9           understand what I'm referring to?

10                  A.   Yes.

11                  Q.   Are there any other categorical  
12           exclusions that you're aware of in the State of  
13           Florida to prohibit those from adopting?

14                  A.   There are certain exclusions for  
15           individuals who have committed certain crimes.  
16           For example, if an individual has committed a  
17           crime of violence and been convicted of a crime  
18           of violence, that would be an exclusion.

19                  There are certain exclusions of  
20           individuals who have been reported for child  
21           abuse in the State of Florida, and if it's -- if  
22           they're founded reports and if they're to the  
23           degree that it would pose a danger to an adoptive  
24           child, then those would be excluded, but they're  
25           considered on an individual basis.

1           Q.  Would those, in your mind, be  
2           categorical exclusions that would not be  
3           disfavored?

4           A.  No, I don't -- You're saying, would they  
5           be categorical exclusions that would not be  
6           disfavored by the child welfare profession in  
7           general?

8           Q.  I'm asking a double negative.  Maybe I  
9           can --

10          A.  Yeah.

11          Q.  -- rephrase it for you, to make it  
12          easier.  In your opinion, as a case worker --

13          A.  Uh-huh, right.

14          Q.  -- and you're being offered as a case  
15          worker expert --

16          A.  Uh-huh.

17          Q.  -- is it appropriate for the State to  
18          categorically exclude certain persons who have  
19          violent background, if I understand your  
20          testimony?

21          A.  That certainly is appropriate, yes.

22          Q.  Are there any other categorical  
23          exclusions that the State of Florida has that  
24          prohibits persons from adopting, other than  
25          violence and homosexuality?

1           A. Not that I'm aware of, in reviewing the  
2           adoptions policies and procedures of DCF.

3           Q. When would be the last time that you  
4           reviewed the DCF policies and procedures on  
5           categorical exclusions?

6           A. Last night.

7           Q. That's pretty recent. Are you aware of  
8           any categorical exclusions pertaining to persons  
9           with substance abuse?

10          A. No, I'm not.

11          Q. Are you aware of any exclusions for  
12          persons who have been convicted of other types of  
13          convictions, criminal convictions?

14          A. Other than violence?

15          Q. Yes.

16          A. No, I'm not.

17          Q. You talked about a word that I'd like to  
18          go back for, and I know the Court is well versed  
19          in this, but could you define for me what is  
20          considered or included in an individual  
21          assessment of an adoptive parent?

22          A. Of an adoptive parent?

23          Q. Uh-huh.

24          A. Yes. The individual assessment would  
25          cover a variety of psychosocial issues that would

1           need to be explored with a great deal of depth,  
2           those being, certainly, psychological and mental  
3           health issues, in addition to one's motivations  
4           for wanting to adopt a child, in addition to  
5           one's ability to provide for a child's future, in  
6           terms of economic needs and physical needs and  
7           emotional needs. There are a variety of areas  
8           that one would look at in terms of how they would  
9           parent a particular child and how they would  
10          address some of the problems that children  
11          experience after having been removed permanently  
12          from their biological parents. So this would  
13          include a broad number of things, certainly, in  
14          doing a home study and assessment.

15                 Q. Have you personally conducted individual  
16          assessments of persons to either foster or  
17          parent?

18                 A. Yes.

19                 Q. Or adopt, I should say.

20                 A. Yes.

21                 Q. When, at what time in your career, did  
22          you perform that function?

23                 A. When I was certainly with the  
24          Department, I did foster home assessments and  
25          adoption studies, and in private practice, I did

1 a few adoption studies.

2 Q. When you indicate that you did the  
3 individual assessments for the Department, could  
4 you give me a time frame and a job capacity?

5 A. When I was a child welfare case worker,  
6 for approximately five years with the Department.

7 Q. That was in 1973 to 1974?

8 A. Right, and then after that, when I had a  
9 private practice, I did a number of divorce  
10 custody studies, which many times include the  
11 same sort of criteria that you would do in an  
12 adoption study. I also did some independent  
13 adoption studies.

14 Q. The two that you did when you were in  
15 private practice, what did those -- Were those  
16 pertaining to placement from foster care into an  
17 adoptive home?

18 A. No, those were independent studies.

19 Q. When you say independent studies, would  
20 you tell me what you mean by that?

21 A. Usually by a relative who is wanting to  
22 adopt a child. At that time, we required  
23 stepparent studies, as well, so one, I believe,  
24 may have been a stepparent. I don't recall at  
25 the moment.

1           Q. You indicated that Florida has a  
2 shortage --

3           A. Uh-huh.

4           Q. -- of potential pool of adoptive  
5 parents, correct?

6           A. Correct.

7           Q. And I believe you said Florida was the  
8 third largest, third largest in the nation?

9           A. Yes.

10          Q. What are the other two?

11          A. It seems that Michigan was one and maybe  
12 New York. I don't really recall.

13          Q. And where did you gather that  
14 information?

15          A. From the Child Welfare League of  
16 America.

17          Q. We also talked about or you talked about  
18 the Child Welfare League of America, and you  
19 talked about --

20          A. Uh-huh.

21          Q. -- that they have policies and they have  
22 statements. Are those inspirational or are they  
23 mandated?

24          A. Their policies in terms of standards are  
25 mandated, yes.

1           Q. So is the policy, their policy -- or is  
2           it a policy or directive or advisement that the  
3           Child Welfare League believes that the exclusion  
4           of gay and lesbians is inappropriate?

5           A. It is -- at the moment, it is a policy  
6           statement that reflects their position on the  
7           issue. So at this point, it is advisory.

8           Q. So states can choose to be a member of  
9           the CWLA and not comply with their advisory?

10          A. Yes, uh-huh.

11          Q. Do you know how many persons, and you  
12          pick the time frame, have applied to be adoptive  
13          parents and were denied because they indicated  
14          their homosexuality?

15          A. No, I don't have that information.

16          Q. So would you be able to ascertain, then,  
17          how many persons would be available to adopt if  
18          the adoption exclusion went away?

19          A. No, I'm not prepared to answer that.

20          Q. So would it be fair to say that you have  
21          no idea whether it would be a small amount or a  
22          large amount?

23          A. True.

24          Q. So would it be fair to say that when you  
25          have a categorical exclusion like homosexuality,

1           where the number is unknown, you have no idea  
2           what effect that would have on the potential  
3           pool?

4           A. No. I would have to assume that it  
5           would have a large effect.

6           Q. And what would your assumption be based  
7           on?

8           A. Based on the fact that we do have large  
9           numbers of individuals in this state who are gay  
10          and who would serve as very good parents to  
11          children, so --

12          Q. What is your understanding -- since your  
13          testimony is that there's a large amount, what is  
14          that amount in the State of Florida?

15          A. I've not calculated that amount, not  
16          really researched that.

17          Q. Are you aware of anyone personally  
18          who -- besides the parties involved here, that  
19          wished to adopt in the State of Florida and were  
20          denied that because of the exclusion?

21          A. No.

22          Q. Had you, when you were a case worker,  
23          ever been involved in an instance where somebody  
24          wished to adopt and were denied because of the  
25          exclusion?



1 A. Not that I recall.

2 Q. You talked about permanency planning.

3 A. Uh-huh.

4 Q. And could you define that for me?

5 A. Yes. Permanency planning is a standard  
6 that requires that we look at permanent homes for  
7 children who are in the child welfare system, and  
8 permanency planning would include, at one end of  
9 the continuum, reunification with their  
10 biological family, or at the other end, adoption.

11 Q. You talked about the CWLA number of  
12 7,400 children where the goal is either adoption  
13 and/or TPR. Does that -- would that include  
14 people who are also in what's called kinship?

15 A. That, I don't know. That was not what  
16 was reported to me by the Child Welfare League of  
17 America.

18 Q. Okay. So you don't know, in that 7,400  
19 goal for adoption and/or TPR, whether that  
20 includes kids that are in kinship? And if you  
21 could define kinship for me.

22 A. Kinship care is with -- when children  
23 are placed with family members.

24 Q. Okay. So we don't know what that number  
25 is made up of?

1           A. No.

2           Q. Okay, and how about the 4,000 in foster  
3 care and free for adoption? Do we know whether  
4 there are any kinship care in that number?

5           A. That is specified as being a number that  
6 relates to the number of children in foster care.

7           Q. We talked about some of the negative  
8 outcomes --

9           A. Uh-huh.

10          Q. -- and you delineated a handful of them,  
11 including that children age out of the system.  
12 Are you aware of how many children -- I'm sorry,  
13 I strike that question. You talked about  
14 attachment disorder.

15          A. Uh-huh.

16          Q. Could you tell me what that is?

17          A. That is a disorder that occurs when  
18 children have experienced oftentimes abuse and  
19 removal from their primary caregivers and have  
20 difficulty forming attachments with other  
21 caregivers and other significant individuals to  
22 the extreme that it prevents them from  
23 functioning on a -- in a relationship, an  
24 interpersonal system.

25          Q. You've been in the child welfare system

1 in the State of Florida for quite some time.

2 A. Uh-huh.

3 Q. Do you know when the exclusion of  
4 homosexuals became law?

5 A. I believe it was in 1976, thereabouts.

6 Q. In 1976, were you still a case worker?

7 A. I'd have to look at my notes.

8 Q. I'm making you think.

9 A. Yes, you are.

10 Because that was a time -- I was a case  
11 worker, actually. I was a case worker with the  
12 Bureau of Children Services, with HRS.

13 Q. Is it fair to say that foster care is  
14 meant to be a temporary environment for a child?

15 A. Yes.

16 Q. And could you define or would it be fair  
17 to say that adoption would be a permanent  
18 placement?

19 A. Yes.

20 Q. Are there other permanent placements  
21 within Florida for children?

22 A. In terms of permanency?

23 Q. Yes, ma'am.

24 A. Certainly, permanent guardianship is  
25 considered a form of permanency.

1 Q. Uh-huh.

2 A. Placement with a relative, a family  
3 member. But permanency in the eyes of children  
4 is either adoption or reunification.

5 Q. Is it your understanding that a  
6 homosexually-behaving person can be a permanent  
7 guardian?

8 A. Yes, I believe that there has been  
9 discussion about permanent guardianship for a  
10 variety of different family members and such, but  
11 permanency truly is looked at through the eyes of  
12 the child, and that would be adoption, would be a  
13 preferable form of permanency.

14 Q. I understand that, and I don't dispute  
15 that, but my question was, is it, in the State of  
16 Florida, permissible to have someone who  
17 identifies himself as a homosexual be a permanent  
18 guardian?

19 A. Yes.

20 Q. Okay.

21 We talked about the individual  
22 assessment that's also done on the child; is that  
23 correct?

24 A. Yes.

25 Q. And there's also -- when you determine a

1 child is appropriate in a household, are there  
2 any other type of activities that are conducted,  
3 other than the individualized study? Do you  
4 understand my question?

5 A. No.

6 Q. Okay, that's fair enough, because  
7 neither do I. Have you heard of something called  
8 a home study?

9 A. Yes.

10 Q. What is a home study?

11 A. The home study is -- of the adoptive  
12 home? Is that what you're referring to?

13 Q. Yes, ma'am.

14 A. Okay. The home study is basically a  
15 study of the home in terms of the physical  
16 environment that the home -- as well as the  
17 emotional environment and the other factors that  
18 would make a home suitable for a child, so  
19 essentially it's looking at the physical makeup  
20 of the home, in terms of the facility and how a  
21 child would be -- would be certainly cared for,  
22 on a variety of levels, but also looking at the  
23 emotional aspect of the adoptive parents.

24 Q. In terms of being a case worker, do you  
25 consider yourself to be an expert in parenting?

1           A. In terms of being a case worker and a  
2 parent, yes.

3           Q. So you have been both?

4           A. Yes.

5           Q. That's what you're saying? Okay.

6                    Are you aware of something called the  
7 adoption exchange system?

8           A. Yes.

9           Q. What is that?

10          A. That is the system -- the national  
11 system, that you're referring to?

12          Q. I'm referring to the State of Florida.

13          A. Oh, the State of Florida. I do recall  
14 the adoption exchange system, but I can't define  
15 it at this particular time.

16          Q. Have you ever, in terms of being a case  
17 worker or in your other positions as you've grown  
18 in your professional career, had occasion to  
19 research gay and lesbian parenting?

20          A. No.

21          Q. Have you, in your role as a professional  
22 and as you've grown -- and I use that from the  
23 time of case worker, and you've excelled  
24 exceedingly well in your career. Have you had  
25 occasion to lecture on gay or lesbian parenting?

1 A. Yes, I have.

2 Q. Could you share with me those occasions?

3 A. With my students in the child welfare  
4 practice course and mental health and child  
5 welfare course.

6 Q. One of the things I thought was  
7 interesting, when we were talking about whether  
8 or not the CWLA -- whether or not they considered  
9 the political environment in their advisory or  
10 their policies, and I believe your testimony was  
11 no, they do not.

12 MR. ROSENWALD: Object. She did  
13 not testify to the CWLA.

14 THE COURT: Well, I'm going to let  
15 her answer.

16 THE WITNESS: I believe, it was my  
17 understanding, that I was responding to  
18 a question as to whether or not they  
19 would acquiesce to political pressures.

20 BY MS. MARTIN:

21 Q. I -- I'm correct, and I believe that was  
22 the question.

23 A. Right.

24 Q. And your response, though, I believe,  
25 was no.

1 A. No.

2 Q. Am I correct?

3 A. Correct.

4 Q. Why do you believe that?

5 A. Well, because their standards, as they  
6 are articulated, are based on a consensus in the  
7 field, in addition to the research in the field.

8 Q. What research are you referring to?

9 A. Well, in the particular area in which a  
10 standard is being developed.

11 Q. Has the CWLA ever issued opinions that  
12 you disagreed with?

13 A. I don't recall at the moment, no. I  
14 don't -- I haven't -- in preparation for this, I  
15 have not reviewed all of their opinions.

16 Q. I was just asking you in terms of your  
17 knowledge in the past years as a professional.

18 A. No, I agree with the majority of their  
19 opinions at this point.

20 Q. Have you ever had occasion to  
21 participate in the formulation of their policies?

22 A. No, uh-uh.

23 Q. Have you ever had an occasion to  
24 participate as a member in their delegate -- I  
25 think you said delegation?



1 A. Delegate assembly.

2 Q. Yes.

3 A. No, I have not been a member of the  
4 delegate assembly.

5 MR. ROSENWALD: Valerie, which  
6 organization are you talking about?

7 MS. MARTIN: CWLA.

8 THE WITNESS: No, that's the  
9 National Association of Social Workers,  
10 that has the delegate assembly.

11 BY MS. MARTIN:

12 Q. Okay, I'll go there. Have you ever been  
13 a delegate at the national association?

14 A. No. No.

15 Q. Thank you for the clarification.

16 Have you ever testified as an expert  
17 before?

18 A. Yes.

19 Q. On how many occasions?

20 A. I would have to review my records on  
21 that. Several. Several occasions. During the  
22 course of my work with the Department, I  
23 testified at least perhaps 50 or more times as an  
24 expert.

25 Q. An expert in what field?

1           A. In child custody, in child welfare.

2           Q. In terms of custody in terms of foster  
3 care?

4           A. Divorce, foster care.

5           Q. Have you ever testified as an expert  
6 concerning Florida's exclusion of homosexuals?

7           A. No.

8           Q. Are you familiar with any of the studies  
9 that were -- that are done concerning  
10 homosexually-behaving people and adopting in  
11 Florida?

12          A. I have reviewed some of the studies.  
13 During the course of writing my book, I reviewed  
14 a number of studies on various areas.

15          Q. Do you recall which studies you  
16 reviewed?

17          A. No, I don't.

18          Q. Do you recall how many you reviewed?

19          A. No, but there were considerable numbers  
20 of studies.

21          Q. Do you recall when you reviewed them?

22          A. I reviewed them before writing the  
23 latest edition of the book, in 2005 and '6, as we  
24 were writing it. I also consistently review  
25 studies that are published in the literature --

1 Q. What literature -- I beg your pardon.

2 A. -- on social work.

3 Q. Could you share with me what literature  
4 you're referring to, by "published in -- "

5 A. Peer-reviewed journals that I review for  
6 the courses that I teach in social work and  
7 related fields.

8 Q. I believe you testified earlier that  
9 there's a shortage of foster -- a shortage of  
10 adoptive parents in the State of Florida,  
11 correct?

12 A. Yes.

13 Q. Has that number of shortage been  
14 consistent in the number of years?

15 A. I don't have the more recent statistics,  
16 although I understand, as reported by DCF, that  
17 the numbers of children who have been placed for  
18 adoption went up slightly this year, this past  
19 year.

20 Q. Let me make sure I understand. You said  
21 the number of placement adoptions went up?

22 A. Right.

23 Q. Does that mean that there's a  
24 corresponding level of needed homes? I mean, is  
25 the disparity less?

1           A. There's -- on a very small percentage,  
2 less, yes.

3           Q. Have you ever seen, in the home study,  
4 where it asks for someone to identify whether or  
5 not they're homosexual?

6           A. I do know that it is discussed in the  
7 policies of DCF that if someone does identify  
8 that they're homosexual, that they are to be  
9 rejected, but I've not seen a particular study in  
10 which someone was rejected.

11          Q. Have you ever, in your career as a case  
12 worker or up through your subsequent positions,  
13 ever had occasion to inquire about someone going  
14 in to adopt -- someone who is seeking to be an  
15 adoptive parent, to ask them whether they were  
16 homosexual?

17          MR. ROSENWALD: I'm going to object  
18 on the grounds of relevance.

19          THE COURT: Tell me why it's  
20 relevant, Ms. Martin.

21          MS. MARTIN: Well, she believes --  
22 she has claimed to be an expert in the  
23 child welfare system, adoption policies,  
24 child welfare policies and practices.  
25 She's a former case worker. I'm just

1 asking if she's ever had occasion to  
2 have to deal with that question.

3 THE COURT: I'll let you answer,  
4 and then we'll move on.

5 THE WITNESS: Okay, I have placed  
6 children with gay and lesbian couples,  
7 yes.

8 MS. MARTIN: And when you -- I did  
9 stop. I don't think I have any other  
10 questions. Thank you.

11 THE COURT: Can I interview for one  
12 point? I'm concerned about these  
13 numbers that I'm hearing, because just  
14 from my personal anecdotal world,  
15 there's just something not right about  
16 them, I think. You have Ms. Davis --  
17 Waters, excuse me, Cathy Waters,  
18 testifying there are about 900 to a  
19 thousand children who are adoptable,  
20 waiting for adoption in Florida. This  
21 just seems very high to me, 7,400 with a  
22 goal of adoption, and adoption -- I  
23 don't know what the 4,000 is. We need  
24 to find out what the number is. Can you  
25 tell me --

1 THE WITNESS: I -- I'm sorry.

2 THE COURT: What -- again, what is  
3 the 7,400 and the 4,000?

4 THE WITNESS: These, I did  
5 communicate with the Child Welfare  
6 League --

7 THE COURT: Because we don't even  
8 have 4,000 children in care in Miami  
9 anymore, in care, all -- all together.

10 THE WITNESS: This is the number  
11 that's reported by DCF, the 4,000, and  
12 simply, it states -- actually, it's on  
13 their website, 4,300 and some odd  
14 children are available for adoption in  
15 foster care, as it's stated on the  
16 website, in their recruitment section.

17 The Child Welfare League of America  
18 states that -- when I questioned how  
19 these statistics vary, they said that  
20 the 7,300, almost 7,400 number is the  
21 number that's reported by the State,  
22 from child welfare agencies within the  
23 State of Florida. When I -- They said  
24 the only thing that might reflect the  
25 reason for the difference is whether or

1 not these numbers were reported  
2 accurately.

3 MR. ROSENWALD: Your Honor, I don't  
4 have the deposition in front of me, but  
5 I believe that the 900 or so number that  
6 is referenced in the deposition refers  
7 to children who are on the adoption  
8 exchange because more than 90 days have  
9 passed since they were available for  
10 adoption. So I think that accounts for  
11 the smaller number in that deposition, I  
12 think.

13 THE COURT: Well, I just need to  
14 have this clarified --

15 MR. ROSENWALD: Okay.

16 THE COURT: -- sometime in these  
17 four days.

18 MR. ROSENWALD: Perhaps we can talk  
19 and try to agree on a number.

20 THE COURT: Well, maybe get Ms.  
21 Waters back to answer that question. I  
22 don't know. It just seems very high to  
23 me. I'm not sure we even have much more  
24 than 7,400 children in care in Florida.

25 MR. ROSENWALD: We'll try and nail

1           it down in the next day or so.

2           THE COURT:  Okay, thank you.  I'm  
3           sorry.  Thank you.

4           Can I ask one other question?  The  
5           permanent guardianship --

6           THE WITNESS:  Uh huh.

7           THE COURT:  I'm not sure how you  
8           can be a permanent guardian and a foster  
9           parent at the same time.

10          THE WITNESS:  Well, I'm not sure  
11          that you couldn't be.  I guess I'm --  
12          I'm not understanding the question  
13          entirely.

14          THE COURT:  Well, the law -- for  
15          example, if you're a foster parent,  
16          you're licensed by the State, you  
17          receive a stipend every month, et  
18          cetera.

19          THE WITNESS:  Uh-huh.

20          THE COURT:  And you are subject to  
21          court scrutiny --

22          THE WITNESS:  Uh-huh.

23          THE COURT:  -- for your entire --  
24          the entire time that you have your  
25          child.  If you have a permanent -- if



1           you're a permanent guardianship, the  
2           moment that permanent guardianship is  
3           entered, the jurisdiction of the case is  
4           finished, in terms of report.

5           THE WITNESS: Right. Right.

6           THE COURT: And it just -- there's  
7           just something --

8           In our -- here in Miami, we have  
9           never, ever made a foster parent a  
10          permanent guardian. It seems to be a  
11          conflict, in terms of what those two  
12          things are.

13          MR. ROSENWALD: Your Honor, I don't  
14          think Professor Lager suggested that you  
15          can be both.

16          THE WITNESS: Did I say that?

17          MR. ROSENWALD: Maybe ask her if  
18          that was what she meant, because I don't  
19          think she meant that, if you --

20          THE COURT: Well, I think, if she's  
21          the expert, I need to clarify that.

22          THE WITNESS: Right.

23          THE COURT: I mean, can you be a  
24          foster parent and a permanent guardian?

25          THE WITNESS: Well, no. Foster

1 care is temporary, the philosophy of  
2 foster care, that it is a temporary  
3 holding system for children, and after  
4 which permanent guardianship would be a  
5 permanent plan. Generally, the  
6 permanent guardianship was developed on  
7 a national level for many families who  
8 wanted -- who were given long-term  
9 custody of children by the -- through  
10 the dependency court, and many of these  
11 families did not want to adopt because  
12 they didn't want family members' rights  
13 terminated.

14 THE COURT: Uh-huh.

15 THE WITNESS: So some states  
16 developed permanent guardianship for  
17 many of these families. But permanent  
18 guardianship and foster care certainly  
19 would not -- would not be compatible.

20 THE COURT: Okay.

21 MR. ROSENWALD: Could we have one  
22 moment to confer, Your Honor?

23 THE court: Uh-huh.

24 (Discussion off the record)

25 THE COURT: Apparently we have

1                   22,000 children in out-of-home care in  
2                   Florida.

3                   THE WITNESS: 22,000?

4                   THE COURT: 22,000.

5                   THE WITNESS: Uh-huh. That's  
6                   significant.

7                   THE COURT: Anything else?

8                   MR. ROSENWALD: If we could just  
9                   have one very quick moment.

10                  THE COURT: Sure.

11                  MR. ROSENWALD: I have nothing  
12                  further.

13                  THE COURT: Anything else?

14                  Thank you, Professor.

15                  THE WITNESS: Thank you.

16                  MR. ROSENWALD: Thank you,  
17                  Professor Lager.

18                  THE WITNESS: Uh-huh.

19                  THE COURT: Who's next?

20                  MR. ROSENWALD: We -- Next is Dr.  
21                  Margaret Fischl.

22                  THE COURT: Okay.

23                  THE BAILIFF: Say again?

24                  THE COURT: Fischl.

25                  MR. ROSENWALD: Dr. Margaret

1 Fischl.

2 (Discussion off the record)

3 THE CLERK: Raise your right hand,  
4 please.

5 THEREUPON:

6 MARGARET A. FISCHL, M.D.  
7 was called as a witness by the Petitioner and,  
8 having been first duly sworn, was examined and  
9 testified as follows:

10 THE CLERK: State your name for the  
11 record, please.

12 THE WITNESS: Dr. Margaret Fischl.

13 THE CLERK: Please be seated.

14 DIRECT EXAMINATION

15 BY MR. ROSENWALD:

16 Q. Good afternoon, Dr. Fischl. How are  
17 you?

18 A. Fine, thank you.

19 Q. Would you please summarize for the Court  
20 your educational background?

21 A. Sure. I received a Bachelor of Science  
22 degree in chemistry from the University of Miami,  
23 and then went on to get my Medical Doctorate  
24 degree at the University of Miami School of  
25 Medicine, and graduated in 1976 -- not that I'm

1 aging myself.

2 Q. Do you have any Board certifications?

3 A. Yes. I went on to train in internal  
4 medicine and am Board certified in internal  
5 medicine.

6 Q. Would you please summarize for the Court  
7 your faculty appointments, focusing on HIV and  
8 AIDS in the academic setting?

9 A. Currently, I am a full professor of  
10 medicine at the University of Miami School of  
11 Medicine. I'm director of the AIDS Clinical  
12 Research Unit there, and I'm also director --  
13 co-director of the Center for AIDS Research.

14 In addition, I should mention, because  
15 it also is a faculty position, I'm division chief  
16 for Special Immunology.

17 Q. Would you please summarize for the Court  
18 your current and past teaching responsibilities  
19 that focus on STDs and AIDS?

20 A. Initially, I worked with medical  
21 students, interns, residents, fellows, and taught  
22 them how to be physicians, and because of the  
23 work I do, which is substantial in HIV/AIDS, I  
24 did a fair amount of teaching, both to the  
25 community, to other physicians, teaching them

1           what is AIDS, what's its manifestations, how it's  
2           transmitted, how you treat it, and wound up  
3           doing, you know, a substantial amount of  
4           lecturing, nationally, internationally and for  
5           the local community, in those areas.

6           Q.    Have you been awarded any Federal or  
7           State grants for which you were the principal  
8           research investigator?

9           A.    Yes, several.  Going back to the '80s, I  
10          received grants from the Center for Disease  
11          Control, looking at transmission of HIV.  I  
12          received Federal grants from the National  
13          Institutes of Health, both from the National  
14          Cancer Institute and from the National Institute  
15          of Allergy and Infectious Diseases, initially  
16          related to the household and heterosexual  
17          transmission of HIV.  That was actually a merit  
18          award, which was a 10-year grant.  Also looked  
19          at -- in another grant, again, heterosexual  
20          transmission of HIV, and then focused -- in the  
21          mid-'80s, was one of the nine first grant awards  
22          to look at the treatment of HIV, and that was a  
23          large national grant that looked at treating HIV  
24          and its complications, and I've actually competed  
25          for that grant successfully for the past 20

1           years.

2                         And then more recently, we were able to  
3           compete for a Center for AIDS Research grant from  
4           the National Institutes of Health. A long  
5           career.

6                         Q. Do you or have you served on any  
7           committees or boards that are relevant to HIV  
8           transmission, life expectancy of people living  
9           with HIV and AIDS, or STDs generally?

10                        A. Yes, quite a few. One, I was actually  
11           on a board for the State of Florida, putting in a  
12           program for HIV. I've also sat on boards and  
13           committees for the Center for Disease Control,  
14           the Food and Drug Administration, for the  
15           National Institutes of Health, and they really  
16           represent a variety of panels that included  
17           describing HIV/AIDS, describing transmission  
18           patterns, and then later focusing predominantly  
19           on the treatment of HIV infection.

20                        Q. Have you won any professional awards,  
21           recognizing you for your work in relation to HIV  
22           and AIDS?

23                        A. Several, and -- you know, I'm almost  
24           embarrassed a little. You can look at my CV, but  
25           I'll just highlight a few that I actually am very

1 proud of. One of them came from the medical  
2 school, and it was a research award that they  
3 award for excellence in research in academic  
4 medicine, and I was given that award. That's a  
5 very rare award. They don't give it every year.  
6 So there's a big picture of me in the medical  
7 school, and I guess students can look at that.

8 But then the Lois Pope Life  
9 International Research Award was given to me.  
10 The Weizmann Institute gave me a research award,  
11 a Woman of Vision award -- several, you know.  
12 I've actually been lucky in my career.

13 Q. And there are others listed on your CV?

14 A. There have been many, yes.

15 Q. Are you a member of any professional  
16 associations?

17 A. Yes, I am. The American Medical  
18 Association, the American College of Physicians,  
19 for which I'm a Fellow for, and then the  
20 Association for the Advancement of Science.

21 Q. Have you given scientific presentations  
22 relative to HIV transmission, life expectancy of  
23 people living with HIV and AIDS, or STDs  
24 generally?

25 A. Yes, I have, and again, you can look at



1 my CV. I have lectured internationally, at  
2 international conferences. Nationally, I've  
3 given keynote talks, as well as presented a fair  
4 amount of study data that I've done. There are a  
5 lot of them, you know, hundreds.

6 Q. Have you sat on any editorial boards  
7 relevant to HIV transmission, life expectancy of  
8 people living with HIV and AIDS, or STDs  
9 generally?

10 A. Yes. You know, just looking, you know,  
11 at the past, you know, 10 to 15 years, I've sat  
12 on several of them, and some of them were pretty  
13 prestigious journals, like the Journal  
14 of American -- JAMA, which is the Journal of the  
15 Medical Association, the New England Journal, but  
16 also, in the past 10 years, there have been  
17 specialty journals, like AIDS, which focuses  
18 predominantly on AIDS, out of the UK, and I've  
19 sat on those, as well.

20 Q. Do you serve as a peer reviewer for  
21 other researchers' work?

22 A. Yes, I do. I actually review for  
23 several leading journals, New England Journal,  
24 AIDS journals, and am one of their reviewers, and  
25 I continue to do that fairly actively. That's, I

1 think, part of your responsibility in doing  
2 research and being in academic medicine, that you  
3 peer review, you know, other individuals' work  
4 for the journals so that what's published, you  
5 know, has really been looked at fairly carefully.

6 Q. Have you provided professional testimony  
7 as an expert on HIV and AIDS to any governmental  
8 bodies?

9 A. Yes, I have. I actually testified --  
10 well, one, to the State of Florida, about  
11 HIV/AIDS and transmission. I've also testified  
12 before the U.S. Senate, before Kennedy's  
13 subcommittee.

14 Q. Have you testified for any agencies of  
15 the Federal Government?

16 A. Oh, many. I misunderstood your  
17 question. Yes, I've been -- I have testified for  
18 the Center for Disease Control. I've testified  
19 before the Food and Drug Administration, and also  
20 for the National Institutes of Health.

21 Q. Have you authored any scientific  
22 articles in peer-reviewed journals relevant to  
23 HIV transmission, life expectancy of people  
24 living with HIV and AIDS, and STDs generally?

25 A. Yes, I have, and they initially focused

1 on the transmission of HIV, the heterosexual  
2 transmission, also household transmission, and  
3 then described -- actually described what  
4 HIV/AIDS is, you know, how you would recognize  
5 it, how you would treat it, and then literally  
6 spent the last 15 years focusing on how you treat  
7 HIV, you know, doing the very first study, the  
8 first drug ever approved, which was Zidovudine or  
9 AZT, and then looking at combining drugs  
10 together, to what we're looking at now, which is  
11 potent combination antiretroviral therapy.

12 Q. Turning to your clinical work, would you  
13 please summarize your clinical experience  
14 relevant to STDs generally and HIV and AIDS  
15 specifically?

16 A. It focuses, to a large extent, on my  
17 research, because what I do is clinical research.  
18 So I test drugs, sometimes the first time a drug  
19 has ever been given to man, and in that setting,  
20 we therefore take care of those patients, as  
21 well, and we have a small practice in that  
22 setting, as well. And we take care of patients  
23 predominantly that have HIV/AIDS or complications  
24 of that.

25 Q. Do you currently direct any clinical

1           program?

2                   A.  Yes, I do.  I direct a very large  
3           program.  It's the AIDS Clinical Research Unit.  
4           I've been directing that since the late '80s, and  
5           what I consider it is really a state-of-the-art  
6           research facility that allows us -- that has a  
7           large group of individuals with me, that has  
8           allowed us to do our research work, from  
9           epidemiological work to our transmission studies,  
10          and most recently focusing on treatment, and  
11          various types of treatment, including, for  
12          example, vaccines.

13                  Q.  How do you keep abreast of the state of  
14          the science relating to infectious diseases such  
15          as HIV and AIDS or other STDs?

16                  A.  There's several ways you can do that.  I  
17          think, for me, what's most important is actually  
18          the literature, and looking at leading journals,  
19          such as the New England Journal, or looking at  
20          specialty journals, such as AIDS.

21                  The other way you can do that is by  
22          attending meetings that are either national or  
23          international meetings.  As part of the research  
24          programs that I participate in, those groups  
25          bring in experts, as well, and will present the

1 leading -- literally cutting-edge study designs  
2 and information that's available.

3 Q. How is keeping up with the research  
4 relevant to your work?

5 A. It's critical. It is basically --  
6 without it, I could not do my work, because, one,  
7 what I do is -- currently, is design new studies  
8 for the treatment of HIV, and therefore I have to  
9 work with basic scientists, behavioral  
10 scientists, and really talk to them, communicate  
11 with them, and therefore, to design that, you  
12 have to be working with your colleagues and have,  
13 literally, information before everybody else  
14 does. It's a really critical type of interaction  
15 that you have to do.

16 Q. Is the research upon which you rely  
17 published in mainstream scientific journals,  
18 widely recognized in your field?

19 A. It's all peer-reviewed journals, which  
20 is really critically important. I mean, the NIH  
21 actually -- I mean, if you're funded by the NIH,  
22 they expect you to submit to peer-reviewed  
23 journals so that, you know, it is looked at, it  
24 is judged as reputable, and gets published. It's  
25 a golden standard.

1           Q. Is the evidence that you rely on the  
2 kind of materials that members of your profession  
3 would reasonably rely on in formulating opinions?

4           A. Yes.

5           Q. Are there any compilations of data  
6 regarding the demographics of the HIV epidemic  
7 that you are familiar with?

8           A. Yes.

9           Q. Can you describe those?

10          A. Yes. At the Center for Disease Control,  
11 which is part of the Federal Government, the  
12 responsibility is to -- they have many  
13 responsibilities, but they are there to really  
14 protect the public health. They do epidemiology.  
15 They track the HIV epidemic. They've done that  
16 from the beginning. They look at transmission.  
17 They look at those that are infected and they  
18 describe that, because that's not only trying to  
19 understand what's happening, but it also helps,  
20 you know, to protect the public, to protect  
21 patients. So they make recommendations, as well.  
22 And they've done that, you know, through the  
23 decades.

24                   The other place that one can look at is  
25 internationally, and that's looking at UNAIDS,

1 and they're responsible for really describing the  
2 entire epidemic, globally.

3 Q. Do you regularly review that data?

4 A. Yes, I do. One, when you're funded by  
5 the NIH, it is a requirement that the patients  
6 that -- part of your research study is the  
7 affected community, and therefore you have to  
8 show what is going on in your community, your  
9 state or nationally, and that those are the  
10 patients that you're looking at, so that's  
11 something I look at, at least twice -- you know,  
12 I have to physically report back to the NIH twice  
13 a year.

14 Q. Now, you've talked a lot about HIV and  
15 AIDS. Can you please summarize for the Court  
16 your qualifications to discuss STDs other than  
17 HIV and AIDS?

18 A. You know, first of all, HIV is a  
19 sexually-transmitted disease, and one, when we  
20 were first working with HIV, we were looking at  
21 what are the relative risk factors for acquiring  
22 HIV infection, and the one thing that we focused  
23 on were other sexually-transmitted diseases, and  
24 therefore we evaluated -- we did questionnaires  
25 for patients, we examined patients, we tested for

1           STDs, we worked with the Health Department. I  
2           worked initially in the STD Clinic in the Health  
3           Department. I still have my fellows and faculty  
4           working in the STD Clinic and training there.

5                     And as a physician in this area, you  
6           know, STDs is something that you do see and you  
7           have to recognize it and treat it.

8                     Q. I'm going -- with the Court's  
9           permission, I'm going to show you a document and  
10          ask you if you recognize that document.

11                    A. Yes. It's my CV.

12                    THE COURT: Marked as --

13                    MS. COOPER: This one's 8.

14                    THE CLERK: -- Petitioner's Exhibit  
15                    8.

16                    MR. ROSENWALD: And at this time, I  
17           would move to admit Dr. Fischl's CV as a  
18           summary of her qualifications.

19                    MR. FAHLBUSCH: No objection.

20                    THE COURT: So ordered.

21                    MR. ROSENWALD: And at this time, I  
22           would move to qualify Dr. Fischl as an  
23           expert in transmission of HIV, treatment  
24           of HIV, short and long-term outcomes for  
25           people living with HIV and AIDS and



1 other STDs.

2 MR. FAHLBUSCH: My only caveat is,  
3 in the expert witness disclosures, other  
4 HIVs (sic) were not mentioned -- I mean,  
5 other STDs. Only HIV was mentioned. So  
6 I would object to Dr. Fischl being  
7 offered as an expert in an area which  
8 was not disclosed to the respondent.

9 THE COURT: Do you want to respond?

10 (Discussion off the record)

11 MR. ROSENWALD: Your Honor, we're  
12 checking the disclosure right now, but  
13 as a professor, as Dr. Fischl testified,  
14 HIV is an STD. In order to discuss HIV  
15 and know about HIV, you need to be able  
16 to talk about STDs and have a knowledge  
17 of other STDs and how they're treated  
18 and how infectious diseases in general  
19 are treated. I believe HIV is a subset  
20 of STDs, and I don't believe there's any  
21 unfair surprise in asking Dr. Fischl to  
22 discuss the broader category of the type  
23 of disease that she's -- that HIV is a  
24 member of.

25 MR. FAHLBUSCH: HIV is also a

1 subset of all infectious diseases, but  
2 Dr. Fischl wasn't offered as an expert  
3 on all infectious diseases. The fact  
4 that it's a subset of another set of  
5 diseases certainly doesn't change the  
6 fact that if it's not covered by the  
7 expert witness disclosure, it's not a  
8 subject that the witness should be  
9 testifying about in this area.

10 MR. ROSENWALD: Your Honor, it  
11 is -- true, broadly, all infectious  
12 diseases might be a little bit broad,  
13 but STDs is very closely related to HIV,  
14 and I would point out that the only  
15 reason there is surprise here is because  
16 the State chose not to depose Dr.  
17 Fischl. Had they sat her down and asked  
18 her what her opinions are and what  
19 individual areas of STDs and HIV and  
20 whether it would include that, they  
21 would certainly have gotten that  
22 information, and that's the way that  
23 parties litigating a case get that  
24 information, they explore what the  
25 opinion entails, and I don't believe

1           there's any undue disconnect between HIV  
2           and the broad type of diseases that it's  
3           a part of.

4           THE COURT: Anything else,  
5           Mr. Fahlbusch?

6           MR. FAHLBUSCH: I'm sorry, Your  
7           Honor, we thought we had a right to rely  
8           on the expert witness disclosures.  
9           Counsel contends that we do not. Our  
10          position is that we did.

11          THE COURT: Okay, I'm going to  
12          grant your motion, Mr. Rosenwald, and  
13          qualify the witness as an expert in  
14          treatment and diagnosis of HIV and STDs,  
15          okay?

16          MR. ROSENWALD: Thank you. And the  
17          other areas that I mentioned?

18          THE COURT: I'm making a finding on  
19          the record that it's very clear, under  
20          702.01 that this was the intent, in  
21          mention of education, experience,  
22          training, and knowledge and skill in the  
23          area of STDs and HIV.

24          BY MR. ROSENWAHL:

25          Q. Dr. Fischl, you mentioned that there is

1 a body that collects data on the demographics of  
2 HIV infection in the United States; is that  
3 right?

4 A. Correct.

5 Q. And that is the CDC?

6 A. It is the Center for Disease Control,  
7 yes.

8 Q. And just to repeat, what about  
9 internationally?

10 A. Internationally, it's the UNAIDS.

11 Q. What is the CDC?

12 A. The CDC is a Federal agency, where its  
13 mission is to actually look at the cause of and  
14 prevention of infections, other diseases, also  
15 looking at injuries, looking at other health that  
16 would negatively impact the public.

17 Q. Is the CDC an agent of the Federal -- an  
18 agency of the Federal Government?

19 A. It is, yes.

20 Q. Is CDC data and information relied on by  
21 people in your field?

22 A. Definitely, it is. I mean, they're the  
23 agency that -- they have other centers within the  
24 Center for Disease Control, and one of them  
25 actually focuses exclusively on HIV/AIDS.

1           Q. What about the UNAIDS data? Is that  
2           relied on by members of your field?

3           A. It is. It is part of the United  
4           Nations' task forces, and it is supported by many  
5           other agencies within the United Nations,  
6           including the World Health Organization.

7           Q. According to that data, are only gay  
8           people affected by HIV?

9           A. No. When you look at HIV infection, the  
10          major routes of transmission are sexual  
11          transmission and the other is blood transmission,  
12          and when you go look at -- This is a global  
13          epidemic, it's a panepidemic, and when you look  
14          at HIV, the major route of transmission is  
15          sexual, and it's heterosexual transmission.

16          You can look at different areas of the  
17          globe or countries, and you may see slightly  
18          different patterns. If you look at Sub-Sahara  
19          Africa, for example, you're looking at the  
20          majority of transmission in that area of the  
21          world as heterosexual transmission. If you move  
22          towards areas like Russia, you're seeing more  
23          drug use, for example. And if you go to Europe,  
24          you're seeing more of sexual transmission,  
25          heterosexual transmission, transmission among gay

1 men, and when you come to the United States,  
2 again, you're seeing a slightly different pattern  
3 in this part of the hemisphere, where the major  
4 transmission is still sexual transmission, and  
5 you see that in men that have sex with men, you  
6 see heterosexual transmission, you see drug use,  
7 and you see patterns of how this virus is  
8 transmitted. So, you know, those patterns, you  
9 know, will change, where you are.

10 Q. Are gay people --

11 A. It's clearly not only a gay disease.

12 That was --

13 Q. Are gay people more affected than other  
14 groups?

15 A. If you look -- one, it depends on how  
16 you want to look at the data. If you look --  
17 let's look at the United States now, and you look  
18 at current infection. You're going to say that,  
19 you know, those reported now that are having  
20 current HIV infection, 50 percent, about, of  
21 those infections are occurring among men that  
22 have sex with men, about 35 percent are among  
23 heterosexual men and women, and the rest are  
24 among IV drug abusers.

25 You can also -- because there's new

1 testing patterns now that are being done and  
2 studies that are done, you could actually look at  
3 prevalence rates, where you would go out and look  
4 at a cohort of sexually active men, for example,  
5 and you would say, how many of them are HIV  
6 positive, and recently a study was completed that  
7 had been done years ago, and if you therefore  
8 look at those prevalence data, you would say --  
9 which was reported by the Center for Disease  
10 Control -- 25 percent of gay men were HIV  
11 infected. So the rate, you know, is high, but  
12 the majority of gay men do not have HIV  
13 infection.

14 Q. Are lesbians also disproportionately  
15 affected by HIV?

16 A. No, they're not.

17 Q. How do lesbians compare to the general  
18 population, in terms of risk?

19 A. Oh, there is no risk. There is no  
20 described transmission among lesbian women of HIV  
21 infection.

22 Q. Does the CDC identify woman-to-woman  
23 sexual contact as a risk factor for HIV?

24 A. They do not. No, they do not.

25 Q. Does the CDC identify man-on-man sexual

1 contact as a risk factor for HIV?

2 A. Yes, they do. Yes, they do.

3 Q. Does the CDC identify heterosexual  
4 contact as a risk factor for HIV?

5 A. Yes, they do.

6 Q. Are there any other groups that are  
7 disproportionately affected by HIV in this  
8 country besides gay men?

9 A. If you -- yes, there are, because the  
10 other way of looking at demographics, because  
11 what you want to do is really also get people  
12 into care and look at prevention -- the other  
13 group that is very disproportionately affected  
14 are those that are Black, and again, if you look  
15 at prevalence data, you can show that based on  
16 the number of Blacks that are in the United  
17 States and the rate of HIV infection, you can see  
18 that Black compared to White, that their risk is  
19 20 times, and then if you look at women that are  
20 Black, their risk is like 50, 60 times. So the  
21 disproportionate in the Black community is real,  
22 and something that everyone has really tried to  
23 outreach to the Black community, to recognize and  
24 to decrease prevention.

25 Q. And that's compared to White people?



1           A. That's compared to White, yes.

2           Q. Of the women who do have HIV, how do  
3 they contract it?

4           A. The majority of women contract it  
5 heterosexually.

6           Q. Have the demographics of HIV infection  
7 changed at all during the course of the epidemic?

8           A. Oh, I -- yes, because that's something I  
9 actually saw and described, and I think it  
10 dramatically has changed.

11                    When we were first describing this, we  
12 saw it predominantly among men that had sex with  
13 men, and then we saw it increasingly among those  
14 that were Black, and then we increasingly saw it  
15 among women. So we watched -- we literally  
16 watched the statistics change, you know, with  
17 time, as the epidemic expanded.

18           Q. Turning to the modes of transmission of  
19 HIV, how is HIV contracted?

20           A. It's sexually transmitted. It is a  
21 blood-borne pathogen, so it's also transmitted by  
22 blood inoculum. So you would -- the virus  
23 actually has to get into the bloodstream. It has  
24 to attach to an immune cell, which is we call a  
25 CD4 cell, and get inside that cell and cause that

1 cell to dysfunction. So the transmission is  
2 blood-borne, whether it's through a sexual  
3 mucosal type of pattern or whether it's through  
4 an inoculum exposure.

5 So it's not something that is casually  
6 spread at all, and like for example, for a health  
7 care worker in taking care of a patient, you  
8 would use precautions, you would wear gloves in  
9 caring for the patient, but your risk would  
10 actually involve direct -- accidental direct  
11 stick from a needle and inoculation and injection  
12 of blood.

13 One can also say that this virus is not  
14 highly contagious. If you go look, for example,  
15 at hepatitis, hepatitis is very contagious. This  
16 virus is not.

17 Q. Is your opinion on the accepted modes of  
18 transmission supported by scientific research?

19 A. Oh, absolutely. It's well -- I mean,  
20 the patterns of how this virus is transmitted was  
21 very extensively investigated and has been  
22 collaborated through many groups, as well,  
23 working together and describing it and working  
24 with the CDC and with the NIH.

25 Q. And is your opinion confirmed by the

1 CDC?

2 A. The CDC has been very actively involved,  
3 although we've argued in the beginning that  
4 heterosexual transmission was taking off in the  
5 United States. I think they realize that now,  
6 yes. But that's good to argue, because that's  
7 how you make progress.

8 Q. Is it generally accepted in your field  
9 that these are the modes of transmission?

10 A. Yes, it is.

11 Q. Is someone at risk of contracting HIV  
12 just by living in the same household with someone  
13 who is HIV positive?

14 A. Looking at household transmission was  
15 done very extensively in the beginning of the  
16 epidemic, appropriately so, and there were many  
17 studies that were done, including one that I did  
18 with my colleagues at the University, and just  
19 when you look at that and you look at household  
20 transmission, you would be looking at casual  
21 transmission in the household and there have been  
22 many studies that have been done, and I think  
23 have shown repeatedly that the risk of household  
24 transmission is very low to nonexistent.

25 And if you look at the literature, and

1 particularly working with the Center for Disease  
2 Control, there are a handful of cases that are  
3 well described in which, in the beginning of the  
4 epidemic, when we were looking at patients that  
5 had AIDS and had very high amount of virus in the  
6 blood and no treatment yet to treat HIV  
7 infection -- so we're looking at a setting now,  
8 you have to step back, you know, 25 years in time  
9 of what we're looking at, there were about eight  
10 or 10 cases that were described that occurred in  
11 a household. Half of those cases were home  
12 health care type settings, and therefore one  
13 could explain, you know, how that happened, and  
14 really resulted in a health care type setting  
15 that was done in the household.

16           There were two cases that are fairly  
17 well described that probably represent what you  
18 would call household transmission. And that, for  
19 example, involved a mother who had AIDS and a  
20 child, who slept together. The mother was very  
21 sick, she had extensive skin lesions, and the  
22 child actually would groom and take care of those  
23 skin lesions and clean them up. We would not,  
24 today, you know, recommend anything like that,  
25 you know, should happen in the house. But there

1 is good data that the child acquired HIV  
2 infection in that setting.

3 Q. And that's eight or so cases over how  
4 many years?

5 A. That was in the beginning of the  
6 epidemic, it was in the '80s, and there were many  
7 other studies that were done that looked at  
8 household-type studies that did not find that  
9 there was household transmission, other than what  
10 I've described.

11 Q. And you said that some of the cases  
12 involved home health care situations.

13 A. Right.

14 Q. Can you describe for the Court what that  
15 means?

16 A. Well, you know, for example, the  
17 other -- one of the cases was a mom who was --  
18 who had two sons that had hemophilia, which is a  
19 bleeding disorder, and you would have to get  
20 Factor VIII, which is given intravenously as a  
21 blood product, and it was -- and it was known,  
22 for example, years and years ago, that Factor  
23 VIII was contaminated with HIV. But one of the  
24 child -- one of the children had AIDS, and she  
25 would be giving the infusions, and it's clear

1           that she probably cross-contaminated the needles  
2           and infected the second child.

3           Q.   And you said that we wouldn't advise  
4           people to -- a child to groom and pick lesions of  
5           a parent anymore.  Would you even see HIV-related  
6           or AIDS-related lesions today?

7           A.   I think what we see today is very  
8           different.  It's day and night.  Back in the  
9           '80s, when patients presented, they presented  
10          with AIDS, so they presented with complicated  
11          infections, life-threatening infections, and one  
12          of the major manifestations were very severe skin  
13          problems and very severe skin complications.  And  
14          it also depended on what you were exposed to.  
15          So, for example, if you were from Haiti,  
16          the type -- When you have AIDS, your immune  
17          system is damaged, and therefore you may have  
18          been exposed to infections that now would  
19          reactivate, and therefore the types of infections  
20          you would see would be very unusual.  So we would  
21          see -- we described things that we had not seen  
22          for decades in infectious diseases, in the early  
23          '80s, with AIDS.  And therefore, the one case I  
24          was talking about actually represent an exposure  
25          in a Haitian family where the infectious agents

1           were very unusual, and therefore had very bad  
2           skin problems. We don't see that today, thank  
3           goodness.

4           Q. You told the --

5           A. We've made a tremendous amount of  
6           progress.

7           Q. You said that you actually were the  
8           principal investigator on one of the studies --

9           A. Yes.

10          Q. -- on household transmission.

11          A. Yes.

12          Q. Can you tell the Court how that study  
13          was designed?

14          A. We designed it back then in that we  
15          identified someone that had AIDS -- I mean, we --  
16          first of all, we developed a protocol, we went to  
17          the IRB, we got consents and all of that -- and I  
18          have to say that. We would identify someone that  
19          had AIDS, and then if they agreed, we would  
20          evaluate that household, and that would include  
21          sexual partners in that household, it would  
22          include children in the household, it would  
23          include other people in the household, whether it  
24          was uncles, aunts, someone that was visiting at  
25          that time, a nephew that may have been down from

1 New York that was visiting.

2 We would then evaluate that whole  
3 household. We would talk to them. We would ask  
4 them what was going on in the household. We had  
5 extensive questionnaires that we had already  
6 field tested, and then we would actually do blood  
7 testing. We would actually evaluate that whole  
8 household for HIV infection, and then we would --  
9 we would then follow up several months later,  
10 again, and do a similar type of questioning and  
11 blood testing.

12 Q. And what did your study show?

13 A. Well, the study showed that there was  
14 clearly a risk to a sexual partner, and that if  
15 we -- we also recognized that there was perinatal  
16 transmission, so that if a mom was infected, that  
17 there was a possibility that it could be  
18 transmitted to a child, and outside -- when we  
19 then looked at the household, as far as other  
20 children in the household that were not infected,  
21 or other members of the household, we did not  
22 find any evidence of HIV infection outside of the  
23 traditional sexual transmission patterns.

24 Q. And when you say perinatal infection,  
25 that means before the child is born?



1           A. Yes. That's a mom who is HIV-infected,  
2           who therefore transmitted the virus to the child  
3           during pregnancy. And the other thing that was  
4           shown, with one of my colleagues in another  
5           study, just to let you know, is that perinatal  
6           transmission does not happen all the time, you  
7           know, that the rates were -- it is not a hundred  
8           percent.

9           Q. Were your findings consistent with other  
10          research that you've talked about?

11          A. Yes. There were several other studies,  
12          one by Friedland, that was in the New England  
13          Journal, that showed something very similar, in a  
14          much larger study that he did, and also with  
15          follow-up, and I think that was very important,  
16          because there were many studies that were done  
17          and what it really showed was consistency on what  
18          was happening.

19          Q. And were the studies that you've talked  
20          about in this area published in well-respected  
21          peer-reviewed journals?

22          A. Oh, yes. Yes. Mine was in JAMA.  
23          Jerry's was in the New England Journal of  
24          Medicine. And also, in doing that, we worked  
25          with the Center for Disease Control, because you

1           could not do that. They were involved with us,  
2           as well.

3           Q. Have members of the medical profession  
4           reached consensus as to whether there's a risk of  
5           household transmission of HIV?

6           A. I think there was a very good consensus  
7           that was arrived, in that, you know, because of  
8           the two cases that I described, that the risk was  
9           minimal to none, and I think Jerry Friedland went  
10          to the extent to say none.

11          Q. Do scientists continue to research this  
12          issue?

13          A. No, we don't. The CDC continues --  
14          again, if someone is identified to have HIV  
15          infection, as a physician you need to identify  
16          what their risk factor was, but there has been no  
17          household transmission recognized in the past 15  
18          years, and therefore studies -- I think there's a  
19          consensus now that it does not occur, and the  
20          CDC, in tracking the epidemic, has not seen  
21          anything to think otherwise. So research is not  
22          really done any longer in this area.

23          Q. How hard is HIV to detect or screen?

24          A. Oh, very easy. You can do an HIV test,  
25          and you can pick up the antibody. You can

1           actually do an antigen test and pick it up,  
2           before you get an antibody test.

3           Q.   And that test is reliable?

4           A.   It's very reliable.  It's now gotten so  
5           that we can pick up early infection, so we can  
6           now do incidence.  So we can say, based on the  
7           series of testing that we are doing now -- not  
8           we -- that the medical profession is doing -- I  
9           guess that's "we" -- we can actually say that it  
10          is likely that this patient was infected in the  
11          past six months, because we can compare antigen  
12          to antibody.  The tests have become very reliable  
13          and sophisticated.

14          Q.   And we're going to talk in just a few  
15          seconds about treatments for people living with  
16          HIV, but have recent treatments made the  
17          possibility of transmitting the virus within a  
18          household even less likely?

19          A.   I think, one, if you look -- with the  
20          advent of treatment, and if you look at  
21          transmission compared to treatment, you can see  
22          that transmission decreased with the advent of  
23          potent antiretroviral therapy, and you can see  
24          that, epidemiologically.  You can describe the  
25          curves.  I wish I had a drawing board.  I'd draw

1           it for you.

2           Q. Now, is there treatment available for  
3 people with HIV?

4           A. Yes.

5           Q. What is the current recommended  
6 treatment?

7           A. Currently, it is what we call highly  
8 active antiretroviral therapy, that has a  
9 horrible short term, called HART, that I hate,  
10 but it's combination antiretroviral therapy, and  
11 what it represents is putting now three drugs  
12 together, and it crosses different classes of  
13 drugs, and what I mean by that is that it entails  
14 giving drugs that attack this virus in different  
15 ways. And that has been shown to be highly  
16 successful, and in giving potent antiretroviral  
17 therapy, you can demonstrate that you can  
18 suppress the amount of HIV in the blood to non-  
19 detectable levels.

20           Unfortunately, this virus sits in  
21 resting, quiescent cells, and its genetic makeup  
22 is in that cell, and the treatments that we have  
23 only work on active cells. So we can't eradicate  
24 the virus from the body, but we can control it  
25 and we can suppress it to nondetectable levels,

1           and in doing that, what is more critical -- I  
2           mean, that's critically important -- is that the  
3           immune system recovers, and therefore it gets  
4           back to a nearly normal functional state. So  
5           that means the risk of getting sick now goes  
6           away, because it is the immune damage that this  
7           virus does that causes AIDS.

8           Q. When did combination antiretroviral  
9           treatment become available?

10          A. In the mid-'90s, with the discovery of  
11          the second class of drugs, because the first drug  
12          was AZT, and it attacked the virus in a certain  
13          way, and all the new drugs that came out after  
14          that were the same class or type of drugs, but we  
15          put two together anyway, and showed that they did  
16          better than one.

17          When a new class of drug came out called  
18          protease inhibitor, that attacked the virus  
19          totally different, we put those together now, and  
20          saw a dramatic response, in which one could  
21          suppress this virus and keep it suppressed.

22          Q. And how does this affect the health of  
23          someone with HIV, when they're treated with these  
24          drugs?

25          A. Dramatically, because, one, what it --

1           It does two things. Not only does it suppress  
2           virus, it prevents disease progression, and  
3           therefore you don't -- you do not see AIDS  
4           anymore, because the immune system recovers, the  
5           immune system heals. You don't see a disease  
6           progression. Patients also live longer.

7                         AZT, the first drug, showed it provided  
8           survival benefits. You put two drugs together,  
9           you improve that survival benefit. You put three  
10          drugs together, you improve the survival benefit  
11          even more.

12                        Q. How long are people living on  
13          combination antiretroviral treatment?

14                        A. If -- You can look at two ways. One is,  
15          you can look at studies that are testing the  
16          drugs, and continue to follow patients long term,  
17          then you would look at the group of these studies  
18          together. In looking at those studies, survival  
19          benefits now exceed eight years, and that's  
20          basically the length of time that we have, you  
21          know, with testing these medications.

22                        You can also look at it now  
23          epidemiologically, where you look at cohorts of  
24          patients, and there you would begin to compare it  
25          to patients that are not HIV-infected, and the

1 recent data that was published very dramatically  
2 showed that when you look at people that are on  
3 antiretroviral therapy now, they have life  
4 expectancies, when you age match them, to people  
5 that are not HIV-infected. I mean, that just  
6 shows you, you know, the power of suppressing  
7 this virus and getting the immune system to  
8 recover.

9 Q. So, just to be clear, are you saying  
10 that people who are HIV-positive but are treated  
11 with combination antiretroviral treatment will be  
12 projected to have a normal life span?

13 A. Yes.

14 Q. And just to back up for a second, I'm  
15 not sure everyone here realizes what the  
16 difference is between HIV and AIDS. Could you  
17 just briefly explain --

18 A. Yes.

19 Q. -- if there is a difference, and what it  
20 is?

21 A. Yes, very much so, because I feel  
22 comfortable saying we can cure AIDS.

23 HIV is immunodeficiency virus. It's the  
24 virus that attacks the immune system. It enters  
25 the major cell that surveils against infections,

1           cancers, and it causes that cell to die and  
2           dysfunction. So it is like giving very severe  
3           chemotherapy, where you just totally, eventually,  
4           if untreated, will destroy the immune system and  
5           part of it, and leave a patient very vulnerable  
6           to get serious infections, and it is that  
7           destruction of the immune system and the causing  
8           of serious infections that is AIDS. It is  
9           actually that acquired immunodeficiency.

10                   HIV is the virus itself. You can have  
11           HIV infection and not know it. You look healthy,  
12           feel healthy, and you have a long -- what we call  
13           latency period, because it takes eight to 10  
14           years for this virus to slowly destroy the immune  
15           system, and therefore that's why testing has  
16           become so critically important, that we recognize  
17           patients much earlier in their infection and  
18           treat them, because the earlier we treat, the  
19           less extensively this virus can get into  
20           different types of reservoirs in the body and  
21           cause dysfunction of the immune system.

22                   Q. Now, do you have patients who have been  
23           on combination antiretroviral treatment since  
24           they were available in the mid-'90s?

25                   A. Since the beginning, since we first had



1 AZT, I still take care of the very first patient  
2 I treated with that drug, still to this day, and  
3 yes, we do. We have patients that we treat, that  
4 are on combination antiretroviral therapy. I  
5 still see my very first patient that I saw in May  
6 1982, and he sends me anniversary cards every  
7 year. My husband gets jealous -- no.

8 Q. So these people are doing well?

9 A. No, they're doing -- I mean, it's day  
10 and night. I mean, I lived through this epidemic  
11 in the beginning, as a young physician. It was  
12 difficult, because I did not become a doc to see  
13 so many patients die, and literally, you know,  
14 had to help people die. We don't see that today.  
15 And that's why we try so hard to get people into  
16 care.

17 Q. Do you have any reason to expect they  
18 won't continue to do well?

19 A. The other thing that's very important is  
20 that to do a clinical trial and to do survival  
21 now, particularly with the medications that we  
22 have, we had to look for what we call a surrogate  
23 marker. You know, what is it, you know, that  
24 would tell us about survival and disease  
25 progression, and we know that the immune system

1 gives us that information. So a CD4 cell count  
2 is a direct correlation with disease progression  
3 and with survival benefit. So we can now look at  
4 that surrogate and look at the amount of virus in  
5 the blood and show that that has a direct  
6 correlation, and we can now use that data to  
7 forecast long-term survival, as well, and we can  
8 also tell a patient, "As long as that virus is  
9 suppressed and your immune system is doing well,  
10 you should do well," and we don't expect -- and  
11 therefore, we don't expect to see that change.

12 Q. Are people that you treat who are living  
13 with AIDS, or HIV, sorry, today, likely to die  
14 from HIV or AIDS, or something else?

15 A. They're likely to die from something  
16 else. I mean, the one thing that is very  
17 dramatic about treatment is that we don't see  
18 AIDS. So we don't anticipate to see progression  
19 to AIDS.

20 Now, one, you have to get into care.  
21 You have to be treated, and you have to stay on  
22 treatment.

23 Q. Are people with HIV who have organ  
24 failure considered candidates for transplants?

25 A. They are, today. They weren't --

1                   THE COURT: Can I just ask you, how  
2                   much longer are we looking at? I'm not  
3                   sure we're really in any relevant areas  
4                   anymore, and the time -- you have 15  
5                   minutes left.

6                   MR. ROSENWALD: I have about five  
7                   or 10 minutes.

8                   THE COURT: Okay.

9                   BY MR. ROSENWALD:

10                  Q. If someone is being successfully treated  
11                  with combination antiretroviral treatment, do  
12                  they feel well enough to take care of children?

13                  A. Yes, they do.

14                  Q. And are they physically able to take  
15                  care of children?

16                  A. Yes, they are.

17                  Q. Do you have any patients who are raising  
18                  children?

19                  A. Many.

20                  Q. And are they able to do it successfully?

21                  A. Now, you're talking about parenting.

22                  There's nothing physically that would really  
23                  deter them from being able to be a parent, you  
24                  know, and they can go back to school, they are  
25                  going back to school. They're lawyers, they're

1 doctors, they're police officers, they're  
2 firemen. They were in the New York Trade Center.  
3 I mean, you know, they can do normal things.  
4 There's no reason to anticipate, from a health  
5 perspective, that they could not be a -- you  
6 know, they could not be a parent because they  
7 were sick.

8 Q. Is there research that looks at how  
9 people feel with combination antiretroviral  
10 treatment?

11 A. Oh, yes, all the time. You know,  
12 quality of life, and one can show that people  
13 feel well. You know, they may feel a little  
14 nauseous, a little fatigued when they first take  
15 their medicines, but they get used to that, but  
16 dramatically, their quality of life improves.

17 Q. And is there research looking at that?

18 A. Absolutely.

19 Q. An expert for the State has indicated  
20 that one reason not to allow gay people to adopt  
21 is because, according to him, gay people have  
22 shorter life spans and may die before their  
23 adopted child grows up.

24 In support of this argument, the State's  
25 expert relies on a 1997 Canadian study, led by

1 Robert Hogg, which found that gay men had reduced  
2 life expectancy. Are you familiar with that  
3 study?

4 A. Oh, yes.

5 MR. FAHLBUSCH: Objection. This is  
6 leading.

7 THE COURT: I'll allow it.

8 BY MR. ROSENWALD:

9 Q. Are you familiar with that study?

10 A. Yes, I am. I know the study. I know  
11 several of the authors. They're my colleagues.

12 Q. Does that study support the State's  
13 argument?

14 A. Well, first of all, you have to look at  
15 that study, and you have to look at when they  
16 enrolled those patients. They're looking at  
17 patients that were enrolled in the '80s, and  
18 they're looking at patients that -- you're  
19 looking at a study that occurred before the  
20 advent of antiretroviral therapy. So you're  
21 looking at a well-done study, I'll say that, but  
22 you're looking at what we saw with AIDS. You  
23 know, it doesn't matter if you were gay, if you  
24 were straight, if you're a woman, a man; that is  
25 what we saw in the beginning. People died of

1           AIDS, and that's what you would expect to see,  
2           but that is not today. I mean, today we have  
3           antiretroviral therapy. That study would need to  
4           be totally redone today with antiretroviral  
5           therapy. So I'm not surprised at that result,  
6           because you're talking, you know, before the  
7           advent of antiretroviral therapy.

8           Q. Do you know what years that study  
9           covered?

10          A. It covered in the '80s, predominantly,  
11          the late '80s.

12          Q. Now, turning very briefly to other STDs,  
13          I just have a few questions.

14          A. Okay.

15          Q. What is the difficulty of treating STDs  
16          other than HIV?

17          A. Oh, STDs are -- is relatively easy to  
18          treat. I mean, if you're looking at something  
19          like syphilis or gonorrhea, this is something you  
20          can do a test for, you can give an antibiotic,  
21          you can cure it.

22          Q. Are the symptoms of other STDs more or  
23          less harmful than HIV and AIDS?

24          A. They're totally different. I mean, if  
25          you have syphilis, gonorrhea, I mean, this is

1 something you can treat. You don't expect  
2 life-threatening -- life-threatening  
3 complications from it. It's day and night. It's  
4 straightforward.

5 Q. Are STDs other than HIV limited to gay  
6 people?

7 A. Say that again.

8 Q. Are STDs limited to gay people?

9 A. No, they're limited to sexually active  
10 men and women.

11 Q. And does an STD other than HIV affect a  
12 person's ability to parent?

13 A. Again, if you have syphilis or  
14 gonorrhoea, this is not something that would cause  
15 a severe medical illness. This is something that  
16 would be treated and would be cured and doesn't  
17 cause any short or long-term disability.

18 Q. Experts for the State may opine that  
19 higher rates of anal cancer in gay men is a basis  
20 upon which to exclude them from parenting. What  
21 causes anal cancer?

22 A. The cause of anal cancer is not  
23 completely known, but when one looks at the human  
24 papillomavirus, HPV, particularly for squamous  
25 cell anal cancer, the association is there, and

1 one is now doing research to show why -- how HPV  
2 causes anal cancer. So the major probable cause  
3 of anal cancer is HPV, human papillomavirus.

4 Q. In whom does the majority of HPV virus  
5 infection occur?

6 A. It occurs among sexually active men and  
7 women. It's a sexually transmitted virus.

8 MR. ROSENWALD: I don't have  
9 anything else, Your Honor.

10 THE COURT: Ms. Bass?

11 MS. BASS: I have no questions.  
12 Thank you, Your Honor.

13 THE COURT: Ms. Allen?

14 MS. ALLEN: I have no questions,  
15 Judge.

16 THE COURT: And are we back to Mr.  
17 Fahlbusch?

18 CROSS EXAMINATION

19 BY MR. FAHLBUSCH:

20 Q. Do people still die of AIDS, Doctor?

21 A. Do people --

22 Q. Still die of AIDS.

23 A. Do people still die of AIDS? Yes. And  
24 the major reason for that is that they don't  
25 access care, and they come to the hospital very



1 late in their illness.

2 Q. And everyone -- Does everyone who does  
3 access care take their medication treatments  
4 appropriately?

5 A. The majority actually do. It is  
6 something you have to work with patients for, and  
7 I mean, I would love to say everyone takes all of  
8 their medicines, all of the time. That's not  
9 true. But I think what's happened with  
10 antiretroviral therapy is the pharmaceutical  
11 industry has worked very hard with the research  
12 community, because the medications that are  
13 available now have much less side effects, are  
14 typically taken once a day, and in fact, triple  
15 drug therapy can be combined in one single pill.  
16 It's called a tripla, and you take it at the  
17 evening, once a day, at night, before you go to  
18 bed. So I think it is increasingly easy to take  
19 antiretroviral therapy.

20 Q. Is there a cost to antiretroviral  
21 therapy?

22 A. Antiretroviral therapy is very  
23 expensive.

24 Q. Persons who do not access treatment, or  
25 have a problem -- have problems taking their

1 treatment appropriately, would not necessarily  
2 expect the increase in life expectancy to the  
3 extent that you've described among people that do  
4 get appropriate treatment and do take it  
5 appropriately?

6 A. That's absolutely correct, and that's  
7 been well recognized and there are a lot of  
8 behavioral scientists that work very extensively.  
9 There's a lot of case management, there's a  
10 tremendous amount of infrastructure that's been  
11 put into place to actually assist patients to --  
12 and a lot of tools to help them take their  
13 medication, and there is a subgroup of patients  
14 that you have to work persistently with, and it's  
15 something that they -- they -- as you take  
16 treatment and you feel better, that tends to be  
17 an incredible positive reinforcement to patients.

18 But there's certain -- there is a  
19 subgroup of patients, for example, particularly  
20 that we see that are intravenous drug abusers,  
21 that are still actively using, and may have some  
22 difficulty because of their heroin addiction, and  
23 that is also something we're trying to work with.

24 Q. And accessing and taking appropriate  
25 treatment would equally be a problem with regard

1 to other STDs; if people don't want to get sick,  
2 they have to seek treatment and comply with their  
3 treatment, correct?

4 A. A little bit different, I'm going to  
5 say, because when you're talking about an STD,  
6 most people recognize that if you have syphilis,  
7 for example, you can go to your doctor and you  
8 get three shots of penicillin and you cure it,  
9 and therefore that's, in a way, a positive  
10 reinforcement.

11 And there's also a fair amount of  
12 contact tracing that the Health Department does.  
13 So I would say, you know, differently when it  
14 comes to STDs. That's something easily  
15 recognized and treatable, and there are blood  
16 tests for it, as well, that you can screen for.

17 MR. FAHLBUSCH: Nothing further,  
18 Your Honor.

19 THE COURT: Anyone else?

20 MR. ROSENWALD: I just have a few  
21 things, a few questions, Your Honor. It  
22 will take one minute.

23 REDIRECT EXAMINATION

24 BY MR. ROSENWALD:

25 Q. Do treatments today for HIV allow some

1 tolerance to missing some treatments?

2 A. You can't say I said this. Yes.

3 I think the one thing, as we have  
4 longer-acting medications, and that are very  
5 potent, and as we have recovery of the immune  
6 system -- because what is so critical is that the  
7 immune system helps battle this virus, so we have  
8 that on our side -- you can miss doses of  
9 treatment and not break through, you know, with  
10 the virus coming back, so --

11 Q. Are people who seek to -- strike that.  
12 Are people who are eligible to adopt, the kind of  
13 people who you would expect to take their  
14 medicine?

15 A. Oh, absolutely. I mean, my initial  
16 reaction, yes, because we've seen, through the  
17 years, particularly in the beginning, many people  
18 that adopted kids that had HIV infection, and,  
19 you know, when other people were not literally  
20 willing to do that. So, you know, we've watched  
21 that, you know, through the past 25 years, and  
22 those were really dedicated people, you know,  
23 that came forward and did that, you know, and  
24 really championed that.

25 MR. ROSENWALD: I have nothing

1 further, Your Honor.

2 THE COURT: Thank you, Doctor.

3 MS. BASS: Thank you.

4 MR. ROSENWALD: Thank you, Dr. Fischl.

5 THE WITNESS: Okay, you're welcome.

6 THE COURT: Okay, a few minutes  
7 left. What do you want to do?

8 MS. COOPER: So we talked earlier  
9 about the possibility of staying a  
10 little longer. We were hoping to put on  
11 our client, Martin Gill.

12 THE COURT: How much longer -- What  
13 are we talking about?

14 MR. ROSENWALD: About an hour.

15 THE COURT: How do you feel about  
16 that?

17 MR. MOYLAN: Your Honor, I'm  
18 burdened by a six-month-old and a  
19 22-month-old. I'm sorry about that.  
20 I'll defer, obviously, to the Court's  
21 ruling, but my understanding was that we  
22 were going till 5:00, and that's what I  
23 advised. I have a partner in life that  
24 had other obligations, too, so --

25 MR. ROSENWALD: Perhaps we don't

1                   need the entire team for Mr. Gill's  
2                   testimony?

3                   MR. MOYLAN:  Unfortunately, that's  
4                   my ride.

5                   MS. MARTIN:  We are --

6                   MS. BASS:  How about if we get you  
7                   a cab?  We have four days to finish this  
8                   trial, and I think we're all nervous  
9                   about making sure we --

10                  MR. ROSENWALD:  Well, they're in  
11                  Boca.

12                  MS. BASS:  -- you know.

13                  MS. MARTIN:  I just don't think we  
14                  can accommodate it tonight.  If we can  
15                  plan for tomorrow, I think we can plan  
16                  to go longer, if you want.  I mean,  
17                  we'll --

18                  MS. BASS:  Can we do half an hour?

19                  THE COURT:  I'll be happy to go  
20                  longer tonight and tomorrow.  Friday, we  
21                  have the reception for George Sheldon,  
22                  and Monday, I'm on a plane at seven  
23                  o'clock, so just so you know.

24                  MS. BASS:  Can we go a little bit  
25                  longer and at least get started?

1 THE COURT: Is there someone else  
2 you can call that --

3 MR. ESSEKS: There's no one else  
4 here, but we could do a piece of his.

5 MS. BASS: Can we at least get part  
6 of it done?

7 THE COURT: Is that okay? What  
8 time do you absolutely have to go?

9 MR. MOYLAN: I live in Deerfield.

10 THE COURT: Oh, wow.

11 MR. MOYLAN: No, Deerfield is okay,  
12 it's just a long ride, so --

13 MS. BASS: Can we go till 5:30?

14 MR. ROSENWALD: If we can stay late  
15 tomorrow, I think that it will be fine.

16 MR. MOYLAN: If it helps, Your  
17 Honor, I'm happy to try to 5:30, if  
18 that's what you need me to do.

19 MS. BASS: Let's go for 5:30, if we  
20 can.

21 THE COURT: 5:30.

22 MR. MOYLAN: Okay. I'm going to go  
23 make some accommodations, if you'll  
24 excuse me.

25 THE COURT: Okay, we'll go to 5:30.

1                   MR. MOYLAN: I don't have a plane,  
2                   but 5:30 is what I'm going to commit to,  
3                   okay?

4                   THE COURT: Okay.

5                   MR. MOYLAN: Thank you.

6                   MR. GILL: Am I taking the stand?

7                   MR. ROSENWALD: Yes.

8                   MR. GILL: But are we actually  
9                   trying to finish in a half an hour?

10                  MS. BASS: No.

11                  MR. ROSENWALD: No.

12                  MR. GILL: All right, we're just  
13                  going to get some --

14                  MS. BASS: We're just going to,  
15                  yeah, start today and --

16                  THE CLERK: Can you please raise  
17                  your right hand, sir?

18                  THEREUPON:

19                                 FRANK MARTIN GILL  
20                  the Petitioner herein, was called as a witness on  
21                  his own behalf and, having been first duly sworn,  
22                  was examined and testified as follows:

23                                 THE COURT: Maybe you can rearrange  
24                  them tomorrow so that this counsel can  
25                  leave. Do you know what I mean?



1 MS. BASS: Are you going to be in  
2 one car again tomorrow?

3 MS. MARTIN: I'm sorry?

4 MS. BASS: Will you be in one car  
5 again tomorrow?

6 MS. MARTIN: That's the plan.

7 MS. BASS: Well, why don't we talk  
8 afterward --

9 MS. MARTIN: Okay.

10 MS. BASS: -- and we'll figure out  
11 the plan for tomorrow.

12 THE COURT: Can we start now, or do  
13 you want us to wait?

14 MS. MARTIN: No, that's -- I'm --  
15 We can go. He should only be a moment,  
16 hopefully.

17 DIRECT EXAMINATION

18 BY MR. ROSENWALD:

19 Q. Good afternoon, Mr. Gill. How are you  
20 doing today?

21 A. Good afternoon.

22 Q. Can you tell the Court who is in  
23 your --

24 THE COURT: Did you swear him?

25 THE CLERK: Yes, Your Honor.

1 BY MR. ROSENWALD:

2 Q. Can you tell the Court who is in your  
3 immediate family?

4 A. My partner, [Tom Roe, Sr.]; his son,  
5 [Tom Roe, Jr.], who's 13 years old --  
6 that's his biological son -- and [John], who is  
7 my foster son, our foster son, he is eight;  
8 [James], who's our foster son, and he is four  
9 years old.

10 Q. Do you have any pets?

11 A. We also have Wufford, who we've had for  
12 about five years. He's a big Lab, a very  
13 friendly Lab. We have a rabbit named George, and  
14 we just found a kitten in our back yard about a  
15 week ago, and his name is Ike -- well, it was  
16 during the hurricane -- and we've been bottle  
17 feeding it. So that's a new addition.

18 Q. Starting with [Tom, Sr.], can you describe  
19 your relationship with him?

20 A. Starting with [Tom, Sr.], [Tom, Sr.] is my life  
21 partner. [Tom, Sr.] and I met -- it's getting close  
22 to nine years ago, eight and a half years ago.  
23 And from the beginning, we hit it off  
24 immediately. We were introduced by a friend. At  
25 that point, I was helping to raise -- well, I was

1            basically being a single parent to my godson, at  
2            that particular point, and it turns out that  
3            [Tom, Sr.] was raising his son, who was about a year  
4            and a half older, and so just from the minute we  
5            met, aside from being an attraction, there was  
6            just -- he was -- he got me and I got him, and I  
7            knew from the first time we had had a  
8            conversation that I just knew we were going to be  
9            in a relationship. I knew that it was going to  
10           be something that would last.

11           Q. How long have you been together as a  
12           couple?

13           A. Well, I guess officially, we moved in  
14           together July 27th of 2000.

15           Q. And how long have you shared a home?  
16           Oh, I'm sorry, have the two of you made any  
17           commitment to one another?

18           A. Right at two years, at our second  
19           anniversary, we decided that a formal commitment  
20           was important. We bought each other matching  
21           wedding bands, and we didn't have a real formal  
22           ceremony. We did have a barbecue, where we  
23           invited our neighbors and our friends, and quite  
24           a few people came over. And from that point,  
25           we've really considered each other spouses.

1           Q. Do you and [Tom, Sr.] feel any level of  
2           responsibility towards all of the children in  
3           your family?

4           A. Absolutely. When we first moved in  
5           together, [Tom, Jr.] just came for the summers.  
6           He was being cared for also by his - [Tom, Sr.]'s  
7           mother, in Tampa, and then at about a year and a  
8           half, [Tom, Jr.] moved in with us full time,  
9           but in short order he became our son, okay? Our  
10          foster kids are definitely our kids. We both  
11          are -- we are Daddy and Papi, and that's very  
12          much an equal endeavor.

13          Q. Do you support each other financially?

14          A. We do. We both have good jobs. And I  
15          wouldn't call it a 50/50 thing. It's more  
16          like -- well, for like eight years now, we've had  
17          joint checking, so we really pretty much pool our  
18          resources. There have been a few times in our  
19          relationship -- at one point, [Tom, Sr.] got  
20          appendicitis and literally his appendix burst  
21          while they were operating on him, and he ended up  
22          being very sick and for about six weeks he had to  
23          be flat on his back most of the time. So, during  
24          that time, of course, I took over financial as  
25          well as other obligations.

1                   There have been other times that -- you  
2                   know, during the boom -- I consider myself a real  
3                   estate investor and I've done pretty well.  
4                   During the boom, I had done very well, and -- but  
5                   there were times I would overextend myself and he  
6                   would have to pay the monthly payments. So it  
7                   goes back and forth, but overall, we just pretty  
8                   much pool our money, like I guess any family  
9                   would do.

10                  Q. How do you consider [Tom, Sr.] to be family?

11                  A. Well, we really consider each other  
12                  spouses but, you know, it's more than that. I  
13                  think, really, it's just a whole bunch of life  
14                  experiences. I think one that stands out in  
15                  particular was, my father died a couple of years  
16                  into our relationship, and my family is pretty  
17                  much from Colorado. My dad was in Colorado at  
18                  the time. And so we flew out there, [Tom, Sr.] and I,  
19                  and [Tom, Jr.], and we attended the funeral  
20                  together. There was a reception line after the  
21                  funeral, and [Tom, Sr.] was invited to stand there,  
22                  and his son with me, as family, to, you know, say  
23                  hello to all of the people after the funeral. He  
24                  was included, and his son, as part of the family.  
25                  You know, I think that there are just so many

1 different experiences like that, like holidays,  
2 Christmas. We spend every Christmas together.  
3 We spend every Thanksgiving together. Sometimes  
4 it will be at our in-laws', sometimes at my  
5 mother's, but we always have been together.

6 Q. Are you and [Tom, Sr.] licensed together as a  
7 foster family?

8 A. Absolutely. From the beginning, we made  
9 the decision together to become foster parents.  
10 We went to orientation together, we went through  
11 MAPP class together, and we have done our annual  
12 training together.

13 Also, I mean, all of the duties, all of  
14 our family duties, we really don't separate it  
15 out into foster versus our biological son, but  
16 we're in that together, all of them.

17 Q. How did you become interested in  
18 fostering children?

19 A. I've always had an interest in children  
20 and having my own children. But really, I think  
21 it was at the point that [Tom, Sr.] and I were  
22 together for a couple of years, we were raising  
23 his son, we had -- it just seemed like we had  
24 gained a lot of stability in our relationship.  
25 We decided that we would like to look into having

1 at least one more child, and we looked at, you  
2 know, things like adoption and surrogacy and  
3 things like that. At that point, I knew that  
4 there was an adoption ban. I think just about  
5 everyone gay here knows, in this state, that  
6 there's an adoption ban. Logically, I thought,  
7 of course there's a ban on fostering here, so I  
8 just thought those weren't options.

9 Then one day I was watching TV and I saw  
10 an interview with Rosie -- it was Rosie O'Donnell  
11 and Diane Sawyer, and they were talking about  
12 fostering, right here in Florida, and I thought,  
13 "What, you can foster in Florida? That doesn't  
14 make sense." But after looking at it a little  
15 bit, it made a lot of sense for us. [Tom, Sr.] had  
16 worked with special needs kids. [Tom, Sr.] was going  
17 to be a special ed teacher at one time, and had  
18 done both volunteer work and paid work with  
19 special needs kids. I had done volunteer work  
20 with special needs kids.

21 Anyway, after looking at surrogacy and  
22 going halfway across the world to adopt, it  
23 suddenly became clear to both of us that we could  
24 make such a big impact here, right here in  
25 Miami-Dade, to a child that really needs a good

1 foster home, and in short order, after that, a  
2 couple of months later, we were in orientation.

3 Q. How do you feel about fostering?

4 A. I love to foster. I mean, people have  
5 asked me, if this all goes well, am I going to  
6 continue to foster, and I think, yeah, I'm going  
7 to continue to foster, I mean, within limits, of  
8 course. We've already got three kids.

9 I mean, it's kind of bittersweet. We  
10 had seven kids that we had to give back and --  
11 through the goal of reunification, and you know,  
12 in my heart, I really believe in reunification.  
13 I think in every case, it was hard, but it was  
14 the right thing, because their family members did  
15 what they had to do, and they were family, and I  
16 agree with that.

17 Q. How many children have you served as a  
18 foster parent?

19 A. There were seven before, as I said, that  
20 went back, and now we have two, so that makes a  
21 total of nine.

22 Q. How would you rate you and [Tom, Sr.] as  
23 parents?

24 A. I'd say we're excellent parents. I  
25 think that we just have a lot to offer. First,



1 as far as stability, [Tom, Sr.] is an incredibly  
2 nurturing and stable individual. I would say I'm  
3 very loving and nurturing. Overall, I think we  
4 make excellent parents, and I think as a team,  
5 we're even better.

6 Q. Have you done anything to prepare  
7 yourself for parenting?

8 A. I've done a number of things. I mean, I  
9 had a little sister that was born when I was  
10 seven, and so of course, I always saw her being  
11 cared for, and helped whenever I could, but after  
12 that, I got a Bachelor's in psychology, which of  
13 course included child psychology and  
14 developmental psychology.

15 During my Bachelor's, my summers were  
16 spent at a place called Handicamp, it was the  
17 Easter Seal's Handicamp, it was a camp for  
18 handicapped kids, up in the mountains -- and  
19 excuse me for saying handicapped, but that was  
20 what it was then; it shows my age, I guess -- and  
21 dealt with handicapped kids of a number of  
22 different types of disabilities, emotional, all  
23 kinds of different areas.

24 I more recently got my Master's in  
25 public health, which included a lot of pertinent

1 classes, but one in particular was mother and  
2 infant health.

3 As far as being a foster parent, of  
4 course, you have the MAPP classes. You have  
5 eight hours of annual training that you have to  
6 do. It usually consists of about four different  
7 classes.

8 I had a newborn placed once, still had  
9 its -- still had her umbilical cord attached, and  
10 I ran right out and bought a book, because -- you  
11 know, it was a book about that thick on a baby's  
12 first year, and I felt, boy, I'd never -- you  
13 know, a newborn like that, I'd better know what  
14 I'm doing. So, if I don't know something, I  
15 educate myself.

16 Q. If you need information or advice now,  
17 do you have people that you can turn to or talk  
18 to?

19 A. Well, I've always had my mother, and  
20 certainly I'll call her. My mother-in-law, as  
21 well, was a -- she's retired now, but she was a  
22 nurse for I don't know how many years, in the  
23 public hospital in Tampa. And during -- by  
24 coincidence, when I had that little baby with the  
25 umbilical cord still attached, we lived next door

1 to a midwife, and so I was back and forth to the  
2 midwife about once a day, sometimes twice a day,  
3 and we got to be good friends. But we have  
4 neighbors, we have friends, we have babysitters.

5 At this point, when it comes to babies,  
6 I consider myself something of an expert, so I  
7 don't have to run out so often, although we have  
8 an excellent pediatrician that I can call, and  
9 she knows me very well, I've been in to see her  
10 so many times.

11 Q. Are you presently employed?

12 A. I am. I work for American Airlines.  
13 I'm a flight attendant, and I've been there 17  
14 years, continuously employed by American.

15 Q. Is [Tom, Sr.] employed?

16 A. [Tom, Sr.] is employed, as well. He's been  
17 with Amtrak almost 10 years, I believe, and he is  
18 a lead service attendant. What a lead service  
19 attendant does is, they work on board the train,  
20 between here and New York, and supervises all of  
21 what are considered on-board service staff. That  
22 would be the diner car, that's the bar, the  
23 sleeper car attendants, the coach attendants.

24 Q. How do you arrange your employment  
25 schedules to best accommodate raising children?

1           A. It kind of sounds difficult, looking at  
2           it from the outside, but it works very well,  
3           because flight attendants at my seniority, 17  
4           years, the average full-time flight attendant  
5           works about 11 days a month. I can hold an  
6           11-day schedule or less, and I tend to work -- I  
7           would rather be at home a little more, so maybe I  
8           work nine days a month.

9                     [Tom, Sr.], on the other hand, bids once a  
10           year, and he works blocks of four days on, four  
11           days off, so literally is off half the month. I  
12           bid once a month, so I can bid around him. So  
13           when [Tom, Sr.] is home, sometimes I'll be working and  
14           vice versa. It works very well. We actually are  
15           home a lot more than probably someone that works  
16           an 8:00 to 5:00 job.

17           Q. Is there always one of you home with the  
18           kids?

19           A. Well, two days this year, we had to use  
20           our official backup. As foster parents, you have  
21           to have kind of a licensed backup, or one that's  
22           done all the checks, and we've used him two  
23           nights this year, where I had to go to training  
24           and we couldn't coordinate things.

25           Q. Tell me how [John] and [James] came

1           into your family.

2           A. It was December 11th, 2004. DCF keeps  
3           telling me it's the 12th, but I swear it was the  
4           11th. Andrea Fleri, who is a PI, a protective  
5           investigator, gave me a call. I have to tell you  
6           that at that point, a couple months earlier, we  
7           had stopped taking kids. We had bought this  
8           6,000-square-foot house, seven bedrooms, three  
9           baths, up in Valdosta, Georgia -- or Quitman,  
10          Georgia, and we really were planning on moving by  
11          summer, by June. We really were giving up the  
12          foster system here and we were planning on  
13          fostering there, and of course, in Georgia -- We  
14          were planning on fostering but with the  
15          possibility of maybe adopting a child from  
16          Georgia, and it's sad because you all would have  
17          lost two good foster parents.

18                 Anyway, Andrea said to me on the phone  
19          that day, she said, "I have two boys, and I only  
20          need someone to take them for maybe a month,  
21          maybe six weeks, two months, and, you know, I  
22          really need a good home and I just need someone  
23          that's willing to give them a good Christmas,"  
24          and at that point my heart melts, that there were  
25          two kids out there, she told me that it was a

1 neglect case and that kind of thing and that they  
2 really needed it, and I thought, boy, we could  
3 give these kids a good Christmas, because we were  
4 spending Christmas at home. My mother-in-law was  
5 coming, my sister-in-law was coming. We were  
6 planning a big Christmas. One of my former  
7 foster -- I try to keep in touch with my foster  
8 kids, and one of my former foster kids was coming  
9 for Christmas. So I was excited about that, and  
10 I said yes. I said, "Great." But I told her,  
11 "We're moving in June. It can't be more than a  
12 couple of months. We're moving in June." So,  
13 anyway, a couple hours later, she showed up at  
14 our door. Should I continue?

15 Q. Well, tell me -- tell me about the boys'  
16 physical condition, when they arrived at your  
17 home.

18 A. After having fostered seven other foster  
19 kids, I think -- I actually took a picture just  
20 minutes after they walked in the door, because I  
21 was really impacted at the sight of these kids.

22 MR. ROSENWALD: If I could  
23 interrupt you, with the Court's  
24 permission, I'll show Mr. Gill a picture  
25 and ask him if he recognizes this

1 picture.

2 THE COURT: Are we marking that?

3 THE WITNESS: Yeah.

4 MR. ROSENWALD: Yes.

5 THE CLERK: Petitioner's Exhibit 9.

6 BY MR. ROSENWALD:

7 Q. Can you tell the Court about these  
8 photos?

9 A. Well, this is [John]. He was four years  
10 old at the time. And as you can see, he looks  
11 pretty traumatized. This isn't a real high  
12 definition photo, but he kind of matched me. He  
13 looked almost like he had male-pattern baldness.  
14 This was all yellow and flaky. He had ringworm,  
15 all the way up here, to the point that his hair  
16 wasn't growing in most of those places. I've  
17 never seen -- I've seen ringworm several times,  
18 we've had cases of ringworm with our kids, but  
19 I've never seen it that bad. This picture really  
20 doesn't show you all of that.

21 He's wearing a men's size medium  
22 T-shirt, and he had on a pair of shoes that were  
23 probably about four sizes too small. He was  
24 hanging way off the back of them. And anyway,  
25 that's how [John] arrived.

1           Q. Can you tell me about the boys'  
2 emotional condition when they came to you?

3           A. Okay. I -- I think I should talk about  
4 [James], if you don't mind. [James]'s --

5           Q. Sorry, go ahead.

6           A. -- physical condition. I took a picture  
7 of [John] because it was kind of impacting at  
8 that moment. I didn't take one of [James].  
9 [James] also had ringworm, but it just  
10 basically had a curl here and a curl there and  
11 patches of ringworm. It just -- it wasn't quite  
12 this severe. He -- Andrea had shown me that in  
13 the bag, there were meds in the bag, and he said  
14 that, you know, "He's fussy," and he was crying a  
15 bit, and she said, "He's been like that because  
16 he has a bad ear infection, but they have meds  
17 here," you know. The PI's are always selling you  
18 on it, "Oh, they have the meds, you're okay."  
19           Anyway, so she left, so then I  
20 thought -- you know, I'd asked her if she'd given  
21 him any, and she said, "No, but here they are,"  
22 blah, blah, blah. So she left. I -- you know, I  
23 had the baby, still, but I'm going through the  
24 bag and I'm looking at the meds, and it was  
25 Amox/Clav. Anyone who's a parent has probably



1           seen Amox/Clav. It's normally white. It has to  
2           be refrigerated. It expires in -- I don't know  
3           how many weeks, but it's not something you keep  
4           around, and you have to be a little bit careful  
5           with it. I took a look at it, opened it up, and  
6           it was completely full, and then I looked at the  
7           date on the container and it was from like  
8           November 1st, and here we were at December 11th.  
9           And it was brown, and it was warm, and it had  
10          gone bad, and I thought -- I mean, it just broke  
11          my heart to think -- Andrea said that, you know,  
12          this is a neglect case, and at that point I  
13          didn't have any idea what was going on at the  
14          house, but why would a parent go out and get this  
15          and then not -- Not one dose had been  
16          administered to that child, and that child was in  
17          pain.

18                        Anyway, on the parents' behalf -- I  
19          don't mean to trash the parents. Really, the  
20          caretaker for several weeks had been the aunt,  
21          who was the one that turned them over to DCF. We  
22          visited with Christmas presents for their  
23          sisters, and it turned out the aunt was taking  
24          care of her mother, who was dying, who had MS and  
25          was bedridden and was dying. She was taking care

1 of three of her own kids who were toddlers. She  
2 was pregnant, out to here, and before she gave  
3 all of these kids up to DCF, there was [John] and  
4 [James] and three sisters, so she had eight  
5 toddlers, practically, I think the oldest one was  
6 eight or nine, and a dying mother in the house to  
7 take care of, and no one was really helping her  
8 out. So I got why -- at that point, why no one  
9 was giving the baby meds. The kids were taking  
10 care of themselves. The kids were taking care of  
11 other kids in that house.

12 Q. How old were the kids when they came to  
13 you?

14 A. [John] was four, and [James] was four  
15 months.

16 Q. Now can you tell me about the boys'  
17 emotional condition when they arrived?

18 A. Sure. Well, again, he just looked  
19 traumatized, but he just had this blank look on  
20 his face. He didn't speak. In fact, he didn't  
21 speak for at least a week, maybe -- I don't  
22 remember exactly, but for the longest time he  
23 didn't speak.

24 At about two weeks, he started speaking,  
25 but -- like he would ask for something or

1           whatever, but it would come out a shuh, shuh,  
2           shush, and we didn't understand it. We would  
3           say, "This?" and it would be a "Shush." You  
4           know, he wouldn't open his mouth when he spoke.

5                        You know, I knew that it must just be  
6           trauma. It must be very difficult for a  
7           four-year-old to be taken away from the only  
8           family he's known, regardless of the quality of  
9           that family or what the family's issues were. He  
10          was truly traumatized.

11                   Q. And what about [James]?

12                   A. [James], of course, was fussy.  
13           [James]'s was a little more of a medical  
14           condition. In short order, of course, I had  
15           gotten antibiotics, pretty much taken care of the  
16           medical things, and really once his medical  
17           issues cleared up, he seemed to be a pretty happy  
18           baby.

19                   Q. Now, at that time, [James], of course,  
20           was a baby, so he hadn't been to school, but can  
21           you tell the Court your observations regarding  
22           [John]'s educational development when he arrived?

23                   A. Well, it took a little time to figure it  
24           out, because he wasn't talking at first, but  
25           once -- after about a month, he was speaking

1 clearly, and we were getting him ready to get  
2 into pre-K, and so I kind of tested him, you  
3 know, was working with him at home. He didn't  
4 know the difference between colors, red, green  
5 and blue. He didn't know the difference between  
6 a square, a triangle, a circle. He couldn't draw  
7 a picture of a person or anything else. He  
8 didn't know how to hold a pencil. He didn't know  
9 the difference between letters and numbers. He  
10 didn't know the alphabet.

11 I did again -- I had spoken with the  
12 aunt, and he had never been placed in pre-K or  
13 any kind of day care. He had always been right  
14 there in the house. He did show some real signs  
15 of intelligence, though. He could sing. I would  
16 play the radio, like in the car, and if he heard  
17 a song once or twice, he knew all the lyrics, and  
18 I could actually shut off the radio and he'd be  
19 singing, and he could sing in tune, and I'd turn  
20 the radio back on, and he'd be right on beat and  
21 have all the words right, and you know, I  
22 couldn't even think of those words. You know, it  
23 takes me a lot of time to learn a song, but he  
24 could record it in his mind, just like that.  
25 So he had certain skills, but obviously he had no

1 formal training, no formal education, and seemed  
2 to have some real problems, like with visual  
3 abilities.

4 Q. Did the boys bond with you right away?

5 A. No, in fact -- well, I'll start with the  
6 baby, because he's a little easier. The baby was  
7 four months. Once he felt better, he just was  
8 the happiest baby. One thing we noticed was that  
9 he was just happy with everybody, just wanted to  
10 be held by anybody that came along. Some woman  
11 in the grocery store, he'd be like -- you know,  
12 which sounds great, but my understanding is,  
13 that's kind of a baby that's never bonded with  
14 any one adult, and in that house there was really  
15 no adult that had time to really take care of  
16 him. I think the siblings were really taking  
17 care of him.

18 At about two months, he definitely  
19 preferred to be held by me. You know, any alarm,  
20 he'd want to come to me. He might go to somebody  
21 who would be visiting to hold, and he'd be still  
22 just the happiest baby, but at the first sign of  
23 whatever, he'd want to come back to me, or to  
24 [Tom, Sr]. I mean, he was equally attached to [Tom, Sr].  
25 But really, being a baby, I think he was very

1 resilient and did very well in that, in the  
2 bonding.

3 I might also say that I -- having had  
4 several babies, I have a Baby Bjorn, a backpack,  
5 and I carry them around a lot, and I think that  
6 that helps with bonding. Of course, feeding and  
7 changing and whatever, but I think carrying them  
8 around is one thing that does help.

9 [John]'s bonding was one of the --  
10 probably the biggest challenge we've had as  
11 foster parents. You know, usually we've had  
12 three-year-olds, two-year-olds. This was, I  
13 guess, our oldest foster child, at four, which  
14 isn't that old, but he had four years to bond  
15 with his biological family. Completely  
16 traumatized the first month, very depressed for  
17 really -- just looking at him, there were signs  
18 of depression for several months. I went back  
19 over pictures, and most of the pictures, about  
20 the three months -- for at least three months,  
21 were about like that, just that blank look on his  
22 face.

23 At one point -- what was it? I had been  
24 holding [James], and then I said, "Come here,"  
25 and I gave [John] a big hug, too. I figured he

1 needs it, probably even more than [James]. And  
2 he said, "No, you just hug my brother. That's  
3 your baby." And then I asked him about that and  
4 I said, "Well, you're both my babies," you know.  
5 And he said, "No, my mommy said I don't have a  
6 baby daddy. She said I ain't got no daddy at  
7 all." He said to me, "She told me a lot of  
8 times, I don't got no daddy. She said [James]  
9 got a daddy, that must be you, but I don't got a  
10 daddy."

11 Let me tell you, my heart just melted at  
12 that point, and at that point, I just said to  
13 him, and I really felt it -- I committed to that  
14 boy. That boy, who was supposed to be temporary,  
15 I said to him, "Don't you say that again, because  
16 I'm your daddy, and I will always be here for  
17 you. You never have to tell anyone again you  
18 don't have a daddy. You have a daddy."

19 Anyway, that was kind of a turning point  
20 for me, emotionally. I think at that point,  
21 I had -- you know, knowing he was temporary, I  
22 had almost been trying not to bond, and he was  
23 definitely trying not to bond. I'd like to say,  
24 you know, at that point, oh, we bonded, and that  
25 was it. It wasn't that happy a story for him.

1           This kid took a year and a half before I thought  
2           that he was -- had some sort of a decent bond  
3           between ourselves, between me and [Tom, Sr].

4                         What saved him during that time was, he  
5           was placed with his little brother, and he had  
6           actually been caring for his little brother.  
7           When he came, he wanted to give his brother a  
8           bottle, he knew how to burp his brother, and we  
9           were, of course, discouraging it. I had to see  
10          it once, to see if he could really do it, but  
11          that kid knew how to feed him and burp him, and  
12          test it to see if it was too hot. And then one  
13          day he had him and he changed him, and he knew  
14          how to change a diaper as well as I did, and of  
15          course, I said to him, you know, "No, that's not  
16          your job." You know, "We take care of you. You  
17          don't need to take care of him anymore." Anyway,  
18          I'm meandering a bit.

19                        About a year and a half into our  
20          relationship with him, he showed real signs of  
21          beginning to bond with us, but I swear, it was  
22          probably two and a half years with this child  
23          before I felt like he was fully bonded to us.

24                        Q. Can you relate to the Court your  
25          observations of any abnormalities in the boys'



1 behavior at the time they came to you?

2 A. The most noticeable was with [John].  
3 And [John], you know, once he started really  
4 asserting himself, at about, I don't know, a  
5 month, I made breakfast one morning, and I made  
6 eggs and he said, "No, I asked for cereal." And  
7 I thought, "Well, I've got cereal." I get the  
8 cereal, get the bowls, get the sugar. I put it  
9 down. He said, "No, I told you pancakes." And I  
10 was kind of taken aback. At first I didn't know  
11 quite what he was doing, but this continued for a  
12 little while, but we figured out in short order.

13 In MAPP class and whatever, they talk a  
14 lot about eating disorders and things that foster  
15 kids develop. He also, we discovered, was taking  
16 food to his room. He would wrap it in a napkin  
17 and we would find it in the dresser drawer and  
18 the underwear drawer. We would find it tucked  
19 between the mattress and the -- it's a car bed,  
20 but between the mattress and the thing. And, you  
21 know, he had a lot of issues around food.

22 His teacher called me from pre-K,  
23 because he got in a fight at lunch, because he  
24 was taking food off one of the other kids plates.  
25 He would get a plate of food and eat two bites

1           and then ask for seconds, before he had really  
2           eaten much of anything. But it was just so  
3           apparent that in that house, he had to compete  
4           for food. He had a whole lot of food issues. In  
5           that sense, he really came to the right foster  
6           home. [Tom, Sr.] is an excellent cook, but [Tom, Sr.] --  
7           [Tom, Sr.], his mother also, now that she's retired from  
8           nursing, she runs a catering business, but she's  
9           always done that on the side, and [Tom, Sr.] would  
10          help her, but [Tom, Sr.] is one of those, he cooks in  
11          these big pots and he always way overcooks. I  
12          mean, I'll always end up throwing out food. We  
13          never -- we always have so much food, I have to  
14          throw some out. But the neat thing was, I could  
15          [John] up there, or [Tom, Sr.] would take him up  
16          there, and I would show him, right before dinner  
17          each day, and we had to do it for weeks, but we  
18          would show him, "Look, we have this much rice.  
19          If you want more, there's more here." We would  
20          purposely put extra on his plate. It really took  
21          about two months, but I would say in two months,  
22          most -- pretty much all of those behaviors went  
23          away.

24                           THE COURT: Shall we stop? Is this  
25                           a good place to stop?

1                   MR. ROSENWALD: This is a good  
2 place.

3                   MS. COOPER: It is a good place.

4                   THE COURT: Is 8:30 good tomorrow?  
5 Do you want to start earlier? I mean,  
6 how behind are we?

7                   MR. ROSENWALD: Actually, we're  
8 only about half an hour behind.

9                   THE COURT: Okay, so 8:30 --

10                  MS. COOPER: We're catching up.

11                  THE COURT: 8:30, and then you'll  
12 talk about the evening.

13                  MR. FAHLBUSCH: Yes, thank you.

14                  MS. COOPER: We'll discuss. Thank  
15 you.

16                  THE COURT: Thank you.

17                  (Thereupon, the hearing was  
18 adjourned at 5:30 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, JOAN L. BAILEY, Registered Diplomat  
Reporter, Florida Professional Reporter, and a  
Notary Public for the State of Florida at Large,  
do hereby certify that I was authorized to and  
did stenographically report the foregoing  
proceedings and that the transcript is a true and  
complete record of my stenographic notes.

DATED this 6th day of October, 2008.

\_\_\_\_\_  
JOAN L. BAILEY, RDR, FPR

Notary Commission Number DD 64037  
Expiration June 14, 2011.

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IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JUVENILE DIVISION  
CASE NO.: 06-033881 FC 04

IN THE MATTER OF THE ADOPTION OF )  
 )  
 [John Doe] and )  
 [James Doe], )  
 minor children, )  
 )  
 \_\_\_\_\_ )

The above-entitled cause came on for  
hearing before THE HONORABLE CINDY S. LEDERMAN,  
in her courtroom at the Juvenile Justice Center  
3300 Northwest 27th Avenue, Second Floor, Miami,  
Miami-Dade County, Florida, on Wednesday, October  
2, 2008, beginning at approximately 8:30 a.m.

- - -

1 APPEARANCES:

2 THE AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION OF FLORIDA, INC., by  
4 LESLIE COOPER, ESQ.,  
5 and  
6 ROBERT F. ROSENWALD, JR., ESQ.,  
7 and  
8 JAMES ESSEKS, ESQ.,  
9 and  
10 SHELBI D. DAY, ESQ.,  
11 Counsel for Petitioner, Frank Martin Gill  
12 and the ACLU.

13 OFFICE OF THE ATTORNEY GENERAL, by  
14 VALERIE J. MARTIN, ASSISTANT ATTORNEY GENERAL,  
15 and  
16 KIERNAN P. MOYLAN, ASSISTANT ATTORNEY GENERAL,  
17 and  
18 CHARLES M. FAHLBUSCH, ASSISTANT ATTORNEY GENERAL,  
19 Counsel for Department of Children & Families.

20 GREENBERG TRAUERIG, P.A., by  
21 HILARIE BASS, ESQ.,  
22 and  
23 RICARDO A. GONZALEZ, ESQ.,  
24 Counsel for the minor children.

25 JESSICA L. ALLEN, ESQ.,  
On behalf of the Guardian Ad Litem Program.

RONALD B. GILBERT, ESQ., GUARDIAN AD LITEM

FRANK MARTIN GILL, PETITIONER

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## I N D E X

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MICHAEL E. LAMB, PH.D.		
Direct Examination (by Ms. Cooper)	451	
Cross Examination (by Ms. Bass)	563	
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FRED S. BERLIN, M.D., PH.D.		
Direct Examination (by Mr. Rosenwald)	636	
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Cross Examination (by Ms. Martin)		
RONALD B. GILBERT		
Direct Examination (By Ms. Bass)	727	
DAVID BRODZINSKY, PH.D.		
Direct Examination (By Ms. Bass)	743	
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## EXHIBITS

Petitioner's Exhibit Number 10	430
Petitioner's Exhibit Number 11	466
Petitioner's Exhibit Number 12	648
Guardian Ad Litem's Exhibit A	742
Guardian Ad Litem's Exhibit B	748



1           THEREUPON:

2                   The following proceedings were had:

3                   THE COURT:   Okay, we're back, and  
4                   we were in the middle of Mr. Gill's I  
5                   guess, do we want to put our appearances  
6                   on the record again?

7                   THE CLERK:   In the case of  
8                   06-033881.

9                   MS. MARTIN:   Valerie Martin,  
10                   Attorney General's Office on behalf of  
11                   the respondent, Department of Children &  
12                   Families.

13                   MR. FAHLBUSCH:   Charles Fahlbusch,  
14                   Attorney General's Office, on behalf of  
15                   the Department of Children & Families.

16                   MR. MOYLAN:   Kiernan Moylan,  
17                   Attorney General's Office, on behalf of  
18                   DCF.

19                   MS. ALLEN:   Jessica Allen, on  
20                   behalf of the Guardian Ad Litem Program.  
21                   The guardian is present.

22                   MR. GILL:   Frank Gill, foster  
23                   parent.

24                   MS. BASS:   Hilarie and Rick  
25                   Gonzalez, from Greenberg Traurig, on

1           behalf of the children.

2           MR. ROSENWALD: Robert Rosenwald on  
3           behalf of the petitioner.

4           MR. ESSEKS: James Esseks and  
5           Leslie Cooper, from the ACLU on behalf  
6           of the petitioner.

7           THE COURT: You were in the middle,  
8           right?

9           MR. ROSENWALD: Yes.

10          THEREUPON:

11                           FRANK MARTIN GILL  
12          returned to the stand and resumed testimony as  
13          follows:

14                           DIRECT EXAMINATION (CONTINUED)

15          BY MR. ROSENWALD:

16                   Q. Good morning, Mr. Gill. How are you?

17                   A. Good morning. I'm good.

18                   Q. Yesterday, you told us that your -- the  
19          placement with [John] and [James] was supposed  
20          to be a short-term placement. Here we are,  
21          nearly four years later. At some point, did that  
22          change?

23                   A. It was kind of at several points. The  
24          first that we had any indication, really -- I  
25          guess I should say that the social workers, of

1 course, they're all looking at one year for TPRs  
2 that kind of thing, so they're not going to keep  
3 you up-to-date on what's going on with the  
4 family, necessarily, but we arranged visitation  
5 with the grandmother -- the great-grandmother,  
6 who had their sisters. And the first indication  
7 we had was, I don't know, a couple months, maybe  
8 three months into our placement, the grandmother  
9 explained to me that she was looking for a bigger  
10 place. She said the guardian ad litem was  
11 assisting her in that, and her goal was to take  
12 [John]. [John] was four, and she had some  
13 history with [John]. She had felt that she had  
14 some bonds with [John] and felt that it would be  
15 best for [John] to be with his sisters but at  
16 that point she turned to me and she said, "And I  
17 would like you to adopt [James]."

18 She said, "I don't really know that  
19 baby. I don't know the father, and what I've  
20 heard, I don't like." She said, "I would really  
21 think that he would be best off staying with you  
22 guys, and I'd like to see you adopt him."

23 So that was the first that we even  
24 thought about it, because really, before that,  
25 they were temporary. You know, we were told they

1           were temporary. We assumed that the family was  
2           trying to get them, and she was. Then at about  
3           six months, we held a big birthday for [John].  
4           His birthday is June 15th. We decided we would  
5           do it at Chuck E. Cheese's. Since we had had  
6           visitation with the family, we thought great, we  
7           can invite pretty much the whole family, using  
8           the great-grandmother's judgment about who not to  
9           invite, and of course, I told her, "Don't invite  
10          the biological parents, because they haven't  
11          petitioned the Court."

12                        Their sisters came, their cousins came,  
13           two aunts and one uncle came. And at that point,  
14           we met the aunt that had originally applied to  
15           take custody of the children. It wasn't the aunt  
16           that was their caretaker, it was an aunt who  
17           was -- she was single. She looked like a  
18           business woman. She looked like she had it  
19           together. She told us she was single and had no  
20           kids, and finally decided it was just too big of  
21           a change for her to all of a sudden take on two  
22           kids, and she had given up the pursuit of getting  
23           custody of either of the kids.

24                        A couple of months after that, we found  
25           that the grandmother -- well, somewhere in that

1 point, the grandmother had gotten a new apartment  
2 and did not get an extra bedroom for [John]. She  
3 didn't really explain it, but it sounded like she  
4 had kind of given up on the idea of taking [John]  
5 by that time. I assume that -- well, maybe I  
6 can't assume, but I would assume that she felt  
7 that he was well taken care of, where he was, in  
8 staying with his little brother and with us.

9 Q. Are the boys now available for adoption?

10 A. Yes. They've been available since  
11 sometime in 2006. More than two years ago, all  
12 of the TPRs were finally finalized.

13 Q. And just to be clear, during the time  
14 that you've had custody of [James] and [John],  
15 has anyone at all from the boys' biological  
16 step-family -- or biological families stepped  
17 forward to take the boys in?

18 A. Well, aside from what I just said about  
19 the grandmother, no, nobody. The parents, to the  
20 best of my knowledge, never really came to the  
21 Court at all. They were served, but they never  
22 showed up, and nobody came forward, no.

23 Q. Now, you said yesterday that you had a  
24 hard time bonding with [John]. Can you tell me  
25 about the development of your relationship with

1 the boys?

2 A. Well, I want to correct you. I didn't  
3 have a hard time bonding with him.

4 Q. Please correct me.

5 A. Maybe the more that he resisted, the  
6 more that we really tried, you know, so the more  
7 we were really bonded with him, but it was more  
8 him having a very difficult time bonding with us.  
9 And I'm sorry, the question is?

10 Q. Tell me about your relationship today  
11 with the boys.

12 A. Today, okay. Well, [John], [John] is  
13 amazing. [John] -- you know they all go through  
14 stages, but [John] is my little angel right now.  
15 I mean, he behaves. He's really good. He has a  
16 lot of friends. They're the same friends he's  
17 had for years, because he's been at like the same  
18 day care, the same aftercare and the same school  
19 for a few years. His best friend is named Misty.  
20 She lives a block away, and we arrange to see her  
21 regularly.

22 We moved this year, and I made point of  
23 not moving -- we moved one block, because he has  
24 friends on that block and I didn't want to go too  
25 far. We like the school. We like the day care.

1 But a true consideration there was the fact that  
2 both of my boys have friends on that block.

3 [John], I can truly say he's like a good  
4 person. Both of my boys. We found a kitten in  
5 the back yard a couple of weeks ago. We also got  
6 a rabbit, maybe in June or July. And they are  
7 gentle with that kitten. They are nurturing with  
8 that kitten. We had to bottle-feed the kitten  
9 and they've helped in bottle-feeding that kitten  
10 but just the way they handle it, the way they  
11 deal with their friends, my kids are going to be  
12 good fathers. They're going to be nurturing  
13 individuals. I -- you know, part of that has got  
14 to be biological, I'm sure, but I would like to  
15 think that the fact that [Tom, Sr.] and I are loving  
16 and nurturing has kind of rubbed off. I'd like  
17 to take some responsibility for that.

18 Q. Has [John] bonded with you now?

19 A. [John] for -- it will be four years  
20 soon. I would say at about two and a half years,  
21 there was no -- I mean, he was completely bonded  
22 at that point. And I mean, he went from being  
23 kind of a depressed kid, an unhappy kid, and now  
24 he smiles a lot. He's a very happy,  
25 well-adjusted kid now.

1                   As the Court saw not long ago, he can be  
2 a little shy at times. He's not as outgoing as  
3 [James]. He's not quite as self-assured as  
4 [James]. But he's a very normal kid at this  
5 point.

6                   Q. How can you tell that [John] is now  
7 bonded with you and [Tom, Sr.]?

8                   A. Well, at one point, he didn't want to be  
9 hugged by me. Now he can't leave the door in the  
10 morning without a big hug, and that's prompted on  
11 his part. I think I can just look in his face  
12 and see how happy he is. We took them to school.  
13 [Tom, Sr.] and I both took them to school, and we go  
14 in the first day, of course, to meet the  
15 teachers, and he ran right up to the teachers and  
16 he said, "These are my daddies, these are my two  
17 daddies, I have two daddies," and he was proud of  
18 us.

19                   Q. What role, if any, did [Tom, Jr.] play  
20 in helping [John] get through his bonding issues?

21                   A. Well, as I said, [John] had a very rough  
22 time, but what really saved him, first of all,  
23 that he was placed with his little brother, who  
24 he was like the caretaker for his brother, so  
25 that was a wonderful thing. I can't say enough



1           about trying to keep the families together,  
2           because those bonds are very important.

3                        What I didn't realize when we first  
4           became foster parents is that your own children  
5           bond to your foster children, and that has been  
6           one of the sad things about fostering, is that  
7           we've had to give back children that our son, who  
8           at the time we started was about eight, had  
9           really bonded to these kids. At one time, I had  
10          some kids taken away to be -- to go back to their  
11          mother. That was, of course, a good thing. And  
12          I was kind of mourning the loss, because we'd  
13          been with them about five months and I was  
14          feeling really bad, but after like two weeks, I  
15          said, "Okay, [Tom, Jr.], are you ready to get  
16          new foster kids," and [Tom, Jr.]'s response to  
17          me was, "No," and I was taken aback by that,  
18          because these were his best friends. He loved  
19          those kids. And I said, "No? Why not?" And he  
20          said, "Because I met the mother. I think she's  
21          going to screw up and we're going to get those  
22          kids back."

23                        Anyway, it turned out he was missing  
24          those kids as much as we were. And I didn't even  
25          think about that when we became foster parents.

1           Anyway I'm digressing here, but the thing about  
2           [John] was, when he came into our home, he wasn't  
3           ready to accept two new parents as parents,  
4           really. He was processing his own loss, I guess.  
5           But [Tom, Jr.] was his instant best friend. I  
6           mean, they would sit on the couch together. They  
7           would wrestle. They would hug. They were just  
8           instantly best friends. Little boys look up to  
9           older boys, I think, and just instantly they took  
10          to each other, like that, and it's still that  
11          way, and I think that really saved [John].

12           Q. What do [John] and [James] call you  
13          and [Tom, Sr.]?

14           A. I'm Papi and [Tom, Sr.] is Daddy. I think  
15          it's nice to have two different names, so you  
16          know who they're going to or who they're calling  
17          to. They asked me once, "What is Papi? What  
18          does that mean? Papi is your name?" And I said,  
19          "No, Papi means Daddy in Spanish," and that we're  
20          both daddies. Sometimes they'll call me Daddy,  
21          too, but certainly if we're both standing there,  
22          it's either Daddy or Papi.

23           Q. Do [John] and [James] have  
24          relationships with your extended family and  
25          [Tom, Sr.]'s extended family?

1           A. Absolutely. Both of our mothers come  
2           and visit. [Tom, Sr.]'s mother is in Tampa, and  
3           she'll come and visit. She's retired. She'll  
4           come and visit several times a year, and, you  
5           know, that's Grandma Helm, and she always does  
6           something for their birthdays. We get Christmas  
7           presents. We usually have Christmas with her.  
8           If we don't, certainly she takes out the time to  
9           send Christmas presents and things, and cards.  
10          When she calls, they want to talk to her on the  
11          phone. They get excited about that.

12                 My mother lives farther away, but she  
13          comes about twice a year, and my mother, of  
14          course, always sends birthday cards and things  
15          like that, and they love my mother, as well. My  
16          mother loves her grandkids.

17                 As far as their uncles and aunts, those  
18          are their uncles and aunts. My sister comes down  
19          to visit quite a bit. My sister has a daughter  
20          that's the same age as [James], and that's his  
21          cousin. He talks about Zayda all the time.  
22          They're always talking, and they even talk on the  
23          phone. They're four years old, I'm not sure what  
24          they talk about, but he wants to talk to Zayda.  
25          My sister lives in Manhattan, but they come down

1 frequently.

2 Q. What was the reaction of your biological  
3 families to your decision to adopt the boys?

4 A. Well, I think it was just natural, that  
5 we've had them so long. Certainly, everybody has  
6 been supportive. Nobody -- I mean, God forbid,  
7 nobody wants me to lose these kids. They would  
8 all like these kids to be permanent.

9 Q. And please describe for the Court [John]  
10 and [James]'s biological family's reaction to  
11 the news that you had decided to adopt the  
12 children.

13 A. Well, I've never met the mother. I  
14 don't think the Court has, either. And I  
15 haven't - [John]'s father is unknown. I never  
16 met [James]'s father.

17 The caretaker at the time was the aunt.  
18 Her name is Ebony. Through visits, I got to know  
19 Ebony, and I really like Ebony. You know, even  
20 though this was like a neglect case, I think she  
21 was just overburdened, and she was doing her job.  
22 She seemed to look forward to my visits, and we'd  
23 sit and talk, and I think she was very  
24 supportive. I think she feels that this was the  
25 best thing.

1                   As far as the great-grandmother, I've  
2                   already said the great grandmother, who's taken  
3                   over the sisters, on one of the first visits,  
4                   said, "I want you to adopt [James]." And she  
5                   said she had a very good feeling about me and she  
6                   was very happy with the placement.

7                   Q. With the Court's permission, I'm going  
8                   to show you a picture and ask you --

9                   THE COURT: I have one question,  
10                  Mr. Rosenwald. The photograph from  
11                  yesterday was not introduced into  
12                  evidence.

13                 MR. ROSENWALD: That's correct, and  
14                 we're going to --

15                 THE COURT: Okay.

16                 MR. ROSENWALD: -- do that, along  
17                 with this one, now.

18                 MS. BASS: I'm sorry --

19                 THE CLERK: It was Petitioner --

20                 MR. FAHLBUSCH: It was  
21                 Petitioner --

22                 THE CLERK: -- Exhibit 9.

23                 MR. ROSENWALD: We marked it, but  
24                 had never -- you're correct, we never  
25                 actually moved to admit it, and I guess

1           at this time I would move -- well, let  
2           me ask some questions first.

3           BY MR. ROSENWALD:

4           Q.   Do you recognize this picture?

5           A.   Yes.  These are my boys, about -- I'm  
6           not sure, about a month ago, sometime this  
7           summer.

8           Q.   Did you take the picture?

9           A.   I actually didn't take this one.  I  
10          think [Tom, Jr.] took this one.  This is on  
11          Amtrak, and they were with their Dad that day,  
12          and they're sitting in an Amtrak train.

13          Q.   Is that an accurate representation of  
14          what the boys look like?

15          A.   Yeah, very much so.  They're both very  
16          healthy kids.  Yeah.

17          MR. ROSENWALD:  At this time, I'd  
18          move to admit both the before picture  
19          and the after picture.

20          MS. MARTIN:  DCF has no objection,  
21          obviously.

22          THE COURT:  So ordered.

23          MS. BASS:  This is 10?

24          THE CLERK:  So that's Exhibit  
25          Number 9, okay, and that's going to be

1 Exhibit Number 10.

2 MR. ROSENWALD: And with the  
3 Court's permission, I'm going to hand  
4 the witness the earlier picture, as  
5 well, to reference.

6 BY MR. ROSENWALD:

7 Q. You can reference them as you like. You  
8 don't have to hold them. I'm not going to quiz  
9 you on them.

10 Tell me --

11 A. I feel like I should be displaying them  
12 here.

13 Q. Tell the Court what [John] is like now.

14 A. [John] is a very normal kid, you can  
15 see. The guardian ad litem and the social worker  
16 would come and take photos of him, and for months  
17 and months you could not get him to smile, I  
18 mean, even a fake smile. It just didn't work.  
19 Now he smiles a lot. You can't take a photo  
20 without him smiling, usually, these days. He's a  
21 very happy kid. As I said, he's got friends.  
22 He's well adjusted. [John] is at -- they're both  
23 above 95 percentile on their height. He's a big  
24 kid. And really, about the only health problem  
25 he's ever had was the ringworm on the top of his

1 head.

2 Of course, the Court knows that on  
3 vacation this year, he did a back flip, even  
4 though I was yelling at him not to, and has  
5 stitches here, but that's -- that, amazingly, I  
6 mean, he's such a healthy kid, in about three  
7 days, that mark was gone and he barely has any  
8 mark there left at all, and that was just a few  
9 weeks ago.

10 Q. Let's talk about [John]'s educational  
11 development. What is he like today,  
12 educationally?

13 A. We worked with him extensively. I mean,  
14 at first it was very difficult, because he just  
15 had no basis, just -- I would guess that he had  
16 never even seen a book before the time we got  
17 him. But these days, he's in second grade. He  
18 had to repeat first grade. He got three Bs and  
19 two Cs on his first report card. Last year he  
20 did all Bs and Cs. He can read. He can read  
21 pretty well. He can read fairly big words. I've  
22 worked with him primarily on reading, because I  
23 felt like, you know, reading for me is the basis  
24 for all other education. If you can't read, it  
25 makes it more difficult to learn anything else.



1           So we really worked on that. I would say that he  
2           is probably -- he got a B in the reading area, so  
3           I would say that he's a little above average.

4                     Math, we're struggling with. But he's  
5           up with his class, I think. Now that I'm feeling  
6           so comfortable with his reading, we've switched  
7           to math a little more, and I think that he'll get  
8           there. But he's doing well in class. His  
9           teacher likes him. He likes school. He even  
10          likes homework. I think he likes homework  
11          because he gets one-on-one attention. I take out  
12          the time every day to do his homework with him.

13                    Q. You were turning to [James]. How is  
14          [James] today?

15                    A. [James]? [James]'s always been an  
16          amazing kid, and [James] is at -- I think it's  
17          97 percent, of his height. He is the youngest  
18          kid in his pre-K class, because he had an August  
19          birthday, and he is the tallest kid in that  
20          class. I mean, I could be wrong about this,  
21          but -- the teacher said he's doing very well, but  
22          I would -- I would guess that he's like the top  
23          of his class, too, being the youngest, because he  
24          knows letters. You know, he's younger than  
25          [John] when we got [John], but [James] knows

1 all of his shapes, colors, numbers. If you  
2 say -- you know, if you say the letter Z, he'll  
3 say -- "What is the letter Z for," he'll say,  
4 "Zebra, zzz, zzz, zzz." So he's learned all of  
5 the sounds that the letters make. It's not going  
6 to be very long -- I mean, he just turned four,  
7 but it's not going to be very long until  
8 [James] is reading. He's a very bright kid. I  
9 could see -- I could actually see -- at this  
10 point, [John] is studious. I could see [John]  
11 going on -- he's got kind of the personality,  
12 some day I could see him being an accountant or  
13 something like that. [James], on the other  
14 hand, is very outgoing, and certainly if he  
15 applies himself, he could go to a university. He  
16 could really succeed in life. He could be a  
17 lawyer.

18 Q. God forbid.

19 A. Yeah.

20 Q. Now, you've applied to adopt [John] and  
21 [James]?

22 MS. MARTIN: Leading.

23 THE WITNESS: Yes.

24 BY MR. ROSENWALD:

25 Q. Why do you want to adopt [John] and

1 [James]?

2 A. Well, we both love them. I truly think  
3 that adopting them would be best for them. I  
4 think, you know, they've got almost four years of  
5 bonding with us. I think that it would truly be  
6 in their best interests.

7 We have provided a very loving and  
8 nurturing home. I think the natural thing for us  
9 to do is adopt them at this point.

10 Q. How do you think [John] would be  
11 affected if he can't be adopted, both boys can't  
12 be adopted by you?

13 A. Well -- well, I mean, as I've said, it  
14 took up to two and a half years for [John] to  
15 really bond with us, and that was with a lot of  
16 effort, and if you think about it, I mean, two  
17 and a half years -- okay, I'm going to digress a  
18 little bit here, but last month I had my regular  
19 visit with Yves Francois -- I don't know, is he  
20 here today? And Yves has been -- I have to give  
21 him a plug, he's been -- he's the adoption  
22 supervisor, but he's taking this on as a regular  
23 case, which he doesn't normally do, and he's been  
24 great. He always shows up on time and he always  
25 pretty much says the right things and, you know,

1 he takes care of things like that.

2 Although Yves -- Yves goes by the  
3 policies here, and basically, on the last visit  
4 and on other visits, he said, "Well, this is how  
5 it -- "

6 MS. MARTIN: Object to hearsay.

7 THE COURT: Sustained.

8 MR. ROSENWALD: He's -- it's the  
9 party admission. He's an agent of the  
10 State, for DCF. Valerie has taken the  
11 position throughout this litigation that  
12 we're not allowed to speak to him  
13 because she represents him as a party.  
14 He is the agent of DCF.

15 MS. MARTIN: Your Honor, just in  
16 rebuttal, that request has never been  
17 made of me, so I've never objected to  
18 you speaking to him. There's never been  
19 a request presented.

20 MR. ROSENWALD: Valerie, we did.  
21 We asked if we could speak to him, and  
22 you told us you could not -- you were  
23 taking the position that you represent  
24 everyone at CFCE, as agents of DCF.

25 And whether she had or not, Your

1 Honor, as a practical matter, the agents  
2 of CFCE are agents of DCF. They're  
3 carrying out DCF's statutory duty.

4 The only reason DCF is a party here  
5 is because it is the one that chose to  
6 come forward to defend the suit. It  
7 could just as easily have been CFCE,  
8 because they are the same entity.

9 THE COURT: I don't want to be in  
10 the position where I have every CFCE  
11 employee in this situation, but my  
12 understanding is, Yves has been here  
13 since yesterday, and you are the  
14 representative of DCF; is that correct?

15 MR. FRANCOIS: Well, Your Honor, I  
16 would say CFCE, actually, because we're  
17 the County's MAPP and service provider  
18 for the children, and Mr. Gill is also  
19 licensed through our agency by DCF,  
20 also.

21 THE COURT: All right, so I will  
22 allow it as to this, but we're not going  
23 to go through every employee that has  
24 seen them.

25 MR. ROSENWALD: No.

1 THE COURT: All right.

2 BY MR. ROSENWALD:

3 Q. Continue. You were saying that you were  
4 told --

5 A. Anyway, I want to reinforce, I think  
6 he's great.

7 Anyway, I think he was trying to prepare  
8 me a bit for, you know, what are -- what can  
9 happen here. Yves really sees things, in his  
10 eyes, I think, by the book, DCF policy. DCF  
11 policy, the way I understand it -- I've been  
12 explained by Yves and by other employees over the  
13 years, what could happen to these kids. Well,  
14 you know, judges are one thing, of course. DCF  
15 policy is another thing. But, by the book, the  
16 way I understand it, if this adoption does not go  
17 through, then inevitably they would end up on the  
18 adoption exchange, and at this point, being  
19 brothers, they would try to keep them together,  
20 but Yves' comment to me was that [John] is now  
21 eight, and really I guess it's kind of an  
22 informal thing, but I've heard it before, over  
23 the age of seven, your chances of adoption are  
24 not very good.

25 So he said, chances are, people would

1           want [James], not [John]. He said, "You know,  
2           I could object to that, and certainly I would  
3           object to that, but the reality is, [James] is  
4           adoptable. [James] is a young child. So it's  
5           possible that they'd have to be split up." He  
6           said, "It would be easier to get them adopted  
7           split up than together."

8                         And I mean, beyond that, I don't know if  
9           all this came from Yves that day or what, but,  
10          you know, as far as continued foster care, my  
11          understanding and what I've been told, I'm sure  
12          by Yves and by other people is that continued  
13          foster care, long-term foster care, is really for  
14          teenagers.

15                        At no time has anyone at DCF, like an  
16          Yves or somebody, said, "Oh, well, we can just  
17          get you permanent guardianship," because I don't  
18          think that they see that as an option. That's  
19          really not part of their policy book. It's not  
20          like part of their goals, like, "Okay, we have  
21          the goal of permanency," and the first thing they  
22          see is adoption, and it's adoption, adoption,  
23          adoption. They don't see permanent guardianship,  
24          lifetime foster care. And as I've been told by  
25          Yves and by other people, when you look at a

1 four-month old baby that came to me, or even a  
2 four-year-old like this, adoption is the goal.

3 Q. What do you think that would do to  
4 [John], if he was taken away from you and taken  
5 away from his brother?

6 A. Well, [John] -- who knows what happened  
7 the first four years. I'm sure it was very  
8 rough. But when we got him, it took an entire  
9 two and a half years for him to develop bonds  
10 with our family. He's now eight. So, looking  
11 ahead, what, he'd probably be nine by the time  
12 he'd get out there on the adoption exchange. And  
13 if his brother were to be adopted out, that would  
14 be devastating, but at least he'd still have us  
15 and he'd have his other brother, [Tom, Sr.], [Tom, Jr.]  
16 and I'm sure he'd survive. If he were to  
17 be adopted to the State's ideal heterosexual  
18 family, I think it would probably take him the  
19 rest of his childhood to form bonds with those --  
20 with those other parents, no matter how good  
21 those parents might be, and imagine being a child  
22 and spending your entire childhood trying to bond  
23 to adults. It's not right.

24 Q. Mr. Gill, why wouldn't continued foster  
25 care, permanent guardianship, be sufficient for





1           here, but you watch the TV movie of the week and  
2           there's the foster parent, and the foster parent  
3           is made out to be the bad guy. So I think  
4           there's a whole certain stigma with the whole  
5           foster system, unfortunately. I mean, foster  
6           parents are very necessary.

7                         Okay, I'm digressing here, but I guess  
8           my point there was, though, each year I pretty  
9           much have to tell their teacher -- We treat them  
10          like they're our kids, like they're our permanent  
11          kids. We make no distinctions there. I had a  
12          battle this year, as Yves could attest. I wanted  
13          to put him into a private evangelical school,  
14          because [James] -- that was for [James], for  
15          pre-K. I thought that that was by far the best  
16          school. He had friends there, it's where he's  
17          been, so I just wanted to keep him there one more  
18          year, and I could not do that under foster rules.  
19          I mean, that's just one small issue.

20                        Q. Have you had a conversation with the  
21          kids about their name?

22                        A. Yeah. Yeah. As -- because this trial  
23          was coming up, I felt that it was necessary to  
24          tell them, you know, "This is what's going on and  
25          this is what Yves and I have talked about. This

1 is what's going on. We're in the process of  
2 trying to adopt you, and this is what adoption  
3 is," and I can't remember exactly what I said,  
4 but I said about permanent, "You'll be a  
5 permanent part of our family," and they weren't  
6 getting it. So I had this idea. I took three  
7 pieces of paper and I wrote out my name, Frank  
8 Martin Gill, I wrote out [James]'s name,  
9 [James Doe], and then I wrote out [John]'s  
10 name -- their new names, of course, under  
11 adoption - [John Doe]. And then I put the  
12 papers in front of them and I said, "See, what  
13 happens in adoption is, you're going to get a new  
14 name, and [John] looked at me like, "I must be  
15 crazy, I just learned to write my name." And  
16 then I said, "Well, look, I want to show you,"  
17 okay? I showed them -- I started writing with  
18 [James] and I held his pencil for him, and then  
19 [John]. I said, "Go ahead and draw out your name  
20 there." He traced over the first one, and then  
21 he started doing the second one, and he looked at  
22 the three names and he said, "We all have the  
23 same name," and I said, "Yeah, in adoption, we  
24 have the same name, and we're all going to be  
25 Gills. That's going to be our last name." And

1 he said, "That means we're a family. We're going  
2 to have the same name."

3 And by that time he had written it out  
4 twice, but what really broke my heart was, I  
5 wanted them to write it out two or three times.  
6 [John] sat there, with just this look of pure  
7 contentment on his face, and he wrote down his  
8 new name for about an hour there. He just kept  
9 writing and writing, and the more he'd write it,  
10 the happier he looked. He had a smile on his  
11 face and he just had this look of pure joy, and  
12 he said a sense, I mean, just in the names, and  
13 that's only one small part of an adoption -- he  
14 had a sense that that was going to make us a  
15 family, a permanent family.

16 Q. How do you and [Tom, Sr.] feel about [John]  
17 and [James]?

18 A. We love them. They are our children.  
19 We could not love those kids any more if they  
20 were our biological kids. There's no distinction  
21 between [Tom, Jr.] and those kids. We love  
22 those kids.

23 Q. Are you and [Tom, Sr.] committed to being  
24 their parents forever?

25 A. Absolutely.

1 Q. Why are you applying to adopt, alone?

2 A. Well, I'm no lawyer, but my  
3 understanding from the beginning was that Florida  
4 has a statute about -- well, I know with the  
5 foster system, like if there's -- there can be  
6 unmarried foster parents, but the two can't both  
7 adopt a child. One or the other has to adopt a  
8 child in each case, and that's a statute over  
9 here somewhere. And then, of course, there's the  
10 1977 ban on gay adoption, which is a completely  
11 different statute. Really, it's like jumping  
12 through two different hoops, and it just didn't  
13 seem like it would be the right thing to do to  
14 try and do a two-parent adoption.

15 So instead, what we plan on doing is  
16 eventually, when this is through, [Tom, Sr.] is going  
17 to do a second-parent adoption, assuming -- I  
18 mean, we have to jump through this first hoop  
19 first.

20 Q. Has [Tom, Sr.] done anything to demonstrate  
21 that he wants to be a forever parent to [John]  
22 and [James]?

23 A. Yeah. He's completely committed to  
24 doing a second-parent adoption, which we'll  
25 probably have to do out-of-state, figure out a

1 way to do that. And of course that's dependent  
2 upon the first-parent adoption, but we also, a  
3 long time ago, for [Tom, Jr.] -- we have power  
4 of attorneys so we can do things for each other,  
5 but beyond that, for -- he has signed an  
6 affidavit that was submitted with the adoption  
7 application, saying that if I were to die  
8 tomorrow in this process, that he would be  
9 willing to continue with the process and he would  
10 be willing to adopt them.

11 Q. Finally, can you tell the Court about a  
12 day in the Gill-[Roe] residence?

13 A. Our days are busy. It's a lot of work  
14 with three kids. We get up about 6:30 every  
15 morning. Because of foster rules, they all have  
16 to take showers separately, which is good, so  
17 [John] takes his showers in the morning, and then  
18 the other kids come out and I make breakfast and  
19 they help me set the table. Each one has their  
20 duties. [James] does napkins. [John], when  
21 he's done, does silverware. [Tom, Jr.] gets the  
22 cereal, if it's cereal, or the bowls maybe or  
23 something. He helps me out in the kitchen a  
24 little bit, because he's older.

25 Then everyone comes to the table.

1           Before anyone starts, we turn off the TV. Even  
2           though it's breakfast, we all eat together. I  
3           think that's very important, to have a little  
4           family time, whether it's breakfast or dinner.

5                        After breakfast, they all put their  
6           own -- own dishes in the sink, and I load the  
7           dishwasher or whatever. They brush their teeth.  
8           I have to help [James] sometimes. Put lotion  
9           on, comb their hair, and once we're ready, I have  
10          a Ford minivan. It's not the sexiest car you've  
11          ever seen, but -- and about 15 years ago, I  
12          wouldn't have been caught dead in a Ford minivan,  
13          but you know what? I guess fatherhood changes  
14          people, and now that car is very practical. I  
15          enjoy it.

16                       Anyway, we get in the van. We go to  
17          school. I drop off [Tom, Jr.], and then I go  
18          to the grade school and I actually walk the kids  
19          in. I think it's important. For one, [James]  
20          is fairly new there, but I've always made a point  
21          of actually seeing the teacher, maybe not every  
22          day, but maybe every second or third day, asking  
23          how things are, asking if they're getting  
24          homework, how's he doing, and, you know, getting  
25          feedback from the teacher. I think it's very

1           important.

2                        Anyway, after that, I go home. I  
3           usually have a load or two of laundry, I have  
4           dishes. In the afternoons, I pick them up and  
5           that's kind of their free time. I figure they've  
6           been in school all day. We generally go to a  
7           park, or one day a week now we're all playing  
8           tennis, and I hired a tennis coach that works  
9           more with [John] and [Tom, Jr.], and I tend to chase  
10          the balls with [James], but we have a lot of  
11          fun.

12                      Then we go home. I make dinner. Of  
13          course, if [Tom, Sr.] is home, [Tom Sr.] loves to cook, so  
14          I just give him the kitchen, but when we get  
15          home, if not, if he's on the train, then I cook.  
16          The kids might watch a little TV, but then when  
17          dinner is ready, of course, again, [John] does  
18          the silverware and [James] does the napkins and  
19          [Tom, Jr.] does the plates and maybe the salad  
20          dressing and things.

21                      We are a religious family. We all go to  
22          Unity on the Bay, which is kind of  
23          nondenominational Christian. And we say grace.  
24          At every dinner, we say grace. All the kids know  
25          grace, and we let the kids -- even [James],



1           who's four, says grace, and it is very cute.

2                       We turn off the TV. We don't answer the  
3 phones. During dinner -- someone told me once  
4 about a technique, and I just say, "What's the  
5 best thing that happened at school today," or,  
6 "What did you like the best about school today?"  
7 If you ask them, "How was school," you get a  
8 "Good," or whatever. So I always get a story  
9 about school from each of the kids.

10                      Yesterday I forgot [James], and  
11 [James] said, "What about me? What about me?"  
12 Because they're all waiting for that question.

13                      Then -- we're very traditional. You  
14 have to be excused from the table. Now,  
15 [James] takes a lot longer, so sometimes the  
16 rest of us will leave the table and he'll still  
17 be there, but in general, you don't rush through  
18 dinner and leave the table.

19                      They help me load the dishwasher, the  
20 older kids do, and everyone takes their plates to  
21 the sink.

22                      Right after dinner, we clean up the  
23 table. The kids usually will be right there  
24 cleaning the table themselves, because it's been  
25 such a routine. We'll start homework. Whether

1 or not we've got homework, there's an hour of  
2 homework at our house. [James] is in pre-K,  
3 there is no homework, but we make some up. I've  
4 got writing books for him, and he's learning to  
5 write letters. And [John] needs a lot of  
6 supervision on his homework, and we spend an  
7 hour. If we get done before an hour, which we  
8 usually do, then it's reading time. After that,  
9 I give them just a little bit of TV or a little  
10 bit of play time, and then it's bedtime. The  
11 other two boys take their baths at night. And  
12 they always want to be tucked in, the little  
13 ones.

14 Something kind of cute, and I don't know  
15 that it's kosher with DCF, but -- everyone has to  
16 have their own bed, of course, and we've always  
17 enforced all DCF rules. I put [John] in this bed  
18 and [James] in that bed. They've shared a room  
19 since [James] was six years old. That's also  
20 DCF rules. They can be in your own bedroom, the  
21 babies, for a little while, but then they have to  
22 be on their own, and I think that was good, of  
23 course, because of the bond they have. But I put  
24 them in their own room -- separate beds, and in  
25 the morning, they're always in the same bed.

1 [James] is there, cuddling with [John].  
2 Honestly, I think it's a good thing. We have  
3 tried -- at times, we say, "Oh, you guys should  
4 stay in your own beds," but anyway, I think  
5 probably for bonding, it's the best thing.

6 Q. Thank you.

7 A. That's pretty much a day.

8 MR. ROSENWALD: That's all I have,  
9 Your Honor.

10 THE COURT: Ms. Bass?

11 MS. BASS: I have nothing, thank  
12 you.

13 MS. ALLEN: I have no questions, Judge.

14 MS. MARTIN: DCF has no questions.

15 THE WITNESS: Thank you.

16 THE COURT: Who's next?

17 MS. COOPER: Next will be Dr. Lamb.

18 MS. MARTIN: Your Honor, may I, in  
19 terms of planning for the day, request  
20 if we could be breaking at 12:45? I  
21 have a conference call.

22 THE COURT: Yes, that's fine.

23 MS. MARTIN: Thank you.

24 (Discussion off the record)

25 THE CLERK: Raise your right hand,

1           please.

2           THEREUPON:

3                           MICHAEL LAMB, PH.D.

4           was called as a witness by the Petitioner and,  
5           having been first duly sworn, was examined and  
6           testified as follows:

7                           THE CLERK: Please be seated, and  
8                           state your name.

9                           THE WITNESS: The name is Michael  
10                          Lamb, L-A-M-B.

11                           DIRECT EXAMINATION

12           BY MS. COOPER:

13                          Q. Good morning.

14                          A. Good morning.

15                          Q. Dr. Lamb, can you please tell the Court  
16                          your educational background?

17                          A. Yes. I have a Bachelor's degree in  
18                          psychology and economics from the University of  
19                          Natal, in South Africa, a Master's degrees in  
20                          psychology from Johns Hopkins University in  
21                          Baltimore and Yale University, and a Ph.D. in  
22                          psychology from Yale.

23                          MS. COOPER: Your Honor, are you  
24                          able to hear?

25                          THE COURT: Yes.

1 BY MS. COOPER:

2 Q. When did you receive your Ph.D.?

3 A. 1976.

4 Q. Okay. And if you could tell the Court,  
5 from the time you finished your Ph.D. program,  
6 where you were employed and what positions you  
7 held up till the present.

8 A. Sure. After my degree, I took a  
9 position as an assistant professor of psychology  
10 at the University of Wisconsin. I then moved to  
11 the University of Michigan, in a similar  
12 position.

13 In 1980, I moved to the University of  
14 Utah, as a professor of psychology, psychiatry  
15 and pediatrics, and I stayed there until 1987,  
16 when I took a position as a senior scientist at  
17 the National Institutes of Health in Washington.  
18 I stayed there for 17 years, and in 2004, took my  
19 current position as professor of psychology at  
20 the University of Cambridge.

21 Q. And that's in the UK?

22 A. In the UK.

23 Q. And what were your job duties at the  
24 universities in Utah, Michigan and Wisconsin?

25 A. They were typical academic

1           responsibilities. I had to teach and I had to  
2           conduct research and I had to guide students and  
3           provide some kind of service within the  
4           departments, as well, in terms of administration  
5           and management.

6           Q. Uh-huh, and can you tell us a little  
7           more about your position at the -- I'm going to  
8           get the agency name wrong -- National Institutes  
9           of -- the agency in Washington, if you could  
10          remind us of the name, please. I get the  
11          initials mixed up.

12          A. It's the National Institute of Child  
13          Health and Human Development.

14          Q. Thank you.

15          A. Which it's now even longer. It's the  
16          Eunice Shriver National Institute of Child  
17          Health and Development. I was responsible for  
18          guiding the research of a group of people working  
19          with me. The selection of research topics was up  
20          to me, so it was an opportunity to do the  
21          research that I wanted to do.

22          Q. Okay, and your current position, you  
23          said you're a professor of psychology at  
24          Cambridge?

25          A. Yes.

1           Q. Do you have any positions within the  
2 department?

3           A. I'm head of the department and head of  
4 the faculty of social sciences.

5           Q. Can you tell us generally how you spend  
6 your time as head of the Department of Psychology  
7 and as a professor of psychology in Cambridge?

8           A. Well, in theory, I'm meant to spend time  
9 doing research and teaching and administration,  
10 and in theory, it should be about 40 percent of  
11 my time on research and 50 to 40 percent on  
12 teaching, and the rest on administration.

13           In practice, I have to work many more  
14 hours than they pay me to do, but I spend a  
15 considerable amount of my time doing research.

16           Q. Okay. Focusing first on the teaching,  
17 what courses do you teach there?

18           A. I teach a course on -- an introductory  
19 course for new students in psychology, and I  
20 teach an advanced course on psychology and social  
21 issues, or the application of psychology to real  
22 world issues and questions. And then I teach  
23 some portions of the Master's level courses,  
24 primarily around research methods and research  
25 ethics.

1           Q. Do you teach any courses that deal with  
2 issues of the family?

3           A. Yes. I mean, I talk a lot about family  
4 in the introductory course, and many of the  
5 social issues that I refer to have to do with  
6 family, influences on children and social  
7 policies in relation to families.

8           Q. Turning to your research, can you  
9 describe initially, just generally, the scope of  
10 your research activities over the past 30  
11 something years?

12          A. I've sort of focused on two broad issues  
13 over that period of time. The one area which is  
14 not relevant to the issues today has to do with  
15 interviews with child abuse victims and the  
16 development of interview techniques for better  
17 interviewing alleged victims of child abuse, both  
18 sexual and physical abuse.

19                   The other research has to do with  
20 factors affecting children's development and  
21 adjustment.

22          Q. Has any of your research looked at  
23 children in, quote, nontraditional families?

24          A. Yeah a lot of my work has been focused  
25 on children in a variety of nontraditional



1 families.

2 Q. Can you describe some of those types of  
3 families?

4 A. Yeah, that being for a long period of  
5 time, I've done work on children growing up in  
6 families where a considerable portion of the  
7 child care is done outside the family, I've done  
8 work on -- thank you -- maternal employment.  
9 I've done work on variations in father  
10 involvement, families where fathers are primarily  
11 responsible for children's care, and I've done  
12 work on children who have a substantial portion  
13 of their care from people other than their  
14 parents, institutional care.

15 Q. And in your field, does the term  
16 nontraditional family have a particular meaning?

17 A. Yeah, it refers in general to any mode  
18 of raising children that deviates from what  
19 social scientists have defined as the traditional  
20 context, and the traditional context was  
21 essentially, you know, a middle-class family with  
22 a stay-at-home mother doing most of the child  
23 care and housework and a father who is primarily  
24 responsible for breadwinning and had limited  
25 responsibility for child care.



1           you consider that to be an area you've  
2           specialized in?

3           A. To some extent, yes.

4           Q. Okay, and to what extent is your work on  
5           the role of fathers and children's development  
6           relied on by other people in your field?

7           A. I think by now it's quite widely relied  
8           on. I edited a book on the role of the father in  
9           child development which first appeared in 1976.  
10          The fourth edition of that was published in 2004.  
11          There's the fifth edition currently in  
12          preparation, and I think that that's widely seen  
13          as sort of the integrative anthology for work on  
14          fathers.

15          Q. And has any of your research looked at  
16          issues of child abuse?

17          A. Yes, as I mentioned, a lot of my work  
18          has to do with interviewing victims of child  
19          abuse. In addition, I've done some work on the  
20          effects of abuse on children's development and  
21          adjustment.

22          Q. Now, you mentioned one book that you  
23          authored. Have you authored any other  
24          publications?

25          A. Yes, I have.

1 Q. Can you tell us approximately how many?

2 A. I think, in total, about 40 books.

3 Q. And other than books?

4 A. Many research articles, perhaps 500 or  
5 so of those. They're published in professional  
6 journals.

7 Q. Do these articles include reports on  
8 research that you've done?

9 A. Yes.

10 Q. And where is your work published, in  
11 general?

12 A. Well, it's published in a variety of  
13 professional journals or professional books. It  
14 would depend a little bit on the focus of the  
15 work, so my work on sort of child development and  
16 adjustment tends to be published in the  
17 mainstream developmental journals, such as Child  
18 Development or Developmental Psychology. There  
19 are other publications in the Journal of Family  
20 Psychology, Journal of Consulting and Clinical  
21 Psychology.

22 A lot of my research on child abuse and  
23 interviewing has been published in journals such  
24 as Child Abuse and Neglect and other specialty  
25 journals on human behavior.

1 Q. Those journals you're referring to, are  
2 they peer-reviewed journals?

3 A. Yes, those all are.

4 Q. And I'm sorry, did you say how many  
5 books you've authored?

6 MR. ROSENWALD: Yes.

7 BY MS. COOPER:

8 Q. Okay, we got that. Sorry about that.  
9 And focusing just on the books now, can you tell  
10 us generally the topics that they've addressed?  
11 You mentioned one, the role of fathers. Can you  
12 tell us about some of the others?

13 A. They've been books that focus on various  
14 aspects of nontraditional families, including one  
15 collection of works on parenting and child  
16 development in nontraditional families, which was  
17 first published at the beginning of the '80s, and  
18 then there was a second version of it in the late  
19 '90s. Works on child care, or works on  
20 fatherhood and social policy, development in  
21 infancy, development of relationships between  
22 infants and mothers, interviewing and forensic  
23 issues, child sexual abuse and its investigation.  
24 I think that covers the range.

25 Q. Are any of the books you've authored

1           used as textbooks or otherwise used in psychology  
2           programs?

3           A. Yes, among them is -- There are books  
4           that have been written explicitly as textbooks,  
5           and those are used as textbooks, perhaps not as  
6           widely as they should be. And some of the other  
7           books, like the book on the role of the father  
8           and the books on nontraditional families have  
9           been used as courses in graduate-level classes.

10          Q. Have any of your books addressed the  
11          development of children raised by lesbian and gay  
12          parents?

13          A. Yes. That topic has been addressed in  
14          several of the books.

15          Q. Aside from your own research, do you  
16          keep up with other people's research on  
17          children's development?

18          A. Yes.

19          Q. Does that include research on children  
20          in nontraditional families?

21          A. Yes.

22          Q. And does it specifically include  
23          research on lesbian and gay parents and their  
24          children?

25          A. Yes.

1           Q. And how is the research on lesbian and  
2           gay parents, or the children of lesbian and gay  
3           parents, that other people do -- how is that  
4           relevant to your work?

5           A. Well, it's relevant to my work in that,  
6           you know, I would say one of my primary interests  
7           is in children's development and adjustment and  
8           the factors that influence it. And so I'm  
9           broadly interested in any research that explores  
10          factors that might influence children's  
11          development. Because I've had a special interest  
12          in child development in diverse rearing  
13          environments, nontraditional family settings, as  
14          well as cross-cultural settings. I've paid  
15          attention to this literature and tried to keep  
16          abreast of it.

17          Q. And can you tell us approximately how  
18          many academic articles or chapters in books on  
19          gay parents and their children you've read over  
20          the years?

21          A. Hmm. Well, somewhere over a hundred, I  
22          would say. It depends a little bit on how you  
23          define those, but I would say there are probably  
24          a hundred fairly solid reports of substantive  
25          research.

1 Q. And what steps do you take to keep up  
2 with the relevant research in your field?

3 A. I subscribe to professional journals,  
4 and I try to review some of the data resources  
5 that list all the various publications.

6 Q. Uh-huh. Would you consider keeping up  
7 with the research in your field a routine part of  
8 your job?

9 A. Yes, it's an essential part of my job.

10 Q. So, for example, if there's a new study  
11 that comes out in a -- a new study on children of  
12 gay parents that gets published somewhere, do you  
13 tend to hear about it at the time?

14 A. Yes.

15 Q. And switching gears from the topic of  
16 gay-parent families, do you keep up with the  
17 research in the area of family violence?

18 A. Yes.

19 Q. Have you ever served on any editorial  
20 boards of academic journals?

21 A. I have, yes.

22 Q. Can you tell us some of those?

23 A. I've served on the editorial boards of  
24 Child Development, Developmental Psychology,  
25 Child Abuse and Neglect, Developmental Review, a



1 couple of French journals. I think that's it.

2 Q. And what does that entail, being on an  
3 editorial board?

4 A. Well, all peer-reviewed professional  
5 journals have articles reviewed by specialists or  
6 experts in the field, who aren't necessarily  
7 parts of the editorial board. The people on  
8 editorial boards are responsible for doing more  
9 of those reviews and for helping in the selection  
10 of other reviewers and sometimes for managing the  
11 editorial process for specific articles.

12 Q. In addition to your service on editorial  
13 boards, do you provide peer review for other  
14 journals?

15 A. Yes.

16 Q. And during the course of your work  
17 reviewing articles, have you ever reviewed any  
18 submissions of psychology articles on the  
19 development of children of gay parents?

20 A. Yes.

21 Q. Can you tell us approximately how many?

22 A. It would have to be something of a  
23 guesstimate, but maybe 20 to 25.

24 Q. And were they all accepted for  
25 publication?

1 A. No.

2 Q. Have you received any major professional  
3 awards?

4 A. Yes.

5 Q. Can you tell us about some of the more  
6 significant ones?

7 A. Well, the one I'm most proud of is the  
8 award from the Association for Psychological  
9 Science for lifetime contributions to psychology.

10 Q. Have you ever testified as an expert in  
11 court?

12 A. Yes.

13 Q. About how many times?

14 A. I would say about 20 times by now.

15 Q. And in those cases, were you qualified  
16 as an expert?

17 A. Yes.

18 Q. And what was generally the subject  
19 matter of those cases, or at least the subject  
20 matter of your testimony in those cases?

21 A. Well, the subject matter of my testimony  
22 almost always has to do with the children's  
23 development and adjustment and the factors that  
24 affect their development and adjustment. There  
25 have also been two or three cases, criminal

1 matters, where the focus was more on interview  
2 techniques and children's reliability or  
3 credibility. But for the most part, the focus  
4 has been on factors affecting children's  
5 adjustment.

6 Q. Were any of those cases child custody  
7 cases?

8 A. Yes.

9 Q. Have you ever been qualified as an  
10 expert in the case where the issue that you were  
11 addressing was the suitability of gay people as  
12 parents?

13 A. Yes.

14 Q. And where was that case?

15 A. That was the Howard case in Arkansas.

16 Q. I'd like to show you a document. Do you  
17 recognize this document?

18 THE COURT: Can we mark it?

19 MS. COOPER: Yes. Can we mark  
20 it as --

21 THE CLERK: Petitioner Exhibit 11.

22 MS. COOPER: Thank you.

23 MS. MARTIN: Just to verify, it's  
24 the same one I have? Thank you.

25 BY MS. COOPER:

1           Q. Okay, Dr. Lamb, do you recognize this  
2 document?

3           A. Yes. It's a copy of my CV.

4           Q. Okay.

5           MS. COOPER: Your Honor, I move to  
6 admit Petitioner's 11, as a summary of  
7 Dr. Lamb's testimony regarding his  
8 qualifications.

9           MS. MARTIN: No objection.

10          THE COURT: What number are we on?

11          THE CLERK: 11.

12          MS. COOPER: 11.

13          And, Your Honor, I also move to  
14 qualify Dr. Lamb as an expert in  
15 psychology, and specifically the  
16 development and adjustment of children,  
17 including children of lesbian and gay  
18 parents.

19          MS. MARTIN: No objection.

20          THE COURT: So ordered.

21          MS. COOPER: Okay.

22 BY MS. COOPER:

23          Q. Dr. Lamb, what does it mean for a child  
24 to be adjusted or maladjusted?

25          A. Well, the term adjustment refers broadly

1 to the ability of a person to function well in  
2 the variety of contexts in which he or she has to  
3 function. So it refers to, you know, the ability  
4 to perform well and adapt to the rules of school,  
5 if you're talking about children. It refers to  
6 the ability to get along with other people, form  
7 friendships, interact in a pro-social way. It  
8 refers to the absence of psychological pathology  
9 or, you know, psychiatric disorder. It refers to  
10 the absence of antisocial sorts of -- or  
11 delinquent behavior.

12 So those would all be the range of  
13 factors that would be included when talking about  
14 somebody's adjustment or maladjustment.

15 Q. And, Dr. Lamb, if I could ask you to try  
16 to speak up just a bit, because they're also  
17 recording the testimony.

18 A. Okay.

19 Q. Thank you.

20 A. Sorry.

21 Q. Can you tell us some concrete examples  
22 of maladjustment in a child?

23 A. Well, an example of maladjustment would  
24 be a case where the child had behavior problems  
25 and was acting out in class and being disruptive,

1           perhaps being aggressive with other children or  
2           bullying other children.

3           Q.    In your field, are there any known  
4           predictors of healthy adjustment for children?

5           MS. MARTIN:  Objection, leading.

6           THE COURT:  Overruled.

7           THE WITNESS:  Yeah, I think there  
8           have, of course, been lots of studies  
9           that have focused on trying to  
10          understand what makes children more  
11          likely to be adjusted or maladjusted,  
12          and I think you can organize the  
13          important factors into three broad  
14          categories.

15          You know, the first set of factors  
16          has to do with the children's  
17          relationships within the family, and  
18          particularly the relationships with  
19          parents.  Children are much more likely  
20          to be well adjusted when they have good,  
21          close, warm relationships with  
22          committed, involved, sensitive parents.

23          A second set of factors has to do  
24          with the relationship between the adults  
25          in the child's life.  We have lots of

1 evidence showing that conflict between  
2 those adults is harmful for children's  
3 adjustment, and increasing amounts of  
4 evidence that the opposite is also true,  
5 that children are more likely to be well  
6 adjusted when the relationships between  
7 the parents are harmonious, positive  
8 ones.

9 And the third set of factors have  
10 to do broadly with the resources  
11 available to the child, and as a rough  
12 rule of thumb, children tend to do  
13 better when they have adequate resources  
14 available, and children who grow up in  
15 less well-resourced homes are more  
16 likely to have issues with their  
17 maladjustment.

18 BY MS. COOPER:

19 Q. So you've described generally findings  
20 that come from a body of research. How long has  
21 this research been going on?

22 A. Well, some of the earliest studies began  
23 in the late '40s and 1950s, but I would say that  
24 the majority of the work has taken place from  
25 about the mid-1960s till today, so 40-odd years

1 of research.

2 Q. And is this research that's been  
3 published in peer-reviewed academic journals?

4 A. Yes, for the most part.

5 Q. Uh-huh. To what extent are these three  
6 factors you identified, these factors that you  
7 say predict healthy adjustment -- to what extent  
8 are they recognized as the relevant factors among  
9 people in your field?

10 A. They're widely recognized as that.

11 Q. Is this a question that has reached a  
12 consensus, a level of consensus?

13 A. Yes.

14 Q. Is this something that would be found in  
15 the major treatises of your profession?

16 A. Absolutely.

17 Q. So, if I were to go to graduate school  
18 in psychology today, what would I be taught are  
19 the factors that predict children's adjustment?

20 A. You'd certainly have most of the work  
21 focus on those three clusters, and perhaps with  
22 some focus on, you know, some of the other  
23 embedded issues within those.

24 Q. Uh-huh. Now, you've mentioned that you,  
25 yourself, have done some research on children



1 in certain types of nontraditional families. Can  
2 you tell us more fully, or the full range of  
3 nontraditional families that have been studied by  
4 other researchers in your field?

5 A. Well, a substantial amount of the work  
6 focuses on the effects of divorce, separation  
7 from parents, single parenthood; a lot of work on  
8 maternal employment; a substantial amount on  
9 different types of nonparental care, day care; a  
10 work on variations in the level to which fathers  
11 are involved in children's care, including cases  
12 where mothers and fathers switch their roles or  
13 responsibilities; work on children in gay and  
14 lesbian families; and of course, as perhaps  
15 sometimes seen as a subset of it, a lot of work  
16 on children in different cultural contexts and  
17 the effects --

18 Q. I'm sorry, on different --

19 A. Cultural contexts, to the extent that  
20 those differ from the traditional ones that have  
21 been the focus of most researchers, who tend to  
22 be North Americans.

23 Q. And have researchers in the field  
24 determined the factors that predict healthy  
25 adjustment in these kinds of nontraditional

1 families?

2 A. Yes.

3 Q. And what are those factors?

4 A. Well, it's very clear that in all those  
5 contexts, the factors that influence children's  
6 adjustment are exactly the same as they are if we  
7 look in the literature as a whole. So, you know,  
8 the same three broad categories are factors,  
9 qualities of relationships with parents, quality  
10 of relationships between those adults,  
11 availability of other kinds of resources. Those  
12 are the factors that affect children's  
13 adjustment, whether they're in traditional or  
14 nontraditional families.

15 Q. Now, did researchers in your field ever  
16 think that children might need to be raised  
17 within the traditional family context to develop  
18 well?

19 MS. MARTIN: Object. It's leading.

20 THE COURT: I'll allow it.

21 THE WITNESS: I think that there  
22 was an implicit assumption, early on,  
23 that what was defined as a traditional  
24 family was the best environment in which  
25 to raise children. But I think it's

1           also fair to say that, you know, once  
2           people began doing research on these  
3           factors, nobody saw that as a major  
4           prediction that had to be challenged.

5           BY MS. COOPER:

6           Q.   I'm sorry, I'm not sure I followed your  
7           last answer, that once the research was done on  
8           these families, what were the findings?

9           A.   I think it was more of an implicit  
10          notion that traditional families were probably  
11          better for children, but within the academic and  
12          research world, I don't think anybody held that  
13          as a very strong hypothesis that had to be  
14          explored. I think it was pretty clear from very  
15          early on that the same sorts of factors seemed to  
16          be important in various kinds of contexts.

17          Q.   Uh-huh, and was there research that  
18          ultimately tested that question?

19          A.   Yes. There's a lot of search now that  
20          explores children's adjustments in a whole range  
21          of different kinds of circumstances and  
22          conditions.

23          Q.   And has any of that research supported  
24          the -- I guess implicit assumption that you said  
25          that traditional families were best?

1 A. No.

2 Q. This body of research you've been  
3 speaking of, on nontraditional families, how  
4 extensive is that?

5 A. Oh, gosh. There would be multiple  
6 hundreds, maybe thousands of articles or reports  
7 on that topic. I mean, that's only a guess.  
8 There certainly is lots of material out there.

9 Q. And how well established in your field  
10 is the conclusion that you gave that children can  
11 adjust well in a variety of nontraditional family  
12 settings?

13 A. I think that's widely accepted as the  
14 case.

15 Q. Uh-huh. Is this a conclusion that is a  
16 matter of consensus within your field?

17 A. Yes.

18 Q. Is it included in the major treatises in  
19 your field?

20 A. Yes.

21 Q. Now, we've been talking about adjustment  
22 versus maladjustment, but are all variations  
23 among children questions of adjustment?

24 A. No.

25 Q. What would be some examples of

1 variations that exist among children that are not  
2 adjustment issues?

3 A. Well, the most obvious ones would be  
4 issues that have to do with variations in  
5 personality or temperament. You know, some  
6 children are more extroverted and some are more  
7 very introverted. Some are chatty, others are  
8 quiet. But those are legitimate and real  
9 individual differences among children, but they  
10 don't have anything to do with adjustment or  
11 maladjustment.

12 Q. Now, you talked some about research that  
13 looks at the adjustment of children in a variety  
14 of nontraditional family settings, and reported  
15 some of the conclusions of that research on the  
16 issue of adjustment, but in addition to looking  
17 at differences in adjustment among children in  
18 traditional and nontraditional types of families,  
19 does any of the research look for other  
20 variations that are not adjustment differences?

21 A. Yes.

22 Q. Can you give some examples of those  
23 kinds of differences that were looked at?

24 A. Well, there's a fair amount of research  
25 focusing on differences in attitudes towards sex

1 roles or sex stereotypes, for example, which  
2 don't represent differences in adjustment or  
3 maladjustment, but are areas in which there may  
4 be differences among children.

5 Q. And can you tell us what you mean by  
6 differences in attitudes about sex roles? You  
7 said sex roles, right?

8 A. Yeah. Well, sex roles, broadly defined,  
9 refer to sort of societal expectations about what  
10 boys and girls or men and women should do, how  
11 they should behave, what sorts of occupations  
12 they should aspire to, and so on. So the, you  
13 know, sex role stereotypes would include things  
14 such as -- like boys should play with cars and  
15 vehicles, while girls should play with dolls, and  
16 that there should be different kinds of  
17 occupations aspired to by boys and girls.

18 Q. And has research looked at children in  
19 some of these nontraditional family contexts you  
20 described and looked at their attitudes about toy  
21 preference or career goals?

22 A. Yes, and I think the evidence there has  
23 shown fairly consistently that children in  
24 nontraditional family contexts tend to have less  
25 sex stereotyped or more tolerant attitudes about

1 sex roles or sex stereotypes.

2 Q. Excuse me.

3 I want to now ask you to summarize or  
4 just identify some opinions of yours about the  
5 impact, if any, on children being raised by gay  
6 or lesbian families, and then after that, we'll  
7 go and look at the specific bases for your  
8 opinions.

9 A. Okay.

10 Q. Based on your 30-something years of  
11 experience in the field of child development,  
12 does being raised by gay or lesbian parents  
13 increase the risk of problems in adjustment of  
14 children?

15 A. No.

16 Q. Does it increase the risk of  
17 psychological problems?

18 A. No.

19 Q. Behavioral problems?

20 A. No.

21 Q. Does being raised by gay or lesbian  
22 parents prevent children from forming healthy  
23 relationships with their peers or others?

24 A. No.

25 Q. Does being raised by gay parents

1 correlate with academic problems?

2 A. No.

3 Q. Gender identity problems?

4 A. No.

5 Q. Problems in the development of their  
6 sexual identity?

7 A. No.

8 Q. Does being raised by gay or lesbian  
9 parents cause any adjustment problems at all?

10 A. No.

11 Q. Okay. Now, I said I'd get to the bases  
12 for your opinions. Can I ask you first to  
13 summarize, in broad strokes, the bodies of  
14 research that you believe support these  
15 conclusions you've just given about the  
16 adjustment of children raised in gay-parent  
17 families? And then we'll go into the specifics.

18 A. Okay. You know, first, there is the  
19 research that I described earlier, hundreds,  
20 perhaps thousands of studies that have explored  
21 what are the factors that do influence children's  
22 adjustment. And as I said earlier, those studies  
23 have yielded some fairly consistent findings  
24 about what factors are important and have  
25 demonstrated consistently that it's the same



1 factors that are important, regardless of the  
2 family type, whether one is talking about  
3 traditional or nontraditional families.

4 And in addition to that, we now have a,  
5 you know, established body of research focusing  
6 specifically on the different types of  
7 nontraditional families, including a fair number  
8 of studies that have focused on children being  
9 raised by same-sex parents, and those studies not  
10 only show that children being raised in those  
11 situations aren't more likely to be maladjusted,  
12 but that there's the same kind of variation  
13 within them, in terms of some children being  
14 adjusted and some children being maladjusted, and  
15 that the factors that influence whether or not  
16 children are well adjusted or not are the same  
17 factors that we find in other sorts of family  
18 contexts.

19 Q. So, before focusing on the research on  
20 gay-parent families and the outcomes for children  
21 in those families, would the broader body of  
22 research you described generally on children's  
23 adjustment, including the other nontraditional  
24 family contexts -- would any of that research  
25 lead you to anticipate that being raised by gay

1 parents would cause adjustment problems for  
2 children?

3 A. No.

4 Q. So, before looking at the body of  
5 research on outcomes for children of gay and  
6 lesbian parents, is there any basis to start with  
7 the assumption that there would be harm?

8 A. No.

9 Q. So let's talk a little bit about that  
10 body of research on gay-parent families. Does it  
11 reach any -- well, can you tell us what  
12 conclusions it's reached on the parenting  
13 abilities of gay people and the adjustment of  
14 children raised by gay people?

15 A. Well, the studies show that, you know,  
16 the average heterosexual parent doesn't differ in  
17 terms of the quality of their parental capacity  
18 from the average same-sex parent, and that the  
19 children being raised by those two different  
20 types of parents are just as likely to be  
21 adjusted, well adjusted.

22 Q. I want to ask you a little bit about  
23 that body of research, to describe it a little  
24 bit. Can you first tell us -- well, I'm sorry, I  
25 think you mentioned there were about a hundred

1 reports of studies on gay-parent families; is  
2 that right?

3 A. Right.

4 Q. And just to clarify, are those -- There  
5 could be, you said, a hundred reports. That  
6 doesn't mean a hundred studies, does it?

7 A. No. No, that's --

8 Q. Sort of a hundred reports that come out  
9 of the studies; is that what you're saying?

10 A. That's correct, because several of the  
11 studies have produced multiple reports.

12 Q. Okay. In all of these hundred or so  
13 reports, have they all concluded that children of  
14 gay parents adjust well?

15 A. Yes.

16 Q. Okay, and what kinds of publications --  
17 what sorts of journals publish these articles?

18 A. Well, these articles have been published  
19 in the main outlets in psychology, the journals  
20 like Child Development and Developmental  
21 Psychology, which are the two major journals in  
22 developmental psychology, the Journal of Family  
23 Psychology, Journal of Child Psychology and  
24 Psychiatry. I would say those have been the  
25 major outlets.

1           Q. Okay, and these, are they all peer-  
2 reviewed journals?

3           A. Yes.

4           Q. When did the research on children of  
5 gay-parent families begin in your field?

6           A. Well, there were some early studies  
7 produced in the 1970s or so. I would say that  
8 the number of studies started to increase in the  
9 1980s, and there's been a steady flow of research  
10 from the 1980s till today.

11          Q. Can you tell us who some of the leading  
12 researchers are, doing this work?

13          A. Yes. Professor Susan Golombok, who is  
14 now a colleague of mine at Cambridge, has  
15 conducted some of this research. Charlotte  
16 Patterson, at the University of Virginia, and  
17 several colleagues, including another professor  
18 at Virginia called Ray Chan, and then there have  
19 been researchers in other European countries,  
20 Henny Bos, in the Netherlands, and Brewaeys, in  
21 Belgium, are the two that stand out.

22          Q. I think your voice is starting to get  
23 soft again.

24          A. Sorry. Okay.

25          Q. And can you tell us the reputations of

1           these researchers?

2                   A.  They're all well-regarded, well-  
3           respected researchers.

4                   Q.  In the studies you've been talking about  
5           that look at children raised by gay parents, what  
6           sort of -- and I guess parents, also.  What are  
7           the factors concerning parenting abilities that  
8           are evaluated in these studies?

9                   A.  Well, the specific factors, of course,  
10          vary a little bit, depending upon the age of the  
11          children involved, but essentially, the focus  
12          has -- in various studies, has focused on, you  
13          know, why the people wanted to be parents and how  
14          they approach child-rearing issues and what sorts  
15          of strategies they adopt when attempting to  
16          discipline their children, interacting with them,  
17          the extent to which they appear warm or  
18          supportive and consistent in their discipline,  
19          say.

20                  Q.  Do any of the studies look at the  
21          psychological adjustment of the parents?

22                  A.  Yes, there are a couple of studies that  
23          have looked at that, as well.

24                  Q.  And turning to the children now, what  
25          are the child adjustment factors that are

1 measured in these studies?

2 A. Well, again, it varies a little bit,  
3 depending upon age, but they have to do -- in  
4 several cases, have focused on relationships with  
5 peers, the extent to which the children have  
6 friendships, good relationships, good social  
7 skills, how they perform at school, and whether  
8 or not they have behavior problems or things that  
9 might be clinically worrisome.

10 Q. And when you say things that would be  
11 clinically worrisome, can you be more specific?

12 A. Well, there are a number of measures  
13 that are used in the field to assess whether  
14 children have behavior problems, and, you know,  
15 most children have some problems, and nobody  
16 really cares about those, but when you have an  
17 accumulation of them, then that becomes  
18 clinically worrisome.

19 Q. Do any of the studies look at the  
20 psychological adjustment of the children of gay  
21 parents?

22 A. Yes.

23 Q. Now, in this body of research on  
24 children of gay parents, does it include studies  
25 that compare children raised by lesbian couples

1 to children raised by married heterosexual  
2 couples?

3 A. Yes.

4 Q. Does it include any studies of children  
5 raised since birth by lesbian-parent families?

6 A. Yes.

7 Q. And would that also include comparisons  
8 of lesbian couples to heterosexual married  
9 couples?

10 A. Yes.

11 Q. Are there any studies that compare  
12 children raised by single parents in the two  
13 groups?

14 A. Yes.

15 Q. Is there any research on gay fathers?

16 A. There's much less on gay fathers, but  
17 there is some.

18 Q. Now, then, if there's much less research  
19 on gay fathers, what is the basis for your  
20 opinion that being raised by gay fathers, in  
21 addition to lesbian mothers, doesn't negatively  
22 affect children's adjustment?

23 A. Well, I think it is based in the same  
24 body of research that I talked about earlier, the  
25 fact that we seem to have a fairly good idea

1           about which factors do influence children's  
2           adjustment, and I've summarized those before, and  
3           by now, pretty clear evidence about factors that  
4           don't seem to be important, and the gender of the  
5           parent doesn't seem to be an important issue, and  
6           the sexual orientation of the parent doesn't seem  
7           to be a significant issue.

8           Q. Okay. Do any of the studies look at  
9           children who were adopted by gay parents, as  
10          opposed to raised by gay biological parents?

11          A. Yes, there are a couple of studies of  
12          that, too.

13          Q. And how do their findings compare to the  
14          studies of children raised by gay biological  
15          parents?

16          A. They're very consistent.

17          Q. Okay.

18                 Now, in a paper prepared by one of the  
19          State's experts for purposes of this litigation,  
20          he addresses some unpublished dissertations on  
21          the subject of the children of gay parents. Are  
22          any of your opinions here today based on  
23          unpublished dissertations?

24          A. No.

25          Q. Now, have you ever heard about any



1 criticism that the methodology used in research  
2 on gay-parent families is so flawed that it can't  
3 be relied on to form conclusions?

4 A. Yes, I have.

5 Q. And who have you heard that from?

6 A. Well, I've heard it particularly from  
7 advocacy groups and individuals who have a  
8 political ideological opposition.

9 Q. Have you ever heard this criticism from  
10 people in your field of child development?

11 A. No.

12 Q. Now, those who advocate against gay  
13 parents sometimes point to researchers'  
14 discussions in their papers of the limitations of  
15 their studies, and they say this means that these  
16 studies can't be relied on to form conclusions,  
17 and they're speaking specifically about the  
18 studies on gay-parent families. Is this  
19 assertion correct?

20 MS. MARTIN: Objection. She's  
21 testifying.

22 THE COURT: Overruled.

23 MS. COOPER: I'm sorry?

24 THE COURT: Go ahead.

25 BY MS. COOPER:

1 Q. Go ahead.

2 A. No, I think that that's a rather naive  
3 position. Every study has limitations, and I  
4 think -- I call it naive because it implies that  
5 we gather knowledge by doing a study that, in and  
6 of itself, tells us something de novo. In fact,  
7 our knowledge is gathered by little incremental  
8 factors. It's gathered by putting together the  
9 results of different studies, approaching similar  
10 questions often in different ways, studying  
11 different people. Every one of those studies is  
12 flawed. The purpose of the peer-review process  
13 is to determine what's the balance between the  
14 flaws and the strengths, and when a paper is  
15 published, a number of people have determined  
16 that, on balance, there's a net contribution to  
17 our knowledge here.

18 Now, it's also important that we  
19 acknowledge what the specific weaknesses are of  
20 any one study, so that one can develop a  
21 reasonable body of literature, being aware of how  
22 the different studies complement one another and  
23 create a clear picture or understanding.

24 Q. And what you've just described, is that  
25 something specific to the research on gay-parent

1 families?

2 A. No. That's the scientific process.

3 Q. Okay.

4 Are you familiar with a document or  
5 publication called No Basis -- I don't have the  
6 full title now, but I think it's, No Basis: What  
7 the Studies Say about Gay-parent Families, by the  
8 authors Lerner and Nagai?

9 A. Yes, I've seen that.

10 Q. Okay, and is that -- Are Lerner and  
11 Nagai scientists who publish in the field of  
12 child development?

13 A. No, they're not.

14 Q. Okay, and do you know if that document  
15 is published in a scientific journal?

16 A. It isn't, so far as I know.

17 Q. Okay. Do you recognize the name of the  
18 publisher, the Marriage Law Project, as a  
19 academic publisher in your field?

20 A. No.

21 Q. Okay. And is this the type of  
22 publication that people in your field would rely  
23 on to form scientific conclusions?

24 A. No.

25 Q. Now, advocates against gay parents

1 sometimes say that the studies have, quote, fatal  
2 flaws that make them invalid. Do any of the  
3 studies on gay parents and their children that  
4 you rely on for your opinions have methodological  
5 flaws that render them invalid or unreliable?

6 A. No.

7 MS. MARTIN: Objection. Counsel  
8 keeps testifying.

9 MS. COOPER: I'm laying foundation  
10 for a question.

11 MS. MARTIN: She's testifying in  
12 her question.

13 THE COURT: Overruled.

14 THE WITNESS: No.

15 BY MS. COOPER:

16 Q. Okay. How does the body of literature  
17 on children of gay parents compare with other  
18 bodies of research in the area of parenting and  
19 child development, in terms of the methodological  
20 quality?

21 A. It's very comparable. The same methods  
22 are used in these studies as are used in  
23 exploring other questions in developmental  
24 psychology, often studies done by the same people  
25 on different questions.

1           Q. I want to now ask you a few questions  
2           about some of the specific criticisms of this  
3           body of research that some advocates against gay  
4           parents have raised, some of which were actually  
5           accepted by the Eleventh Circuit Court of Appeals  
6           in the Lofton case, okay?

7                     Some people have said that studies on  
8           gay-parent families are fatally flawed because  
9           they use small nonrepresentative convenience  
10          samples. First of all, is the use of small  
11          nonrepresentative convenience samples unusual in  
12          the field of psychological research?

13                    A. No, it's fairly typical.

14                    Q. Are large-scale representative studies  
15          commonly used in your field?

16                    A. No.

17                    Q. Why is that?

18                    A. Well, large-scale representative studies  
19          are largely done by sociologists and  
20          demographers, who are asking very different sorts  
21          of questions than psychologists are. I would say  
22          the typical psychologist conducts a study with a  
23          smaller number of participants and seeks to get  
24          more detailed or in-depth understanding of why  
25          people behave the way they do or what

1 characterizes their behavior.

2 Survey studies certainly have their  
3 place in demography, but I think both those  
4 people and most psychologists would argue that  
5 you get a much more superficial understanding  
6 from a survey study.

7 Q. Well, how can studies using smaller  
8 samples give you enough information to draw  
9 conclusions about the suitability of gay parents?

10 A. Well, because they are studies that are  
11 specifically designed to ask questions in depth  
12 about the children's -- in most of the cases  
13 we're talking about here, about the children's  
14 adjustment and about the factors associated with  
15 variations in their adjustment.

16 Q. Does it make a difference in your field  
17 whether there's one study reaching certain  
18 conclusions versus other -- numerous studies?

19 A. Well, it certainly does to me. I mean,  
20 I look for bodies of findings that are -- that  
21 build on multiple studies and where there's an  
22 accumulation of knowledge that points in the same  
23 direction. I think it would be really risky for  
24 anybody to rely on any single study in reaching a  
25 conclusion.

1           Q. Is it true that all of the studies on  
2           the adjustment of children of gay parents use  
3           nonrepresentative samples?

4           A. No, it's not.

5           Q. Which didn't?

6           A. Well, there's studies that Patterson and  
7           Wainwright have conducted which draw adolescents  
8           from a national sample of high school students in  
9           the U.S. There's a recent study by Ian Rivers,  
10          done in the UK which drew a sample from a school  
11          district in Central England. And there's a study  
12          that Susan Golombok did which drew the  
13          participants from a geographical area. It was a  
14          cohort and attempt to include all babies born in  
15          a certain time window in that area. And that was  
16          the way they recruited most or part of the  
17          sample, and then they also supplemented that by  
18          adding some additional individuals who had moved  
19          into the area rather than delivering there.

20          Q. And these studies you just described,  
21          are those -- did those use representative  
22          samples?

23          A. Yes.

24          Q. And were the findings that were reported  
25          by those studies you just described, that used

1           representative samples, were they any different  
2           than the findings of the studies that used  
3           convenience samples?

4           A. No.

5           Q. Some advocates against gay parents have  
6           said that the gay-parent family studies didn't  
7           use adequately matched comparison groups between  
8           their gay and their heterosexual parents. Is  
9           that assertion correct?

10          A. Well, it's correct with respect to some  
11          studies, but it's not generally correct of all  
12          the studies.

13          Q. Uh-huh. What kind of characteristics  
14          did studies match for?

15          A. Well, what they've tried to match for is  
16          the age of the children, the -- whether or not  
17          the children were the biological children of the  
18          parents being studied. They've tried to match  
19          for the length of the relationship between the  
20          parents, when they're in couples. They tried to  
21          match for whether the parents are in couples or  
22          single.

23          Q. Can you speak up?

24          A. Sorry, and they've tried to match for  
25          the socioeconomic circumstances, educational



1           therefore economic circumstances.

2           Q. Now, you mentioned that in some of the  
3 studies, they were not able to match --

4           A. Uh-huh.

5           Q. -- as well. Where that happens in  
6 scientific research, where researchers aren't  
7 able to match for all the relevant  
8 characteristics, is there a way to account for  
9 those differences in the two groups?

10          A. Well, yeah. If the groups are different  
11 on some dimension that is related to the outcome  
12 that you're looking at, then you can  
13 statistically control for those differences. In  
14 other words, you equate the groups on the  
15 unmatched variable.

16          Q. And is that technique used in any of the  
17 studies on gay-parent families where they don't  
18 have perfectly matched comparison groups?

19          A. Yes, it is.

20          Q. Some advocates against gay parents  
21 sometimes suggest that this body of research is  
22 invalid because the researchers seek to affirm  
23 the null hypothesis. First of all, what does  
24 that mean?

25          A. Well, the null hypothesis is the

1 prediction that there's no difference between  
2 groups. And technically, statistics are designed  
3 to determine whether or not there are differences  
4 between groups, so that the purpose of the  
5 statistic is to show that there are.

6 Q. So this criticism, that the studies are  
7 invalid because the researchers seek to affirm  
8 the null hypothesis, in your view, is that a fair  
9 criticism?

10 A. Well, I think it's not a fair criticism  
11 for a number of reasons, not least of all the  
12 fact that most studies have quite a number of  
13 hypotheses that they explore, and secondly,  
14 because at this stage, and indeed for quite a  
15 while, it wouldn't have made sense to predict  
16 differences between groups of children being  
17 raised by same-sex and opposite-sex parents,  
18 simply because of the body of research that I've  
19 been talking about.

20 Q. Some advocates against gay parents  
21 complain that there is a lack of longitudinal  
22 studies, evaluating children over time. First of  
23 all, do you need longitudinal studies to --  
24 pardon me -- I'll start that again. Do you need  
25 longitudinal studies to answer the question of

1           whether parental sexual orientation has an effect  
2           on children's adjustment?

3           A. No.

4           Q. Why is that? Why don't you need those  
5           things?

6           A. Well, if your prediction is that  
7           children are going to be better adjusted if  
8           they're raised by heterosexual parents, you only  
9           need to study them once and to compare children  
10          who are raised by heterosexual and same-sex  
11          parents and see whether there's a difference in  
12          their degree of adjustment. There would be no  
13          added information in relation to that question if  
14          you studied them two or three times.

15          Q. Uh-huh, and this study of in a moment in  
16          time, is that called a cross-sectional study in  
17          your field?

18          A. Yes.

19          Q. Is there cross-sectional research on  
20          gay-parent families, looking at children at  
21          different ages along the age spectrum?

22          A. Yes.

23          Q. Is it true that there are no  
24          longitudinal studies on children raised by gay  
25          parents?

1           A. No, it's not.

2           Q. Can you identify some longitudinal  
3 studies that exist?

4           A. Susan Golombok has done two longitudinal  
5 studies of groups in England. Henny Bos is  
6 following a group of a hundred lesbian mothers  
7 who she recruited during pregnancy and they're  
8 now ten years old.

9           Q. The children are?

10          A. The children are, sorry, not the  
11 mothers. And Brewaeys' study has also followed a  
12 group of children from birth, and I think the  
13 last report I saw had them at about the age of  
14 10.

15          Q. Uh-huh.

16          A. And in this country, there's the  
17 National Lesbian Family Study, conducted by  
18 Nanette Gartrell and her colleagues, which  
19 recruited some people during pregnancy, again.  
20 The last published reports have to do with them  
21 at the age of 10, but I believe they're now  
22 studying them in adolescence.

23          Q. And you mentioned that Golombok did two  
24 longitudinal studies. For what period of time  
25 did she follow up the children?

1           A. The one study followed them from the  
2           time when they averaged about nine or 10 until  
3           they averaged 23 or 24. It was about a 14-year  
4           gap between the two assessments. And the other  
5           study saw them first at the age of about six, and  
6           then the second time at the age of about 12.

7           Q. Okay. Were the results of the studies  
8           that were longitudinal any different than the  
9           results of the studies on children of gay-parent  
10          families that were cross-sectional?

11          A. No.

12          Q. Now, one of the expert witnesses for the  
13          State in this case has written that the  
14          statistical analysis done by some of the  
15          researchers who conducted studies on gay-parent  
16          families is flawed, and he engaged in his own  
17          reanalysis of studies and said that actually  
18          there were some differences where the research  
19          reported that there were none. Have you reviewed  
20          any of Dr. Schumm's manuscripts where he makes  
21          this argument and does the statistical analysis?

22          A. Yes, I have.

23          Q. Okay, and have you reviewed one piece he  
24          wrote for this litigation called Re-examination  
25          of Evidence Concerning Child Development Reported

1 in Tasker and Golombok's 1997 Growing up in  
2 Lesbian Families?

3 A. Yes, I have.

4 Q. Do you have any reaction to Dr. Schumm's  
5 argument that this notion that the analysis,  
6 statistical analysis, done by other researchers  
7 is flawed and his research shows differences  
8 where there were none reported?

9 A. Yeah. I find his claim somewhat  
10 surprising for the most part, because what he  
11 does, in that report in particular, is draw  
12 attention to statistically nonsignificant  
13 differences and treats them as though they were  
14 statistically significant, and one of the  
15 cardinal rules of research is that, you know, the  
16 whole purpose of conducting statistical analysis  
17 is to determine whether the differences are  
18 reliable or not. If they're not reliable, then  
19 you shouldn't talk about them, and several of the  
20 differences that he draws attention to are, in  
21 fact, nonsignificant differences.

22 There is one point in which, in relation  
23 to one statistical test, where he makes a claim  
24 that they may have used the wrong statistical  
25 test, and that seems like a reasonable comment

1           about that one. But for the most part, I find  
2           the allegation not supported by his analysis, and  
3           it seems rather incredible to think that all of  
4           these papers would have been published by  
5           peer-reviewed journals, having gone through the  
6           peer-review process, without people noticing that  
7           there were major flaws in the statistical  
8           analysis.

9           Q. The Eleventh Circuit Court of Appeals,  
10          in the Lofton case, described this body of  
11          research on gay-parent families as yielding  
12          inconclusive and conflicting results. Is that an  
13          accurate characterization of the research in this  
14          field?

15          MS. MARTIN: Objection, assumes  
16          facts not in evidence.

17          THE COURT: Overruled.

18          THE WITNESS: No. As I've  
19          testified, I think that the evidence is  
20          quite clear and consistent, and it's not  
21          controversial. Among scholars, I mean.

22          BY MS. COOPER:

23          Q. Right.

24          A. Otherwise, I wouldn't be here.

25          Q. Now, the same court has said that the

1           Legislature could credit other studies that have  
2           found that children raised in homosexual  
3           households fare differently on a number of  
4           measures, doing worse on some than similarly  
5           situated heterosexuals. Is that an accurate  
6           statement?

7           A. No.

8           MS. MARTIN: Same objection,  
9           assumes facts not in evidence.

10          THE COURT: Overruled.

11          THE WITNESS: No.

12          BY MS. COOPER:

13                Q. Okay. The examples pointed to by the  
14                court in that case to support that statement I  
15                just read are two articles. One is an article by  
16                Paul Cameron called, quote, Homosexual Parents,  
17                and the other is an article by Stacey and Biblarz  
18                called, quote, How Does the Sexual Orientation of  
19                Parents Matter. Are you familiar with those  
20                articles?

21                A. Yes.

22                Q. Okay. Is the Cameron study, Homosexual  
23                Parents, a study that anyone in your field could  
24                credit?

25                A. No.



1 Q. Why is that?

2 A. Because it's frankly a study that is so  
3 badly flawed that it's hard to really determine  
4 what was found, except to say that the  
5 conclusions reached and reported there are simply  
6 not reasonable conclusions to draw, given the  
7 study that was conducted.

8 Q. And can you explain why that is?

9 A. Well, the study attempts to show that  
10 children who are raised by homosexual parents are  
11 more likely to be sexually maltreated by them  
12 while growing up. So to address that question  
13 appropriately, you would need to know, first of  
14 all, who was raised by a homosexual parent and  
15 who was sexually molested.

16 Amazingly, in five of the six cities  
17 where the study was conducted, the individuals  
18 were not asked about the sexual orientation of  
19 their parent. So this fundamentally important  
20 piece of evidence, necessary to answer that  
21 question, was simply not available.

22 Q. On what basis did Cameron suggest in his  
23 study that he knew the sexual orientation of the  
24 parents?

25 A. Well, in one of the cities, they added a

1 question that asked about the sexual orientation  
2 of the parents, so there were some individuals  
3 from that city, and in the other cities, there  
4 was a rather convoluted way in which children  
5 were asked what accounted for their own sexual  
6 orientation, and they were given a long list of  
7 factors that they could choose as accounting for  
8 their sexual orientation, and among those options  
9 was "the sexual orientation of my parent." And  
10 Cameron apparently used those two pieces of  
11 evidence to identify some people as being raised  
12 by homosexual parents.

13 Q. So, if someone said they were gay and  
14 then they said they attributed their own sexual  
15 orientation to the sexual orientation of their  
16 parents, they were counted as a child of gay  
17 parents; is that right?

18 A. That appears to be the case, yes.

19 Q. But if somebody had a gay parent but  
20 they did not attribute their own sexual  
21 orientation to the fact that they had a gay  
22 parent, they would not be counted?

23 A. Then their parent would be counted as  
24 heterosexual.

25 Q. Okay. Is Cameron someone known in the

1 field as a contributor to the research on  
2 children's adjustment?

3 A. No.

4 Q. Is he affiliated with any university?

5 A. No, he's not.

6 Q. Is he affiliated with any entity?

7 A. He's affiliated an advocacy group called  
8 the Family Research Institute.

9 Q. Do you know anything about the Family  
10 Research Institute?

11 A. Relatively little. It's an institute or  
12 a group of people who have fairly strong views  
13 about the dangers associated with homosexuality  
14 and the importance of the family.

15 Q. Uh-huh. What is Cameron's reputation in  
16 your field?

17 A. Well, Stacey and Biblarz report that he  
18 is somebody who was thrown out of or lost his  
19 membership in several professional organizations  
20 and would suggest that his reputation is not high  
21 in the field.

22 Q. Did they say why he was thrown out?

23 A. Yes. They say that he --

24 MS. MARTIN: Objection, hearsay.

25 THE COURT: Sustained.

1 MS. COOPER: It's an academic --

2 THE COURT: Sustained.

3 MS. COOPER: Okay.

4 BY MS. COOPER:

5 Q. Now, the other article that I mentioned  
6 that was referenced in the Lofton opinion is an  
7 article by Stacey and Biblarz, and you said  
8 you're familiar with that article?

9 A. Yes.

10 Q. Okay. Did the Stacey and Biblarz  
11 article, cited by that court, the reference I  
12 gave you, did they offer any conclusions about  
13 what the research shows with respect to whether  
14 children of gay parents are well adjusted or  
15 adversely affected?

16 A. Yes. In a couple of places, they  
17 reassert their conclusion that I offered here,  
18 namely, that children raised by gay and lesbian  
19 parents are just as likely to be well adjusted as  
20 children raised by heterosexual parents.

21 Q. I'd like to show you a copy of that  
22 article.

23 MS. COOPER: Do you folks want a  
24 copy?

25 MS. MARTIN: I'd like to see what

1                   you're referring to. May I have it?

2                   MS. COOPER: Sure.

3                   MS. MARTIN: Thank you.

4                   MS. BASS: Thank you.

5                   BY MS. COOPER:

6                   Q. Can you tell us the specific conclusion  
7                   that they reached about the impact on adjustment  
8                   of being raised by gay parents?

9                   A. Yes. I mean, what they state here is as  
10                  I said earlier, "Because every relevant study to  
11                  date shows that parental sexual orientation, per  
12                  se, has no measurable effect on the quality of  
13                  parent-child relationships or on children's  
14                  mental health or social adjustment, there is no  
15                  evidentiary basis for considering parental sexual  
16                  orientation in decisions about children's best  
17                  interest."

18                  Q. Do Stacey and Biblarz say anywhere in  
19                  this article that children of gay parents fare  
20                  worse than children of heterosexual parents in  
21                  any way?

22                  A. No.

23                  Q. Did Stacey and Biblarz indicate that  
24                  studies found any differences between the two  
25                  groups of children?

1 A. Yes, they do.

2 Q. Were there any differences related to  
3 adjustment?

4 A. No.

5 Q. Okay. Are you aware of any studies by  
6 child development researchers published in peer  
7 review scholarly journals that conclude that  
8 children raised by gay parents are somehow less  
9 well adjusted in any way?

10 A. No.

11 Q. Have you ever reviewed a paper by  
12 Sotirios Sarantakos, entitled Children in Three  
13 Contexts: Family, Education and Social  
14 Development?

15 MS. MARTIN: Thank you.

16 THE WITNESS: Yes.

17 BY MS. COOPER:

18 Q. Okay, and where was that paper  
19 published?

20 A. It was published in a magazine called  
21 Children Australia.

22 Q. Is that a peer-reviewed academic  
23 journal?

24 A. I don't know.

25 Q. Have you ever heard of it before seeing

1           this article?

2           A. No.

3           Q. Is this a journal that one can find, for  
4           example, if you go on the research databases that  
5           people in your field use?

6           A. No. It's not a journal or magazine  
7           that's covered by the Web of Science or by the  
8           PsycINFO, which are the two major sources.

9           Q. Then how did you come across the  
10          article?

11          A. I came across it because it was  
12          mentioned in the Howard case, that they talked  
13          about it there.

14          Q. Prior to seeing this article, were you  
15          aware of Sarantakos's work?

16          A. No.

17          Q. Had you ever heard of him?

18          A. No.

19          Q. Is he a psychologist?

20          A. No. He's a sociologist.

21          MS. MARTIN: Objection, lack of  
22          foundation.

23          THE COURT: Overruled.

24          THE WITNESS: He's a sociologist.

25          BY MS. COOPER:

1           Q. Okay. Can you describe generally the  
2 Sarantakos study that I mentioned?

3           A. Yeah. It's a study that compares the  
4 school performance and behavior in school,  
5 primarily, of children in three groups: Children  
6 raised by heterosexual married parents, children  
7 raised by heterosexual cohabiting parents, and  
8 children raised by either gay couples or lesbian  
9 couples.

10          Q. What were Sarantakos's findings in that  
11 study?

12          A. Sarantakos reports that on a number of  
13 dimensions or measures of adjustment, the  
14 teachers reported that the children being raised  
15 by the heterosexual married parents were  
16 performing better and appeared better adjusted  
17 than the children being raised by the cohabiting  
18 parents, cohabiting heterosexuals, and that they  
19 in turn were better adjusted than those being  
20 raised by the heterosexual (sic) lesbian and  
21 gay-parent couples.

22          Q. In the sample in the study, was this a  
23 representative sample?

24          A. No, it was not.

25          Q. It was a convenience sample?



1           A. The gay and lesbian sample was a  
2 convenience sample, yes.

3           Q. How does the Sarantakos study compare in  
4 terms of sample size to other studies on  
5 gay-parent families that you've been discussing?

6           A. Well, there were 58 children in the gay  
7 and lesbian group, 47, I think, lesbian, and 11  
8 with gay parents, which puts it in the -- you  
9 know, in the middle range of the size of these  
10 other studies.

11          Q. Uh-huh, and how does the Sarantakos  
12 study compare, in terms of the matching of the  
13 comparison groups, to other studies on gay-parent  
14 families?

15          A. Well, one of the problems, perhaps the  
16 major problem, with the Sarantakos study has to  
17 do with its matching, because as Sarantakos  
18 points out fairly late in his discussion, the  
19 children being raised by gay and lesbian parents  
20 had all experienced the separation or divorce of  
21 their parents, often quite recently, and of  
22 course, the experience of separation and divorce,  
23 as well as, in many cases, moving from one  
24 community to another, is something that's  
25 associated with measures of children's

1 adjustment. And it seems very plausible that the  
2 differences that he identified have more to do  
3 with those experiences of the children than they  
4 have to do with the sexual orientation of their  
5 parents.

6 Q. The Lofton court stated that scientific  
7 attempts to study homosexual parenting in general  
8 are still in their nascent stages and that gay  
9 parents are, quote, an unproven family structure,  
10 close quote, that has not been conclusively  
11 established to be as good as married heterosexual  
12 couples. Is there any basis in fact for these  
13 statements?

14 MS. MARTIN: Object, facts not in  
15 evidence.

16 THE COURT: Overruled.

17 THE WITNESS: No.

18 BY MS. COOPER:

19 Q. Is there as much research on children  
20 raised by, for example, stay-at-home fathers as  
21 there is on children raised by gay parents?

22 A. No.

23 Q. Is there as much research on children  
24 raised by single fathers as there is on children  
25 raised by lesbian parents?

1 A. No.

2 Q. The Lofton panel also suggested that it  
3 is premature to rely on the body of research on  
4 gay-parent families because of an absence of  
5 studies on adopted rather than biological  
6 children of homosexual parents.

7 First of all, do you need to have  
8 research on children raised by gay adoptive as  
9 opposed to gay biological parents, in order to  
10 know whether children's adjustment is adversely  
11 affected by being adopted by a gay parent?

12 A. No.

13 MS. MARTIN: Objection. Just for  
14 the record, Your Honor, I object to the  
15 facts not in evidence and that counsel's  
16 testifying.

17 THE COURT: Same ruling.

18 THE WITNESS: No. I think, given  
19 the body of evidence that I've talked  
20 about already, it's pretty clear that  
21 you don't need that type of evidence.

22 BY MS. COOPER:

23 Q. I'm sorry, your voice dropped at the  
24 end.

25 A. That you don't need that type of

1 research.

2 Q. Well, are the predictors of healthy  
3 adjustment for adopted children different than  
4 the predictors of healthy adjustment for children  
5 raised by biological parents?

6 A. No, they're not. Obviously, there's an  
7 additional factor you have to consider, which has  
8 to do with the prior experiences and  
9 circumstances of those children. But there, you  
10 would be looking at exactly the same factors  
11 characterizing those earlier influences which  
12 would play a role in shaping those children's  
13 adjustment, just as their current circumstances  
14 would.

15 Q. And I think you mentioned earlier that  
16 there is some research that looks at children who  
17 are adopted by gay parents. Are the findings of  
18 those studies any different than the findings of  
19 the studies that looked at children of gay  
20 biological parents?

21 A. No.

22 Q. Another witness for the State, Dr.  
23 Rekers, has said in the past that in order to be  
24 convinced that families with homosexuals ought  
25 not be excluded from parenting, he would need to

1           see longitudinal studies over a 40 to 50-year  
2           period, from birth to mid-adulthood, and it would  
3           have to be a representative sample of thousands  
4           of children of homosexual parents. What do you  
5           think of that requirement?

6           A. I think it's really quite silly.

7           Q. Why is that?

8           A. We don't have those sorts of studies  
9           done on any types of family settings or any of  
10          the factors that influence children's adjustment.  
11          But we have, as I said earlier, a very good  
12          understanding of what factors are important in  
13          shaping children's adjustment. And there's  
14          clearly not a need to conduct studies like that  
15          on this question.

16          Q. And is there a need to conduct studies  
17          like that on other questions relating to  
18          children's adjustment?

19          A. No.

20          Q. Do you think it's feasible to do the  
21          kind of study he described?

22          A. I don't think it would be feasible to  
23          find a representative sample of gay and lesbian  
24          parents raising children in a context where the  
25          actual numbers of such parents may be relatively

1 small, and of course, to do the type of study,  
2 you'd want to have all of them recruited at the  
3 time when they had children of the same age, so  
4 that one could follow them over time in the same  
5 way. I think it's just -- it wouldn't be  
6 feasible to conduct a study of that sort.

7 Q. You've testified that being raised by  
8 gay parents doesn't have any adverse effects on  
9 children's adjustment or development. How well  
10 established is this conclusion in your field?

11 A. It's well established.

12 Q. Is it a subject about which the field  
13 has reached consensus?

14 A. Yes.

15 Q. Is it recognized in the important  
16 treatises in your field?

17 A. Yes.

18 Q. Have any of the leading professional  
19 associations in your field issued any statements  
20 about this?

21 A. I think most of the relevant  
22 professional associations have: The American  
23 Psychological Association, the American  
24 Psychiatric Association, American Pediatric  
25 Association, American Academy of Pediatrics,

1 National Council of Social Workers, National --  
2 something for Adoptive Parents, I forget their  
3 acronym. So it's been pretty widely accepted by  
4 all the professionals who focus on this topic.

5 Q. Switching gears a little bit, you've  
6 testified that it's well established in your  
7 field that parents' sexual orientation doesn't  
8 affect children's adjustment, but does that mean  
9 that there are no differences at all between  
10 children raised by gay parents and children  
11 raised by heterosexual parents, on average?

12 A. No. There are differences on things  
13 that don't have to do with adjustment.

14 Q. What sort of differences have been  
15 found?

16 A. Several of the studies have shown that  
17 children being raised by gay and lesbian parents  
18 have less sex-stereotyped attitudes, so that, for  
19 example, their toy choices are less stereotyped,  
20 and the children are less likely to have very  
21 sex-stereotyped notions that, you know, girls  
22 should be nurses and only the boys should be  
23 lawyers.

24 Q. Now, you talked about this a little bit  
25 earlier with respect to research on attitudes of

1 children in other kinds of nontraditional  
2 parents, but I don't think I got a chance to ask  
3 you, is there any benefit to children's  
4 adjustment to having more sex-stereotyped  
5 attitudes or, for example, for girls to, you  
6 know, play with dolls and boys play with trucks,  
7 or girls to aspire to be nurses and boys to  
8 aspire to be astronauts?

9 A. No.

10 Q. Does the fact that a child is more or  
11 less sex-stereotyped in their attitudes mean --  
12 or let's say less sex-stereotyped in their  
13 attitudes mean that the child has a gender  
14 identity disorder or any problem with gender  
15 identity?

16 A. No.

17 Q. Are you familiar with the psychiatric  
18 diagnosis, gender identity disorder?

19 A. Broadly, yes.

20 Q. And can you tell us generally what that  
21 means?

22 A. It refers to a situation where a child  
23 is uncomfortable or unhappy with the gender that  
24 it was born in.

25 Q. Uh-huh. Does departure from sex



1 stereotypes, in terms of these areas you  
2 discussed, play choices or career goals, that  
3 kind of thing -- does that mean that a child has  
4 discomfort with their sense of being a boy or a  
5 girl?

6 A. No.

7 Q. Have any of the studies that looked at  
8 children of gay parents explored whether children  
9 had gender identity problems?

10 A. Yes, some have.

11 Q. And what did they find on that issue?

12 A. They find no differences in the numbers  
13 with those problems, and of course, gender  
14 identity disorders are very rare, so in most of  
15 these studies there would be no children in  
16 either of the comparison groups that have those  
17 problems.

18 Q. Now, this -- these less sex-stereotyped  
19 attitudes that you've talked about, you gave  
20 examples of it manifesting itself in play choices  
21 and career choices. Is there any evidence that  
22 this -- these less sex-stereotyped attitudes  
23 manifest itself in attitudes about what is  
24 appropriate for boys and girls in terms of sexual  
25 behavior?

1           A. Can you repeat your question?

2           Q. I'm sorry, that was a long question. Is  
3           there any evidence that the less sex-stereotyped  
4           attitudes found, on average, among children of  
5           gay parents -- that those less sex-stereotyped  
6           attitudes manifest themselves in attitudes about  
7           what is appropriate sexual activity for boys and  
8           girls?

9           A. Yeah, there is, in the -- one Golombok  
10          study, for example, there was some evidence that  
11          broadly speaking, the children raised by lesbians  
12          hewed to less of a sexual double standard than  
13          those being raised by heterosexual moms, so that  
14          the girls raised by lesbians were more sexually  
15          active and the boys raised by lesbian moms were  
16          less sexually active than the boys or girls in  
17          the other group.

18          Q. And what accounts for this difference?

19          A. Well, I think it's consistent with a lot  
20          of other evidence suggesting that children in  
21          nontraditional contexts are less tied to some of  
22          those sex stereotypes and have parents who  
23          encourage more tolerant types of attitudes and  
24          values.

25          Q. And by tolerance, you mean with respect

1 to sex roles, or something else?

2 A. Yes, and less rigid application of  
3 those.

4 Q. The Golombok study that found these  
5 differences in attitudes that you've described --  
6 and I guess less of a double standard, was the  
7 way you described it.

8 A. Uh-huh.

9 Q. Did that study show any differences in  
10 the age at which the children of lesbian mothers  
11 first initiated sexual relationships, compared to  
12 the children of heterosexual mothers?

13 A. Yeah, there was no difference in that.

14 Q. And do children in other types of  
15 nontraditional families exhibit the kinds of  
16 attitudes about sex roles that you've just  
17 described in gay-parent families?

18 A. Yes.

19 Q. Is there any research that looked at the  
20 sexual orientation of the children of gay  
21 parents?

22 A. There is some, yes.

23 Q. And who's looked at that question?

24 A. Well, again, the same Golombok study.

25 Q. Uh-huh, and she's the one that followed

1 up to age 20-something?

2 A. They averaged 23, 24, yes.

3 Q. Okay. And what did Golombok and her  
4 colleagues find with respect to the sexual  
5 orientation of the children of the lesbian moms  
6 compared to the children of the heterosexual  
7 parents?

8 A. Well, there was no significant  
9 difference between the two groups. There were  
10 two same-gender orientation kids in the  
11 lesbian-mother families and none in the other  
12 families, but that wasn't a significant  
13 difference between those groups.

14 Q. And when you say significant, do you  
15 mean statistically significant difference?

16 A. Statistically significant, right, sorry.

17 Q. Putting aside the question of whether  
18 children identify as lesbian, gay, bisexual,  
19 heterosexual, did Golombok look at all at whether  
20 or not the children -- or I guess they weren't  
21 children -- the young people in the two groups  
22 had engaged in same-sex behavior or indicated an  
23 openness to engaging in such behavior, or  
24 considering it?

25 A. The children raised by the lesbian

1 mothers seemed more open to both considering  
2 same-sex relationships and were more likely to  
3 have recognized some same-sex attraction and  
4 acted on it when they felt that kind of  
5 attraction.

6 Q. Uh-huh. What percentage of the kids in  
7 the lesbian-parent families had had at least one  
8 same-sex sexual experience?

9 A. It was about a quarter.

10 Q. Okay, and the other group, the  
11 heterosexual-parent group?

12 A. I think it was none.

13 Q. What accounts for that difference in  
14 the --

15 MS. MARTIN: I'm sorry, could I ask  
16 him to repeat the answer? I didn't hear  
17 it.

18 THE WITNESS: I'm sorry, I said  
19 none.

20 MS. MARTIN: None, okay. I didn't  
21 know if you said none or not known.  
22 Thank you.

23 MS. COOPER: Oh.

24 BY MS. COOPER:

25 Q. What accounts for the difference in the

1           number of young people in the two groups being  
2           open to having same-sex relationships?

3           A. Well, I suspect it has to do with being  
4           in an environment in a family and in communities  
5           that were less likely to frown on same-sex  
6           relationships, and so it made it easier for those  
7           children who felt same-sex attraction to actually  
8           act on it, whereas for the children in the  
9           heterosexual -- with heterosexual moms, while  
10          they felt that attraction on occasions, they  
11          obviously didn't feel comfortable acting on it,  
12          perhaps expecting that their parents would be  
13          less tolerant and less supportive if they had.

14          Q. Would you expect that young people who  
15          feel attracted to persons of the same sex --  
16          well, let me actually ask it differently. Let's  
17          say you have kids raised by heterosexual parents.  
18          If you have kids who are raised by heterosexual  
19          parents who are accepting of homosexuality, maybe  
20          they have gay friends come to the house, that  
21          sort of thing, how would you expect those kids to  
22          react to having their own feelings of same-sex  
23          attraction, compared to children raised by  
24          parents who express negative views about  
25          homosexuality?

1           A. Well, you'd expect that they, too, would  
2 feel that it was more okay, that their parents  
3 would be more likely to accept that.

4           Q. Witnesses for the State may bring up Dr.  
5 Stacey's article that you discussed earlier, how  
6 does sexual orientation of the parents matter,  
7 and they may refer to statements in her article  
8 that parental sexual orientation is positively  
9 associated with the possibility that children  
10 will be more likely to attain a similar  
11 orientation, and that theory and common sense  
12 would also support such a view.

13                   Are you familiar with that part of  
14 Stacey's article?

15           A. Uh-huh. Yes.

16           Q. Did Stacey explain how parental sexual  
17 orientation could have an effect on children's  
18 sexuality?

19           A. Well, I think she explains it in the  
20 same way that I've just described, namely, by  
21 suggesting that the major difference between  
22 these families would be differences in the  
23 parents' toleration of or support for children  
24 acting on same-sex attraction if they felt that.  
25 So it has more to do with whether or not children

1 would feel that there was some flexibility to act  
2 on those feelings.

3 Q. Did Stacey raise any other possibilities  
4 that might account for that disparity?

5 A. She also mentioned sort of potentially a  
6 biological factor, to the extent that, say, being  
7 gay is genetically determined, presumably gay  
8 parents would pass on gay genes to their  
9 children.

10 Q. Uh-huh. Was Stacey saying that living  
11 with gay parents makes you gay?

12 A. No.

13 Q. If children do end up growing up to be  
14 gay, whether they're raised by gay parents or  
15 straight parents, is that a maladjustment?

16 A. No.

17 Q. And why do you say that?

18 A. Well, because homosexuality isn't  
19 defined as an index of maladjustment in the, you  
20 know, diagnostic measures of pathology,  
21 psychopathology.

22 Q. Uh-huh. Now, the State's experts may  
23 point to a number of books of interviews of  
24 people who grew up being raised by gay parents,  
25 and I believe some of them are narratives about



1           those people, and they have said in their  
2           disclosures in this case that these books  
3           demonstrate that children or people raised by gay  
4           parents are more likely to be gay themselves. I  
5           want to ask you some questions about a passage  
6           in -- or some references in Dr. Rekers'  
7           St. Thomas Law Review article about that.

8                         First of all, have you reviewed the  
9           St. Thomas Law Review article written by George  
10          Rekers?

11                        A. Yes, I have.

12                        Q. Okay. I want to turn your attention to  
13          Page 366 to 67.

14                        MS. COOPER: Do you folks all have  
15          your copies?

16                        MS. MARTIN: If you give me a  
17          second, I have one.

18                        MS. COOPER: Okay, sure.

19                        MS. MARTIN: You said 366?

20                        MS. COOPER: 366.

21                        MS. MARTIN: Okay.

22          BY MS. COOPER:

23                        Q. Okay, and if you'll look under the  
24          heading, 251 Qualitative Cases Published  
25          Document Stress and -- oh, sorry, Stress and

1           Distress Inherent to the Structure of a Home  
2           Headed by a Homosexual, and then in the next  
3           paragraph, in the paragraph following that  
4           heading, there's references cited in the  
5           footnotes to -- one, two, three, four, five, six,  
6           seven -- eight different publications. Are you  
7           following along with me?

8           A. Yes.

9           Q. Okay, and those are publications -- I'll  
10          just use the last names as shorthand, but we can  
11          all follow along -- Rafkin, Saffron, Asten,  
12          Gillespie, a book edited by Howey, Gottlieb, Snow  
13          and Garner. Are you following along with me?

14          A. Uh-huh.

15          Q. Okay. Now, are you familiar with any of  
16          these books listed here?

17          A. I'm broadly familiar. I've read a  
18          couple of them and I've skimmed through some of  
19          the others, yes.

20          Q. Uh-huh, and do you know whether any of  
21          the authors of these publications are social  
22          scientists?

23          A. No, none of them are social scientists.  
24          There are a couple of psychotherapists, but most  
25          of them are journalists.

1 Q. Most of them are --

2 A. Journalists and authors.

3 Q. Are these authors who attempted to  
4 scientifically collect data on children of gay  
5 parents?

6 A. No.

7 Q. What are they trying to do?

8 A. They're trying to provide portraits of a  
9 diverse range of experiences that people might  
10 have had, growing up. In some of the cases, they  
11 deliberately tried to find people whose  
12 experiences were as different as possible, so,  
13 you know, those who lived with gay dads or had  
14 gay dads they didn't live with, those who were  
15 happy, those who were unhappy, those who had good  
16 relationships, those who had bad relationships.  
17 They were trying to, you know, present portraits  
18 or draw stories, not in a fictional sense, but to  
19 describe experiences in these different kinds of  
20 contexts.

21 Q. Were they attempting to collect a  
22 representative group of people raised by gay  
23 parents?

24 A. No.

25 Q. Is it possible to make to make

1           generalizations about people raised by gay  
2           parents from these kinds of sources?

3           A. No.

4           Q. Are they more in the nature of  
5           anecdotes?

6           A. They're journalistic accounts, yes.

7           Q. Okay.

8           The Lofton court has said that a basis  
9           for the exclusion of gay people from adopting is  
10          that most children are going to grow up to be  
11          heterosexual and heterosexuals will better be  
12          able to guide their children through adolescence  
13          by relating stores of their own dating  
14          experience.

15          Is there any basis for the assertion  
16          that gay parents cannot guide their heterosexual  
17          teenagers through adolescence?

18          A. No.

19          MS. MARTIN: Objection, facts not  
20          in evidence. She's testifying.

21          THE COURT: Overruled.

22          THE WITNESS: No.

23          BY MS. COOPER:

24          Q. Is there any reason that heterosexual  
25          parents couldn't guide their gay teenagers

1 through adolescence?

2 A. No.

3 Q. Even though their dating experiences  
4 might be somewhat different with respect to the  
5 gender of partners?

6 A. No.

7 Q. Can single mothers guide sons through  
8 adolescence?

9 A. Yes.

10 Q. And what about people who, for religious  
11 or other reasons, haven't really had any dating  
12 experience? Can they successfully guide children  
13 through adolescence?

14 A. Yes.

15 Q. I want to switch to the topic, a new  
16 topic --

17 MS. COOPER: Is this -- Are folks  
18 needing a break, or can we go on? Okay?  
19 All right, great.

20 Dr. Lamb?

21 THE WITNESS: Yes.

22 MS. COOPER: Are you okay?

23 (Discussion off the record)

24 (Thereupon, a recess was taken.)

25 THE COURT: Okay, please continue.

1                   Doctor, I apologize. This is not  
2                   the way courtrooms are run in America,  
3                   so I apologize for what you witnessed in  
4                   the last 10 to 15 minutes. It's an  
5                   aberration.

6                   Go ahead.

7 BY MS. COOPER:

8                   Q. Dr. Lamb, a witness for the State, Dr.  
9                   Rekers, raised in the discovery during the course  
10                  of this case the issue of social stigma  
11                  experienced by children of gay parents, so I have  
12                  a few questions for you about that topic. Is  
13                  there any research that addresses the social  
14                  development or peer relationships of children of  
15                  gay parents?

16                  A. Yes.

17                  Q. And can you identify some of the leading  
18                  studies on that topic?

19                  A. Well, Bos has explored that as one of  
20                  the issues in her studies. Golombok has explored  
21                  that. It's been a quite well established or  
22                  quite well studied project.

23                  Q. And can you tell us in broad strokes how  
24                  the research went about evaluating children's  
25                  social development or peer relationships?

1           A. Mostly by questioning teachers or  
2 children or mothers about their children's peer  
3 friendships and relationships with others.

4           Q. And what were the findings of the  
5 studies that looked at the social relationships  
6 or social adjustment or peer relationships of  
7 children of gay parents?

8           A. That there are no differences between  
9 the social skills and social relationships of  
10 children raised by gay/lesbian as opposed to  
11 heterosexual parents.

12          Q. Did any of these studies look at whether  
13 children of gay parents are more likely to  
14 experience peer rejection or ostracism by peers?

15          A. They do, and they show no differences  
16 with respect to ostracism, rejection, bullying.

17          Q. Uh-huh. Putting aside, I guess, the  
18 more extreme case of peer ostracism, did any of  
19 the studies look specifically at to what extent  
20 children by gay parents are affected by teasing  
21 and bullying and that sort of negative peer  
22 reaction?

23          A. Yes, several of the studies have shown  
24 that teasing and bullying is surprisingly common.  
25 It's common in children in both sorts of

1 families, without any difference in the amount of  
2 such teasing, although the reasons why children  
3 get teased are different, that is to say,  
4 children raised by gay and lesbian parents are  
5 more likely to be teased about their mother's  
6 sexual orientation, whereas children in the other  
7 group as just as likely to be teased, but it may  
8 be things that have to do with how their mother  
9 looks or her ethnic background or their family  
10 circumstances, their appearance.

11 Q. And to the extent that children of gay  
12 parents do face teasing about their families, do  
13 the studies indicate whether that has any impact  
14 on their adjustment?

15 A. Well, the studies show that there aren't  
16 any differences in the levels of adjustment of  
17 children.

18 Q. And that includes social adjustment?

19 A. That's correct.

20 Q. Now, you mentioned that kids get teased  
21 for some other reasons. Can you tell us sort of  
22 the types of things kids get teased about?

23 A. Well, as I mentioned, they have to do  
24 with, you know, ethnic background, appearance,  
25 appearance of both the individual and the



1 parents. Kids are teased for being too fat, too  
2 thin, too short.

3 Q. Uh-huh, and what kind of characteristics  
4 of their parents might cause teasing?

5 A. The same sorts of things, ethnic  
6 background; perhaps the parent has a foreign  
7 accent.

8 Q. Excuse me.

9 Is there anything about teasing or  
10 bullying based on the sexual orientation of  
11 someone's parent that is more damaging to  
12 children than experiencing such behavior based on  
13 other family characteristics?

14 A. No.

15 Q. Would excluding gay people from adopting  
16 children, or I should say does excluding gay  
17 people if adopting children shield people from  
18 bullying and harassment?

19 A. Unfortunately not.

20 Q. Now, we've talked about the St. Thomas  
21 Law Review publication written by Dr. Rekers. I  
22 want to call your attention to another piece  
23 of -- if folks can turn to Page 368, and I'll  
24 hand this to you in a moment, Dr. Lamb -- towards  
25 the bottom, the last paragraph of the page, of

1 Page 368, there's a reference to a, quote, 50  
2 percent rate of peer harassment and bullying  
3 experienced by children of homosexual parents.

4 Are you following along with me?

5 A. Yes.

6 Q. And then the reference that comes in the  
7 first footnote after that appears to be a  
8 citation to an article by Sears; is that correct?

9 A. That's correct, yes.

10 Q. Okay. Now, have you read this portion  
11 of Dr. Rekers' article?

12 A. Yes.

13 Q. And have you read the Sears article that  
14 he cites?

15 A. Yes, I have.

16 Q. Did Sears say that children of gay  
17 parents have a 50 percent rate of peer harassment  
18 and bullying?

19 A. No, he didn't.

20 Q. Then did he say anything about that  
21 topic?

22 A. Well, Sears' paper was a review, not a  
23 study, and he does make reference to another  
24 study done by somebody called Wyers, which  
25 involved interviews with lesbian mothers and gay

1 fathers, and in the course of that study, they  
2 report that 50 percent of the lesbian mothers  
3 reported that their children had relation--  
4 concerns about relationship issues.

5 Q. What kind of concerns?

6 A. Fears about how to tell friends about  
7 their mother's sexual orientation, for example.

8 Q. So did Wyers say anything about a 50  
9 percent rate of peer harassment and bullying of  
10 children of gay parents?

11 A. No.

12 Q. Can you think of any reason to cite a  
13 review article citing another study, rather than  
14 just citing the study directly to support a  
15 proposition?

16 A. No, not really.

17 Q. Have you reviewed the Wyers article that  
18 was referenced by Sears in the article that Dr.  
19 Rekers referenced in the St. Thomas Law Review?

20 A. Yes.

21 Q. Okay, and when were those children  
22 studied, during what time period?

23 A. The paper was published in 1983, and the  
24 children were -- or the interviews were conducted  
25 in the late '70s, around 1980.

1           Q.  Would you expect that children's  
2           experience of being raised by gay parents to have  
3           been the same or different, several decades ago,  
4           than -- compared to now?

5           A.  You would expect it to be quite  
6           different.  There's a much greater awareness of,  
7           familiarity with, and tolerance of homosexual  
8           relationships today than there was 30 years ago.

9           Q.  I want to turn back to that list of the  
10          eight or so books of narratives and interviews of  
11          young people raised by gay parents, the Saffron,  
12          Rafkin, et cetera, that we talked about earlier,  
13          and you've already testified that these are not  
14          scientific books that allow you to draw  
15          generalizations about kids of gay parents, but I  
16          have one additional question focused on this  
17          particular issue of stigma.

18          When do the subjects of those books, the  
19          young people raised, or I guess the people raised  
20          by gay parents -- when did they grow up?

21          A.  Well, there was quite a range.  Some of  
22          these books reviewed or talked to children of  
23          lesbians and gays who were themselves old enough  
24          to be grandparents.  So the earliest birth dates,  
25          as I recall, were in the 1920s, and the latest

1           ones were in the early 1990s, so you had a range  
2           of people growing up anywhere from the 1930s to  
3           the 1990s or early 2000s.

4           Q.    The issue of disclosing to peers that  
5           you have a gay or lesbian parent, that is an  
6           issue that has been raised in discovery in this  
7           case by Dr. Rekers.  Is keeping information about  
8           one's family from peers something that's unique  
9           to children of gay parents, or to some children  
10          of gay parents?

11          A.   No, it's quite common for children to  
12          not talk about some aspects of their family.

13          Q.    What types of things?

14          A.   Religion, perhaps a very common one, the  
15          fact of the backgrounds of the parents,  
16          socioeconomic backgrounds, whether or not they're  
17          immigrants.

18          Q.    Now, we've been talking a bit about peer  
19          relationships.  I want to switch gears very  
20          briefly to talk about other kinds of  
21          relationships, specifically, relationships  
22          between children of gay parents and extended  
23          family members.  Did any of the studies in this  
24          body of research that you've been discussing look  
25          at the relationships between children of gay

1 parents and their grandparents and other  
2 relatives?

3 A. Yes, they did.

4 Q. And did any of those studies look at the  
5 amount of contact that children had with their  
6 relatives?

7 A. Yes, they did.

8 Q. And what were the findings with respect  
9 to the relationships and contact that these  
10 children had with other relatives?

11 A. Well, the children were just as likely  
12 to have good contact with their extended family,  
13 regardless of the sexual orientation of their  
14 parents.

15 Q. Now, experts for the State have raised  
16 in this litigation that a basis for the exclusion  
17 is that children are best off with a married  
18 mother and father who are married -- a mother and  
19 father who are married, and you've already  
20 largely addressed this in discussing the research  
21 that you've been talking about up till now, but I  
22 just have a few more questions that are related  
23 to what we anticipate might be addressed by the  
24 State's experts, so I want to address some of  
25 those issues.

1                   First of all, do either men or women  
2                   have a greater inherent capacity to be good  
3                   parents?

4                   A. No.

5                   Q. Is there anything about gender, per se,  
6                   that affects someone's ability to be a good  
7                   parent?

8                   A. No.

9                   Q. Now, within heterosexual two-parent  
10                  families, are there any differences in styles of  
11                  interaction that parents have with their  
12                  children, as between mothers and fathers?

13                  A. Yeah, in particularly North American and  
14                  English families, there's a tendency for fathers'  
15                  interactions with children to be much more  
16                  focused around play and sort of playful  
17                  activities and boisterous stimulation, whereas  
18                  interactions with mothers is much more focused on  
19                  caretaking, soothing, and sort of more containing  
20                  styles of interaction.

21                  Q. Does that mean that mothers as a group  
22                  have one style and fathers as a group, in these  
23                  heterosexual-parent families, have a completely  
24                  different style of interacting?

25                  A. No. There's a considerable amount of

1           variation, so that those are differences if you  
2           compare groups of individuals, but in fact, you  
3           know, of course, mothers do a lot of play with  
4           their children and fathers can do things other  
5           than play with their children.

6           Q. Uh-huh. Excuse me.

7                        What about in heterosexual two-parent  
8           families where the father is the primary  
9           caregiver? Do those patterns or emphases and  
10          interactions still exist?

11          A. No, they don't seem to. Those patterns  
12          seem to be more related to the roles that the  
13          parents are playing in relation to the child's  
14          care, rather than to have anything to do with  
15          their gender, so that when fathers are more  
16          involved in child care, they tend to adopt a more  
17          maternal style, and mothers who are more involved  
18          in the breadwinning, say, would be less  
19          characterized by the so-called maternal style.

20          Q. Uh-huh. So the average differences in  
21          parenting interaction style that are seen between  
22          men as a group and women as a group, are those  
23          average differences greater than the differences  
24          in styles that exist, say, among women or among  
25          men?



1           A. The differences within the groups is  
2           huge. There's much greater difference among them  
3           than there is between the group means.

4           Q. Is it harmful to children raised by  
5           heterosexual couples if their parents do not  
6           assume the traditional gender roles and styles,  
7           meaning, you know, the father is not the  
8           boisterous, playful one, and the mother is not as  
9           soothing, for example?

10          A. Absolutely not, and indeed, as I  
11          mentioned earlier, these may be quite  
12          characteristic of families here, but in many  
13          other cultures, you don't see these differences  
14          emerging at all, and children are obviously  
15          developing perfectly adequately.

16          Q. Your voice is really dropping down.

17          A. Sorry. And those children are still  
18          developing perfectly well.

19          Q. Okay. An expert for the State may point  
20          to research that compares outcomes for children  
21          in single-parent families to the outcomes of  
22          children in two-parent families, to support the  
23          exclusion of gay people from adopting, so I have  
24          a couple of questions on that research.

25                 First of all, are children in single-

1 parent families more likely to have adjustment  
2 difficulties than children in two-parent  
3 families?

4 A. Yes.

5 Q. And what kind of adjustment  
6 difficulties?

7 A. Well, they are difficulties across the  
8 range of factors that I talked about earlier.  
9 They're more likely to have problems at school.  
10 They are less likely to perform well at school,  
11 less likely to extend their education, more  
12 likely to have difficulties in relationships with  
13 peers and intimate relationships as they grow  
14 older, and perhaps more likely to get engaged in  
15 antisocial and even delinquent behaviors.

16 Q. And what is it that accounts for the  
17 poor adjustments, or poorer adjustments, among  
18 children in single-parent families compared to  
19 those of two-parent families?

20 A. Well, I think the -- one has to go back  
21 to those three broad characteristics or factors  
22 that I talked about earlier. Children in  
23 two-parent families often have -- suffered the  
24 disruption or perhaps loss of a relationship with  
25 one of their parents, and that's a -- places a

1           burden or stress on them.

2                       In many cases, there's been a  
3           considerable amount of conflict between their  
4           parents, perhaps at the time that the  
5           relationship was dissolved, and of course,  
6           single-parent families as a whole have much  
7           poorer economic circumstances than two-parent  
8           families.

9                       So, for all these reasons, there are a  
10          number of factors that place those sorts of  
11          families at risk.

12                      Q. Now, you talk about a greater likelihood  
13          of adjustment problems among children in  
14          single-parent families compared to two-parent  
15          families. Does that mean all or most of the  
16          children in single-parent families are  
17          maladjusted?

18                      A. No, absolutely not. That refers to  
19          differences between those groups of children.  
20          The majority of children raised in single-parent  
21          families are perfectly well adjusted. The rates  
22          of maladjustment in those families, in most  
23          studies, run around one third of them, which is  
24          about twice the rate in children in two-parent  
25          families. So there's a big increase in risk, but

1 a situation where, in both cases, the majority of  
2 the kids are perfectly well adjusted.

3 Q. Does this body of research that looks at  
4 outcomes for children in single versus two-parent  
5 families demonstrate that being raised by gay  
6 parents compromises children's adjustment in any  
7 way?

8 A. No.

9 Q. Does it say anything at all about the  
10 significance of parents' sexual orientation or  
11 gender to the development of children?

12 A. No.

13 Q. Is there any scientific basis upon which  
14 to conclude that a child needs a male and female  
15 parent to develop healthily, or that there's an  
16 optimal gender combination of parents?

17 A. No.

18 Q. Was that ever raised as an issue in your  
19 field, that perhaps children need a mom and a dad  
20 to adjust well?

21 A. Yes. I think a lot of the theory in  
22 developmental psychology came from a  
23 psychoanalytic framework in which that would be a  
24 reasonable prediction. As psychology has moved  
25 away from and has been informed by different

1 traditions than the psychoanalytic, so those  
2 sorts of predictions have become less -- less  
3 prominent. Certainly, when I began my research  
4 on mothers, fathers and children, I entertained  
5 and studied the possibility that this was really  
6 important, and came to the conclusion there, as  
7 did other people, that that wasn't the case.

8 Q. Uh-huh. I think, a minute ago, you  
9 referred to, as other models in the field, other  
10 than the psychoanalytic one?

11 A. Other theories or theoretical  
12 frameworks.

13 Q. Oh, theoretical frameworks, thank you.  
14 What frameworks are you talking about? Are you  
15 talking about research or --

16 A. I meant, yes, theories, scholarly  
17 theories or scholarly research traditions.

18 Q. And this idea that kids would need a  
19 mother and a father, that was predicted about the  
20 psychoanalytic theory, was that ever tested by  
21 empirical research?

22 A. Not very much.

23 Q. No, well, I guess I should frame it  
24 differently. As the field moved on to these  
25 other frameworks, did they ever test the

1           assumption that kids need a mother and a father  
2           to develop healthily?

3           A. Yes.

4           Q. And what were the conclusions?

5           A. And the conclusion is that they don't.

6           Q. Is this conclusion, that children don't  
7           need a parent of each gender to adjust healthily,  
8           something -- well, I guess, how well established  
9           is that in your field at this time?

10          A. It's very well established.

11          Q. And since when has that been well  
12          established?

13          A. Oh, for at least 25 or 30 years.

14          Q. Is this -- would you say this represents  
15          the generally accepted view in your field?

16          A. Yes.

17          Q. Is it a subject of consensus?

18          A. Yes.

19          Q. Now, you say that the gender combination  
20          of parents isn't important to children's  
21          adjustment, but in Dr. Rekers' St. Thomas Law  
22          Review article, he points to some of the papers  
23          you wrote where you discuss the, quote, unique  
24          contributions of mothers and fathers to  
25          children's development, and specifically, he

1 points to a review article authored by Marsiglio  
2 and you and others in 2000, and another review  
3 article authored by Cabrera and you and others,  
4 also in 2000. Do you know which articles I'm  
5 referring to?

6 A. Yes.

7 Q. Is your discussion of the unique  
8 contributions of mothers and fathers inconsistent  
9 with what you've been saying here?

10 A. No, not at all. You know, many children  
11 have heterosexual parents, mothers and fathers,  
12 and as I testified earlier, I've spent a lot of  
13 my research studying the roles of mothers and  
14 fathers in heterosexual families, in situations  
15 where children do have parents of both genders.  
16 There's very clear evidence that both of those  
17 relationships are important to their development.  
18 But that doesn't mean that it is necessary for  
19 children to have relationships with parents of  
20 both genders in order to thrive.

21 Q. So, if you have a family with, say, two  
22 fathers, would you say each father makes a unique  
23 contribution to the children's development?

24 A. Yes.

25 Q. One of the State's experts may point to

1 research that shows poorer outcomes for children  
2 of heterosexual unmarried cohabiting parents,  
3 compared to heterosexual married parents, as  
4 evidence that gay parents are suboptimal. Are  
5 you familiar with the research on cohabiting  
6 heterosexual couple families?

7 A. Yes.

8 Q. And is that right, that there are poorer  
9 outcomes for children in cohabiting heterosexual  
10 couple families, compared to married heterosexual  
11 couple families?

12 A. Yes.

13 Q. Okay, and what accounts for those poorer  
14 outcomes?

15 A. Well, there are probably a number of  
16 factors, that include the fact that some of those  
17 cohabiting families include children who were  
18 born in other relationships than in the  
19 relationship that the parents are currently in,  
20 so those children would have experienced some  
21 kind of separation problems or difficulties or  
22 exposure to divorce or conflict.

23 And there does seem to also be a role  
24 played by the lesser degree of commitment shown  
25 by individuals who choose to remain in a



1           cohabiting relationship rather than become  
2           married to one another.

3           Q. So, in these studies, is it the marital  
4           status of the parents, per se, that affects the  
5           outcomes for the children?

6           A. No. It has more to do with both the  
7           experiences of the children, with respect to the  
8           exposure to stress and less close relationships  
9           with parents, and it has to do with differences  
10          in the parents' commitment or investment in the  
11          two sorts of families.

12          Q. Now, of course, in most places,  
13          including Florida, gay couples can't marry, so  
14          does this research on cohabiting heterosexual  
15          couples and the outcomes for their children  
16          suggest that there would be poorer outcomes for  
17          children in gay couple families?

18          A. No, it doesn't, because of course, in  
19          the literature with heterosexuals -- you know,  
20          cohabiting couples, roughly speaking, split into  
21          two groups. Some of them go ahead and get  
22          married and others separate, and those who choose  
23          not to go ahead and get married are the ones who  
24          are at a much higher risk and are ones who are  
25          manifesting much less commitment to the

1 relationship than those who decide to go ahead  
2 and get married, but in a situation with same-sex  
3 parents, where you don't have the choice of  
4 demonstrating your commitment by getting married,  
5 you have a very different situation there, that's  
6 really not comparable.

7 Q. Are the majority of children raised by  
8 cohabiting heterosexual parents maladjusted?

9 A. No.

10 Q. About how many or how big is the  
11 disparity?

12 A. Around a quarter of them, I would say.

13 Q. Now, the State's experts have asserted a  
14 number of statements, generalizations, about gay  
15 people, such as that gay people are more prone to  
16 domestic violence or more likely to have  
17 psychiatric disorders. And other experts are  
18 addressing these topics more fully, but I just  
19 have one or two questions about what the child  
20 development research says about these topics,  
21 okay?

22 So, the State's experts have raised the  
23 argument that placing a child with gay adoptive  
24 parents heightens the risk of exposure to  
25 violence in the home. Have researchers explored

1           whether there are any -- I should say, have child  
2           development researchers explored whether there  
3           are any family characteristics that correlate  
4           with an increased risk of family violence?

5           A.   There are family characteristics,  
6           particularly that have to do with levels of  
7           stress within the family.

8           Q.   Is being a gay parent among the factors  
9           that have been identified as a risk for family  
10          violence?

11          A.   No, it's not.

12          Q.   And is this question of sort of what  
13          factors or characteristics predict family  
14          violence something that has been studied well by  
15          researchers?

16          A.   Fairly extensively, yes.

17          Q.   And the State's experts have asserted  
18          that gay people -- one reason to exclude gay  
19          people from adopting is that they are more prone  
20          to psychiatric disorders, and just one question  
21          on that. Has any of the research on gay-parent  
22          families evaluated the mental health of the gay  
23          or lesbian parents compared to the heterosexual  
24          comparison group?

25          A.   Yes, they have.

1 Q. What did they find?

2 A. They find comparable levels of  
3 psychological adjustment on the part of the  
4 parents.

5 Q. Stepping back now, in your expert  
6 opinion, does excluding gay people from adopting  
7 do anything at all towards the goal of promoting  
8 healthy child adjustment?

9 A. No. I think, on the contrary, it  
10 potentially places healthy child development at  
11 risk, in a general sense.

12 Q. And why is that?

13 A. Because it excludes from the pool of  
14 potentially qualified adopters people who would  
15 otherwise be perfectly appropriate and perfectly  
16 capable of caring for children, on the basis of  
17 factors that are not relevant to that decision,  
18 and given that there are large numbers of  
19 children in need of adoption and always a short  
20 supply of qualified parents, the net effect is  
21 that more children are not going to be placed  
22 appropriately, because the pool of potential  
23 adopters have been reduced.

24 THE COURT: Just wait for the  
25 plane --

1 THE WITNESS: Sorry.

2 THE COURT: -- Doctor.

3 Thank you.

4 THE WITNESS: Okay.

5 So one would reduce the pool by  
6 excluding people who would otherwise be  
7 good potential adoptive parents.

8 BY MS. COOPER:

9 Q. Now, we've talked some about the  
10 St. Thomas Law Review article, authored by  
11 Dr. Rekers, and he, among other things, addresses  
12 the gay parenting research that -- well, the  
13 scientific research on lesbian and gay families.  
14 In your view, is this article a fair presentation  
15 of the scientific research on lesbian and gay  
16 parents and their children?

17 A. No, I don't think it is.

18 Q. Why is that?

19 A. Well, there are a couple of reasons. I  
20 mean, the first is that the article includes lots  
21 of assertions or claims masquerading as  
22 scientific conclusions, that is to say,  
23 statements are made without any grounding in  
24 empirical research to support those. And when  
25 citations are made, they're frequently to other

1 Law Review articles, rather than to other more  
2 systematic sources of research evidence.

3 Q. Do you have any other impressions of the  
4 presentation of Dr. -- Dr. Rekers' presentation  
5 on the research on gay-parent families?

6 A. Well, as I said, it presents a very  
7 selective and incomplete summary of the evidence  
8 that exists. Many of the major studies aren't  
9 mentioned at all, and the report itself contains  
10 lots of these assertions that are not  
11 well-founded in fact.

12 Q. Have you ever read any other scholars'  
13 reviews of any of Dr. Rekers' publications?

14 A. Yes, I have.

15 Q. Whose?

16 A. Well, I'm thinking particularly of a  
17 book review written by Professor Zucker.

18 Q. Who is Professor Zucker?

19 A. He is the head of a center at the  
20 University of Toronto that focuses its work on  
21 the sexual development of children and young  
22 adults.

23 Q. And just what is his first name, for  
24 clarification?

25 A. Ken.

1 Q. Kenneth?

2 A. Kenneth.

3 Q. What is his reputation in your field?

4 A. He has an excellent reputation. He's  
5 widely regarded in the field and was the recent  
6 president of the society for people working in  
7 this area.

8 Q. And you mentioned he did a review of  
9 some of Dr. Rekers' publications. Where was that  
10 review published?

11 A. The review was published in the Archives  
12 of Sexual Behavior.

13 Q. Is that a peer-reviewed academic  
14 journal?

15 A. It is, yes, it's the main journal  
16 published by an organization for people studying  
17 sexual behavior.

18 Q. Which publications of Dr. Rekers were  
19 reviewed by Dr. Zucker?

20 A. The review that I have in mind focused  
21 on two books, one called Growing Up Straight, and  
22 the other, I believe, called Shaping Your Child's  
23 Sexual Identity.

24 Q. And what did Dr. Zucker have to say in  
25 this book review about those two books?

1           A. Well, he was very critical of those two  
2 books, and raised two rather profound and serious  
3 criticisms. The first was that he felt that  
4 the -- what Dr. Rekers had done was to distort  
5 the available evidence in order to make it accord  
6 with his ideological beliefs or commitments, and  
7 secondly, that he had failed to review the  
8 available scholarly evidence that was germane to  
9 the topics of the books.

10           Q. Switching to Dr. Schumm, the other  
11 witness for the State, I think you mentioned  
12 earlier that you've looked at some of the  
13 manuscripts that he prepared for this litigation  
14 that addressed the research or some of the  
15 research on gay-parent families; is that right?

16           A. Yes.

17           Q. And can you tell us, in your opinion,  
18 did he provide a fair presentation of the  
19 research on children raised by gay parents?

20           A. No, I don't think so.

21           Q. Why is that?

22           A. Well, I think that that is -- as I  
23 mentioned earlier, in several of the reports, he  
24 reanalyzes or re-presents the information in ways  
25 that I think is not very helpful, because it



1 focuses on statistically nonsignificant  
2 differences between the groups. And in other  
3 contexts, he's criticized some of the work for --  
4 in ways that I find not very persuasive.

5 I mean, for example, he focuses one  
6 paper on recent studies by Patterson and  
7 Wainwright, as well as by Rivers. Those are two  
8 of the studies that involved looking at  
9 population-based representative samples, and Dr.  
10 Schumm suggests that both studies were deficient  
11 because they may not have accurately identified  
12 the types of families with whom the children were  
13 staying, and in particular, he suggests that it's  
14 possible that some of the children who were  
15 reported to be living with lesbian coupled  
16 parents were just two women who happened to be  
17 living in the same house. Now, in these studies,  
18 these women were selected on the basis of an  
19 assertion that they lived in a marriage-like  
20 relationship, and to me, it seems very unlikely  
21 that people who were sharing a house, say, with  
22 an au pair looking after their children would  
23 have described theirs as a marriage-like  
24 relationship, which is what Dr. Schumm suggests  
25 in his criticism.

1           Q. He suggests that a parent and au pair  
2 might describe themselves as being in a  
3 marriage-like relationship?

4           A. Exactly, that there might be confusion  
5 about the designation.

6           Q. Uh-huh. Did you have any reaction to  
7 Dr. Rekers' discussion of the Sarantakos -- I'm  
8 sorry, Dr. Schumm's discussion of the Sarantakos  
9 study?

10          A. Well, his discussion of the Sarantakos  
11 study is rather strange, too, because in his  
12 review papers and the papers he submitted, he  
13 harshly criticizes studies for methodological  
14 flaws and for failing to appropriately match the  
15 groups being compared, but then he goes on to  
16 describe the Sarantakos study as an exemplary  
17 study, where, as I said earlier, it's a study  
18 that's marked by really substantial problems in  
19 the matching of subjects, in a way that would  
20 completely undermine the nature of the  
21 conclusions being offered.

22          Q. Now, you mentioned that -- I think when  
23 talking about Dr. Rekers, that sometimes he cites  
24 Law Review articles to support propositions. Are  
25 Law Review articles the type of sources typically

1           relied on by social scientists to form scientific  
2           conclusions?

3           A. No.

4           Q. And to the extent anyone relies on  
5           reports from advocacy organizations, like the  
6           Family Research Council or other advocacy groups,  
7           are those the types of sources typically relied  
8           on by social scientists to form scientific  
9           conclusions?

10          A. No.

11          Q. Now, Dr. Rekers has said in the past  
12          that if a child is in foster care with a gay  
13          person, he would favor removing that child  
14          because of the foster parent's sexual  
15          orientation, in order to place that child in a  
16          family with heterosexual role models, and he said  
17          he would favor doing that even in the case of a  
18          child who had been with a family for 10 years,  
19          and that, you know, the child can get over that  
20          within a year. What do you think of this view?

21          A. I think it's incredible. We have so  
22          much evidence pointing to the importance of  
23          children's relationships with parents and to the  
24          damage that's caused by separating children from  
25          their parents and stressing those relationships.

1 To propose that it would be appropriate to take a  
2 child from a good parent-child relationship,  
3 simply on the basis of the sexual orientation, is  
4 just incredible to me.

5 MS. COOPER: Just a minute, please.

6 (Discussion off the record)

7 MS. COOPER: I don't have anything  
8 further, Your Honor.

9 THE COURT: Ms. Bass?

10 CROSS EXAMINATION

11 BY MS. BASS:

12 Q. Let me just ask one follow-up question.  
13 The circumstance you just described, where a  
14 child has formed a bond with a parent who happens  
15 to be gay, and they're then taken from the  
16 family, what would you likely expect to be the  
17 consequence on the child's mental health of that  
18 separation?

19 A. Well, those separations are traumatic  
20 for children, so you'd expect those children to  
21 be profoundly distressed and perhaps experience,  
22 you know, a substantial degree of maladjustment.

23 Q. And that maladjustment could continue on  
24 throughout their life?

25 A. It could continue throughout their life.

1 It wouldn't necessarily, but it certainly could.

2 MS. BASS: I have nothing further.

3 THE COURT: Thank you.

4 Ms. Allen?

5 MS. ALLEN: No, Judge, I have no  
6 questions.

7 THE COURT: Okay. Ms. Martin's  
8 turn?

9 MS. MARTIN: Yes, ma'am, it is, and  
10 I do have questions.

11 CROSS EXAMINATION

12 BY MS. MARTIN:

13 Q. Good afternoon -- good morning, sir.  
14 It's nice to see you again.

15 A. Thank you.

16 Q. How are you?

17 A. Okay.

18 Q. Good. I have some preliminary questions  
19 regarding your CV, and I believe it's already  
20 been previously marked as the Petitioner's Number  
21 11. Do you have a copy of your CV in front of  
22 you?

23 A. Yes, there's one here.

24 Q. Would you mind taking a look at that  
25 with me?

1           A. Uh-huh.

2           Q. When we first introduced you to the  
3 Court, when your counsel first -- when counsel  
4 first introduced you to the Court, you mentioned  
5 that you had a BA, an MA and a Ph.D. Can you  
6 tell me what MPhil means?

7           A. Master of Philosophy.

8           Q. Thank you. And also, you have an MS,  
9 correct?

10          A. That's right, yes.

11          Q. And also, in looking at your resume, or  
12 your CV is the more proper name for it, you've  
13 listed quite a few references. In fact, your CV  
14 is double-paged and it's big. It has lots of  
15 articles and things. If I look at the category  
16 that starts with publications, and I believe it's  
17 on Page 10 --

18          A. Yes.

19          Q. -- and it lists various publications,  
20 are these listed in date order, such as by your  
21 employment status at the time?

22          A. They're in date order, yes.

23          Q. Okay, oldest being first? The oldest is  
24 on the top?

25          A. That's right.

1           Q. And then if I turn to Page 56, it's  
2           titled, Papers Presented to Scientific and  
3           Professional Conventions.

4           A. Right.

5           Q. Should I assume or is it your  
6           understanding that the items listed on  
7           Publications, starting on Page 10, are also  
8           publications that are -- well, let me start over  
9           again, because that was really not very good.

10                  Should I assume that the Page 10, where  
11           you have identified things by the title  
12           Publications, those are articles that are written  
13           in paper form, correct?

14           A. That's correct, yes.

15           Q. Okay, and that each of these, you've  
16           been an author or co-author?

17           A. That's right, yeah, and I've listed the  
18           authorship in the order of authors in each case.

19           Q. Indeed you have, thank you. If I look  
20           at Page 56, and it's titled Papers Presented to  
21           Scientific and Professional Conventions, and  
22           there's quite a few papers there -- are there  
23           papers that correspond with these listings?

24           A. For the most part, there are not, and in  
25           several cases you'll see that there are

1           publications that relate to the same material  
2           about which I made presentations, but for the  
3           most part, other than those cases where there's a  
4           publication, there wouldn't be any record, other  
5           than an abstract in the conference agenda.

6           Q. All right. I'm a little confused, and  
7           that's why I'm asking you a couple questions on  
8           it.

9           A. Yes.

10          Q. A lot of times, persons will put down  
11          where they've given presentations, and they'll  
12          list different groups that they've spoken to and  
13          different presentations that they've made. Do  
14          you have a place on your CV that does that?

15          A. No.

16          Q. Okay. Would it -- Were you intending in  
17          your CV to have this section starting on Page 56  
18          to be a listing of presentations that you've  
19          given?

20          A. Yes.

21          Q. Okay. So it's fair for me to say that  
22          there would be no paper here, that these were  
23          just verbal presentations?

24          A. That's right.

25          Q. And not publications?



1 A. That's right.

2 Q. Okay.

3 A. Unless they're mentioned as  
4 publications.

5 Q. So they could be listed dually --

6 A. That's right.

7 Q. -- under Publications and then under the  
8 Presentation section?

9 A. That's right.

10 Q. All right.

11 When talking about your background, and  
12 you've had very prestigious positions, one of  
13 them was at the National Institute of Child  
14 Health and Development. Did I say that correct?

15 A. Human Development.

16 Q. Human Development, okay. I can only go  
17 so fast with my writing.

18 A. That's right.

19 Q. And at that time, you indicated that you  
20 had the flexibility to select the research topics  
21 that you worked on.

22 A. That's right.

23 Q. What topics did you prefer to work on at  
24 that time?

25 A. Well, I worked on -- I continue doing

1 work in the two lines of research that I talked  
2 about earlier, the work on children's adjustment  
3 and the -- I really developed there the work on  
4 children as witnesses, and so that became another  
5 major line of work when I was there.

6 Q. Would it be fair to say that the line of  
7 work you did with children witnesses is called  
8 forensic -- something forensic psychology?

9 A. Yeah, it's an aspect of forensic  
10 psychology. It's about forensic interviewing.

11 Q. At the time that you were selecting your  
12 own topics at the National Institute for  
13 Child --

14 A. Health and Human Development.

15 Q. Thank you. How much time did you spend  
16 on the forensic psychology part?

17 A. I would say, on average, it was about  
18 half of my time across that period.

19 Q. And could you refresh my memory how much  
20 time, when we're talking at that time period in  
21 your professional career, the years that that  
22 would have been?

23 A. Yeah, that was from 1987 to 2004, so 17  
24 years.

25 Q. So, for those 17 years, about half your

1 time was on forensic. What was the other half  
2 on?

3 A. Factors that had to do with children's  
4 development and adjustment in various  
5 circumstances.

6 Q. Since you only spent half your time on  
7 the forensic -- I should say not only. You spent  
8 50 percent of your time on the forensic  
9 psychology, and according to your testimony, you  
10 spent only 30 or 40 percent of your time  
11 researching; is that correct?

12 A. Well, that was referring to the time at  
13 Cambridge. I mean, when I was at NICHD, I didn't  
14 have any teaching responsibilities, so I was able  
15 to devote all my time to doing research.

16 Q. All right. Thank you for the  
17 clarification on that. And you've been doing  
18 research in this field for over 30 years,  
19 correct?

20 A. Yes.

21 Q. There's been testimony that there's  
22 sometimes held a consensus in the community of a  
23 certain idea. Has there ever been a time in your  
24 30 years where there was a consensus of something  
25 in the community that was later found not to be

1 so true and no longer a consensus?

2 A. I can't think of one, but --

3 Q. How about the well-founded idea that a  
4 house or family with a mother and father would be  
5 better than a single-parent family?

6 MS. COOPER: Objection,  
7 mischaracterization of past testimony.

8 THE COURT: I'm going to allow it.

9 THE WITNESS: I don't think that  
10 that was ever a professional consensus.

11 BY MS. MARTIN:

12 Q. Oh, I'm sorry, you're completed?

13 A. Yeah, sorry.

14 Q. Oh, I'm sorry.

15 A. Sorry.

16 Q. I thought you were thinking and were  
17 going to say some more words. I'm sorry. Just  
18 hit me in the leg when it's time for me to talk.

19 You talked about nontraditional  
20 families. Was the term -- is the term  
21 nontraditional family -- would that be a term of  
22 art in your work?

23 A. Yes, I think it's fair to say.

24 Q. And in terms of nontraditional families,  
25 when did nontraditional families, in the course

1 of your professional career, begin?

2 A. Well, the earliest studies would have  
3 been those that focused on father absence, and  
4 that's a topic that sort of over time has morphed  
5 from focusing on father absence and became  
6 characterized as effects of divorce, and then  
7 later, effects of single parenthood, but they're  
8 essentially the same bodies of research. The  
9 earliest studies there were ones that involved  
10 children whose dads were off at war, in the  
11 Second World War, so the early 1940s, and that  
12 work, about those sort -- you know, father  
13 absence, divorce, single parenthood, continues to  
14 today.

15 The work on maternal employment became  
16 more prominent -- it started as an issue in the  
17 '50s, it became much more common in the '60s, as  
18 more and more women started working, and I'd have  
19 to say that there's much less work on that today.  
20 I think that that topic has had its time.

21 Starting at the same time, in the  
22 mid-'60s, was the concern about the effects of  
23 nonparental child care or day care, and that  
24 remains as hot a topic in the society now as it  
25 was then, so that we've got 40 or so years on

1           that.

2                       The work on male -- male care providers  
3           or primary caretaking fathers began -- I started  
4           a study of that in the late '70s, so that was  
5           about the time that people were asking those  
6           questions.

7                       Work on gay and lesbian parents, as I  
8           said, also started in the mid to late '70s.

9                       Q.   Did you start working on the gay and  
10          lesbian parenting issues as early as the 1970s,  
11          yourself?

12                      A.   Not myself, no.

13                      Q.   When did you begin working in that area,  
14          or researching in that area, if that's a more  
15          proper term for you?

16                      A.   Well, you know, I've never done a study,  
17          myself, that focused on children being raised by  
18          gay or lesbian parents.  But I've been following  
19          that literature for -- well, probably since about  
20          1980, in the early 1980s.

21                      Q.   So you've never done a research article  
22          yourself, or a paper or a journal on gay and  
23          lesbian families?

24                      A.   I've never done a study that focused on  
25          that, that's correct.

1 Q. Okay, that's a good clarification. Have  
2 you ever done a journal paper or anything on gay  
3 and lesbian parenting style?

4 A. Focused exclusively on that, no.

5 Q. One of the things -- you talked about --  
6 well, first of all, a question for you in terms  
7 of the publications that you've written. In  
8 looking through your CV at the publications, it  
9 would appear you've done a lot of research on  
10 fatherhood; is that true?

11 A. Uh-huh.

12 Q. In terms of your 30 years as a  
13 professional in that field, has your opinion on  
14 the role of the father evolved over time?

15 A. Yes.

16 Q. Would it be fair to say that in your  
17 field of child -- of psychology and development  
18 and adjustment of children, that the opinions in  
19 the community tend to evolve?

20 MS. COOPER: Objection, vagueness.

21 Community?

22 THE COURT: I'll sustain the  
23 objection.

24 BY MS. MARTIN:

25 Q. Is it your opinion or your view, in the

1           30 years that you've been practicing, that the  
2           opinions evolved in terms of what is a  
3           traditional or nontraditional family?

4                   MS. COOPER: Same objection.

5                   Opinions of who?

6                   MS. MARTIN: In his community.

7                   THE COURT: The academic community?

8                   MS. MARTIN: Yes, ma'am.

9                   THE COURT: All right, go ahead.

10                   THE WITNESS: I'm not sure that  
11                   there's been a change in the definition  
12                   of what's traditional and  
13                   nontraditional, particularly, if that  
14                   was your question.

15           BY MS. MARTIN:

16                   Q. Is there a strict definition of what's  
17                   traditional and nontraditional?

18                   A. Well, there's a strict definition of  
19                   what's traditional, which is, as we said, sort of  
20                   a term of art to refer to the, you know,  
21                   middle-class family with a stay-at-home mom and a  
22                   breadwinning dad. And there were a variety of  
23                   deviations from that that people have studied,  
24                   and I think I've summarized the major ones here.

25                   Q. We've talked -- you talked or testified



1           about different factors, and one of them was the  
2           relationship with the parent and child, and also  
3           the relationship between the adults, in terms of  
4           conflict and things, and also the resources that  
5           would be available to the child. In your  
6           analysis of those three factors, and in terms of  
7           nontraditional families, do you see a higher  
8           incidence or a lower incidence, depending on the  
9           nontraditional family you're looking at, for  
10          instance, a working mother versus a stay-at-home  
11          father?

12                 A. Well, my point was that you would be --  
13          if you were interested in the adjustment of the  
14          children, you'd be looking at the same sorts of  
15          factors in order to determine whether or not this  
16          child was likely to be well adjusted or poorly  
17          adjusted, and that would be the case whether that  
18          child was one whose mother was working or one  
19          whose, you know, dad stayed home with him.

20                 Q. Would the factors change at all if you  
21          were looking at a one-parent household versus a  
22          two-parent household?

23                 A. Well in those broad categories, no. I  
24          mean, you would be focusing on the quality of the  
25          relationships that children had with their

1 parents. Now, in many children in single-parent  
2 families, they may have no relationship with one  
3 of their parents. They may have a very strained  
4 relationship with one of their parents, and they  
5 may have been -- may have experienced some  
6 stresses in the relationship with the other. So  
7 those would be the factors that would be  
8 important in order to understand whether or not a  
9 child was likely to be maladjusted.

10 Q. And of those three factors, would those  
11 three factors apply to a child that has been in  
12 the foster care system?

13 A. They would. With the additional proviso  
14 that you would also, in that instance, want to  
15 know something about the history of that child,  
16 so you'd -- in essence, you'd want to know about  
17 the same three factors in the previous family or  
18 families' situations in which that child had  
19 lived.

20 Q. Would it be your opinion as an expert  
21 that children entering the foster care because  
22 they've come from dysfunctional families may be  
23 at higher risk for maladjustment?

24 A. Yes.

25 Q. As a result of that risk of

1           maladjustment, would -- in your professional  
2           opinion, would it matter if it was at a -- if  
3           that child was entering into a single-parent or a  
4           double -- a single or two-parent family? Did you  
5           understand my question?

6           A. Yeah, I think so.

7           Q. Thank you very much.

8           A. Well, I think the same -- you'd have to  
9           look at the same sorts of factors, and as I said  
10          earlier, single-parent families do have some  
11          additional problems. You know, there are fewer  
12          parents to get around. You get worn out more  
13          quickly when you're trying to do it on your own.  
14          So there would be some additional, although  
15          different factors, going into a single-parent and  
16          a two-parent family.

17          Q. Okay. In terms of talking about  
18          nontraditional families, you delineated a number  
19          of what you consider to be nontraditional  
20          families, and those would be families as a result  
21          of a divorce, single parents, maternal working  
22          mother, nonparental day care, and father's --  
23          depending on the father's level of involvement in  
24          care, such as switching roles. You know, a  
25          stay-at-home father, I think, is what you were

1 alluding to, correct?

2 A. Right.

3 Q. And also gay and lesbian households, and  
4 also, you talked about different kinds of  
5 cultural diversities.

6 A. Right.

7 Q. How many of the nontraditional families  
8 are those as a result of divorce?

9 A. I'm not sure what your question is. In  
10 the society?

11 Q. In terms of your analysis of  
12 nontraditional families, and we're talking about  
13 that in a broad term and I'm just trying to  
14 narrow it down, how many nontraditional families  
15 are those as a result of divorce?

16 A. A substantial number. I mean, that  
17 would be one of the -- that would probably be,  
18 you know, the most common. I mean, as it stands  
19 now, you know, the majority of children in this  
20 country experience the divorce or separation of  
21 their parents.

22 Q. I'm going to ask you to help me out  
23 there. When you say substantial, can you give me  
24 a --

25 A. Well, I said half.

1           Q. Half? Okay. And how many  
2 nontraditional families, and this is kind of a  
3 trick question, are single parents, because  
4 therefore it derives from a divorce, but you  
5 itemized single parent as a separate category, so  
6 shall I address it as a separate category, to  
7 make it easier for you?

8           A. No, as I said, I mean, there's been --  
9 It's the same body of studies that have slightly  
10 changed the focus of the time, from an initial  
11 focus on the absence of the father to a focus on  
12 the effects of divorce, to a recognition that not  
13 all children in single-parent families actually  
14 had parents who were married and therefore got  
15 divorced. Some of them were cohabiting. In  
16 fact, the vast majority were either married or  
17 cohabiting, so there was some kind of a  
18 separation.

19           But there are a fair number of kids who  
20 are born to single mothers who choose to become  
21 mothers by choice, and where the child wasn't  
22 born into a couple relationship at the outset.

23           Q. What percentage would be your estimate  
24 of the percentage of gay and lesbian households  
25 that you would consider part of the

1 nontraditional families?

2 MS. BASS: Objection to form.

3 MS. MARTIN: To form?

4 THE COURT: Do you understand the  
5 question, Dr. Lamb?

6 MS. MARTIN: Would you like --

7 THE WITNESS: I think the answer  
8 is, I don't know.

9 BY MS. MARTIN:

10 Q. Have you ever studied what percentage of  
11 gay and lesbian households make up a  
12 nontraditional -- the nontraditional family?

13 A. There now, you have lost me.

14 Q. Oh, and I'm not surprised. If I look at  
15 nontraditional families as a pie, and we've  
16 already sliced it in half, to say that half of  
17 them, the nontraditional family as you define it,  
18 is a result of divorce, and I'm asking, how big  
19 piece of the pie would be comprised of gay and  
20 lesbian households?

21 A. Well, what I meant to say was that, you  
22 know, half the children experience divorce or  
23 single parenthood for at least a portion of their  
24 childhood. We don't have good numbers about the  
25 number of children who have gay or lesbian

1 parents.

2 Q. Is there a reason why we don't have good  
3 numbers of the numbers of gay and lesbian  
4 parents?

5 A. Well, there are probably a number of  
6 reasons, not least of them the fact that, you  
7 know, quite a few lesbian and gay parents aren't  
8 public about their sexual orientation, and may be  
9 continuing to parent within a heterosexual  
10 relationship, even though they have a homosexual  
11 orientation. But it's not a question that I  
12 think has been the focus of research.

13 Q. And the reason I'm asking that is  
14 because you previously testified that in your  
15 research on nontraditional families, that you've  
16 read or researched over a thousand articles,  
17 thousands of articles, and how many of those  
18 thousands of articles would be addressing gay and  
19 lesbian households?

20 A. As I said, I think there are about, you  
21 know, a hundred solid peer-reviewed reports about  
22 gay and lesbian parents. There are more that I  
23 wouldn't include in those, in that hundred. We  
24 talked about some of those popular books, for  
25 example.

1           Q. I believe you testified as regarding gay  
2           and lesbians and being raised by gay and lesbian  
3           parents -- you testified there would be no  
4           difference in things such as -- would be no  
5           difference, I believe, is the testimony, in terms  
6           of adjustment rates or psychological rates. When  
7           you make that statement, are you combining single  
8           gay and lesbian parents or are you combining that  
9           with two-parent gay and lesbian households?

10          A. Well, there are studies that have  
11          explored both, and some have focused on lesbians  
12          living alone, others have focused on lesbians who  
13          are partnered, so there's -- the conclusion is  
14          sort of drawn from both sorts of studies.

15          Q. But in terms of a gay and lesbian  
16          household, and I use that term specifically here,  
17          and if that household only has one parent, that  
18          child will still experience some of the same  
19          difficulties as your general three categories,  
20          correct?

21          A. Right.

22          Q. Okay, like economic differences and  
23          things of that nature?

24          A. And you would have to look at those  
25          factors and see whether or not they were relevant



1 in the individual case, yes.

2 Q. And you also, I think, testified that  
3 the research is fairly well established in the  
4 number of studies of same-sex families, that they  
5 were no more likely to be maladjusted, right?

6 A. Yes.

7 Q. And in that same-sex families, you're  
8 including one single parent and dual parenting,  
9 again? Let's wait for the plane.

10 A. Yes.

11 Q. Two questions. Did you remember my  
12 question and can you hear me?

13 A. Yes. It includes studies that have  
14 looked at both of those types of families.

15 Q. You mentioned a particular researcher  
16 and author called Charlotte Patterson. Do you  
17 remember mentioning her name?

18 A. Yes.

19 Q. Have you read a lot of her work?

20 A. Yes.

21 Q. Have you ever heard criticisms of her  
22 work?

23 A. It depends what you mean by criticisms.  
24 I mean, as I said, all studies have limitations,  
25 and so, you know, people would -- people in the

1 field would talk about limitations of particular  
2 studies, but I've never -- I can't think of a  
3 sort of, you know, criticism of Charlotte  
4 Patterson's body of work in general, if that's  
5 what you mean.

6 Q. I'll give you some specifics, then.

7 A. Okay.

8 Q. Have you heard criticism of Charlotte  
9 Patterson's work that it's convenience sampling  
10 only?

11 A. Well, I haven't heard that, but were  
12 that accusation to be made, it's obviously false.

13 Q. Have you heard criticism about Charlotte  
14 Patterson's research that it's snowballing? Do  
15 you know what snowballing is?

16 A. Yeah. Actually, I think that that  
17 wouldn't be a fair criticism of the work that I'm  
18 thinking about, although that may have been the  
19 strategy used in one of the most recent studies.  
20 I don't remember, to be sure.

21 Q. And we've talked about different ways of  
22 doing studies and sometime -- well, strike that.  
23 Have you heard criticisms of Charlotte  
24 Patterson's work that she has too small of a  
25 sample size to make a definitive analysis?

1 MS. COOPER: I just want to object  
2 on vagueness, because it's not clear,  
3 "criticisms."

4 MS. MARTIN: I'm just asking  
5 generally, in his community as an  
6 academic.

7 THE COURT: Overruled.

8 THE WITNESS: No. No.

9 BY MS. MARTIN:

10 Q. Okay.

11 Have you done any studies on gay or  
12 lesbian households in terms of foster care?

13 A. As I said, I haven't done studies of  
14 these myself at all. There are studies that  
15 focus on the adjustment of children in foster  
16 care, and most of those studies include children  
17 who are being raised by gay or lesbian foster  
18 parents, but to my knowledge, none of the studies  
19 have actually teased out and differentiated the  
20 adjustment of children in those families as  
21 opposed to the others in the group, so they've  
22 just been included in the group of families  
23 studied.

24 Q. Would that not be an issue for the  
25 academic community to want to know the answer to,

1 in terms of what's the best -- how children  
2 develop in different nontraditional families?

3 A. I don't think so, because I think the  
4 academic community feels it is pretty well  
5 established that the sexual orientation wouldn't  
6 make a difference, and I think that's the reason  
7 why people who do work on foster care don't say,  
8 "Oh, these are different so we shouldn't include  
9 them this the sample."

10 Q. We talked a little bit about advocacy  
11 groups, and I think the testimony was that the  
12 advocacy groups are not something that's relied  
13 upon in the scientific community by your academic  
14 environment --

15 A. Right.

16 Q. -- correct? Do you belong to any  
17 advocacy groups?

18 A. I don't know how you would define it. I  
19 am a member of the ACLU. That's an advocacy  
20 group.

21 Q. Do you belong to anything else, other  
22 than the ACLU?

23 A. National Organization of Women, the  
24 Fatherhood Institute. I can't think of others  
25 but -- oh, conservation, the American

1 Conservation Group, Sierra Club.

2 Q. That's a nice list. You talked about  
3 the marriage law project, and could you define  
4 that for me, discuss that a little bit?

5 A. I don't know a whole lot about it. It  
6 was a project that was based at Catholic  
7 University, which I think it was administratively  
8 housed in the law school, but it also included  
9 people from the -- some of the theology, or  
10 whatever the grouping is. It was sort of a  
11 combination of religion and law and ethics.

12 Q. Is it a fair statement that -- to say  
13 that each researcher takes a little bit of their  
14 personality into their projects?

15 A. Yes, certainly people study things that  
16 interest them. So, to that extent, what they do  
17 is influenced by what they -- what they find most  
18 interesting.

19 Q. All right. We talked about some of the  
20 methods that are used in your professional  
21 environment, the academic environment, in terms  
22 of research, and I believe you testified that  
23 small sampling was rather common.

24 A. Uh-huh.

25 Q. Is that what you said?

1           A. Yes.

2           Q. And I think you also said that the  
3 large-scale representative studies weren't  
4 normally done in that field. Is that correct?

5           A. I said that they tend not to be the  
6 focus of developmental psychologists. They are  
7 the focus of social psychology, those who study  
8 opinion. You know, this time of year, there are  
9 thousands of social psychologists doing surveys  
10 on every corner about political attitudes, but  
11 they tend not to be the way developmental  
12 psychologists do their business. They're the  
13 mainstay of demographers, sociologists and social  
14 psychologists.

15          Q. Do political attitudes play a role in  
16 how you do your research?

17          A. I'm not sure I understand your question.  
18 Do my political attitudes?

19          Q. Right. You just mentioned something  
20 about political attitudes in terms of study.

21          A. No, I said there are hundreds of social  
22 psychologists who focus on polling and, you know,  
23 every four years, they all do very well. But  
24 that's not related to what I do.

25          Q. All right. I just needed clarification.

1           A. Oh, sorry.

2           Q. I was confused. If you don't -- well, I  
3 shouldn't -- Let me ask it this way. What type  
4 of studies do you think are appropriate in the  
5 field of psychology that you practice and  
6 research?

7           MS. COOPER: Objection, vague  
8 and -- I guess I'll just leave it at  
9 that.

10          THE COURT: Do you understand? Can  
11 you answer, Dr. Lamb?

12          THE WITNESS: I can try.

13          THE COURT: Okay.

14          THE WITNESS: You know, I think the  
15 fundamental question has to be, what's  
16 your research question? And once you  
17 have a specific research question, you  
18 choose a method that's appropriate for  
19 addressing that question. So I'm not  
20 trying to imply that demographers'  
21 questions aren't valid. They're  
22 perfectly valid. They're just not my  
23 questions. And any research project, to  
24 be defensible, has to be driven first by  
25 a question or set of questions, and then

1           a decision is made about what would be  
2           the best way of addressing that  
3           question, and that could involve a  
4           variety of types of methodologies,  
5           different sorts of, you know, data-  
6           gathering strategies and so on.

7           BY MS. MARTIN:

8           Q.    As I understand it, in the field of what  
9           you've been offered as an expert in, child  
10          psychology, and we talked about traditional  
11          families and they tend to evolve, and we talked  
12          about things called cross-sectional studies,  
13          which it's my understanding is just like a  
14          snapshot in time; you do a study at that  
15          particular time and that's what the  
16          cross-sectional study shows, correct?

17          A.    Uh-huh.

18          Q.    And if your looking at the transition of  
19          transitional families -- of nontraditional  
20          families, why would it not be better to do  
21          longitudinal studies, where you can map the  
22          progress as they progress?

23          A.    Well, again, it would depend what your  
24          question was.  You know, I've done longitudinal  
25          studies, and for some questions they're the right



1 strategy to adopt.

2 When I first started to give you an  
3 example, my early work on fathers, mothers and  
4 infants, I was interested in, did babies form  
5 attachments to their mothers before they formed  
6 attachments to their fathers? Well, the only way  
7 you could answer that question was by following a  
8 group of infants over time and looking at the  
9 development of relationships to both of those  
10 parents. When did they occur, over time; how did  
11 those relationships evolve. So, for that  
12 question, a longitudinal study was very  
13 appropriate. It was necessary.

14 If my question is, are these people  
15 better adjusted than those people, I don't have  
16 to do a longitudinal study. I look at how they  
17 are now and I look at how they are now and see  
18 whether they differ, and for addressing that  
19 question, there's no need to do a longitudinal  
20 study. So, you know, having a longitudinal study  
21 isn't something that makes a project better.  
22 It's better, in fact, the only way of answering  
23 some sorts of questions, and for other sorts of  
24 questions, there's no need to use that sort of  
25 strategy.

1                   Longitudinal studies are very costly.  
2           There's a real problem of keeping track of people  
3           over time, so you usually lose people as you go  
4           along, and so your study becomes less powerful or  
5           less useful over time. So, unless there's really  
6           a reason to invest the effort and time and money,  
7           you know, and all of us only have about a 40-year  
8           career, so if you spend it all on one study,  
9           you've spent it all, right?

10           Q. Don't do it all at once, huh?

11           A. Yes.

12           Q. You know, I'm still rather perplexed on  
13           that issue of longitudinal studies, and I'm going  
14           to ask you one more question on it.

15           A. Okay.

16           Q. Bear with me, please. When you're  
17           looking at nontraditional families and you're  
18           talking about divorce -- and children of divorce,  
19           if I'm correct, they will develop difficulties as  
20           they progress in their adulthood, so you may have  
21           something that develops later in life, not at  
22           five years old; would that be fair to say?

23           A. Yeah.

24           Q. Okay. So why would you not want to look  
25           at a child five years old and have that snapshot,

1 but then also look at how they develop later in  
2 life, to see if that divorce had an effect on  
3 that child?

4 A. Well --

5 Q. Does my question make sense?

6 A. Yes. Let me see if my answer is  
7 relevant to your question.

8 Q. Okay.

9 A. You know, if your question was, are  
10 people in adulthood better or worse adjusted  
11 because their parents got divorced, then you  
12 would be able to answer that question by looking  
13 at groups of people at 35 years old, and  
14 comparing those whose parents were divorced and  
15 those who weren't, and that would give you a  
16 sense of, no, there isn't, or there is a legacy  
17 of those early experiences.

18 If your question was a somewhat  
19 different one, which is, how does the -- how are  
20 you affected by the experience of divorce, and  
21 Mavis Heatherington has done several studies  
22 showing that you see there's a time course in  
23 reactions, and so if you follow people over time,  
24 you see a very big immediate reaction and then  
25 most people come back towards where they were

1 earlier on. So, if your question has to do with  
2 those issues, then you would want to do a  
3 longitudinal study. Again, it really gets back  
4 to, what's the specific question that you want to  
5 address.

6 Q. I understand. And if you're looking --  
7 and again, your testimony is, you don't know how  
8 many gay and lesbians make up what is called the  
9 nontraditional family, so --

10 A. Well, I don't know how many gay and  
11 lesbian parents there are in this country.

12 Q. In the United States, is what you're  
13 referring to?

14 A. Right.

15 Q. Okay, because you're from the pond --

16 A. Well, I'm not even sure we know there,  
17 either.

18 Q. If you look -- can you tell me what the  
19 research indicates in terms of the benefits to  
20 the children's adjustment of having two parents  
21 versus one, say, for instance, in a heterosexual  
22 household?

23 A. Well, I mean, there seem to be a number  
24 of reasons why, on average, kids are at less risk  
25 in those environments. You know, the first is

1           that they potentially have two supportive  
2           relationships with their parents, and having  
3           those two supportive relationships is positive.

4                       Of course, some of them have the  
5           disadvantage of having too bad relationships, or  
6           maybe a good one and a bad one. So it's  
7           something of a mixed bag. But in general,  
8           there's a greater possibility that you would have  
9           two supportive relationships, parents who can  
10          stand in for one another and who can work  
11          together as parents, and there's also in those  
12          situations usually a much better resource base.  
13          I mean the Census data makes very clear that  
14          two-parent households have much higher incomes  
15          than single-parent households, and so those  
16          parents are able to provide for those children  
17          better. They're likely to be able to afford  
18          houses in neighborhoods with good schools.  
19          They're likely to provide the various other  
20          resources that make it easier for their children  
21          to develop. So you've got a number of factors  
22          that account for the disparity between the  
23          proportion of children who have issues of  
24          maladjustment in two-parent and single-parent  
25          families.

1           Q. If, in your academic environment, when  
2 you do researching and oftentimes it's based on  
3 non-longitudinal studies, do you need to be more  
4 cautious than on what the sample grouping is?

5           A. I'm not -- I don't think so, as I  
6 understand your question, no.

7           Q. Did the Golombok study, talking about --  
8 comparing lesbian mothers with heterosexual  
9 mothers, did it talk about two-family  
10 households -- two-parent or one parent? Do you  
11 know my question?

12          A. Well, I mean, Golombok has done three  
13 studies, and they differ somewhat with respect to  
14 that, so that in the -- some of them are focused  
15 on groups of people who did have partners; some  
16 include those who were single parents. So  
17 there's a range. Both of those types of families  
18 have been studied.

19          Q. In the Golombok studies, would it be  
20 fair to say that the lesbians were, a majority of  
21 the time, the biological parent to the child?

22          A. That's correct, they were.

23          Q. You talked about the Stacey and Biblarz  
24 study in 2001, regarding kids raised by gays and  
25 lesbians are just as well adjusted as those

1 raised by heterosexuals. Do you remember saying  
2 that?

3 A. Right. It's a review paper. It's not a  
4 study.

5 Q. Thank you very much. I apologize.  
6 Where was that study done?

7 A. Well --

8 MS. COOPER: Object -- go ahead.

9 THE WITNESS: What do you mean?

10 Where was the review?

11 MS. BASS: Objection. He just said  
12 it was not a study.

13 MS. MARTIN: I understand.

14 BY MS. MARTIN:

15 Q. Where -- Who were the subjects? What  
16 was the subject matter? Were they -- Was it in  
17 the United States? Was it in Europe?

18 A. It was a review of the -- of much of the  
19 research on children raised by gay and lesbian  
20 parents, so it included the studies wherever they  
21 were done. It included some kids growing up in  
22 the States and some kids growing up in the UK. I  
23 don't remember whether it includes those growing  
24 up in other parts of Europe, either -- as well, I  
25 mean.

1 MS. COOPER: Speak up.

2 THE WITNESS: Sorry.

3 Is that my target? Okay.

4 MS. COOPER: Right here and here.

5 BY MS. MARTIN:

6 Q. You indicated that there's a growing  
7 research -- let me start over again. In terms of  
8 nontraditional families, gay and lesbian families  
9 are one in that category; is that fair to say? I  
10 mean --

11 A. Yeah.

12 Q. Thank you. When looking at gay and  
13 lesbian households, is it fair to say that  
14 there's more studies done on lesbian households  
15 than gay men households?

16 A. Yes.

17 Q. Why is that?

18 A. I think it's because there are more  
19 lesbian mothers living with their children than  
20 there are gay fathers living with their children.

21 Q. In terms of research in the field of  
22 child psychology, is that, in terms of recent  
23 years, a growing trend, or has it been rather  
24 stable in terms of ratio?

25 A. As what?



1           Q. As gay and lesbian households being --  
2 as the study of lesbian households versus gay men  
3 households. Is the studies showing an increase  
4 in either one of those kind of households?

5           A. I don't know.

6           Q. Did you not understand my question?  
7 Because you can tell me if you don't.

8           A. Yeah, I'm not sure I did.

9           Q. Okay. My question is, there are lesbian  
10 households and there are gay men households.

11          A. Uh-huh.

12          Q. Does research show either one of those  
13 on the increase as compared to the other? I'm  
14 just asking.

15          A. I'm -- I don't know of research on that.

16          Q. Okay, thank you. That was --

17          A. Okay, sorry.

18          Q. -- very poor questioning on my side. I  
19 apologize to you.

20                 You talked about nontraditional -- kids  
21 from nontraditional families were less tied to  
22 sexual role identification, talking about trucks  
23 and dolls and things.

24          A. Uh-huh.

25          Q. Is that unique to the gay and lesbian

1 community, or would that be fair to say for all  
2 single-family or nontraditional families?

3 A. It seems to be true of most types of  
4 nontraditional families.

5 Q. So the benefit of that would be derived  
6 from other nontraditional families, as well?

7 MS. COOPER: Objection, vague.

8 Benefit in what --

9 THE COURT: Do you want to restate  
10 it?

11 MS. MARTIN: Sure.

12 BY MS. MARTIN:

13 Q. So the benefit of a child growing up in  
14 a household where they're more open to different  
15 sexual roles, playing with trucks, playing with  
16 dolls, is not unique to the gay and lesbian  
17 household; it's in all the other nontraditional  
18 families, as well?

19 A. Yeah, I'm not sure I would use the word  
20 benefit, because that implies that there's  
21 something better or worse about having those --  
22 one set or attitudes or another, and as I said,  
23 these sorts of attitudes aren't related to  
24 adjustment. It's not the case that it's better  
25 to have, you know, less sex-stereotyped attitudes

1 or more sex-stereotyped attitudes.

2 Q. You talked about one of the Golombok  
3 studies, and it had to do with the children's  
4 identification with being more open to different  
5 types of sexual orientations, and I believe you  
6 testified that same-sex households' children  
7 experience 25 percent greater increase in being  
8 open to that environment. Did I understand your  
9 testimony correct?

10 A. No. About a quarter of the children  
11 with lesbian mothers had engaged in some same-sex  
12 activities by the time they were interviewed as  
13 24-year-olds.

14 Q. And would I be -- Would it be fair for  
15 me to say that your testimony was that zero  
16 percent for heterosexual experience?

17 A. I think that's right, yes.

18 Q. Because my notes are --

19 A. No, zero percent of the children in the  
20 heterosexual families, yes.

21 Q. Was there any studies on that pertaining  
22 to gay men?

23 A. As the parents?

24 Q. Correct.

25 A. No.

1 Q. No? You have to answer out loud.

2 A. I'm sorry, no.

3 Q. And you talked about one of Stacey's  
4 articles talking about the -- whether there's a  
5 likelihood of children who grow up in a same-sex  
6 household of developing or having an identity for  
7 same-sex attraction; do you remember when we  
8 talked about that?

9 A. Yeah. I mean, Stacey and Biblarz talk  
10 not so much about the changes in the attraction,  
11 but in differences in the potential to act on it,  
12 when people felt the attraction.

13 Q. I actually have a real easy question on  
14 that.

15 A. Okay.

16 Q. Is that called intergenerational  
17 transmission?

18 A. No, not typically. I suppose that could  
19 be a variant of it.

20 Q. What is intergenerational transmission?

21 A. It's when there are similarities between  
22 the parent generation and the children's  
23 generation. So it's most often used in talking  
24 about child abuse, say, family violence, with the  
25 notion that children who are abused as children

1           grow up to be abusive parents. So I suppose what  
2           we're talking about here -- I think the crucial  
3           difference is and what Stacey is talking about is  
4           not a difference in whether or not there is  
5           same-sex attraction. What she's talking about is  
6           the potential to feel free to act on it, if you  
7           feel it.

8                           And I think the notion of  
9           intergenerational transmission would imply that  
10          there's sort of an increase in the amount of  
11          same-sex attraction felt, and I think that's not  
12          what Stacey is talking about, if I understand  
13          her.

14                        Q. Thank you for the clarification.

15                           We talked about an article of  
16          Dr. Rekers -- or you testified regarding an  
17          article of Dr. Rekers, where it talked about  
18          eight different narrative studies. Do you  
19          remember that?

20                        A. Yes.

21                        Q. And the testimony was that narratives  
22          aren't necessarily something that's used in -- as  
23          a basis for academic research. You wouldn't use  
24          it as a sole basis. I may be expounding on your  
25          testimony. But my question is this, if I could

1           lay it out:  Would there ever be a time that you,  
2           as a researcher, would base an opinion on a  
3           narrative?

4           A.  I don't think I'd ever base it on a  
5           single narrative, but certainly there are cases  
6           where you do qualitative studies or studies which  
7           involve interviews of people, where you explore  
8           aspects of their development.  So my testimony is  
9           not that that's never useful, but that these  
10          particular books weren't conducted in order to do  
11          that.

12          MS. MARTIN:  I'm not going to quite  
13          be done by 12:45, just to give you a  
14          heads up.  I probably need a half hour  
15          or 45.  I'm good to go there, but I just  
16          thought I would let the Court know where  
17          I am.  I'll keep going, though.

18          THE COURT:  Okay.

19          MS. MARTIN:  It's as I look at my  
20          notes.

21          BY MS. MARTIN:

22          Q.  I have a question for you regarding  
23          Kenneth Zurker.

24          A.  Zucker.

25          Q.  Zucker.  At the University of Toronto,

1 correct?

2 A. Uh-huh.

3 Q. And you were talking about some book  
4 reviews that he did of Dr. Rekers.

5 A. Uh-huh.

6 Q. Was Dr. Zucker's -- your testimony  
7 regarding his review of Dr. Rekers pertaining to  
8 the St. Thomas Law Review?

9 A. No. It pertained to a review of two of  
10 his earlier books.

11 Q. Okay. I just wanted clarification,  
12 because --

13 A. Right.

14 Q. -- we tended to move fast from  
15 Dr. Rekers' St. Thomas into Zucker, and in terms  
16 of the two reviews that Zucker did of some works  
17 from Dr. Rekers, I believe you testified it was  
18 Growing Up Straight and Shaping Your Child's  
19 Identity; is that correct?

20 A. That's correct, and it was one review  
21 which focused on both books.

22 Q. Thank you. Do you know the year that  
23 those books were published by Dr. Rekers?

24 A. Mid-1980s.

25 Q. Do you know the subject matter of those

1           publications?

2                   A. Yeah. I think the subject matter is  
3           captured in the titles. I mean, they were about  
4           how to -- how to make sure that your child grows  
5           up with a straight sexual orientation.

6                   Q. So those were published by Dr. Rekers,  
7           in your recollection, in the 1980s sometime?

8                   A. That's right.

9                   Q. If I say a publication or a book called  
10          the DMS, do you know what I'm referring to?

11                  A. DSM?

12                  Q. Thank you, yes. I'm dyslexic. Yes,  
13          thank you.

14                  A. Yes.

15                  Q. Was there ever a time that you're aware  
16          when the DMS (sic) indicated that homosexuality  
17          was a psychiatric disorder?

18                  A. I'm pretty sure that it was, but I  
19          couldn't swear to that. It's not been diagnosed  
20          as a disorder or listed as a diagnosable disorder  
21          since at least as long as I've been around, so  
22          since the mid '70s.

23                  Q. Since the mid-'70s? So it's not listed  
24          as a psychiatric disorder today, to your  
25          knowledge?



1           A. That's correct.

2           Q. Okay. As far as you're aware, has  
3 Zucker done any other critiques of Dr. Rekers'  
4 work?

5           A. I'm not aware of any.

6           Q. Were, in your mind, as you know Growing  
7 Up Straight and Shaping Your Child's Identity --  
8 were those articles written from an academic  
9 point of view, by Dr. Rekers, if you know?

10          A. Well, they were what one might call  
11 today cross-over books, in that they drew on the  
12 research literature, they did ostensibly review  
13 the evidence and talk about what we knew about  
14 that, and they made reference to his professional  
15 credentials and his expertise in the area, but  
16 they were written not primarily for academics,  
17 but for the broader market.

18          Q. If I were to tell you that -- well, I  
19 won't. I'll let you tell me. It's not fair for  
20 me to tell you, as a witness. I think you've  
21 already testified that children that are in the  
22 foster care system may have an additional factor  
23 that needs to be considered, in terms of their  
24 maladjustment, correct?

25          A. Uh-huh.

1           Q.  Would that additional factor in terms of  
2           potential maladjustment be exacerbated going into  
3           different types of nontraditional families, for  
4           instance, versus -- a working mother versus a  
5           single father?

6           A.  No.  If I understand your question, the  
7           issues with respect to how that child would fare  
8           would depend on the same sets of factors that I  
9           talked about earlier.

10          Q.  Are you aware of any studies using a  
11          random sample of the U.S. population that  
12          compares homosexual (sic) households to same-sex  
13          households, in terms of child development and  
14          adjustment?

15          A.  It would be --

16          MS. BASS:  Wait a minute.

17          THE WITNESS:  Sorry.

18                    You've got a well-placed  
19          courtroom here, haven't you?

20          THE COURT:  It's lovely, isn't it?

21          THE WITNESS:  What was the  
22          question, again?

23          BY MS. MARTIN:

24          Q.  Sure.  Are you aware of any studies  
25          using a random sample --

1           A. Oh, yes, I'm sorry.

2           Q. Can I -- do you mind if I finish the  
3 question, just for the record? Are you aware of  
4 any studies using a random sample of the U.S.  
5 population which addresses homosexual (sic)  
6 parenting versus same-sex household parenting --  
7 same-sex households?

8           A. Well, the Add Health survey that I  
9 mentioned earlier would be that. It's a  
10 nationally representative sample of high school  
11 aged students, and the -- from those, it's  
12 possible to identify parents who are  
13 same-gendered and parents who are heterosexual.

14           MS. MARTIN: Your Honor, I think  
15 this is a good time for me to stop. If  
16 you don't mind, I do need to stop and  
17 get the phone call --

18           THE COURT: Sure.

19           MS. MARTIN: Thank you.

20           THE COURT: We'll come back at  
21 1:45.

22           MS. MARTIN: Thank you very much.

23           (Thereupon, the lunch recess was  
24 taken.)

25           MS. MARTIN: Thank you for breaking

1           for me.

2           THE COURT: No problem.

3           MS. MARTIN: I got my phone call  
4           done.

5           THE COURT: Okay, are we all here?

6           Okay, Ms. Martin.

7 BY MS. MARTIN:

8           Q. Are you ready to go?

9           A. Yes.

10          Q. I really have only a handful of  
11          questions for you, so hopefully this will go  
12          quickly.

13          Are you familiar -- well, let me say  
14          this. If I were to tell you that an expert for  
15          the petitioner testified that there is a higher  
16          rate of psychiatric disorders among --

17          (Interruption)

18          THE COURT: Give me one second.

19          (Discussion off the record)

20          THE COURT: Okay, I'm sorry. Go  
21          ahead.

22          MS. MARTIN: That's all right.

23 BY MS. MARTIN:

24          Q. If I were to tell you that an expert for  
25          the petitioner, Dr. Susan Cochran -- Are you

1 familiar with her?

2 A. Yes.

3 Q. That if Susan Cochran testified that  
4 there is a higher rate of psychiatric disorders  
5 among gay and lesbians, would you be in agreement  
6 with that statement?

7 A. It's not my area of specialty.

8 Q. All right. If I were -- assuming that  
9 there is a higher level of psychiatric disorders  
10 among gay and lesbians, would that have any  
11 adverse -- possible adverse maladjustment issues  
12 for a child in a household?

13 A. Well, definitely, it would. The mental  
14 health status of a parent would be important.  
15 But I think, to my knowledge, those studies are  
16 comparing gays and lesbians in general. They're  
17 not focused on gay and lesbian parents, and the  
18 research that is specifically focused on gay and  
19 lesbian parents don't find higher rates of  
20 psychiatric disorder or psychological problems.

21 Q. If Ms. Cochran testified that it  
22 involved parenting of gays and lesbians, would  
23 you be in agreement?

24 MS. COOPER: Objection, your  
25 opinions, mischaracterizes --

1 THE COURT: Overruled.

2 MS. COOPER: Foundation and  
3 mischaracterizing testimony.

4 THE COURT: Well, can you answer?

5 THE WITNESS: That would not be  
6 what I believe their literature says.

7 BY MS. MARTIN:

8 Q. We talked about children -- and  
9 particularly the Golombok study, about children  
10 identification, their sexual identification and  
11 their openness to experience new sexual  
12 identifi-- experiences, I guess, is a better  
13 word.

14 A. Uh-huh.

15 Q. And I believe you testified that 25  
16 percent of the same-sex children would experience  
17 same-sex attraction. Am I correct?

18 MS. COOPER: Objection,  
19 mischaracterization.

20 THE COURT: I'm sorry. I'm working  
21 on the last case. Can you repeat that?

22 MS. MARTIN: Sure. I'll try.

23 BY MS. MARTIN:

24 Q. In referring to the Golombok study, I  
25 believe we talked -- or you talked about the

1 children in a -- of a same-sex household or a  
2 parent, and their willingness to experience  
3 different open types of sexual experiences, and  
4 I, perhaps incorrectly, and if I am incorrect, I  
5 would appreciate you making me straight -- 25  
6 percent of same-sex children would have an  
7 attraction -- I'm sorry, you're looking at me  
8 perplexed, and I can tell why. May I start over?  
9 Bear with me. I'm an attorney.

10 A. Sure.

11 Q. Golombok, I got that down right?

12 A. Uh-huh.

13 Q. In the Golombok study, I believe the  
14 testimony was that children who are in -- who  
15 have a same-sex parent --

16 A. Uh-huh.

17 Q. So far I'm good -- that they would have  
18 greater openness to experience alternative sexual  
19 experiences; am I so far correct with your  
20 testimony?

21 A. That's correct yes.

22 Q. And I believe -- I thought that you said  
23 there was a 25 percent of same -- of the  
24 children, would experience same-sex sexual  
25 experience?

1           A. Six of the 25 children with lesbian moms  
2 did have some same-sex sexual contact, that's  
3 correct.

4           Q. And if there was 25 -- six percent -- or  
5 six of them, would that not be an increased risk  
6 for a child's maladjustment, then, in that  
7 household?

8           A. I don't understand why.

9           Q. Well, if you have a -- You're talking  
10 about different relations between a child and a  
11 parent in the household, and if a child is going  
12 to have a same-sex sexual attraction, would that  
13 be a maladjustment in the household of a child?  
14 That's all I'm asking.

15          A. No.

16          Q. Okay.

17          A. I mean, the important thing to remember  
18 is that this isn't about the attraction. What it  
19 focused on was the willingness of the children to  
20 act on that attraction --

21          Q. Uh-huh.

22          A. -- when they felt it, as opposed to a  
23 greater reticence to do so, on the part of  
24 parents in the other group, and so it has more to  
25 do with, you know, experimentation around



1           sexuality. Remember that these children were --  
2           averaged 25 or 24 when they were being  
3           interviewed, and these sexual experiences all  
4           occurred in their late teens and early twenties.

5           Q. Uh-huh.

6           A. So one is talking about different kinds  
7           of sexual experiences, but not more sexual  
8           experiences.

9           Q. Thank you. And was it also your  
10          testimony that it was zero percent or none for  
11          the heterosexuals with that same question posed?

12          A. With respect to the behavior, that's  
13          correct.

14          Q. Thank you.

15                 You also talked about peer harassment  
16          and things like that, or bullying things.

17          A. Uh-huh.

18          Q. And around that same line of  
19          questioning, I believe you testified that 50  
20          percent of the lesbian mothers were concerned  
21          about their relationship with their child in  
22          regards to disclosing their sexual orientation.

23                 MS. COOPER: Objection,  
24          mischaracterization.

25                 THE WITNESS: Yeah, that referred

1           to the Wyley study, where 50 percent of  
2           the lesbian moms, substantially fewer of  
3           the gay fathers, said that they had had  
4           some concerns about relationship issues,  
5           and that those concerns mostly focused  
6           on how the child would talk about --  
7           kind of talk to others about the sexual  
8           orientation of their mothers or fathers.

9           BY MS. MARTIN:

10           Q.   If that -- assuming that study to be  
11           true, the 50 percent, would that not be an issue,  
12           in terms of your three-pronged maladjustment  
13           criteria to consider between the relationship  
14           between a mother and a parent (sic)?

15           A.   Well, as I said, I mean, parents always  
16           have concerns about things in relation to their  
17           children, and so this really raises a particular  
18           issue that was something that they thought about  
19           and thought might be an issue for their children,  
20           but it wasn't a situation in which there were  
21           serious problems that they had reported on the  
22           part of the children.

23           Q.   You talked -- testified a while ago  
24           about a single parent versus the two-parent  
25           households, and the likelihood that it would have

1 adjustment difficulties with it just being a  
2 single parent.

3 A. Uh-huh.

4 Q. Do you recall that testimony from this  
5 morning?

6 A. Uh-huh.

7 Q. And I believe that there were certain  
8 issues that would cause those adjustment  
9 problems, and you identified the loss of a  
10 parent, conflict between the parents regarding  
11 divorce, and less economic resources. Am I  
12 correct in --

13 A. Right.

14 Q. -- my representation of your testimony?

15 And I believe you said that a third of  
16 children from a single parent would have  
17 maladjustment; is that correct?

18 A. Generally, that's about right, yes.

19 Q. I just wanted to confirm my numbers.

20 A. Uh-huh.

21 Q. And two times the rate in a two-parent  
22 household, correct?

23 A. That's right.

24 Q. But also, we don't know the numbers or  
25 you're not aware of the numbers, as you sit here

1           today, of the gay and lesbian households in this  
2           country that are either single or two-parent  
3           households, correct?

4           A.   That's right.

5           Q.   In terms of the psychoanalytic  
6           theoretical frameworks --

7           A.   Uh-huh.

8           Q.   -- we talked about or you testified  
9           about psychology moving away from certain ideas  
10          and those predictions becoming less prominent,  
11          and I believe you testified, in that respect,  
12          traditional mother and father households,  
13          correct?

14          A.   And the presumption that that was a  
15          necessary context in which children should be  
16          socialized.

17          Q.   Am I correct in understanding your  
18          testimony that you said that presumption was made  
19          without empirical data?

20          A.   Well, psychoanalytic theory is based on  
21          clinical experience rather than on substantive  
22          data, so to that extent, right, it's not an  
23          empirically-founded theory.

24          Q.   Would it have been in the field of child  
25          psychology that in the time frame when you began

1           your career, 30 years ago, that the presumption  
2           was that a mother and father household was best  
3           for a child?

4           A.   That would probably be sort of the  
5           waning days of that, yes.

6           Q.   Would it be fair to say there was a  
7           consensus at that time, when you first started  
8           your career, that a two-parent household was  
9           better?

10           MS. COOPER:  Objection, asked and  
11           answered.

12           THE WITNESS:  I --

13           MS. MARTIN:  You need to let the  
14           Judge rule.

15           THE COURT:  Go ahead.

16           THE WITNESS:  I'm sorry.  I  
17           apologize.

18           No, I don't think -- I mean, when I  
19           use the word consensus, maybe  
20           incorrectly, I'm referring to a belief  
21           that is widely shared among the  
22           researchers that on the basis of the  
23           knowledge we've gathered, this is the  
24           case.  And I think it would have been  
25           fairer to say at that point, there might

1           have been many, not all, people who held  
2           to that view, but they all recognized it  
3           was not a view that had been explored in  
4           research. It was an open question. And  
5           so that's a difference, I think, between  
6           a consensus and a shared recognition  
7           that there was an open question.

8           BY MS. MARTIN:

9           Q. In your mind, is consensus the same as  
10          well-established?

11          A. Not necessarily. I think, as we've used  
12          them here today, I think they've pretty much  
13          meant the same thing.

14          Q. If you were -- and assume this for the  
15          purposes of this question. At the beginning of  
16          your career, if you were looking at the three  
17          criteria for the predictors of children's  
18          maladjustment and you were going to explore  
19          different types of households, would your  
20          founding position be at that time that the  
21          two-parent household would have been the norm and  
22          where you would begin your investigation?

23          A. No, I don't think so. I don't think so.

24          Q. At that time, 30 years ago, where, if  
25          you could recall -- and I'm not saying you're too

1 old to recall or anything like that -- but if you  
2 could recall, what would be the criteria that you  
3 would have started to think about, the three  
4 factors for a child's maladjustment at that time  
5 in society, in terms of family structure?

6 A. Well, I don't know if I can answer it  
7 for everybody, but certainly for me --

8 Q. As for you, sure.

9 A. Yeah.

10 Q. That's what I'm looking for.

11 A. The striking issue it raised is, why are  
12 there such big individual differences? Everybody  
13 knows and every study shows that there are some  
14 children raised in single-parent families who are  
15 absolutely fine and others who are not. The big  
16 question there, which I think has always been the  
17 major question for psychology, is, why those  
18 differences? And that's why one starts to  
19 explore, well, does it have to do with the  
20 quality of relationships with parents? Maybe  
21 there's something about the environment in which  
22 the child is growing up. Is it something about  
23 the resource base? So I think the major issue it  
24 would have led people to focus on is not an  
25 assumption that divorce or single parenthood is

1 bad, but why is it having negative effects in  
2 some circumstances but not in others?

3 Q. Well, is it fair to say to that the  
4 divorce rate in the last 30 years has increased  
5 in the United States?

6 A. Absolutely.

7 Q. So would it be fair to say that when you  
8 look at the three factors that would go to  
9 maladjustment, that factor has gone up  
10 considerably?

11 A. Well, I would say that that's really not  
12 true, because, of course, divorce isn't one of  
13 those factors. That's a family structure.

14 Q. Fair.

15 A. And the point I've tried to make is that  
16 if you're trying to predict who is going to be  
17 better or worse adjusted, you look at the same  
18 factors, whether -- whatever the family structure  
19 you're talking about.

20 Q. Here's where I'm trying to get at. If  
21 there are views that are held and they're not a  
22 consensus --

23 A. Uh-huh.

24 Q. -- and they're not well established, but  
25 it's just what everybody in your field assumes to



1           be, how do you get to the point where you assume  
2           it to be, if it's not consensus or well  
3           established?

4           A. Well, I'm not sure I fully understand  
5           your question. I think it's fair to say that as  
6           an empirical science, psychology really took off  
7           in the 1940s, very much in the post-war era, and  
8           before that, it was very much guided by clinical  
9           experience and the theories that came out of  
10          that, but as they -- as a process of accumulating  
11          knowledge and testing that knowledge and trying  
12          to create a knowledge base, that's something  
13          that's really only taken off over the period of  
14          time that we're talking about.

15          Q. Would there ever be a time where you, in  
16          your professional experience, in the 30 years as  
17          a psychologist, in child development, ever make a  
18          well-founded or a consensus opinion on an issue  
19          that was not empiric, didn't have empirical data?

20          A. I can't think of one.

21          Q. Fair enough.

22                  If I were to tell you that Susan Cochran  
23          testified that gays and lesbians have a higher  
24          risk factor, over their lifetime prevalence, of  
25          alcohol and substance abuse, would you agree with

1           that statement?

2           A.   It's not my area of expertise.

3           Q.   If I were to tell you that -- Assuming  
4           that to be true for the purpose of this  
5           discussion, would that increase in substance  
6           abuse or alcoholism have an adverse or a  
7           potential maladjustment issue for a child in that  
8           household?

9           MS. COOPER:  Objection.  I'm not  
10          sure I understand it.  Vague.

11          THE COURT:  Overruled.

12          THE WITNESS:  Well, in any family  
13          where there is a parent with substance  
14          abuse problems, that is a potential risk  
15          factor.

16          Again, and I am willing to stand  
17          corrected, I believe that the evidence  
18          that Dr. Cochran would have talked about  
19          has to do with gays and lesbians in  
20          general, rather than about those who are  
21          parents.

22          So I don't know whether there's a  
23          higher risk.  But in any event, we're  
24          talking of relatively small numbers of  
25          people, and the -- obviously, one has to

1 do sort of an individual-based  
2 assessment about the degree of risk that  
3 a child faces in a particular situation.

4 BY MS. MARTIN:

5 Q. I didn't mean to interrupt you. Assume  
6 for purpose of this question that Susan Cochran  
7 testified that 40 percent of the gay and lesbians  
8 would have such a psychiatric disorder during  
9 their lifetime prevalence, or lifetime prevalence  
10 of a psychiatric disorder, as compared to 20  
11 percent of heterosexuals.

12 A. Uh-huh.

13 Q. Would that disparity be something to be  
14 concerning someone in a child development field,  
15 in terms of the three risk factors for  
16 maladjustment?

17 MS. COOPER: Objection,  
18 mischaracterization.

19 THE WITNESS: I don't think  
20 it would --

21 MS. MARTIN: I'm sorry, you have to  
22 let the --

23 THE COURT: Overruled.

24 THE WITNESS: I'm so sorry. I  
25 think it wouldn't really make a

1           difference to those factors.  Clearly,  
2           having a parent with a psychiatric  
3           disorder, somebody who's not able to  
4           parent appropriately, raises the risk  
5           for a child, and that would certainly be  
6           one of the factors related to the  
7           children's adjustment.

8           BY MS. MARTIN:

9           Q.  You were asked earlier this morning  
10          regarding a study that Dr. Schumm did a  
11          reanalysis of, and he did the critique of  
12          Patterson and Wainwright --

13          A.  Uh-huh.

14          Q.  -- and perhaps another individual, I'm  
15          not quite sure at the moment, talking about  
16          children living with lesbians, and would it --  
17          would it be fair to say that there could be two  
18          women living in a household who are in a  
19          marriage-like relationship but that's not sexual?

20          A.  I don't think that that's the way most  
21          people interpret the term "marriage-like  
22          relationship."

23          Q.  How do you interpret that term?

24          A.  Marriage-like relationship?  A  
25          relationship with another -- an intimate

1 relationship with somebody else that's equivalent  
2 to the relationship, presumably, on issues of  
3 intimacy and sexuality.

4 Q. But is it fair to say that there could  
5 be two women living in a household for purposes  
6 of various reasons, including economic or social  
7 reasons, that are not lesbians?

8 A. There certainly could. I doubt that  
9 they would describe themselves as in a  
10 marriage-like relationship, though.

11 Q. Do you know how the questionnaire was  
12 derived on either -- on the studies talking about  
13 whether or not these two women were lesbians in  
14 the same household?

15 A. How it was derived? Well, it's from  
16 the -- it's the national representative study,  
17 the Add Health study, so it was a fairly lengthy  
18 questionnaire that was filled out.

19 Q. And I understand it was a questionnaire,  
20 but do you know what the actual question was that  
21 derived this answer?

22 A. Those are the specific words and the  
23 critical words. I don't know the rest of the  
24 question, though.

25 Q. In looking at your CV, you've done a lot

1 of publications and a lot of research, it would  
2 appear to me, in the area of fatherhood.

3 A. Uh-huh.

4 Q. Would that be fair to say?

5 A. Yes.

6 Q. At the time you began your academic  
7 career in studying fatherhood, was that something  
8 that was studied on a wide basis by child  
9 development --

10 A. No.

11 Q. -- people like you?

12 A. It really wasn't, and my study was one  
13 of the first to look at relationships between  
14 babies and their fathers.

15 Q. Would you consider yourself to have been  
16 a person on the forefront of that academic study  
17 of parenthood at the time?

18 A. By definition, yes.

19 Q. Did you, over time, evolve a different  
20 opinion of fatherhood as your data -- as your  
21 experience in your academic career developed?

22 A. Definitely.

23 Q. And how did it change?

24 A. Well, as I said, when I began, there was  
25 nobody else doing research on fathers and

1 children, so the initial studies were very  
2 exploratory and involved trying to understand a  
3 little bit about the formation of relationships.  
4 The initial work, as I said, focused on the  
5 formation of attachments between babies and their  
6 parents, and one of the initial questions there  
7 had to do with, what difference does it make, how  
8 important is the role between infants and their  
9 fathers? And by contrast, what we were talking  
10 about now is a fairly well-established, large  
11 body of research that explores aspects of  
12 parent-child, father-child relationships in lots  
13 of different ways.

14 Q. But it's fair to -- I beg your pardon.

15 A. Go ahead.

16 Q. But is it fair to say that your academic  
17 experience and research led you to evolve your  
18 thought on that, and your opinion?

19 A. Yes.

20 Q. So it's reasonable to conclude that your  
21 opinions changed over time?

22 A. Yes.

23 Q. Okay, and you indicated that there  
24 are -- I think you said a hundred studies of --  
25 this may not be right -- a hundred studies of gay

1 and lesbian households or parenting; am I  
2 correct?

3 A. A hundred reports.

4 Q. Thank you.

5 A. I would say there are probably fewer  
6 studies, yeah.

7 Q. And in those studies, how many children  
8 of gay and lesbians were involved in the studies?

9 A. By now, probably eight, nine hundred.

10 Q. Would there ever be occasion in that  
11 eight or nine hundred for those children to be  
12 double-counted, if you know what that term means?

13 A. Yeah, when I tried to sort of work out  
14 the numbers, I tried not to include twice cases  
15 where the same individuals were studied more than  
16 once. So I'm pretty confident, I mean, given  
17 that the eight hundred is not a fixed figure, but  
18 I think the real figure was close to that, and  
19 it's of individuals, not duplicate counted  
20 individuals.

21 Q. Are you able to ascertain the individual  
22 identity from the studies, to be able to make  
23 that determination?

24 A. Well, to the extent that a researcher  
25 says, "I was" -- "I'm talking here about the same



1 sample that I talked about in this paper," or,  
2 "Some of the people that I included in this study  
3 were also included in that study," I mean, that  
4 would be a conventional expectation in the field,  
5 that you would say where you got your sample, and  
6 if the sample has been reported on elsewhere, you  
7 need to make that clear.

8 Q. That would be an assumption on your  
9 part, in some avenues?

10 MS. COOPER: Objection, vagueness.

11 THE COURT: Can you answer?

12 THE WITNESS: I don't think it's  
13 just an assumption. That's one of the  
14 conventions in the field, that you would  
15 report it.

16 Secondly, in the process of peer  
17 review, that would be one of the  
18 questions that reviewers would expect  
19 you to address and to explain what the  
20 relationship was between the different  
21 studies that you had done.

22 So I think that that's a --  
23 something that would be pretty clear.

24 BY MS. MARTIN:

25 Q. The identity of the subjects would be

1 clear?

2 A. Well, whether or not they had been  
3 included in other studies would be clear.

4 Q. You testified that excluding gays and  
5 lesbians from the pool of otherwise qualified  
6 applicants -- Are you aware of how many children  
7 are in the foster care environment in Florida?

8 A. Total numbers? No.

9 Q. You indicate there's a large number of  
10 kids; is that correct?

11 A. Uh-huh.

12 Q. And I would not --

13 A. Well, I.

14 Q. You know, I --

15 A. I understand there's somewhere between  
16 three and four thousand children --

17 Q. That's fine, sir.

18 A. -- waiting for adoption.

19 Q. I don't need an exact number. But what  
20 percentage, if you know, of gays and lesbians in  
21 the State of Florida wish to adopt? Do you know  
22 that?

23 A. The proportion? I don't know that.

24 Q. So you wouldn't know whether maintaining  
25 this ban on homosexual adoption would have an

1           increase -- or a significant increase in the  
2           number of applicants for adoption, would you?

3           A. Well, it would have -- by definition, it  
4           does reduce the available pool. I don't know how  
5           much it reduces the available pool.

6           Q. And if we look at just the U.S.  
7           population, what percentage, as you understand  
8           it, is gay and lesbian?

9           A. Well, you surely found out there are  
10          lots of very broad guesses about that. It's not  
11          my expertise. People talk about numbers anywhere  
12          from one percent to substantially more than that,  
13          maybe as high as 10 percent.

14          Q. So it would be fair to say you would not  
15          have any idea of what that effect the ban would  
16          or would not have on the adoptive parent pool in  
17          Florida?

18          A. Well, it would reduce the pool. We just  
19          don't know how much. I don't know how much.

20          Q. That's fair enough.

21          A. Yeah.

22          MS. MARTIN: Thank you, Judge.

23          We're done.

24          THE COURT: Okay. Any redirect?

25          MS. COOPER: Just a moment.

1 (Discussion off the record)

2 REDIRECT EXAMINATION

3 BY MS. COOPER:

4 Q. Just two questions, Dr. Lamb.

5 I understand you testified that the  
6 rates of things like psychiatric disorders and  
7 substance abuse of different populations, that's  
8 not within your expertise, but if you learned  
9 that one group of people has an elevated rate of  
10 psychiatric disorders compared to the general  
11 population, say, Native Americans, is that a  
12 reason to exclude the whole group from adopting?

13 MS. MARTIN: Objection, relevance.

14 THE COURT: I'll allow it.

15 BY MS. COOPER:

16 Q. And if you learned that one group of  
17 people had an elevated rate of substance abuse,  
18 compared to the general population, would that be  
19 a reason to exclude the entire group from  
20 adopting?

21 A. I don't think so.

22 MS. COOPER: That's all.

23 THE COURT: Thank you, Doctor --

24 THE WITNESS: Thank you.

25 THE COURT: -- very much.

1 MS. BASS: Thank you very much.

2 THE WITNESS: Okay.

3 MR. ROSENWALD: Dr. Fred Berlin is  
4 next.

5 THE COURT: Dr. Berlin, come  
6 forward to the chair right there.

7 DR. BERLIN: Yes, ma'am.

8 THE COURT: Raise your right hand,  
9 please.

10 THEREUPON:

11 FRED S. BERLIN, M.D., PH.D.  
12 was called as a witness by the Petitioner and,  
13 having been first duly sworn, was examined and  
14 testified as follows:

15 THE CLERK: Thank you. State your  
16 name for the record, please.

17 THE WITNESS: My name is Fred  
18 Berlin, B-E-R-L-I-N.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 BY MR. ROSENWALD:

22 Q. Good afternoon, Dr. Berlin. How are  
23 you?

24 A. I'm fine. How are you?

25 Q. I'm well, thank you.

1                   Could you please explain to the Court  
2 both your professional training and your  
3 certification?

4                   A. I have both a Ph.D. degree, which is in  
5 psychology; I also have an M.D. degree, a medical  
6 degree; beyond the internship that I did,  
7 rotating through the various medical specialties,  
8 I then did additional training in psychiatry, and  
9 I'm Board certified by the American Board of  
10 Psychiatry and Neurology in psychiatry.

11                  Q. And what year did you graduate from  
12 medical school?

13                  A. 1974.

14                  Q. What are your current professional  
15 positions?

16                  A. I wear several hats, so I'll try to keep  
17 it relevant. My academic appointment is as an  
18 associate professor at the Johns Hopkins  
19 University School of Medicine. I'm also an  
20 attending physician at the Johns Hopkins  
21 Hospital. I'm the founder of the Johns Hopkins  
22 Sexual Disorders Clinic. I'm also the director  
23 of the National Institute for the Study,  
24 Prevention and Treatment of Sexual Trauma.  
25 That's a large clinic that grew out of the

1 original Hopkins clinic, and I'm also the  
2 director of another sexual clinic at Hopkins.  
3 So, as you see, there's many roles that I've  
4 played, but I've tried to keep it pertinent to  
5 the issues here today.

6 Q. How do you spend the majority of your  
7 professional time?

8 A. If I had to categorize it, I'd break it  
9 down into three major areas. First would be  
10 clinical care. That means evaluating and  
11 treating patients, and because of my particular  
12 area of expertise, these are often patients who  
13 have some problem in the sexual arena. So  
14 clinical care is one.

15 Second is teaching. I teach residents,  
16 medical students, both through didactic lectures  
17 and what's referred to as bedside teaching, where  
18 they actually learn in an apprenticeship-like  
19 way, by observing the actions of more senior  
20 people. So teaching is a second major  
21 responsibility.

22 And thirdly, I've published a fair  
23 amount of research. So, those three areas.

24 Q. As part of your clinical care, have you  
25 treated pedophiles?

1           A. Yes, I've treated many.

2           Q. How many pedophiles would you say you've  
3 treated?

4           A. Oh, at least several hundred. My  
5 colleagues and I published a paper, for example,  
6 all the way back in 1991, which reported on a  
7 follow-up on over 400 men who'd been diagnosed  
8 with pedophilia, and since then, there's been  
9 several hundred more. So it's certainly a large  
10 number.

11          Q. Within the field of psychiatry, do you  
12 have any particular area of expertise?

13          A. I may have already covered that. It has  
14 to do with human sexuality, the various  
15 dysfunctions that exist sexually, people that --  
16 men that have difficulty with erectile  
17 dysfunction, which has received a lot of news  
18 lately. Sexual disorders, people who have  
19 something qualitatively different about their  
20 sexual makeup, in a way that can impair their  
21 functions or cause distress, I deal with that,  
22 and of course, in teaching, it's hard to talk  
23 about disorders without contrasting that with  
24 health. It's as though disease and health are  
25 kind of the opposite end of the same coin. So my



1 expertise would include a knowledge base in the  
2 area of human sexuality in general.

3 Q. In developing your expertise in human  
4 sexuality, have you developed an expertise in the  
5 etiology of sexual orientation?

6 A. I believe so. I've certainly kept up  
7 with the literature and the research that's been  
8 done on that issue. I have written in some of my  
9 papers with respect to that issue. I believe the  
10 answer to your question would be yes.

11 Q. And could you define the word etiology?

12 A. Well, in simple terms, it means cause,  
13 and in the real world, it's usually more than "a  
14 cause," but "causes." So it's those factors that  
15 contribute to the development of a particular  
16 condition, whether it be polio, in terms of  
17 physical medicine, or whether it be pedophilia or  
18 exhibitionism, in terms of disorders, or for that  
19 matter, what contributes to the etiology of why  
20 any of us experience the sexual desires that we  
21 do. Why am I attracted to women, the opposite  
22 gender? Why are some attracted to members of the  
23 same gender?

24 There is a sense that we need to learn  
25 more about that, and I've kept myself up with the

1 literature in trying to better understand that  
2 issue.

3 Q. As a result of your work, have you been  
4 asked to speak or participate in any professional  
5 conferences?

6 A. Yes, and you have my vitae, so I'm not  
7 going to try to be exhaustive, so I'll just give  
8 a couple of examples.

9 I've been an invited participant at a  
10 White House conference on child sexual abuse.  
11 I've been asked to address a subcommittee of the  
12 United States Senate on more than one occasion on  
13 that same issue. I've been invited to address  
14 colleges of judges in several states. I've been  
15 invited to participate in symposiums, sponsored  
16 both by the Federal Bureau of Investigation and  
17 by the United States Department of Justice.

18 Perhaps that would be enough to give you  
19 some examples.

20 Q. Thank you.

21 Have you been asked to serve as a  
22 professional consultant to any organizations?

23 A. Yes, a number. I've provided  
24 consultation, for example, to the European  
25 Parliament. I've provided consultation to the

1 Division of Corrections in Maryland, in terms of  
2 how to manage people who've been arrested because  
3 of sexual offenses. I've done that both in the  
4 adult and juvenile system.

5 I've also been asked to provide  
6 consultation when the Catholic Church was having  
7 so much difficulty, which I'm sure everyone is  
8 aware of. I was asked to do that in two ways. I  
9 was invited to become a member of the Ad Hoc  
10 Committee on Sexual Abuse for the National  
11 Conference of Catholic Bishops, to try to help  
12 them analyze and deal with the issue.

13 And quite a bit of sexual abuse of  
14 children had occurred in Boston, and I was  
15 invited to become a member of the Cardinals'  
16 Commission for the Protection of Children, again,  
17 to try to learn more about what had gone wrong,  
18 and more importantly, what changes need to be  
19 made to make sure that things go much better in  
20 the future.

21 Q. In the course of doing your work, is it  
22 your practice to keep up with the relevant  
23 professional literature?

24 A. Yes.

25 Q. How do you do that?

1           A. Well, in a variety of ways. I'm in a  
2           teaching institution. I attend grand rounds,  
3           which are educational rounds. Various clinics  
4           that I run, I not only teach myself, but others  
5           come in to teach, and so that keeps me in  
6           informed, and again, they're from multiple  
7           disciplines -- urology, gynecology.

8           I attend various conferences. In fact,  
9           to be relicensed periodically as a physician, I'm  
10          mandated to have a certain number of continuing  
11          education hours. So I don't know how much detail  
12          you need, but those are examples of the ways in  
13          which I go about doing that.

14          Q. Have you written any professional  
15          publications in your career?

16          A. Many. I've published in what I believe  
17          are quality journals: The Journal of the  
18          American Medical Association, the New England  
19          Journal of Medicine, the American Journal of  
20          Psychiatry. I've done that on a variety of  
21          topics. Probably the most common things that  
22          I've published about have to do with sexual  
23          disorders, such as pedophilia, exhibitionism,  
24          some things having to do with factors that  
25          distinguish persons with those conditions from

1 others, looking at recidivism. Perhaps that will  
2 give you some sense.

3 Q. Have you performed any peer reviews of  
4 other people's work?

5 A. Yes. I'm sure the Court understands  
6 that peer review is a process whereby if, for  
7 example, somebody submits an article to be  
8 considered for publication to a journal, others  
9 who are seen as having expertise in the area are  
10 asked by the editor to review that material, in  
11 order to see if it's up to scratch, if I can put  
12 it that way. I've done that for the Journal of  
13 the American Medical Association, the American  
14 Journal of Psychiatry, the American Journal of  
15 Forensic Psychiatry, and several -- several  
16 others.

17 I've also provided peer review to the  
18 National Institute of Mental Health. When people  
19 have submitted research to be considered for  
20 support and for grants to be given to them, I've  
21 done peer review in that sense, as well, looking  
22 at the quality of proposed research.

23 Q. In the course of doing your work, have  
24 you been asked to become a member of any  
25 professional organizations or committees?

1           A. Well, I have, but perhaps the only one  
2           that I think would be relevant to the issues here  
3           today are that I was asked to be a member of one  
4           of the subcommittees for the DSM, the Diagnostic  
5           and Statistical Manual of Mental Disorders.  
6           That's a manual that helps to define for the  
7           mental health community the nature of various  
8           psychiatric conditions, in the same way that  
9           there's a manual called the International  
10          Classification of Diseases, which does the same  
11          thing when it comes to physical, as well as, by  
12          the way, psychiatric issues. And I was asked to  
13          become a member of the subcommittee on the  
14          paraphilias for the DSM, and in laymen's terms,  
15          the paraphilias means sexual disorders.

16          Q. What did your work on that subcommittee  
17          entail?

18          A. Well, it entailed looking at what  
19          conditions were considered to be sexual  
20          disorders, paraphilias, whether the evidence that  
21          was out there in the professional literature  
22          justified including them, whether there was new  
23          evidence suggesting that perhaps other conditions  
24          might be brought in, or some there that should be  
25          discarded.

1                   It gave me a little bit of opportunity  
2                   to talk to others about the history of the DSM  
3                   and how these decisions had been made over time.  
4                   That would be a brief synopsis of what my work  
5                   involved.

6                   Q.    You mentioned the history at the DSM.  
7                   In the course of your work on the subcommittee to  
8                   revise the DSM, how, if at all, was the history  
9                   of how existing disorders at the time were added  
10                  to the DSM -- how was that relevant to your work  
11                  on the committee?

12                  A.   Well, I guess the relevance at the time  
13                  that I was doing this was that there had been a  
14                  clear move away from putting conditions in  
15                  because of a theory of -- if I could put it this  
16                  way, a theory of the world, that there was a real  
17                  sense that we have to have empirical evidence.

18                  At one time, for example, if somebody  
19                  had a theory that Condition A existed because  
20                  something went wrong during early psychological  
21                  development, just because of that theory, the  
22                  condition might have been included in the DSM.  
23                  But by the time I got there, which was the third  
24                  revision, it was recognized that there needs to  
25                  be an empirical body of knowledge upon which

1           these decisions are made, and that's how we tried  
2           to approach that matter.

3           Q.   And how did you go about educating  
4           yourself about the way disorders got on the DSM  
5           before your involvement?

6           A.   Well, first of all, I knew something  
7           about it to start with. I am a psychiatrist. I  
8           knew what was out there. I'd kept up with the  
9           reading. But I also discussed some of these  
10          matters with other committee members.

11          THE COURT:  Are you having trouble  
12          hearing?

13          THE WITNESS:  Am I going too fast?  
14          I sometimes --

15          THE TAPE MONITOR:  No, it's okay.

16          THE WITNESS:  Okay. I'll slow  
17          down, if it's a problem, so -- okay.

18          MR. ROSENWALD:  Are you all right,  
19          Joan?

20          THE COURT REPORTER:  He is fast.

21          THE WITNESS:  I'm sorry. I'll try  
22          to slow down.

23          BY MR. ROSENWALD:

24          Q.   Slow down, try.

25          A.   I'll slow down.



1           Q. Have you or the sexual disorders clinic  
2           that you direct received any special  
3           international or national recognition?

4           A. Yes. The clinic that I direct -- and I  
5           am proud of this -- has been designated by the  
6           United States Department of Justice as something  
7           that they refer to as a national resource site,  
8           because of the work that we've done in this area.

9                   As a consequence of that designation,  
10           I've been asked to do some teaching at various  
11           seminars around the country, but the answer to  
12           your question is that that designation has been  
13           given to our clinic by the Justice Department.

14           Q. At this time, with the Court's  
15           permission, I am going to show you a document and  
16           ask you if you recognize this document.

17                   THE CLERK: Petitioner's Exhibit

18                   12.

19                   THE WITNESS: Yes, it's my vitae.  
20           I was just looking to see if it was  
21           dated, because whenever new things  
22           occur, that's added.

23                   So it is a copy of my vitae.  
24           Whether it's absolutely up to today's  
25           date, I don't know, but it's certainly

1 quite adequate.

2 MR. ROSENWALD: At this time, I  
3 would move to admit Dr. Berlin's CV as a  
4 summary of his qualifications.

5 THE COURT: Any objection?

6 MR. FAHLBUSCH: No objection.

7 THE COURT: Okay, so ordered.

8 THE CLERK: Petitioner's Exhibit  
9 12.

10 MR. ROSENWALD: And also, at this  
11 time, I will move to qualify Dr. Berlin  
12 as an expert in the areas of human  
13 sexuality, including homosexuality,  
14 pedophilia and child sex abuse.

15 MR. FAHLBUSCH: No objection.

16 THE COURT: Okay.

17 BY MR. ROSENWALD:

18 Q. Dr. Berlin, I'm going to ask for your  
19 expert opinion in three areas, whether  
20 homosexuality is a mental disorder; whether  
21 having a gay parent will make a child gay; and  
22 whether gay adults pose a heightened risk of  
23 committing child sex abuse.

24 Starting with the first topic, whether  
25 homosexuality is a mental disorder, my first

1 question for you is about the term "mental  
2 disorder." What does that term mean?

3 A. Well, as the name might suggest, it  
4 means that there's something disordered or  
5 abnormal about a person's mental makeup, and to  
6 the extent that there's something different about  
7 their mental makeup, it normally needs to be  
8 associated with either causing some impairment in  
9 their ability to function or some sort of  
10 distress or suffering, so an abnormality in  
11 mental makeup and an abnormality of such that it  
12 impairs in some fashion the person's functioning  
13 or causes some sort of distress or suffering,  
14 either for themselves or, in some cases, for  
15 others.

16 Q. Does everyone who seeks treatment from a  
17 mental health provider have a disorder?

18 A. No, absolutely not. An analogy would be  
19 that one goes to one's physician for a checkup,  
20 and the hope is that they don't have anything  
21 wrong with them, and if they don't, that's good  
22 news. And so we, as psychiatrists and other  
23 mental health professionals, psychologists,  
24 social workers and so on, evaluate people to see  
25 whether or not they have a disorder, but in many

1 cases, the answer will be no.

2 I might add, for the sake of  
3 completeness, that sometimes even if they don't,  
4 it doesn't mean that they don't need some  
5 assistance. People of a sound mind can be  
6 distressed. Someone can be grieving over the  
7 loss of a loved one, for example, and it would be  
8 helpful to them to talk to a professional and try  
9 to deal with those feelings.

10 So they're not going to be seen as  
11 having a mental disorder, but they still might be  
12 seen as someone who could benefit from  
13 psychological counseling and from emotional  
14 support.

15 Q. If there's something different or  
16 atypical about a patient, is that a sufficient  
17 basis on which to diagnose a disorder?

18 A. No. I mean, people are all different in  
19 many ways. I mean, some people have blue eyes,  
20 some people have brown eyes. So a difference  
21 alone would not be sufficient. There really  
22 needs to be some evidence that suggests that  
23 they're impaired in their functioning, they're  
24 suffering, that this is a condition that we want  
25 to try to prevent because it causes these kinds

1 of human problems, that it's a condition we want  
2 to try to treat or intercede with because of that  
3 suffering and difficulty functioning.

4 So a difference, alone, just because I'm  
5 different than you and you're different from me,  
6 doesn't mean that one or the other of us  
7 inevitably must be seen as having a disorder.

8 Q. You talked a little bit about this, but  
9 is there a specific medical term that  
10 psychiatrists ordinarily use when diagnosing a  
11 sexual disorder?

12 A. Yes. Psychiatrists have their own  
13 language, and it's just a shorthand way of  
14 conveying information, and I think I mentioned  
15 earlier that the term that psychiatrists use when  
16 referring to a sexual disorder is paraphilia.

17 Q. What sorts of information does a  
18 diagnosis of paraphilia convey?

19 A. Well, it conveys the information that  
20 there's something abnormal or different about a  
21 person's sexual makeup, and different in a way  
22 that does cause suffering or impairs functioning,  
23 and maybe to give an example, because that  
24 sounds, even as I say it, very abstract, let's  
25 take exhibitionism. The average man would be

1           capable of exposing himself sexually, but the  
2           average man doesn't have intense, recurrent  
3           sexual cravings about exposing himself, to the  
4           point where it can be an ongoing struggle for him  
5           to maintain proper self-control, and yet in  
6           exhibitionism, which is one of the paraphilic  
7           disorders, that's exactly what's happening, that  
8           these people are afflicted, through no fault of  
9           their own, with these abnormal cravings that can  
10          impair their ability to function, to be in full  
11          control of themselves, and that can cause  
12          distress for the community and ultimately for  
13          themselves, as well.

14                        Again, I don't know how exhaustive you  
15          want me to be. Pedophilia would be another  
16          example. But I hope that the concept is clear in  
17          terms of what would be meant when I or another  
18          mental health person says that someone is  
19          sexually disordered or has a paraphilic disorder.

20                        Q. Just briefly, you mentioned pedophilia.  
21          How is pedophilia characterized?

22                        A. Well, perhaps the best thing to do is to  
23          tell you what the primary definition of the  
24          mental abnormality is in any paraphilic disorder,  
25          and I certainly then will make it specific to

1 your question here.

2 If you read the DSM about the primary  
3 mental abnormality in any paraphilic disorder, it  
4 says that the afflicted individual experiences  
5 intense, recurrent, sexually-arousing fantasies  
6 and urges about something.

7 In exhibitionism, which I already  
8 covered, that something is about exposing one's  
9 self, to usually an unsuspecting stranger.

10 In pedophilia, that's about interacting  
11 sexually with a child. Now, again, I suppose  
12 that in theory any adult is capable of  
13 interacting sexually with a child, although most  
14 of us are actually rather repulsed by the idea of  
15 doing so, but certainly the average person is not  
16 having intense, recurrent, sexually-arousing  
17 fantasies and urges about interacting with a  
18 child, to the point where they may have to  
19 struggle in an ongoing way not to act in such a  
20 fashion.

21 So I hope that makes it clear for you,  
22 the way in which both pedophilia and  
23 exhibitionism, and the other paraphilic  
24 disorders, for that matter, are clearly quite  
25 different from the norm, in a way which has

1           tremendous personal and social consequence.

2           Q.   Earlier, you talked about the DSM.  Can  
3           you explain a little more about what the  
4           Diagnostic and Statistical Manual of Psychiatric  
5           Disorders is?

6           A.   All right.  Well, I thought I'd covered  
7           it, to some extent, but it's just a way of having  
8           a frame of reference, a site that people can go  
9           to, to say, "What are the conditions about which  
10          there's a consensus, in terms of them being  
11          mental abnormalities?"

12          As I said, all the mental abnormalities  
13          included in the DSM are part of the ICD, the  
14          International Classification of Diseases.

15          So, when something is listed as a  
16          disorder in the Diagnostic and Statistical Manual  
17          of Mental Disorders, it means that there's a  
18          consensus within the mental health community that  
19          it's legitimate to see that condition in such a  
20          fashion.

21          Q.   Does the DSM provide a list of  
22          paraphilic or sexual disorders?

23          A.   Yes.  I've named some of them.  There's  
24          also sadism, people that are very aroused by the  
25          pain and suffering of others, clearly something



1           that is quite abnormal and can be a very serious  
2           condition for the community and for people  
3           afflicted; masochism, in which people injure  
4           themselves because the way in which they're  
5           aroused sexually is by their own suffering,  
6           degradation and so on, and so the DSM lists  
7           several of the more -- of the paraphilias or the  
8           sexual disorders that have been identified as  
9           being pretty classical, and then there's a final  
10          condition called paraphilic disorder not  
11          otherwise specified, recognizing there can be  
12          others besides the first several listed, and that  
13          if one wants to make that diagnosis, you can call  
14          it a paraphilic disorder, but then you have to  
15          specify the way in which the person's sexual  
16          makeup is indeed pathological.

17                 Q. In the past, did the DSM categorize  
18                 sexual disorders in the same way that it does  
19                 today, or did it do so differently?

20                 A. No. I'd like to believe that as time  
21                 has gone along, we've learned and gotten better  
22                 at what we do. And at one point historically,  
23                 during DSM-I and II, for example, the DSM, we can  
24                 now say from hindsight, incorrectly considered  
25                 sexual disorders to be an aspect of personality

1 disorder.

2 Now, what have we come to recognize, to  
3 try to make it clear why that was wrong and why  
4 that's changed? If I tell you something about a  
5 person's sexual makeup -- let me pick myself, for  
6 example, I tell you that I'm heterosexual -- what  
7 kind of information does that and does it not  
8 convey? What it tells you, if I tell you I'm  
9 heterosexual, is that I'm a man attracted to  
10 women, and at my age, you'd be pretty safe to  
11 assume I've acted on those attractions.

12 But it does not -- and this is the  
13 important point -- tell you anything about my  
14 personality, my character, my temperament and so  
15 on. Knowing that I'm heterosexual doesn't tell  
16 you if I'm kind or caring, cruel or not so cruel,  
17 conscientious or lacking in conscience. That all  
18 has to be determined entirely in its own right.  
19 And so today, the DSM lists the paraphilic  
20 disorders as Axis I conditions, what it refers to  
21 as Axis I conditions. There's something terribly  
22 wrong with a man who's recurrently craving sex  
23 with children and may not even be able to have  
24 sex with an adult.

25 Then, having seen what's going on in

1 terms of the person's sexual makeup, we have to  
2 look independently, on what's called Axis II. In  
3 addition to there being something going on in  
4 terms of the person's sexual makeup, is there or  
5 is there not evidence of a character flaw of  
6 personality disorder. We now recognize that  
7 having a particular sexual makeup is not in any  
8 way whatsoever predictive of character or  
9 temperament difficulties. We now know those  
10 things have to be evaluated entirely in their own  
11 right.

12 Q. Can you define for the Court the terms  
13 heterosexual, homosexual and bisexual, for the  
14 Court?

15 A. All right, well, I suspect the Court  
16 already knows, but since you've asked me, I will.  
17 These are terms that refer to the gender of adult  
18 that an individual is attracted to, and so if I  
19 say to you that a person is heterosexual, that  
20 person is attracted to adults of the opposite  
21 gender. If I tell you that this is a person  
22 that's homosexual, I'm just conveying some  
23 information, this is an adult that's attracted  
24 to -- sexually, to members of the same gender,  
25 and if I tell you this is an adult who's

1 bisexual, all I'm telling you is that this is an  
2 adult who's attracted sexually to adults of both  
3 genders.

4 Q. In the past, homosexuality was  
5 considered to be a sexual disorder in the DSM; is  
6 that right?

7 A. That's correct.

8 Q. Can you explain why homosexuality used  
9 to be considered to be a sexual disorder in the  
10 DSM?

11 A. Well, there are a couple of reasons. I  
12 may have just touched upon it lightly when I  
13 talked about needing now to move from theory to  
14 looking at empirical evidence.

15 At the time when homosexuality was  
16 considered to be a sexual disorder, the various  
17 Freudian type theories had been predominant in  
18 psychiatry. And those theories assumed, and I  
19 want to underline the word assumed, that all of  
20 us are meant to be heterosexual, and the theories  
21 proposed that in some cases, something goes wrong  
22 during early psychological maturation and  
23 development, and that because something has gone  
24 wrong, some people end up not being attracted to  
25 age-comparable members of the opposite gender;

1           they're attracted to the same gender, and so by  
2           definition, the theory had declared that if  
3           you're not an adult heterosexual, you must have a  
4           disorder.

5                         For sake of completeness, the therapy,  
6           back in those days, was insight-oriented. We  
7           would help the person discover what went wrong  
8           through early psychological -- during the early  
9           psychological maturation, and as a consequence of  
10          them developing that insight and understanding  
11          and the emotional release that went along with  
12          it, they'd be cured. Well, you know, maybe I'm  
13          attracted to women because of the way my parents  
14          raised me or whatever. But understanding why I'm  
15          hungry, whether it's for food or for people,  
16          doesn't change anything. So the therapy didn't  
17          turn out to be supported by the data or the  
18          evidence. Neither did the empirical evidence  
19          about it being a disorder, and so the point was,  
20          it was in there on a theoretical basis. When  
21          people began to look objectively at the issue of,  
22          is there anything intrinsic to having a  
23          homosexual orientation that would justify  
24          considering homosexuality, per se, to be a mental  
25          disorder, there simply was not any evidence to

1 support that contention.

2 So, just to be sure I'm clear, it should  
3 never have been in there in the first place. It  
4 was based on a faulty theory that has not been  
5 supported over time. And secondly, it was  
6 removed because the evidence that was available  
7 did not justify its inclusion.

8 Q. Have there been any theories that have  
9 tried to link homosexuality to parental  
10 influences?

11 A. There been have been a number, and  
12 again, I talked about the importance of, you  
13 know, learning what's out there, reading  
14 textbooks and so on, because we don't want to  
15 repeat the mistakes of the past.

16 At one time -- I'll just give one  
17 example. This was in many of the older  
18 textbooks. There was a theory that homosexuality  
19 was caused by a domineering mother and a weak  
20 father. And for a long time, people who were  
21 teaching psychology and development and so on  
22 were suggesting that that was so.

23 Well, ultimately, research was done that  
24 took a look, to try to compare groups of people  
25 who were homosexual in their orientation with

1           those who were heterosexual, to see, was there  
2           any identifiable difference in terms of this  
3           domineering mother and weak father, and there  
4           simply wasn't any evidence. So that's an example  
5           of a theory that was out there, that people had  
6           subscribed to, but when we looked at the data, it  
7           eventually didn't hold any water.

8           Q. Just to be perfectly clear, in your  
9           expert opinion, does the fact a person is gay or  
10          lesbian tell you, as a psychiatrist, that this  
11          person should be considered to have a mental  
12          disorder?

13          A. No. It just tells me the kind of  
14          partner towards whom they're attracted sexually,  
15          the type of adult partner.

16          Q. In your expert opinion, is there any  
17          reason, perhaps new research, that would justify  
18          reclassifying homosexuality as a mental disorder  
19          now?

20          A. No.

21          Q. Now, if I correctly understood what  
22          you've said, pedophilia is a mental disorder,  
23          while homosexuality is not. Can you explain the  
24          difference?

25          A. Well, pedophilia, by its very nature,

1       predisposes towards tremendous suffering. A  
2       person who's drawn sexually towards children and  
3       acts on those attraction can certainly cause  
4       tremendous suffering and victimization. It also,  
5       in the process, is going to ultimately destroy  
6       their own life if they're not in full control of  
7       themselves. Pedophilia interferes with  
8       individuals expressing love and affection and  
9       companionship in the context of an adult, mature,  
10      caring relationship. Pedophilia, in those ways,  
11      is extremely different, in my judgment, from  
12      either heterosexuality or homosexuality.

13           Q. You had suggested earlier that when a  
14      condition causes suffering, that that can be one  
15      basis for considering it to be a disorder.

16           If a gay person was discomforted because  
17      of his own sexual attractions, would that be a  
18      reason to characterize it as a mental disorder?

19           A. No. It would be a reason for that  
20      particular person to appreciate that they're  
21      distressed, that they're anxious, that they're  
22      struggling, and to provide them with help. But  
23      given the fact that it's just a very tiny  
24      percentage of gays who are having that problem,  
25      to suggest that somehow that means that the whole



1 universe of people who are gay are somehow  
2 disordered, it seems to me, would make no sense.

3 So we'd be talking about a gay person  
4 with a particular kind of problem, and we want to  
5 address the problem, in the same way, for  
6 example, that we might be talking about a woman  
7 who's depressed, where we want to help her with  
8 the depression but we don't say because she's a  
9 woman who's depressed that being female ought to  
10 be some sort of a disorder.

11 Q. If it could be shown that a higher  
12 percentage of homosexuals, as opposed to  
13 heterosexuals, suffered with -- I'm sorry, strike  
14 that.

15 Returning, for the moment, to the issue  
16 of why pedophilia is considered a psychiatric  
17 disorder, whereas homosexuality is not, as a  
18 psychiatrist, have you treated people who have  
19 pedophilia?

20 A. Yes, I think we covered that earlier.  
21 I've treated hundreds of individuals who have  
22 pedophilia.

23 Q. When treating an individual for  
24 pedophilia, would you ordinarily give him any  
25 advice about children?

1           A. Oh, absolutely. Just as when I'm  
2           working with alcoholics, I say, "Stay away from  
3           bars. You don't want to place yourself in the  
4           situations of temptation you may not be able to  
5           handle."

6                        When I'm working with someone who has  
7           pedophilia, part of my effort to assist him is to  
8           insist that they avoid any unnecessary exposures  
9           or involvements to children, because the nature  
10          of their condition is such that they can be drawn  
11          towards children, and for obvious reasons, it's  
12          terribly important that they resist acting on  
13          those sorts of temptations.

14           Q. In the course of your professional  
15          practice, you've also treated gay people who are  
16          in need of psychiatric care; is that right?

17           A. That's correct.

18           Q. When treating a gay patient, do you  
19          ordinarily give any advice about children?

20           A. Well, not ordinarily. I mean, I've  
21          seen, for example -- I'm thinking of a gay  
22          patient who's come in and he is gay and he's  
23          wanting some advice about, "I've got my 13-year-  
24          old nephew," and he wants some counseling, "Is it  
25          something you think I should discuss with him or

1 not?" So there may be specific issues, but  
2 certainly I don't say to gay people, in general,  
3 "You need to stay away from children," in the way  
4 that I would with pedophilia. Those are  
5 extremely different situations.

6 Q. Well, just to be clear, in the example  
7 you were giving, it was a gay person who had a  
8 question about whether he should tell his  
9 13-year-old nephew that he is gay or not?

10 A. Yes. I wanted to make it clear that  
11 there are reasons why some gay people may need  
12 advice about children, but there's nothing about  
13 being gay that intrinsically makes a person a  
14 risk to a child. So I don't have to give the  
15 advice to gay people who come in, "Avoid  
16 unnecessary involvements with children," because  
17 there's nothing about being gay that heightens  
18 the risk that they'll get involved with a child.  
19 Clearly, that risk is very much heightened in  
20 pedophilia, and therefore, to that group of  
21 individuals, I do need to give that kind of  
22 advice.

23 Q. Now, you said earlier, you served on the  
24 subcommittee that revised the DSM for the  
25 paraphilias, correct?

1           A. That is correct.

2           Q. And as part of that work, it was part of  
3 your task to determine which disorders should be  
4 included in the DSM; is that right?

5           A. Well, I mean, I wasn't deciding alone,  
6 but it was part of my task, collaboratively with  
7 others, to make those decisions, yes.

8           Q. In your professional opinion, and based  
9 upon your own involvement with the DSM, is the  
10 decision to either include, or for that matter,  
11 not to include a specific diagnosis in the DSM,  
12 ordinarily predicated upon political pressures?

13          A. To answer directly, no, but let me  
14 expand, if I may.

15                 There clearly, in many of the conditions  
16 that are in the DSM, can be political pressures,  
17 and they can come from both sides. To stick to  
18 the pertinent issue, homosexuality, there are a  
19 number of people, for their own reasons, the  
20 reasons they feel are quite legitimate, who felt  
21 and I think probably still do feel that  
22 homosexuality should be in the DSM. There's  
23 others, for their own reasons, who feel and felt  
24 that it should be out. But I can tell you from  
25 my experience on the DSM that there was a firm

1           expectation that we not be influenced by  
2           political decisions.  There's been a lot of talk  
3           about the old Soviet Union, where  
4           psychiatrists -- psychiatry had been politicized,  
5           and people who were dissident or had different  
6           points of view were labeled as having psychiatric  
7           disorders.

8                         So, were there political pressures?  
9           Yes, there can be.  Was that the basis for the  
10          decision?  No.  As I mentioned earlier, the  
11          decisions were to be made based on the evidence.  
12          There is no evidence, in my professional opinion,  
13          that homosexuality should be considered a  
14          psychiatric disorder, and that decision is  
15          evidence-based and not responding to the  
16          political pressures from either side that indeed  
17          can be there.

18                        Q.  Finally, just to sum up, with respect to  
19          the issue of psychiatric diagnoses, is  
20          homosexuality considered to be a mental disorder  
21          by the psychiatric profession today?

22                        A.  No.

23                        Q.  And is it currently listed as a disorder  
24          in the DSM today?

25                        A.  No.

1           Q. I would now like to ask you a few  
2           questions about whether the sexual orientation of  
3           parents can influence the sexual orientation of  
4           their children. From a medical perspective, how  
5           might that, theoretically, be possible?

6           A. Well, I mean, there's really two general  
7           ways in which influence can occur, and that's  
8           what people refer to as nature or nurture. In  
9           other words, on the nurture side, are there  
10          certain environmental experiences or events that  
11          might have an influence, and on the nature side,  
12          is there something about genetics, biology, that  
13          might have the influence.

14          It's a little tricky when it comes to  
15          influences that occur while a woman is pregnant,  
16          are those biological or are those sort of the  
17          early environment, but generally speaking, to not  
18          complicate it unnecessarily, the two ways that  
19          are looked at are either nature or nurture.

20          Q. In your expert opinion, is the sexual  
21          orientation of a homosexual child determined by  
22          the sexual orientation of the parents that raise  
23          that child?

24          A. I don't know of any evidence that the  
25          environment in which a child is raised,

1           heterosexual/homosexual environment, would  
2           determine the sexual identity of the child who's  
3           raised in that environment.

4           Q. Do the majority of homosexual children  
5           come from homosexual households?

6           A. No. I mean, that's one of the reasons  
7           I've answered the question as I did. If I wasn't  
8           clear, I can answer it further. But when one  
9           looks at this issue, first of all, the  
10          overwhelming majority of homosexual individuals  
11          were raised in heterosexual households,  
12          suggesting that the environment in which they  
13          were raised in those instances certainly wasn't  
14          the determining factor of their development, and  
15          there's also been studies that have looked at  
16          persons, for example, who were raised by lesbian  
17          mothers. There's a good deal of research out  
18          there on that issue, and some of that research,  
19          even where some of the lesbian mothers indicated  
20          that, you know, they're lesbian themselves, they  
21          wouldn't have minded or might even have liked it  
22          had their child turned out to be lesbian or gay,  
23          the overwhelming majority of those children  
24          raised in that gay environment turned out to be  
25          heterosexual.

1                   So that evidence is based on very large  
2                   numbers and suggests that the orientation of the  
3                   parents and the family where the child is being  
4                   raised does not seem to be any kind of a  
5                   significant determinant in terms of the sexual  
6                   orientation that the person grows up to have.

7                   Q.    When a psychiatrist uses the term sexual  
8                   orientation, is there just one way or more than  
9                   one way that that term can be defined?

10                  A.   Well, that really is a good point, and I  
11                  think we all should be careful to define our  
12                  terms.  So, if we look at the literature on this  
13                  issue, there's probably three major ways that  
14                  people have defined these terms.  One would be by  
15                  the subjective sorts of attractions that a person  
16                  is experiencing.  In other words, you could ask  
17                  me, "Do you feel sexually attracted to women or  
18                  to men," and based upon those attractions, we  
19                  could say something about whether I should be  
20                  thought of as homosexual or heterosexual.  That's  
21                  one way.

22                  A second thing that people have looked  
23                  at is behavior.  Some people have said, "Well,  
24                  let's just see which gender of individual a  
25                  person has been involved with sexually, and that



1 will be the definition." I don't find that a  
2 very good one, and I can get into that later, if  
3 you want to ask, but to be complete here, that's  
4 a second way, is looking at behavior, that this  
5 has been identified.

6 The third way that it's been identified  
7 is simply by asking the person how they  
8 self-identify. In other words, you don't  
9 necessarily ask them what attractions they are or  
10 aren't experiencing. You don't ask them how  
11 they've behaved. You just say, "Tell me what you  
12 consider yourself to be." And the person may say  
13 homosexual, they may say bisexual, they may say  
14 heterosexual. So self-identification is the  
15 third way in which that's often done.

16 Q. Okay, using those three definitions, is  
17 there any evidence that a parent's  
18 self-identified sexual orientation can influence  
19 a child's sexual orientation?

20 A. Certainly not the child's self-  
21 identified orientation. In other words, children  
22 who are self-identifying, as I just said, as gay  
23 were often raised in families where the parents  
24 were self-identifying as heterosexual. So the  
25 answer would be no, if we look at the

1 self-identity of what somebody says.

2           It is a little bit different if we look  
3 at talking about experiencing feelings or  
4 considering acting on feelings. For example,  
5 there is some evidence out there that suggests  
6 that children who are raised in a gay household,  
7 if they're having gay feelings, seem more willing  
8 to express and acknowledge them. So, in talking  
9 about those attractions, they seem more willing  
10 to do that if raised in a gay environment.

11           And secondly, children raised in a gay  
12 environment, as opposed to in a heterosexual  
13 environment, seem more willing to consider acting  
14 on those feelings.

15           Q. And to be clear, is there any evidence  
16 that a child's attraction is actually influenced  
17 by the parents' sexual orientation?

18           A. Again, I -- let me just make it clear.  
19 This is a little bit difficult, for the following  
20 reason. Number one, we only know about an  
21 attraction if someone is willing to talk about  
22 it. So, to be more accurate, we know what they  
23 say, rather than necessarily know what they're  
24 feeling.

25           But the other thing that is difficult

1           and the reason I stopped, just to make clear, we  
2           also, as I talked about earlier, have to know  
3           about nature or nurture. So, if you're asking me  
4           about environmental influences affecting whether  
5           a child considers himself to be gay or straight,  
6           I do not believe there's any evidence to support  
7           that, but there is some evidence suggesting that  
8           there may be some degree of genetic or biological  
9           transmission when it comes to homosexuality, and  
10          so if, for example, there are more children  
11          raised in a homosexual environment saying that  
12          they have homosexual attractions, unless these  
13          kids have not had any biological ties with the  
14          parents, one cannot rule out that that is indeed  
15          actually happening, but may be because of  
16          biological rather than environment factors. So I  
17          hope that's clear. It's a little complicated,  
18          but if I haven't been clear, just --

19                 Q. Yes, thank you for clarifying that.

20                 Thank you.

21                         Are you surprised that children raised  
22                         by gay parents are more likely to admit  
23                         acknowledging or acting on gay feelings, if they  
24                         have them?

25                         A. You say surprised. I mean, that's kind

1 of a wide term. It's not unexpected. In other  
2 words, you know, children want to be safe, and so  
3 if a child is in an environment where they're  
4 concerned about whether acknowledging these  
5 feelings will be dealt with in a supportive way,  
6 they're perhaps going to be less likely to want  
7 to talk about it. If a child is in a gay  
8 environment, where they've had reason to believe  
9 that talking about it will be dealt with in a  
10 more supportive fashion, then it would seem to me  
11 that they'd be more likely to be willing to talk  
12 about it.

13 So I'm speculating a little bit, because  
14 your question, I think, asked me to do that, but  
15 I don't find it unexpected, given what might  
16 influence what a child is willing to say in a  
17 particular environment.

18 Q. Now, you've referred to studies that  
19 have suggested that children who have been raised  
20 by gay parents may be more likely to acknowledge  
21 homosexual feelings than kids raised in a  
22 heterosexual home. Were those studies done with  
23 adopted children?

24 A. No, and that's really the point I wanted  
25 to make earlier, that some of these studies, for

1           example, were done on lesbian women who were  
2           raising children, but in many cases, it was their  
3           own biological child, and so any conclusions from  
4           that kind of research, it wouldn't be possible to  
5           tease out the role of nature versus nurture.  
6           What would have to be done to really address that  
7           issue is to find a group of individuals who are  
8           raising children where there's absolutely no  
9           biological tie. That's the only way that one  
10          could tease that out.

11                 Q. In your professional opinion, at this  
12           point in time, is there a consensus within the  
13           medical community about the cause or causes of  
14           homosexuality, or for that matter,  
15           heterosexuality?

16                 A. If I may, I'll answer it this way, and  
17           if I haven't answered, please pursue it, but  
18           where the consensus lies is actually in what  
19           homosexuality and heterosexuality are not due to,  
20           and the consensus is on two points, and I'll name  
21           them and then, if I can, explain it.

22                         There's a consensus that homosexuality  
23           and heterosexuality are not the consequence of a  
24           conscious decision that any of us make as  
25           children. There's a consensus on that. And

1           there's a consensus that homosexuality and  
2           heterosexuality is not a consequence of  
3           discussions and planning that is done by one's  
4           parents, and so just to be clear, if I may, I'll  
5           expand on each of those.

6           Q.    Sure.

7           A.    In terms of the first point, I'll use  
8           myself as an example again, but it will apply in  
9           a very broad way, obviously. I ask myself the  
10          question, was there some point in my life, during  
11          childhood, when I sat down and recognized that I  
12          had choices and said to myself, "Listen, do you  
13          want to grow up to be attracted to women? Do you  
14          want to grow up to be attracted to men? Do you  
15          want to grow up to be attracted to both men and  
16          women?" At no time did I sit down, weigh my  
17          options, and decide to grow up as a person who's  
18          attracted to women. In growing up, I discovered  
19          that that's the nature of my sexual makeup.

20          So the first point is, there's a  
21          consensus that none of us, as children, weigh our  
22          options and make a conscious choice about the  
23          nature of our sexual makeup. Now, later on,  
24          given my sexual makeup, I may choose how to act  
25          on that, but right now, we're just talking about

1 the development of that makeup in the first  
2 place.

3 The second point I made is that it's not  
4 a result of parents sitting down and having  
5 discussions and deciding. My parents, I suspect,  
6 at some point, had talked about what school they  
7 might want me to go to, or do they want me to  
8 start driving at 16 or not driving at 16. But I,  
9 as a parent -- I'll speak for myself, rather than  
10 my own parents -- never sat down with my wife and  
11 said, "Let's talk about whether we want our  
12 children to be gay or straight, and let's talk  
13 about what we need to do to ensure that they're  
14 going to be the way we want them to be."

15 So the other consensus, to stay on  
16 point, is that heterosexuality and homosexuality  
17 is not the result of a decision that becomes  
18 implemented as a consequence of the way in which  
19 parents are behaving.

20 Q. I, with the Court's permission, am going  
21 to hand you an article by Dr. Rekers that we've  
22 been referring to here, throughout the day, that  
23 was reprinted in the St. Thomas Law Review.

24 Thank you.

25 And I'm going to ask you to turn to Page

1           377.

2           A. Let me put on my reading glasses.

3                   And did you say 377.

4           MS. BASS: 377.

5           MR. ROSENWALD: 377, thank you.

6           MS. MARTIN: May I, for the record,  
7 just say I'm giving my copy to Chuck, so  
8 you know that I have a copy with me.

9           MR. ROSENWALD: Oh, thank you. I  
10 assumed that you still had yours. I  
11 apologize.

12           MS. MARTIN: No, no, don't  
13 apologize. I had it. I just wanted to  
14 do it for the record.

15           MR. FAHLBUSCH: I'm going to object  
16 to this line of questioning, Judge.  
17 This is far beyond the expert witness  
18 disclosure. Dr. Berlin hasn't been  
19 offered as a rebuttal --

20           THE COURT: I don't know what the  
21 question is yet.

22           MR. ROSENWALD: Thank you.

23           MR. FAHLBUSCH: Okay.

24 BY MR. ROSENWALD:

25           Q. Now, Dr. Rekers, one of the experts for



1 the State, has written that gay parents may cause  
2 their kids to be gay. His argument states, on  
3 Page 377, I quote, "In homes with a homosexually-  
4 behaving adult, children are more likely to  
5 experience distress and associated harm of an  
6 ill-timed sex education, that is not timed to  
7 match the psychosexual development need of the  
8 child, but instead exposes the child to  
9 information about males engaging in oral sex and  
10 inserting penises into rectums at formative ages,  
11 when those mental images can become strongly  
12 associated with sexual arousal patterns,  
13 predisposing the child to developing anxiety  
14 about sex, a confused sexual identity, or  
15 homosexual behavior. Knowledge of specific  
16 abnormal or deviant sexual practices is more  
17 safely introduced after the child has had the  
18 opportunity to develop a stable and secure gender  
19 identity and psychosexual identity," end quote.

20 What is your professional opinion on  
21 this argument?

22 A. Well, two points, I'll make. First of  
23 all -- and again, I want to stay on focus. We're  
24 talking about the development of homosexual or  
25 heterosexual interest. I can assure you that I

1 did not become heterosexual after learning from  
2 my heterosexual parents about penile-vaginal  
3 intercourse, about whether or not my mother and  
4 father were having oral or anal sex. I mean, for  
5 goodness sakes, in either a homosexual or a  
6 heterosexual environment, children aren't  
7 thinking about those sorts of things. I lived  
8 with my parents, I loved my parents, but they  
9 never discussed with me what they did in bed, nor  
10 did I ever think about that as a young child.

11 I became aware of the fact of being  
12 attracted to females, and it had nothing to do  
13 with my parents either telling me or not telling  
14 me these sexually explicit details which I think  
15 we all agree, in either a heterosexual or a  
16 homosexual environment, children shouldn't be  
17 provided with before they're at an age where it's  
18 appropriate.

19 The second point I make, for purposes of  
20 completion, is that if we really did believe that  
21 this is how children developed their sexual  
22 makeup, presumably people who very much want  
23 their children to be heterosexual should, very  
24 early on, be showing them pictures in Playboy and  
25 Hustler and letting them know about dildos and so

1           on. So is this is just -- I don't want to in any  
2           way disrespect, but this is very far removed from  
3           anything that resembles the knowledge base that  
4           we have about how each of us develops our  
5           particular sexual makeup. It doesn't -- It  
6           doesn't make any sense at all.

7           Q. Is there any evidence to suggest that  
8           gay people would talk to their kids about sex  
9           earlier or inappropriately, whereas heterosexuals  
10          would not?

11          A. I know of no evidence of that.  
12          Obviously, any parent should be responsible,  
13          whether gay or heterosexual, and none of us, as  
14          parents, should be talking about these kinds of  
15          specific details with children who aren't at a  
16          developmental age where they're ready for that.  
17          But that's not a gay/homosexual/heterosexual  
18          issue. That's a responsible parent issue.

19          Q. Does Dr. Rekers cite any authority for  
20          the assertion that gay people would be more  
21          likely to inappropriately discuss sex than  
22          straight people?

23          A. Well, I mean, I want to be fair. You've  
24          just put this in front of me. I have read it,  
25          but certainly there's not a single reference in

1 the paragraph that we just read. So, to the  
2 extent that that talks about, has he referenced  
3 any body of knowledge, no, there's no reference  
4 listed.

5 Q. Based on this argument, how would you  
6 rate Professor Rekers' understanding of the  
7 etiology of sexual orientation?

8 A. Well, again, I don't know the gentleman  
9 and I don't want to go too far with this, but I  
10 think a fair way I could answer this is, if I --  
11 and I submit questions for examinations as a --  
12 you know, as someone who teaches in a medical  
13 school, and so on. If I had submitted as a  
14 question, to be answered in terms of a paragraph,  
15 to talk about the factors that have been shown to  
16 be important in how each of us develops our own  
17 particular sexual makeup, this sort of an answer  
18 wouldn't have passed the exam.

19 Q. I'm finished with that article now.

20 Turning to a slightly different topic,  
21 does an adult's attraction to people of one sex  
22 or the other change over the course of a  
23 lifetime?

24 A. Not ordinarily. I mean, I've been  
25 attracted to women for as long as I can remember,

1           and it's hard to imagine that at some point I'm  
2           going to turn and become gay.  But for sake of  
3           completion, there are some exceptions to the  
4           rule.  I mean, people who develop Alzheimer's,  
5           for example, where there's actually brain injury,  
6           there can be effects on -- traumatic brain injury  
7           sometimes does that.  Sometimes child sexual  
8           abuse can cause all sorts of serious problems,  
9           including confusion and difficulties in the  
10          sexual arena.  But absent those extreme  
11          circumstances, in general, we're all aware of who  
12          it is we're attracted to from a very young age,  
13          and it doesn't change.

14                 Now, the other point I should add, of  
15          course, is that some people are aware from a very  
16          young age that they are bisexual, they are  
17          attracted to adults of the same and opposite  
18          gender, and over time, what kind of relationship  
19          that person is in may change.  But for those who  
20          are exclusively homosexual, they're not very  
21          likely, at the age of 60, to suddenly become  
22          straight, and for those of us who are  
23          heterosexual, we're not very likely, at some  
24          point, to suddenly flip.  That just is not the  
25          way it ordinarily works.

1           Q. Finally, to sum up this topic, is it  
2           your expert opinion that environmental factors  
3           associated with a parent's sexual orientation are  
4           likely to result in an adopted child eventually  
5           self-identifying as gay?

6           A. No.

7           Q. Thank you.

8           I now want to ask you some questions  
9           about the relationship between being homosexual  
10          and the sexual abuse of children. Earlier in  
11          your testimony, you defined pedophilia as a  
12          craving to have sex with a child; is that right?

13          A. Well, I'm not sure I used the word  
14          craving. I talked about strong urges and  
15          fantasies, but craving is an acceptable word, as  
16          well.

17          Q. Are there various types or subtypes of  
18          pedophilia?

19          A. Yes, there's a couple of ways of  
20          dividing the cake with pedophilia, if I can put  
21          it that way. One is based on the gender of child  
22          towards whom the person is attracted, and so  
23          we're usually talking about a man with  
24          pedophilia. Again, there are some exceptions,  
25          but it's usually a man, and so we can talk about

1 a man who's attracted to boys. That would be  
2 same-gender pedophilia. A man who's attracted to  
3 girls would be opposite-gender pedophilia. A man  
4 who's attracted to both boys and girls would be  
5 both-gender pedophilia. So that's one way of  
6 dividing the cake.

7 The other way of dividing the cake with  
8 pedophilia is in terms of whether or not the  
9 person who has the disorder is attracted only to  
10 children, or, alternatively, has some degree of  
11 attraction to adults in addition to having a very  
12 strong attraction to children.

13 If a person is attracted -- who has  
14 pedophilia, is attracted only to children, that's  
15 the exclusive form of pedophilia. In other  
16 words, they're attracted exclusively to children.  
17 In the other form, where there is some degree of  
18 attraction to adults, it's the nonexclusive form  
19 of pedophilia, because again, they're not  
20 attracted exclusively to children, they have some  
21 degree of attraction to adults, either male or  
22 female, but the fact they have that attraction to  
23 adults doesn't erase the fact that they're still  
24 having these cravings, these attractions for  
25 children that are very different from what the

1 rest of us experience.

2 Q. Let's say you have a new patient in your  
3 clinic, and he's a man who has sexually abused a  
4 boy. In your clinical experience, can that fact  
5 alone accurately predict the sorts of adults  
6 towards whom that man is sexually attracted?

7 A. No, absolutely not. Unless I ask him,  
8 knowing that he's been involved sexually with a  
9 boy doesn't tell me, first of all, is there any  
10 attraction to adults at all. I mentioned there's  
11 the exclusive form of pedophilia, so if this was  
12 the exclusive form of same-gender pedophilia, he  
13 wouldn't be attracted to any adults. And if it's  
14 the nonexclusive form, I don't know without  
15 asking him, even though he's been involved with  
16 boys, whether his adult attraction is to women or  
17 men. Sex isn't always about logic. So, until I  
18 either ask him or there's some technologies I can  
19 use to assess that, knowing that he's been  
20 involved with a boy just tells me that he's been  
21 involved sexually with a boy.

22 Q. Now let's look at it from the other  
23 side. If you learned that a man is married and  
24 is sexually active with his wife, does that tell  
25 you anything about whether he is going to be



1 sexually attracted to his sons?

2 A. No, it doesn't, and in fact, clearly, I  
3 would be making a mistake to assume that a  
4 married man who's sexually active with his wife  
5 couldn't possibly be a threat to his sons,  
6 because tragically, there are numerous documented  
7 instances of men who were heterosexually active  
8 with women, who unfortunately end up sexually  
9 abusing a boy.

10 So, again, the answer there, until I get  
11 more information, is that I can't come to  
12 conclusions prematurely.

13 Q. You just defined for us the exclusive  
14 form of pedophilia. Just to be entirely clear,  
15 is a man who is attracted exclusively to boys  
16 correctly called a homosexual?

17 A. No, absolutely not, because by  
18 definition, that man has absolutely no attraction  
19 sexually to adult men, so he clearly is not  
20 homosexual.

21 Q. If a man had sex with a boy, would it be  
22 correct to consider that to be a problem of  
23 homosexuality?

24 A. No. I mentioned earlier some of the  
25 work I did with the Catholic Church, and they

1           made an awful mistake there. I mean, when it was  
2           clear that a number of priests had become  
3           involved sexually with boys, at one point the  
4           Church was thinking that it had a problem of  
5           homosexuality. The problem it was having was of  
6           child sexual abuse, and in some cases pedophilia,  
7           and that's what they failed in a timely way to  
8           appreciate. It was never a problem of  
9           homosexuality. It was child abuse and  
10          pedophilia, and that's a really important point  
11          that they missed early on.

12                 Q. Now, you've been using the terms  
13           same-gender pedophilia and different-gender  
14           pedophilia. Are other terms sometimes used  
15           instead of those?

16                 A. Yes, in the literature. The DSM is  
17           using those because I think it does avoid  
18           confusing the different variants of pedophilia  
19           with either heterosexual or homosexual adult  
20           attractions, but if you read a lot of the  
21           literature, instead of talking about same-gender  
22           or opposite-gender or both-gender pedophilia, it  
23           talks about heterosexual, homosexual or bisexual  
24           pedophilia. I prefer to stick to the term same,  
25           opposite or both, because I think it avoids a lot

1 of confusion.

2 Q. But just to be clear, what term does the  
3 DSM use?

4 A. The DSM also avoids the confusion. The  
5 DSM, when it talks about pedophilia, says to  
6 specify whether it's same-gender attractions,  
7 opposite-gender attractions, or both-gender  
8 attractions.

9 Q. In your expert opinion, are gay people  
10 more likely to sexually abuse children than  
11 heterosexuals are?

12 A. No.

13 Q. In your expert opinion, are gay people  
14 more likely to be sexually attracted to children  
15 than heterosexuals are?

16 A. No.

17 Q. In your expert opinion, are gay people  
18 more likely to sexually abuse adolescents?

19 A. No.

20 Q. In your expert opinion, are gay people  
21 more likely to be attracted to people under the  
22 age of consent?

23 A. I think you're asking the same question,  
24 but the answer is still no.

25 Q. Is there any credible physiological

1 scientific evidence that looks at this question  
2 of whether gay people are generally more  
3 attracted to younger age persons than are  
4 heterosexuals?

5 A. Yes, there is, and if I may, in terms of  
6 what I've talked about, looking objectively at  
7 evidence, this is very important, so if I can  
8 expand on my answer, I would appreciate the  
9 opportunity.

10 A well-respected researcher named Kurt  
11 Freund -- he started out in Czechoslovakia and  
12 then came over to Canada -- was instrumental in  
13 developing a device known as the penile  
14 plethysmograph, and what I'd like to do is  
15 explain it, and if you'll bear with me, I will  
16 make sure that I've answered your question.

17 The penile plethysmograph was an attempt  
18 to try to be able to look objectively, in males,  
19 at both the gender of partner and the age range  
20 of partner that men are attracted to, and so it's  
21 a very simple concept. What Freund would do  
22 would be to show pictures of adults of different  
23 ages, male and female, children of different  
24 ages, male and female, to men who had a device  
25 that was around the penis, that simply measured

1           the extent to which they were getting an  
2           erection, and the device was hooked up to a meter  
3           that could show a correlation between what they  
4           were looking at, men, women, boys, girls, and the  
5           degree of erection that they had gotten.

6                         So that was, I think, the pioneering  
7           work that Freund had done. That then allowed two  
8           sorts of objective questions to be answered that  
9           I think are very pertinent to what we're  
10          discussing today. The first question was, is  
11          there any difference between heterosexual and  
12          homosexual men in terms of their attraction to  
13          adolescents and to children.

14                        Now, how did Freund do this? And he did  
15          it several times, and replicated it. He'll take  
16          this, the penile plethysmograph -- and let's  
17          start with a group of heterosexual men. So these  
18          are heterosexual men. They show a lot of  
19          arousal, physiologically, in looking at images of  
20          women. And then, as you get younger and younger,  
21          adolescent women are still attractive -- I mean,  
22          I can find an attractive 15 or 16-year-old to be  
23          attractive. I'm not going to act on it, but  
24          that's there. So as you got into teenage years,  
25          there wasn't quite as much attraction as adult

1 women, but it came down, but then again, still in  
2 this heterosexual curve, the lower you got -- you  
3 get in the, you know, six, seven, eight-year-old  
4 girls -- heterosexual men were not showing  
5 attraction to that age, and then as you continued  
6 over on this heterosexual group, to little boys  
7 and to teenage boys and to men, the curve still  
8 stayed flat, because they were heterosexual.  
9 They weren't attracted to anyone of the same  
10 gender.

11 Now, using Freund's technology, the same  
12 thing could be approached, done on a group of  
13 homosexual men. Again, these men showed high  
14 attraction to adult males. They're homosexual.  
15 They came down to adolescents, there was somewhat  
16 less attraction there, analogous to what was  
17 happening with the heterosexuals. As they got to  
18 young boys, just as had been true with  
19 heterosexuals, who'd lost the interest in young  
20 girls, the homosexual men lost an interest in  
21 young boys, and then moving over to females, they  
22 didn't pick up an interest with little girls or  
23 women, because they were homosexuals.

24 So the point is that these curves were  
25 mirror images of themselves, providing objective

1           physiological evidence that homosexual men were  
2           no more attracted to boys than were heterosexual  
3           men to girls.

4                       Now, the other thing that Freund's  
5           research did -- because now you have this  
6           baseline on what was homosexual and heterosexual  
7           arousal patterns -- it enabled researchers to  
8           then look at a group of men who had actually been  
9           involved with boys, to see whether or not these  
10          men showed arousal, men who had been involved  
11          with boys, to adult males. And what they could  
12          show, using Freund's penile plethysmograph, this  
13          technology -- this gives one study, there have  
14          been others, but one study in particular -- the  
15          bulk of men who'd been involved sexually with  
16          boys had absolutely no attraction whatsoever to  
17          adult males. So, even though they'd been  
18          involved with boys, two thirds of these men who  
19          had been involved with boys in this study had  
20          absolutely no evidence that they were attracted,  
21          using their own physiology, to adult men.

22                      Freund could then -- I'm sorry, this is  
23          follow-up on Freund's research. But it was then  
24          possible to also determine, what about men who  
25          did have some degree of sexual attraction, either

1 to adult men or to adult women? They were either  
2 heterosexual, homosexual or bisexual. Did they  
3 show the typical pattern that had been shown by  
4 Freund for heterosexual and homosexual  
5 individuals? In other words, were these either  
6 heterosexual people who, like most heterosexuals,  
7 weren't attracted to very young children? Were  
8 these homosexual people, who like most homosexual  
9 people, weren't attracted to very young children?  
10 No. These were people, even though they had some  
11 attraction either to men or women or both, had a  
12 heightened attraction to young boys.

13 In other words, even though their adult  
14 attraction was either heterosexual, bisexual or  
15 homosexual, they differed from most homosexuals  
16 or heterosexuals in that they had a heightened  
17 attraction to children, indicating that the  
18 problem in terms of why they were abusing these  
19 boys wasn't anything to do with their attraction  
20 to adults. The problem was they had pedophilia.  
21 They had a heightened attraction to little boys.  
22 And depending upon what their adult orientation  
23 was, they were men with a heightened attraction  
24 to little boys who also had some degree of  
25 attraction to women, or they were men with a



1           heightened attraction to little boys who had a  
2           heightened attraction to men, but the issue was  
3           pedophilia, it wasn't adult homosexuality or  
4           heterosexuality, and this was very objectively  
5           demonstrated by looking at their own  
6           physiological responses.

7           Q. Has this physiological research been  
8           replicated with the same results?

9           A. Yes. Freund, for example, I think  
10          published the first study, where I've described  
11          these two curves, in the British Journal of  
12          Psychiatry. I think it was back around 1973. He  
13          repeated this study, oh, around 1984, where he  
14          tried to refine it a little bit, to see if he  
15          could actually show an aversion, sexually. I  
16          won't go into all the details, I don't think  
17          they're relevant, but in this study 15 years  
18          later, he had an entirely different group of men.  
19          He had a group of homosexual men, he had a group  
20          of heterosexual men who had not been sex  
21          offenders, another group of heterosexual men who  
22          were offenders against adults but not children,  
23          and again, these curves of showing that in the  
24          homosexual population and the heterosexual  
25          population, that there tended to be a dropoff as

1           you got to the younger ages, were again present.  
2           So it has been replicated, it is objective, and  
3           again, there's no one study that's "the study,"  
4           but certainly, the contribution that Freund made,  
5           in my judgment, was analogous to when we move  
6           from assuming the world must be flat to saying,  
7           "Is it really? We'd better take a look."

8                         Prior to Freund getting into this,  
9           another researcher named Nicholas Groth, who I  
10          should credit also -- it was assumed by most  
11          people that if, for example, a boy had been  
12          sexually abused by a man, the man must be  
13          homosexual. The importance of both Freund's work  
14          and Dr. Groth, who I mention also, was that he  
15          wanted to get away from a theoretical view of  
16          what the world was presumably like, to actually  
17          looking at evidence.

18                        So although, you know, there's not one  
19          study that's the definitive study, to the extent  
20          that these researchers insisted on moving to  
21          looking objectively and not just having a world  
22          view that wasn't based on science and knowledge,  
23          I think these were really a groundbreaking pieces  
24          of research and ideas.

25                        Q. Are you aware of any studies that have

1           evaluated men who actually abused children to  
2           determine how many of them were attracted to  
3           adult men, as well?

4           A. Yes, and I think perhaps you are -- I  
5           talked about Dr. Groth. I think that may be --  
6           this may be a chance where I can talk about his  
7           work. He was someone -- he worked for many years  
8           in Somers Connecticut Prison, with sex offenders,  
9           but even before that, he'd worked in  
10          Massachusetts, and so he'd had an opportunity to  
11          see lots of sex offenders, including those who'd  
12          offended against children, and in one of his  
13          early pieces of work, back in the early '70s, he  
14          just decided, as best he could, to not make  
15          assumptions that the men who he was seeing in  
16          prison, who had been involved with boys, were  
17          necessarily homosexual, but to try to look at  
18          their history, to see if he could find evidence  
19          that they'd been active with adults sexually, or  
20          since he was seeing them in prison, where they  
21          were being treated, to ask them about whether  
22          they'd experienced attractions. And in this  
23          large group of 175 men, the overwhelming majority  
24          who had been involved with boys, he was not able  
25          to find evidence of homosexuality. In fact, none

1 of them in that study were found to be  
2 exclusively homosexual.

3 Now, it's an early study. I think there  
4 are some methodological problems. But it's the  
5 one that set the foundation, along with the work  
6 I just talked about by Dr. Kurt Freund, for  
7 saying, "Let's look at this empirically," and  
8 certainly, not to discard his data, when he  
9 looked at this large group of men and looked at  
10 the ones that had been involved with boys, the  
11 overwhelming majority were not homosexual, if by  
12 homosexual we mean a history or an acknowledged  
13 attraction to adult men.

14 Q. Now, we've talked about this study  
15 looking at it from the point of view of the  
16 abuser. Are you aware of a study by Carole Jenny  
17 that looked at the question from the opposite  
18 point of view and surveyed children who have  
19 actually been sexually abused, to determine  
20 whether their abuser was gay?

21 A. Yes. Jenny was working in a clinic that  
22 evaluated abused children, and did a chart  
23 review, was able to look at children who'd been  
24 molested by men, to try to see if there was any  
25 information to suggest that these were gay men.

1                   The way in which she would go about  
2                   finding this out would be to try to get some  
3                   sense of history. For example, was the man  
4                   married to the mother who was the -- the mother  
5                   of the child who'd been abused, which would  
6                   document some evidence of heterosexual  
7                   involvement, things of that nature.

8                   So I want to acknowledge there's some  
9                   shortcomings to that study, because Jenny did not  
10                  actually go out and interview all of these men  
11                  and find out from them their history, in terms of  
12                  if they had homosexual contacts, so there are  
13                  some shortcomings, but to the extent that the  
14                  study is of value, certainly she again found that  
15                  there were many instances where she couldn't  
16                  document, even though the victim was a boy, that  
17                  this had been perpetrated by a man who was gay,  
18                  and certainly she was able to document that many  
19                  of these men had a history of adult  
20                  heterosexual involvements.

21                  Q. How many participants were in that  
22                  study? Do you remember?

23                  A. Well, it started with a large number,  
24                  but they had to exclude people, because some of  
25                  the things weren't substantiated and so on. As I

1 recall, there may have ended up about 226, or  
2 something like that, that ultimately got  
3 included, but I'm going by memory. If it's  
4 really important, we can pull out the study and  
5 look exactly.

6 Q. And do you remember how many of the  
7 abusers in that study turned out to be gay?

8 A. Well, again, I don't think she was able  
9 to identify anybody who was clearly gay, in that  
10 particular study, using that method. But I don't  
11 want to overstate it, because there were some  
12 limitations to it, but nonetheless, to answer  
13 your question, she wasn't identifying gays in  
14 that study.

15 Q. We understand. Thank you.

16 Were the studies that you just referred  
17 to in the last couple of questions, published in  
18 well-respected, peer-reviewed journals?

19 A. Certainly the Jenny one was. Groth,  
20 Freund -- we talked about several. I talked  
21 about a follow-up study, which I think may have  
22 been Barbary and Marshall. All of those studies  
23 were in peer-reviewed journals.

24 Q. Were the authors of those studies  
25 considered to be respected researchers in their

1 field?

2 A. Yes.

3 Q. And were their findings considered to be  
4 significant?

5 A. They were, and again, I don't want to  
6 belabor the point, but I think the particular  
7 significance, particularly of Groth and of  
8 Freund, were their insistence on not assuming  
9 that if a child -- if a boy had been abused, that  
10 it must have been by a homosexual man, their  
11 insistence that we begin to look at this  
12 empirically. So, in that sense, they were  
13 extremely significant.

14 Q. Do these studies meet the standards for  
15 reliable research in your field?

16 A. Yes, I believe they did.

17 Q. One of the State's experts in this case  
18 has opined that homosexuals are at a higher risk  
19 of committing child sex abuse than heterosexuals.  
20 He relies on a large six-city study as support  
21 for that claim. Are you familiar with that?

22 A. I believe the study he is referring to  
23 is by Cameron and Cameron, so I believe I am  
24 familiar with it.

25 Q. In your expert opinion, does that study

1 show that homosexuals are at a higher risk than  
2 heterosexuals of committing child sex abuse?

3 A. No, I don't believe so. Even though, I  
4 mean, it sounds like a big study, and it was, to  
5 be fair, I mean, six cities, but in five of the  
6 six cities, the researchers never asked if the  
7 parents -- if parents were gay. In the sixth  
8 city, which was Dallas, if I remember correctly,  
9 they did. And in terms of this particular issue,  
10 in that study, what they reported upon was that  
11 they discovered a total of 17 individuals who had  
12 said they had come from gay families, and five of  
13 those 17 had reported that -- that they had  
14 been -- I'm sorry, let me get this clearer.  
15 There were 17 who reported that they came from  
16 gay families. That part is correct. And then  
17 five reported that they were homosexual in their  
18 makeup and they said -- let me pause for a  
19 minute. I'm getting tired, and I don't want to  
20 get this wrong. It's been a long time since I  
21 read this.

22 Could you ask the question again, just  
23 to make sure I'm clear, because I'm getting off,  
24 and I don't want to say something that isn't  
25 right.



1           Q. Sure. Does that study show that  
2           homosexuals are at a higher risk than  
3           heterosexuals of committing child sex abuse?

4           A. All right, thanks, and that gets me back  
5           on track. I apologize.

6                        So he'd found 17 people who were  
7           identifying as coming from gay families, and five  
8           of them had volunteered they'd been abused, so he  
9           says five out of 17, and if you divide that,  
10          there it is, a 29 rate of abuse in gay families.  
11          The problem was, we don't know if that  
12          denominator was 17 or 20 or 40, because they  
13          didn't really ask about, in a consistent way, who  
14          had gay parents.

15                       To give an analogy, if someone did a  
16          study, and let's say 10 people volunteered that  
17          they had heterosexual parents and five of them  
18          volunteered that they had been sexually abused,  
19          50 percent. I'd say, "Boy, that's really  
20          evidence that coming from a heterosexual family  
21          is marked risk of being sexually abused." No. I  
22          don't have enough data. It's not a  
23          representative sample. It's most likely a  
24          sampling error.

25                       And so, again, there was a lot of

1           descriptive data in the Cameron study. In that  
2           study, there were no statistical analysis to say  
3           if these were statistically significant findings.  
4           But most importantly, assuming that five out of  
5           17 was the correct proportion, when it could have  
6           been five out of much more, or a little bit more  
7           or a lot more, and they had no way of knowing, is  
8           simply not good science and not a good basis for  
9           coming to conclusions.

10           Q. Have the conclusions of that research  
11           been generally accepted, professionally?

12           A. No, to the contrary, they've been  
13           criticized quite a bit, professionally.

14           Q. Do you know if the data has been called  
15           misleading.

16           MR. FAHLBUSCH: Objection, hearsay.

17           MR. ROSENWALD: Is --

18           THE COURT: I'll allow it.

19           MR. ESSEKS: She said she'll allow  
20           it.

21           THE COURT: I'll allow it.

22           MR. ROSENWALD: Thanks.

23           BY MR. ROSENWALD:

24           Q. Go ahead.

25           A. Oh. Well, I know that Dr. Cameron was

1           actually censored -- censured by a professional  
2           body, because they felt that his conclusions were  
3           not justified by the data. That's the extent of  
4           what I know.

5           Q. Dr. Rekers and Dr. Schumm, who are  
6           experts for the State in this case, rely on  
7           several other articles by Paul Cameron or his  
8           son, Kirk, as authority for their argument that  
9           gay people are more likely to sexually abuse  
10          children than straight people. What is your  
11          response to those other articles?

12          A. Well, most of what I've seen -- and we  
13          should be specific. I'm talking -- because  
14          "other articles" doesn't mean anything. I've  
15          read quite a bit by Dr. Schumm and Dr. Rekers,  
16          and their conclusions, and I think they'll  
17          acknowledge this, are based on making a certain  
18          assumption, and the assumption that underlies all  
19          their conclusions is that if a boy was, for  
20          example, sexually abused by a man, that that man  
21          must be homosexual. They base it just on looking  
22          at behavior.

23                         In other words, you could start out  
24          being a man in a heterosexual setting. You abuse  
25          a boy. That becomes homosexual abuse. You start

1 out a man in a heterosexual environment, and you  
2 abuse a girl, and that becomes heterosexual  
3 abuse. They're redefining after the fact,  
4 according to the gender of the child, whether  
5 this is an adult heterosexual or homosexual  
6 person, and even if the man was very active  
7 sexually with his wife, you don't know that he's  
8 ever, ever had a sexual liaison with an adult  
9 man, they are choosing to define that as an  
10 example of homosexual abuse. Now, I don't want  
11 to repeat everything I've said, but that  
12 assumption, there's clear evidence from data,  
13 absolutely cannot be made. And if you take that  
14 assumption away, that's the foundation upon  
15 which, in my reading of it, virtually every  
16 conclusion that Dr. Rekers and Dr. Schumm comes  
17 to, and so given that there's clear evidence that  
18 it is not proper to make that assumption, I think  
19 much of what they contend loses its weight.

20 Q. All the other articles relied on by  
21 Dr. Rekers and Dr. Schumm, authored by the  
22 Camerons, were those that you looked at with  
23 regard to the opinions in this case -- were they  
24 published in peer-reviewed journals?

25 A. Well, again, I want to be careful.



1           distress or the degree of troubledness of the  
2           family, and I think I remember reading Dr. Rekers  
3           himself concedes that. In other words, there is,  
4           at first blush, a difference in terms of foster  
5           families and non-foster families, but if you then  
6           equate those families in terms of the amount of  
7           disruption that's in the family, it's really the  
8           disruption that's the predictor of the effect on  
9           the child, not whether it's a foster home or not.  
10          In a good foster home, children do just as well  
11          as in a regular good home. It's the disruption  
12          in foster homes that's really the key issue.

13                 Q. An expert for the State has also argued  
14          that gay men are more likely to have been  
15          sexually abused as children. He also notes that  
16          people who were sexually abused as children are  
17          more likely to grow up to become abusers  
18          themselves. He then asserts that gay men are  
19          more likely to be child sex abusers, because they  
20          were more likely to have been abused as children.

21                 My question for you is whether most men  
22          who have been sexually abused as children go on  
23          to become sexual abusers themselves.

24                 MR. FAHLBUSCH: Objection, leading,  
25          and counsel was testifying.

1                   MR. ROSENWALD: I'm laying a  
2                   foundation for my question. I --

3                   THE COURT: Go ahead. Overruled.

4                   THE WITNESS: Let me get this  
5                   question clear. Let me answer -- so I'm  
6                   not avoiding it, but I'd like to explain  
7                   the answer.

8                   BY MR. ROSENWALD:

9                   Q. Go ahead.

10                  A. The answer is no, but it's important how  
11                  we look at this. If we look at a group of  
12                  abusers and look backwards, a very significant  
13                  number of abusers in most of the studies that are  
14                  looked at were indeed themselves sexually abused.

15                  On the other hand, if we take a group of  
16                  children who have been sexually abused and do a  
17                  prospective study in which we look forward,  
18                  absolutely, the overwhelming majority of children  
19                  who are sexually abused do not go on to become  
20                  abusers. In fact, thank God -- and this is  
21                  wonderful news, often it's with the help of  
22                  children -- the overwhelming majority of children  
23                  who have been sexually abused go on to become  
24                  productive and good citizens.

25                  Now, I don't want to take away from the

1 fact that some were scarred and have serious  
2 problems, because this is an issue where nobody  
3 should fail to appreciate that. But the fact is  
4 when you look at a cohort of sexually abused  
5 children and follow them over time, it's only a  
6 very tiny percentage that go on to become sexual  
7 abusers.

8 Q. I have just a couple more questions.

9 Have any professional organizations  
10 issued a position statement regarding the  
11 relationship between homosexuality and child  
12 sexual abuse?

13 A. Yes. I believe the American Academy of  
14 Adolescent and Child Psychiatry, the American  
15 Psychological Association. There may be others.  
16 Those are two that I'm familiar with, and they  
17 indicated they did not feel there was a  
18 relationship.

19 Q. What is the significance of such a  
20 position statement?

21 A. Well, again, it's how much weight do you  
22 want to put on it. It's a consensus of opinion  
23 amongst people who clearly are well trained  
24 professionals. Certainly these are groups that  
25 are not going to be cavalier in their concern



1           about the welfare of children. They're groups  
2           who are able to study the research.

3                       So, to the extent that these are  
4           respected professional groups who have come to  
5           this consensus, I think some weight certainly  
6           needs to be given to their opinion.

7                       Q. If the State of Florida approached you  
8           and said they wanted to eliminate child sex  
9           abusers from the pool of adoptive parents and  
10          asked you to pick out one group of people to  
11          exclude from that pool, what group would you  
12          choose?

13                      MR. FAHLBUSCH: Objection. This  
14           issue is speculation and irrelevant.

15                      THE COURT: Sustained.

16                      BY MR. ROSENWALD:

17                      Q. Well, let me try it a different way. If  
18           you needed to exclude a group of people from the  
19           pool of adoptive parents to best guard against  
20           child sex abuse, would you pick homosexuals to  
21           exclude?

22                      MR. FAHLBUSCH: Same objection.

23                      THE COURT: I'll allow that.

24                      THE WITNESS: No. That would not  
25           be the group where there's evidence of

1 an increased risk.

2 MR. ROSENWALD: Thank you. That's  
3 all I have, Your Honor.

4 THE COURT: One question, Dr.  
5 Berlin. When -- exactly when was the  
6 homosexuality as a paraphilic disorder  
7 removed from the DSM?

8 THE WITNESS: I think it was 1973.  
9 I could be off by a year or two, but I  
10 think that was when.

11 THE COURT: Thank you.

12 Ms. Bass?

13 MS. BASS: No questions. Thank  
14 you.

15 THE COURT: Ms. Allen?

16 MS. ALLEN: No, Judge, I have no  
17 questions.

18 THE COURT: And whose -- Is it  
19 Mr. Fahlbusch today?

20 MR. MOYLAN: Yes.

21 CROSS EXAMINATION

22 BY MR. FAHLBUSCH:

23 Q. You know that homosexuality was listed  
24 as a mental disorder in the DSM at one time,  
25 correct, Doctor?

1 A. Yes. Yes, sir.

2 Q. And you don't know when it was removed?

3 MR. ROSENWALD: Objection.

4 THE WITNESS: Yes, I think I just  
5 answered the Judge, it was removed in  
6 1973.

7 BY MR. FAHLBUSCH:

8 Q. 1973, okay. Subsequent to that, was  
9 homosexuality mentioned under disorders?

10 A. There was a time period where a term was  
11 used called egodystonic homosexuality, and that  
12 referred to a small group of men who were  
13 homosexual, who were discomforted by the fact  
14 that they were homosexual. The profession still  
15 recognizes that group exists, and I've seen such  
16 people and have tried to counsel them, but the  
17 idea that because there's a small group who are  
18 dissatisfied should somehow lead to the  
19 conclusion that homosexuality, per se, should be  
20 seen as a disorder, that conclusion was never  
21 thought to be a valid one.

22 Q. Okay, and how long was that listed as a  
23 mental disorder?

24 A. I don't want to get -- I think it was a  
25 few years, but I'm not sure, so let me just

1 acknowledge that.

2 Q. Is it still listed as a mental disorder?

3 A. No. No, it's not.

4 Q. You mentioned that there is still, in  
5 DSM, a disorder that's entitled sexual disorder  
6 not otherwise specified, correct, Doctor?

7 A. Yeah, I think what I mentioned was  
8 paraphilic disorder not otherwise specified, but  
9 there's also one that says sexual disorder not  
10 otherwise specified. So there's a degree of  
11 flexibility there.

12 Q. Okay. Under that, the disorder I  
13 mentioned, sexual disorder not otherwise  
14 mentioned, is an example given, to your  
15 knowledge, of persistent and marked distress  
16 about sexual orientation?

17 A. I don't recall, but it may well be  
18 there.

19 Q. But you don't know?

20 A. I don't, but I would have no problems.  
21 I said I see such people, and I have no problem  
22 indicating, by using that term, that there is an  
23 issue, but that's not the same, I'm sure you  
24 would agree, as saying that homosexuality is a  
25 disorder.

1 Q. Do we know what causes people to develop  
2 one or another sexual orientation, Doctor?

3 A. There's some evidence about some factors  
4 that may play into it, but the simple answer is  
5 there's still an awful lot we don't know.

6 What I said we are clear on is the  
7 factors -- it's easier to be clear on what  
8 doesn't cause it than what does.

9 Q. Do we know that environmental factors  
10 play no role in it?

11 A. No. I think there are instances where  
12 environmental factors do, so no, I don't want to  
13 suggest there's never an environmental factor  
14 that plays a role.

15 Q. Is there currently discrimination in the  
16 present culture against persons who engage in  
17 homosexual conduct?

18 MR. ROSENWALD: Let me object.

19 This is -- He's not qualified --

20 THE COURT: I don't think that's  
21 his area of expertise.

22 I'm assuming I'm correct with that,  
23 Doctor?

24 THE WITNESS: I'd just as soon not  
25 answer that.

1 THE COURT: All right.

2 BY MR. FAHLBUSCH:

3 Q. Oh, you mentioned that there was at  
4 least an attempt not to be influenced by  
5 political considerations in determining what  
6 disorders are to be listed as mental disorders in  
7 the DSM, correct, Doctor?

8 A. Yes, that's correct.

9 Q. Are you a member of organizations that  
10 engage in political activism?

11 A. Let me think. No. I've occasionally  
12 made contributions to political candidates or to  
13 organizations that have particular political  
14 interests. I support Doctors Without Borders,  
15 for example, in trying to provide that kind of  
16 healthcare, but I'm not a member of any kind of  
17 advocacy groups that I can recall.

18 I had in the past -- to be complete, I  
19 had been a member of the ACLU. I don't think  
20 I've renewed that, but I didn't want to not say  
21 it.

22 BY MR. FAHLBUSCH:

23 Q. Are there any other such organizations  
24 that you have been a member of, Doctor?

25 A. I can't think of any that would be

1 relevant to what we're talking about.

2 MR. ROSENWALD: We'll send you a  
3 membership card.

4 BY MR. FAHLBUSCH:

5 Q. Now, you testified that there is some  
6 evidence that children raised by, I think it was,  
7 lesbian households, are -- have a greater  
8 willingness to acknowledge same-sex attraction;  
9 is that correct?

10 A. That's correct.

11 Q. And they also have a greater willingness  
12 to act on same-sex attraction?

13 A. Well, it's actually to consider acting  
14 on, and I don't want to mince words, but that was  
15 really what the research showed.

16 Q. Not whether or not they actually did  
17 engage in same-sex contact?

18 A. The research that I recall, and there  
19 may be others, I'm not suggesting that what  
20 you're saying might not be possible, but the  
21 research that I had read said they were more  
22 willing to consider it.

23 Q. I was a little confused in the research  
24 you went over by Freund and -- Groth, is that  
25 correct?

1           A. Those were two people that I mentioned,  
2           yes.

3           Q. Yeah. I followed your description of  
4           the mirror image --

5           A. Okay.

6           Q. -- graphs of homosexual and heterosexual  
7           men who are primarily attracted to adults.

8           A. Okay.

9           Q. I didn't understand the relationship or  
10          what evidence established a nonrelationship  
11          between the gender orientation of the person  
12          being tested and whether or not they were  
13          pedophiles. Were there -- were there mirror  
14          images between homo-- same-sex oriented  
15          pedophiles and heterosexually-oriented  
16          pedophiles, or what was shown by the research  
17          with regard to that, Doctor?

18          A. This is probably my fault. I can see I  
19          probably wasn't clear. I made the point that one  
20          of the particular significances of the Freund  
21          research is, it broke ground by giving a  
22          methodology and saying we have to look at things  
23          empirically. And the curves that I described,  
24          the mirror images, were from Freund's research,  
25          originally, that he'd published in 1973 in the



1 British Journal of Psychiatry, and there was a  
2 follow-up in '84 and so on.

3 Perhaps what I wasn't clear about is  
4 that I was saying that that then produced the  
5 foundation that allowed other researchers to do  
6 additional studies, and the study I'm actually  
7 talking about, and I think I wasn't clear on  
8 this, was done by two people called Marshall and  
9 Barbery, so let me make sure I spell that out.  
10 They had looked at 21 boys who'd been sexually  
11 abused. And then they were able to do the penile  
12 plethysmograph on the 21 men who had done the  
13 abuse.

14 What they were able to show was a couple  
15 of things: That in two thirds of those cases,  
16 that would have been 14 out of the 21 that had  
17 abused boys, on the penile plethysmograph, those  
18 14 men had absolutely no arousal to adult men.  
19 So that showed, using this technology, that even  
20 though they'd been with boys, they were not  
21 homosexual in terms of their adult orientation.

22 Now, what about the other seven men, the  
23 other seven who had abused boys? Those men,  
24 those seven, some of them showed arousal to males  
25 and/or females, so they did show that. But what

1           was then interesting is, when you looked at their  
2           arousal pattern to boys -- I mentioned in the  
3           original Freund data that normal homosexuals and  
4           heterosexuals were unaroused to boys -- these  
5           individuals had a higher arousal level to boys  
6           than they had either to adult women or adult men,  
7           and so this was demonstrating in a very objective  
8           way that these were men with a nonexclusive form  
9           of pedophilia, that even though they had  
10          attraction to men and women, they had a much  
11          stronger attraction to boys than to either of  
12          those adult categories, and so the problem wasn't  
13          homosexuality or heterosexuality; the problem  
14          was, they had a particular form of pedophilia, a  
15          heightened attraction to children. So that's  
16          what I thought was so important. Here we were  
17          looking objectively at physiology. It didn't  
18          depend on self-report and so on.

19                 Q. Of those seven, do you -- well, what  
20                 number showed attraction to adult women?

21                 A. Again, we can find that study if it's  
22                 important. I don't recall. I don't -- None of  
23                 them showed exclusive attraction to males. I  
24                 think that most of them were either bisexual, and  
25                 there may have been one or two that were simply

1           heterosexual, but I want to acknowledge, I don't  
2           remember for sure, so I could be off a little bit  
3           on that.

4           Q.   Also, 21 is a pretty small sample to  
5           draw population-wide conclusions, isn't it?

6           A.   Oh, that's true, but it's not too small  
7           a sample to refute the idea, that it is not  
8           acceptable to assume that because a man has had  
9           sex with a boy, he must be homosexual. That  
10          clearly refutes, that that assumption cannot be  
11          made -- not made accurately, at least.

12          MS. BASS: This is fresh water, if  
13          you want.

14          THE WITNESS: Thank you. Thanks.

15          MR. FAHLBUSCH: Can I have a  
16          moment?

17          (Discussion off the record)

18          BY MR. FAHLBUSCH:

19          Q.   You testified, I believe, that  
20          environmental factors are not shown to have an  
21          effect on sexual orientation?

22          A.   Well, I was more specific. I said that  
23          growing up in a homosexual environment was not  
24          shown to affect whether people self-identify as  
25          gay or straight. I think that's what I said.

1           Q. So -- so environmental factors might  
2 have an effect on sexual orientation?

3           A. Well, anything might. There -- but I  
4 indicated earlier, I think there are instances  
5 where it does. I mean, it's an environmental  
6 factor when somebody has a traumatic brain  
7 injury. There's biology, too, but there's also a  
8 life event. It's a biological -- it's an  
9 environmental factor when children are sexually  
10 abused, and I indicated that being a victim of  
11 sexual abuse can cause all sorts of confusion and  
12 difficulty sexually, but that's because you're  
13 sexually abused. That's a separate issue from  
14 homosexual versus heterosexual environment.

15           Q. Oh, well, on that, I recall that your  
16 testimony concerning the fact that although we  
17 determined -- we've determined that a high  
18 percentage of persons who become sexual abusers  
19 have been sexually abused, correct?

20           A. That's correct.

21           Q. But you also testified that the obverse  
22 was not necessarily true, that those persons who  
23 have been sexually abused, only a very low  
24 percentage become abusers?

25           A. That's correct.

1           Q. But given the obverse, isn't it true  
2           that a much higher percentage of persons who have  
3           been sexually abused become abusers than persons  
4           who have not been sexually abused?

5           A. Let me make sure if I understand this.  
6           I'm not sure I understand the question. I'm not  
7           trying to be difficult. I'm not sure that I  
8           understand.

9           Q. Okay, let me try to be clearer.

10          A. Okay.

11          Q. We have a population of persons who have  
12          been sexually abused.

13          A. Yes.

14          Q. We have a population of persons who have  
15          not been sexually abused.

16          A. Right.

17          Q. We have a certain percentage of each of  
18          those populations that at some point during their  
19          lifetime become child sexual abusers.

20          A. I'm with you.

21          Q. The percentage of those persons who have  
22          been sexually abused is much higher, isn't it?

23          A. I see where you're going, so is it -- if  
24          you took a group of people who have been sexually  
25          abused and a group who hadn't been, are there

1           likely going to be a higher percentage of abusers  
2           from the group who were abused than weren't, and  
3           the answer would be yes. Now, that might be a  
4           reason to say anyone who's sexually abused  
5           shouldn't, for example, be allowed to adopt, but  
6           in the real world, the percentage of sexually  
7           abused who are going to go on to abuse is so  
8           small that we'd have to question how much weight  
9           ought to be given to that.

10           Q. I think that the question I asked was,  
11           is the percentage higher, and I think your answer  
12           was yes.

13           A. Well, if you want -- fair enough. You  
14           know, I was trying to explain, but that's fair.  
15           If you want a yes or no answer, the answer is  
16           yes.

17           MR. FAHLBUSCH: No further  
18           questions at this time, Doctor.

19           THE WITNESS: Thank you.

20           THE COURT: Any redirect?

21           MR. ROSENWALD: Can we have one  
22           moment, Your Honor?

23           (Discussion off the record)

24           MR. ROSENWALD: That's all we have.

25           MS. COOPER: Thank you.

1 MR. ROSENWALD: Thank you, Dr.

2 Berlin. You're done.

3 THE WITNESS: Oh, thank you.

4 (Discussion off the record)

5 MS. BASS: Are you resting?

6 THE COURT: All right, we need you  
7 to rest.

8 MS. COOPER: Oh, sorry.

9 MR. ROSENWALD: Sorry.

10 MS. COOPER: Yes, we do.

11 THE COURT: All right. So, Ms.  
12 Bass, you'll call your witness.

13 MS. BASS: I will call the guardian  
14 ad litem. He's going to be the next  
15 witness.

16 (Thereupon, a recess was taken.)

17 THE COURT: Okay, who's next?

18 THE BAILIFF: Be seated.

19 THE COURT: Mr. Gilbert?

20 MS. BASS: Your Honor, we call Ron  
21 Gilbert.

22 THE CLERK: Raise your right hand,  
23 please.

24 THEREUPON:

25 RONALD B. GILBERT

1           was called as a witness on behalf of the Guardian  
2           Ad Litem and the Children, and, having been first  
3           duly sworn, was examined and testified as  
4           follows:

5                         THE CLERK: Thank you. State your  
6                         name for the record, please.

7                                 DIRECT EXAMINATION

8           BY MS. BASS:

9                         Q. Could you please state your name for the  
10           record?

11                         A. Ronald Bart Gilbert.

12                         MS. MARTIN: Your Honor, excuse me  
13                         one moment. May I just put in the  
14                         record that there is a stipulation filed  
15                         by the parties, and part of the  
16                         stipulation was that the home study and  
17                         everything was conducted, and but for  
18                         the statute, the home study and all the  
19                         other paperwork was substantial and the  
20                         home was a good environment.

21                         So DCF would indicate that we've  
22                         already stipulated to this witness, and  
23                         put that in the record, just -- we  
24                         object to his testimony.

25                         THE COURT: All right.



1 BY MS. BASS:

2 Q. Mr. Gilbert, are you a certified  
3 guardian ad litem?

4 A. Yes.

5 Q. And please describe your training for  
6 that certification.

7 A. I took a three-day course given by the  
8 Guardian Ad Litem Program in Miami-Dade County,  
9 which involved child psychology, the court  
10 procedures, some -- something about drug and  
11 sexual abuse.

12 Q. When did you complete your training to  
13 become a guardian ad litem?

14 A. In 19 -- I'm sorry, 2005.

15 Q. And how long have you served as a  
16 guardian ad litem?

17 A. It's coming up to seven years.

18 Q. During that seven years, on  
19 approximately how many cases have been appointed  
20 to serve as a guardian ad litem?

21 A. It's 35 to 40.

22 Q. And how many children have you served as  
23 a guardian for?

24 A. Over a hundred.

25 THE COURT: Ms. Bass, these photos,

1 Mr. Gilbert has given to the Court.

2 Those are his children.

3 MS. BASS: Oh, that's very nice.

4 Very nice.

5 BY MS. BASS:

6 Q. How long did you serve on the cases for  
7 those hundred some odd children?

8 A. Well, it varied. Sometimes it was as  
9 short as maybe three months, and sometimes it's  
10 been five to six years.

11 Q. And have you ever been recognized for  
12 your service as a guardian ad litem?

13 A. Yes. It was either my first or second  
14 year, I was awarded Guardian of the Year, of the  
15 Program.

16 Q. And who grants that ward?

17 A. The Program itself.

18 Q. And what is it based upon?

19 A. Of all the guardians who are currently  
20 certified as guardians, this was to honor the one  
21 who exemplifies the best of the Guardian Program.

22 Q. And are you the guardian ad litem  
23 assigned to this case?

24 A. Yes.

25 Q. And when did you take on that

1 assignment?

2 A. June of '06, I think, or '05.

3 Q. Please describe for us the children  
4 involved in this case over which you are the  
5 guardian.

6 A. Well, it's [James Doe] and [John  
7 Doe]. At that time, there was also three  
8 girls who were with their great-grandmother.

9 Q. Where are [James] and [John] currently  
10 placed?

11 A. Well, they're currently placed with the  
12 foster parents who they've always been placed  
13 with, Frank Gill and [Tom Roe, Sr].

14 Q. And how long have they resided with Mr.  
15 [Roe] and Mr. Gill?

16 A. Since I've been a guardian.

17 Q. Do you know when they first took custody  
18 of those children?

19 A. I think from the time the case came into  
20 the Dependency Court.

21 Q. How often do you visit the children?

22 A. Monthly.

23 Q. And approximately how long do you spend  
24 on each visit?

25 A. Between a half hour to an hour.

1 Q. What do you do during these visits?

2 A. I observe the children. I observe the  
3 children's interaction with each other, with the  
4 other child who is in the residence, with the  
5 foster parents. I talk to the children as to  
6 what's happening in their life. I find out if  
7 they need any medical care or treatment or other  
8 services, which is the function of a guardian.

9 Q. Approximately how many occasions have  
10 you visited these children?

11 A. Over 30.

12 Q. And have you also spoken to Mr. Gill --

13 A. Yes.

14 Q. -- and Mr. [Roe] --

15 A. Yes.

16 Q. -- regarding their relationship with the  
17 children?

18 A. Yes.

19 Q. And approximately how often do you speak  
20 to Mr. Gill and Mr. [Roe] about the children  
21 and their care?

22 A. Well, every time I'm there, depending  
23 upon who's there. Sometimes they're both there,  
24 sometimes only one of them is. Other times I  
25 talk to them on the phone. When the problem

1           arose initially, there was a problem in getting  
2           their Medicaid card and some medical bills paid.  
3           If there's an unusual problem that shows up. I  
4           ask them if there's a problem in school that I  
5           need to know about, they call me. I've been  
6           obviously also talking about the court  
7           proceedings concerning the adoption.

8           Q. Have you read the court file?

9           A. Well, not the court file. I've read  
10          the -- when I was assigned, they give you a  
11          guardian file, which is copies of the court file  
12          that the guardian program has, plus the JRs that  
13          have been filed before by the case management  
14          agency, or -- I don't remember if the DCF was  
15          originally the only case management agency and  
16          the new agency took over afterward.

17          Q. Have you read any other literature about  
18          this case?

19          A. Well, when the decision was made by the  
20          foster parent to try and adopt the children, I  
21          thought I should look at the literature on gays  
22          adopting children and how children do in that, so  
23          I looked at the APA and various other  
24          organizations mentioned by the experts today and  
25          the uniform decisions of these studies were as

1 represented by these experts.

2 Q. And did you consider the information you  
3 gained from those readings in your  
4 recommendation?

5 A. Well, yes. I mean, it's my position, as  
6 I understand the guardian obligation, is to make  
7 sure that the kids are in a safe placement, to  
8 find out that they're getting appropriate  
9 services, and also to make a recommendation  
10 concerning permanency, and I think that's part of  
11 what I was legally obligated to do.

12 Q. As part of your role as guardian, have  
13 you also attended court hearings?

14 A. Yes.

15 Q. Approximately how many?

16 A. I think over 30.

17 Q. And at some time, were the parental  
18 rights of [James] and [John] terminated?

19 A. Yes.

20 Q. Do you recall approximately when that  
21 occurred?

22 A. No, I don't.

23 Q. Are you aware if the children are  
24 currently free for adoption?

25 A. Yes.

1           Q. Why don't you tell the Court a little  
2 bit about your view of how the children are  
3 doing. Why don't we start with their medical  
4 status.

5           A. Well, currently they're in excellent  
6 health. I mean, there was only a short period of  
7 time, other than [John]'s back flip, where  
8 there's been any serious injury or problem. I  
9 didn't see the kids originally with the ringworm  
10 condition, because I came on board a year or two  
11 after. But they've always appeared to be in  
12 excellent health. They appeared to be  
13 appropriately having their medical needs attended  
14 to.

15          Q. And have you had any experience with  
16 meeting with their teachers at school?

17          A. I talked to their teachers on the phone  
18 to find out how they were progressing and whether  
19 there was anything that would set them apart from  
20 any of the other kids at school, and they said  
21 no, they're doing fine, and that the parents --  
22 or the foster parents were very involved.

23          Q. Have you witnessed the interaction in  
24 the home between the children and -- let's start  
25 with Mr. Gill?

1 A. Many times.

2 Q. Okay. What can you describe to this  
3 Court as a result of your observations of the  
4 children's interaction with Mr. Gill?

5 A. They're very bonded to him and he's  
6 bonded to them, and there's the normal  
7 interaction that a concerned foster parent and/or  
8 even regular parent would have.

9 Q. And how about their bonding with [Tom, Sr.]?

10 A. It's the same. And they're also bonded  
11 to Mr. [Roe's] son.

12 Q. Why don't you describe the children's  
13 relationship with [Tom, Jr.]?

14 A. It is almost as if they are his brother.

15 Q. His biological brother. They play --

16 A. Biological brother. They play with him.  
17 They -- what can I say -- interact in the same  
18 way they would with a normal biological brother.

19 Q. Can you give any specific examples of  
20 the interaction or attachment between --

21 A. Well, I've seen them play. I've seen  
22 them hug each other. I've seen them deal with  
23 games and stuff like that.

24 Q. And can you describe any of the  
25 interactions that you've observed between



1 Mr. Gill and Mr. [Roe] and [John] and  
2 [James]?

3 A. Well, they've always appeared to be a  
4 loving and nurturing environment. I mean, they  
5 are directly engaged with the children in their  
6 schoolwork and also with their social activities,  
7 and in fact, I know that they've made strenuous  
8 efforts to try and keep them in touch with the --  
9 their sisters, who are with the  
10 great-grandmother. They've extended themselves,  
11 even though she's been either reticent or unable  
12 to comply with visitation or contact, before as  
13 well as after she was given or adopted the  
14 children.

15 Q. Have you observed the type of discipline  
16 that's shown in the home by Mr. Gill and  
17 Mr. [Roe] towards the children?

18 A. There's actually been no reason for me  
19 to see any. I haven't seen any behavior which  
20 required discipline. During the times I've  
21 visited, the kids always appeared to be very  
22 happy and in contact with their foster parents.  
23 There's been no dysfunction that I've observed.

24 THE COURT: Ms. Cameron, would you  
25 do me a favor and convince them to clean

1 another courtroom?

2 MS. CAMERON: I'll do my best, Your  
3 Honor.

4 THE COURT: Thank you.

5 BY MS. BASS:

6 Q. Have you observed the foster parents  
7 giving instructions to the children?

8 A. Yes.

9 Q. And did the children -- How did the  
10 children --

11 A. They respond.

12 Q. -- react to those instructions?

13 A. They respond as children I've seen in my  
14 other cases, who have been in either with  
15 relatives or with -- what can I say -- decent  
16 foster parents, the same way. I mean, obviously,  
17 there's some times that the kids don't follow  
18 what they ask for, but I've seen that rarely.

19 Q. Do the children refer to Mr. [Roe] and  
20 Mr. Gill as their dads?

21 A. Yes.

22 Q. Do you have any opinion as to the effect  
23 on these children if they were separated from  
24 their foster parents?

25 A. It would be against their manifest best

1 interests. I think it would be tragic. These  
2 kids obviously were subject to abuse and neglect,  
3 and this would add legal abuse and neglect to  
4 their placement, and their mental and physical  
5 well-being.

6 Q. Do you have an opinion as to the extent  
7 of the emotional ties that these children with  
8 their foster parents currently have?

9 A. Yes, I have an opinion.

10 Q. And what is that opinion?

11 A. As I say, they're very bonded, and  
12 they're in a loving, nurturing family.

13 Q. Have you ever discussed with the  
14 children the possibility of their adoption by  
15 their foster parents?

16 A. There was no reason to. I observed that  
17 they were bonded to these foster parents and felt  
18 that it was not for me to interrupt that bond.

19 Q. Do you have a recommendation as to  
20 whether Mr. Gill should be allowed to adopt  
21 [John] and [James]?

22 A. Yes, I do.

23 Q. What is that opinion?

24 A. That it would be in the manifest best  
25 interests of the children that he be allowed to

1 adopt.

2 Q. And what is the basis for your opinion?

3 A. I have -- as I say, have had over 30  
4 cases with a hundred different kids, and there's  
5 actually been more than 30 foster parents and  
6 relatives that I've seen, as well as parents  
7 whose kids were reunified with them, and this  
8 would constitute probably a paradigm for  
9 parenting. They are model parents.

10 In fact, I would count on less than one  
11 hand the number of relatives or custodians who  
12 would be as caring and as nurturing and concerned  
13 about their children as Mr. Gill and Mr. [Roe].

14 Q. Do you have an opinion as to why an  
15 adoption would be a preferred alternative in this  
16 case, rather than a permanent guardianship?

17 A. Yes.

18 Q. And what is your opinion?

19 A. That I would obviously prefer adoption.  
20 It's preferred by statute. It's also -- These  
21 kids feel that they are their children, and they  
22 are their fathers, and I think it would be tragic  
23 to have them placed in a situation where they'd  
24 have to justify why are they there or leave it  
25 open to have them removed.

1 MS. BASS: Thank you. I have  
2 nothing further.

3 THE COURT: Okay. Ms. Cooper, any  
4 questions?

5 MS. COOPER: No questions.

6 THE COURT: Okay.

7 MS. MARTIN: I have a quick  
8 question.

9 MS. BASS: Oh, I'm sorry, there's  
10 one other thing I wanted to do, and  
11 that's simply, to, yes, address -- These  
12 are the guardian ad litem items review  
13 reports, Your Honor. They're in the  
14 court file. We wanted to make sure they  
15 were in the trial file.

16 THE COURT: And they're marked, I  
17 see.

18 THE CLERK: It's going to be, yeah,  
19 Guardian Ad Litem's. She handed me, as  
20 a Composite, Exhibit A.

21 MS. MARTIN: And, Your Honor, I do  
22 have an objection and/or a  
23 clarification, if I might, just to this  
24 exhibit. It may just be my ignorance,  
25 and please, I apologize if it is. I'm

1 not usually in this arena. These are  
2 filed under a Case Number which is  
3 different than what I filed the adoption  
4 documents in. I have not seen these,  
5 and obviously, I don't object if they're  
6 in the court file, because you can take  
7 judicial notice, but it's my  
8 understanding that things have to be  
9 redacted in the adoption file, and there  
10 are the other children in this, and I  
11 just point that out because I don't know  
12 if that's right or wrong or -- I don't  
13 know.

14 THE COURT: Okay. The clerk can  
15 deal with that. We can redact the  
16 originals.

17 MS. MARTIN: Okay, I just didn't  
18 know. I redacted when I did my  
19 discovery, and I just wasn't sure.

20 MS. ALLEN: Thank you. That was marked.

21 THE COURT: All right, and other  
22 than -- and so the --

23 MS. MARTIN: Yes, I have no  
24 objection to that, as long as it's  
25 corrected in your world.

1 THE CLERK: It's Exhibit A for the  
2 Guardian Ad Litem and the children.

3 THE COURT: Does the Attorney  
4 General have any questions?

5 MS. MARTIN: No, we do not, thank  
6 you. I'm sorry.

7 THE COURT: All right, thank you,  
8 Mr. Gilbert.

9 MS. ALLEN: Thank you.

10 MR. GILBERT: Thank you, Your  
11 Honor.

12 MS. BASS: We're next going to call  
13 Dr. David Brodzinsky.

14 THE CLERK: Raise your right hand.  
15 Raise your right hand, please.

16 THEREUPON:

17 DAVID BRODZINSKI, PH.D.  
18 was called as a witness by the Guardian Ad Litem  
19 and the Children and, having been first duly  
20 sworn, was examined and testified as follows:

21 THE CLERK: State your name for the  
22 record, please.

23 THE WITNESS: I'm Dr. David  
24 Brodzinsky, B, as in boy, R-O-D, as in  
25 David, Z-I-N-S-K-Y.

1 DIRECT EXAMINATION

2 BY MS. BASS:

3 Q. Welcome, Dr. Brodzinsky. Why don't you  
4 tell the Court a little bit about yourself, where  
5 you live, what you do.

6 A. I am a clinical and developmental  
7 psychologist. I currently live in Oakland,  
8 California. I have relocated there in 2006.  
9 Before that, I was in New Jersey for 32 years, as  
10 a professor of psychology at Rutgers University.

11 Q. And what do you do for a living, Dr.  
12 Brodzinsky?

13 A. I'm a clinical psychologist, mostly  
14 doing psychotherapy, forensic evaluations,  
15 consultations with various kinds of child welfare  
16 organizations, and so forth.

17 Q. And do you have a clinical practice?

18 A. I do, with my wife. It's under the name  
19 Family Mental Health Consultants.

20 Q. Is your wife also a psychologist?

21 A. She's also a psychologist.

22 Q. And what is the primary focus of your  
23 practice?

24 A. Of my practice, it's about -- split  
25 about 50/50. About 50 percent of it is



1 traditional kinds of clinical work with children,  
2 families and occasionally adults, and the other  
3 half has to do with forensic evaluations, mostly  
4 in the area of family law, but also personal  
5 injury cases, and sometimes in criminal court, on  
6 child abuse cases.

7 Q. Why don't you tell the Court something  
8 about your educational background?

9 A. I have a Bachelor's in psychology from  
10 State University of New York at Buffalo, and I  
11 got my doctoral degree from State University of  
12 New York at Buffalo. That degree was awarded in  
13 1974.

14 Q. And what was your Ph.D. in?

15 A. Developmental psychology, but I was also  
16 cross-trained in clinical psychology.

17 Q. Could you please explain to the Court  
18 what developmental psychology is?

19 A. It's the study of human behavior and  
20 human traits and how they change over time, from  
21 birth to death.

22 Q. And you said you were also trained in  
23 clinical psychology.

24 A. Yes.

25 Q. What exactly is that?

1           A. That's the study of abnormal forms of  
2 behavior, the diagnosis of abnormal behavior, its  
3 treatment, its prevention.

4           Q. Are developmental and clinical  
5 psychology related in any way?

6           A. They can be. I mean, I work mostly in  
7 the area of developmental psychopathology,  
8 meaning I study and I'm interested in and I treat  
9 children who have different kinds of adjustment  
10 problems, and I follow them over time, both -- in  
11 my research, I would do that, but also  
12 clinically, I'm working with them periodically  
13 for years.

14          Q. What type of children and adjustment  
15 problems do you typically work with?

16          A. Well, I work with children across the  
17 whole gamut of problems, but my area of specialty  
18 over the last 25 years has been working with  
19 children who are adopted, in foster care, also  
20 children of divorce and other forms of family  
21 disruption and uncommon forms of family --  
22 nontraditional forms of family life, really.

23          Q. How did you first develop a specialty in  
24 working with adopted children?

25          A. You're getting me into a personal story

1           now. In 1979, I met my current wife. She wasn't  
2           my wife then. She had four children, one of whom  
3           was adopted. She approached me, because of my  
4           research on children's understanding of different  
5           aspects of the world, and she thought I might  
6           know something about how children would  
7           understand adoption, because she was talking with  
8           her child about adoption and wanted to know,  
9           "What do you think my child would understand?"  
10          And I said, "I don't know." I didn't have any  
11          idea about adoption, at that point in time. Few  
12          psychologists, few mental health professionals  
13          are trained in this area in graduate school.

14                        But the question stuck with me, and  
15          within a year, I started doing some pilot  
16          research in that area with another student, and  
17          ultimately I met up with my current wife again  
18          and we started doing research together, and from  
19          there my personal and my professional life took a  
20          different turn.

21                        Q. Do you have any professional licenses or  
22          certifications?

23                        A. I am licensed in psychology -- to  
24          practice psychology both in New Jersey and in  
25          California. I have a certification in child

1 maltreatment, with a specialization in child  
2 sexual abuse. That's from New Jersey.

3 Q. And did you do any internships, as part  
4 of your Ph.D. program?

5 A. Yes, I did an internship at the Irving  
6 Schwartz Institute for Children and Youth. That  
7 is an organization that's now defunct, but at the  
8 time -- this was back in '72 to '73, and it was  
9 associated with the Philadelphia Psychiatric  
10 Center, obviously in Philadelphia.

11 I stayed on for another year, doing a  
12 post-doc in child and family therapy there, too.

13 Q. And could you please describe any  
14 academic appointments that you may have had?

15 A. Right after my post-doc, in '74, I got a  
16 position in the Department of Psychology at  
17 Rutgers University, and that was really my only  
18 academic position, at least in terms of paid  
19 positions. I've had other adjunct positions.  
20 And I was there from 1974 through 2006, when I  
21 took early retirement, moving up the ranks from  
22 assistant professor to associate professor to  
23 full professor.

24 At the same time, I had adjunct  
25 positions in the Graduate School of Applied and

1 Professional Psychology, which is the  
2 practitioner program in psychology which is at  
3 Rutgers, and also, at the same time, I had an  
4 adjunct position in child and adolescent  
5 psychiatry at the University of Dentistry and  
6 Medicine, which is the Medical School of New  
7 Jersey.

8 Q. Did you do any -- have any involvement  
9 in foster care work during your time at Rutgers?

10 A. Yes. From 1989 to 2006, I ran what was  
11 called the Rutgers Foster Care Counseling  
12 Project. That was a State-funded project, funded  
13 by the Division of Youth and Family Services, our  
14 State social service organization. It was both a  
15 training program and a service program. It was a  
16 training program in the sense that the primary  
17 clinicians were Ph.D. and Psy.D. students --  
18 Psy.D. is P-S-Y-D, a doctor of psychology.

19 They were the clinicians. We were  
20 training them to work with kids who were coming  
21 out of the foster system, with backgrounds of  
22 abuse, neglect, prenatal drug exposure, a whole  
23 host of things that children in foster care are  
24 exposed to, but at the same time, of course, we  
25 were servicing the children in the New Jersey

1 system who were in foster care, and their  
2 families, helping them to adjust to new  
3 placements as they moved from one home to  
4 another, and then hopefully as they moved from  
5 foster care either back to their biological  
6 families, if there was reunifications efforts  
7 that were successful, or if not, then on to  
8 adoption. So that was -- I was there from --  
9 directing that from, as I said, '89 to 2006.

10 Q. Now, other than that work between '89  
11 and 2006, have you had any clinical involvement,  
12 working with children involved in the foster care  
13 system?

14 A. Yes, absolutely. Again, as I started  
15 doing research in the area of adoption and foster  
16 care, my clinical practice started switching into  
17 that area, and then for a period of time for  
18 about five or six years, I ran a -- my wife and I  
19 ran a --

20 Q. I'm sorry, Dr. Brodzinsky, could you  
21 slow down a bit? We have this court reporter  
22 here who needs to take down every word you say.

23 A. My students always would tell me that,  
24 too. In the mid-'90s, for about five years, I  
25 ran a post-adoption service program -- you'll

1           pardon me, because I'm sick right now.

2           Q. I'll get you some water.

3           A. I'm going to infect everyone here.

4           Q. We hope not.

5           A. This was a State-funded program,  
6           providing clinical services to children who were  
7           adopted. Most of these were children who were  
8           coming out of the foster care system. They were  
9           either in pre-adoptive homes or in finalized  
10          adoptive homes, but the program also opened up to  
11          other kinds of adopted children, meaning children  
12          who were placed internationally and children who  
13          were adopted as babies, you know, outside of the  
14          State system. So we ran that for a while. My  
15          clinical practice, my private practice, over the  
16          years, has focused primarily, but not  
17          exclusively, on working with adopted kids and  
18          kids in foster care.

19          Q. Could you describe for the Court,  
20          please, what the Center for Adopted Families is?

21          A. That's now a defunct organization, but  
22          it was a program in New York City that was  
23          providing clinical services to adoptive families  
24          in the City. I consulted with them in helping to  
25          develop certain training that they were doing at

1 the time.

2 Q. And could you also describe for the  
3 Court what the National Center for Special Needs  
4 Adoption is?

5 A. That's an organization based in  
6 Michigan. It is geared primarily towards  
7 developing best practices and supporting the  
8 adoption of children of special needs coming out  
9 foster care system.

10 Q. Have you had any involvement with that  
11 organization?

12 A. Yes. I've done training for them, both  
13 in Michigan as well as other places around the  
14 country, in aspects of dealing with adoption.

15 Q. Could you describe what the  
16 Spence-Chapin Adoption Agency is?

17 A. They are a New York-based adoption  
18 agency, very well known, one of the oldest in the  
19 country. I worked with them, on and off, for  
20 about -- well, since the late 1980s, training  
21 their staff, training adoptive parents, coming in  
22 and working with them on a periodic basis.

23 Q. Could you describe for us what the Evan  
24 B. Donaldson Adoption Institute is?

25 A. The Evan B. Donaldson Adoption Institute



1           was begun about 12 years ago. At this time, it's  
2           one of the preeminent think-tanks, if you want to  
3           think about it that way, in the area of adoption.  
4           Its mission is to promote research, education and  
5           sound policy around adoption. It's based in New  
6           York City, but our staff -- and I was one of the  
7           founding directors. Actually, this is a  
8           nonprofit organization. The money originally  
9           came from Spence-Chapin, but we have  
10          subsequently, with their willingness, of course,  
11          split, so that we are no longer in any way  
12          directly connected to them.

13                        It's a -- I was one of the founding  
14          directors, I served on their board for 10 years,  
15          and then when I moved from New Jersey to  
16          California, I went off the board and became one  
17          of the staff people, because most of the work I  
18          was doing was staff-related, anyway. I was  
19          working on projects, in addition to helping to  
20          develop the policy for the organization. And I'm  
21          currently research and project director for the  
22          institute, and we have kind of a virtual  
23          organization, in the sense that our staff is in  
24          like six different locations around the country.

25                        Q. What type of projects does the institute

1 get involved in?

2 A. We've been involved in a wide range of  
3 projects. Some of the more recent ones that I've  
4 been involved in, one is called the Adoptive  
5 Parent Preparation Project, and that is, we  
6 just -- I just put out a policy paper that's  
7 available on their website that deals with  
8 principles dealing with best practices for  
9 preparing adoptive parents and supporting them.  
10 All kinds of adoptions, not just child welfare  
11 adoptions, but international adoptions, infant  
12 adoptions, kinship adoptions, and so forth.

13 That project is continuing. We're  
14 developing training materials to be used in the  
15 field by professionals with parents.

16 I've also been involved in a project  
17 that is dealing with the development of best  
18 practice standards with regard to gay and lesbian  
19 adoption. That came out of a project which I  
20 did, I'm going to say, in -- around 2002, it  
21 began, 2001, 2002. It was a survey research  
22 project, looking at adoption agency policies and  
23 practices in this area, dealing with gay and  
24 lesbian adoption, and that followed from an  
25 earlier study that I did on a similar topic. We

1           expanded the work in the -- in this other  
2           research. That's -- that data is available.  
3           That paper is available on the website, as well.

4                         And then following that, we received  
5           grant monies from several foundations to do a  
6           project which is focusing on best practice  
7           standards now. A policy paper just was released,  
8           I think it was either earlier this week or last  
9           week. I didn't author that one. My colleagues  
10          did. I'm heading up the project, but Gene Howard  
11          authored that, along with a woman lawyer named  
12          Madeleine Freundlich, and that focuses on  
13          expanding the resources for children in care,  
14          focusing specifically on children in the foster  
15          care system who need to be adopted, and the focus  
16          here being on, you know, looking at gay and  
17          lesbian individuals as potential adoptive parents  
18          for these individuals, what the laws are around  
19          the country, what the case work practice is, what  
20          the needs of children are, what the needs of the  
21          families are and so forth.

22                         Another part of that project involves  
23          two research studies which are now ongoing, which  
24          I'm doing with a professor of social work here in  
25          Florida. His name is Scott Ryan of Florida State

1 University. And we are looking -- we're doing a  
2 follow-up on agency practices in this area, since  
3 the previous study we did was for the fiscal  
4 years '99 and 2000, so we're already eight years  
5 beyond that, and we wanted to see if there's any  
6 changes in what's going on nationally -- and  
7 these are national surveys.

8 And the second research project is  
9 focusing in on what the experiences are of  
10 lesbians and gay men who've adopted, what they  
11 need, what they're getting from the agencies and  
12 what they're not getting, what kind of supports  
13 they're getting, and again, the goal here is to  
14 try to develop best practice standards so that  
15 for those agencies that are willing and want to  
16 work with this population, they're getting  
17 adequate training, they know how to work with  
18 this population to meet the unique needs of the  
19 children that are going into the homes.

20 Q. Have you had anything published in the  
21 area of either adoption or foster care?

22 A. Quite a few articles, yeah, both journal  
23 articles in peer-reviewed journals, the  
24 mainstream journals in my field, chapters in  
25 books that are geared for professionals, and I've

1            authored five books on adoption. And I'm  
2            co-editing another book which is in -- it's  
3            almost ready to go to the publisher. It's  
4            another professionally oriented book, and that's  
5            on adoption by gays and lesbians.

6            Q. Could you just give the Court a quick  
7            overview of the topics you have covered in your  
8            published works?

9            A. In adoption and foster care, you mean?

10          Q. Yes, just adoption and foster care?

11          A. Okay, fine.

12                      Looking primarily at outcomes for  
13            children, how they're doing, long-term, what are  
14            the predictors of their adjustment, what things  
15            undermine their adjustment, what things support  
16            their adjustment; the kinds of specific problems  
17            that they're having when they are having  
18            adjustment difficulties; those factors, in the  
19            parent-child relationships that support more --  
20            you know, healthier -- healthier family life;  
21            attachment issues in parent-child relationships  
22            in adoptive families.

23                      I've published a lot on parenting  
24            issues, what are some of the unique issues that  
25            come up at different stages of the family life

1 cycle. I've published on national survey  
2 research on gay and lesbian adoption, what the  
3 agencies are doing. And I've published on  
4 adoptive parent preparation. That covers  
5 probably the majority, not necessarily every  
6 area, but the majority of the areas.

7 Q. Could you please describe any academic  
8 journals in which your work has been published?

9 A. Most of the mainstream child development  
10 journals. It would include Child Development,  
11 Developmental Psychology, the Journal of Applied  
12 Developmental Psychology. Clinical journals  
13 would be the Journal of Consulting and Clinical  
14 Psychology, the Journal of Clinical Child  
15 Psychology, the American Journal of  
16 Orthopsychiatry -- that's O-R-T-H-O,  
17 Orthopsychiatry. Adoption Quarterly, I'm on the  
18 editorial board of Adoption Quarterly. That is  
19 the -- one of the preeminent academic journals  
20 that publishes adoption-oriented kinds of  
21 research.

22 Q. And are these all peer-reviewed  
23 journals?

24 A. They're all peer-reviewed, yes.

25 Q. Have you had the opportunity to speak on

1 conferences regarding the adoption and foster  
2 care area?

3 A. Oh, numerous times. I mean, probably a  
4 dozen times or more a year.

5 Q. And have you received any awards for  
6 your work in the area of adoption or foster care?

7 A. I've received the U.S. Congressional  
8 Coalition Award. It's called the Angel Adoption  
9 Award. It comes out of the U.S. Congress every  
10 year. A certain number of people get nominated,  
11 and my wife and I, as a team, were nominated and  
12 received the award in 2002.

13 Q. I'd like you to take a look at your CV  
14 and ask if you can identify that.

15 A. Yes, this is the most recent version of  
16 it.

17 Q. Okay, you can give it back to me.

18 MS. BASS: This is the copy we've  
19 previously provided. We'd like to have  
20 it marked as -- I guess this is --

21 THE CLERK: Guardian Ad Litem B.

22 MS. BASS: Thank you.

23 And at this point, I would tender  
24 Dr. Brodzinsky as an expert in the area  
25 of child clinical psychology,

1 developmental psychology, a specialist  
2 in adoption and foster care, and  
3 attachment evaluation and its  
4 implication on the adjustment of  
5 children in adoption.

6 MR. FAHLBUSCH: No objection.

7 MS. BASS: Excuse me, in foster  
8 care, I'm sorry.

9 (Discussion off the record)

10 BY MS. BASS:

11 Q. Are you familiar with the term "forensic  
12 psychology"?

13 A. I am.

14 Q. Could you please describe for the Court?

15 A. It's the application of principles of  
16 psychology, mental health, if you will, to legal  
17 issues.

18 Q. And have you ever been retained as a  
19 forensic psychologist?

20 A. Over 500 times.

21 Q. And would you say you have a practice in  
22 forensic psychology?

23 A. Yes, the majority -- well, about half of  
24 my practice and certainly the majority of my  
25 income from private practice comes from forensic



1 work.

2 Q. And approximately how many forensic  
3 psychology cases have you been involved in during  
4 your career?

5 A. Over 500.

6 Q. And in how many different states have  
7 you appeared as an expert witness?

8 A. Ten states.

9 Q. Now, were you retained in this matter?

10 A. I was.

11 Q. And could you please describe for the  
12 Court the purpose for which you were retained?

13 A. I was retained to, first and foremost,  
14 do an evaluation of the children, [John] and  
15 [James], and the relationship with their  
16 fathers, Frank Martin Gill and [Tom Roe, Sr.], to  
17 look, if you will, at the quality of their  
18 relationship, their attachment. Some people call  
19 it a bonding evaluation. Most psychologists  
20 don't like the term bonding, so we refer to it as  
21 an attachment evaluation.

22 I was retained to opine on the potential  
23 harm to the children, should they be removed from  
24 this home, and also as to whether or not adoption  
25 was in their best interests, and perhaps to

1 address other issues that could be raised here.

2 Q. Well, starting with the first opinion  
3 that you're here to render, could you please  
4 describe to the Court the quality of the  
5 relationship, or attachment, as you've described  
6 it, that exists between [John] and [James] and  
7 Mr. Gill and Mr. [Roe]?

8 A. Okay. Both children -- I suppose I  
9 could do it one at a time, but since the quality  
10 is really the same, to save time, I would say  
11 that both children showed evidence of very strong  
12 and secure attachments to both of their fathers.  
13 Mr. Gill acknowledged that the kids are probably  
14 a little bit more attached to him, at the time I  
15 did the evaluation, anyway, which is a year ago.  
16 I've done a subsequent telephone consult with  
17 him, more recently, to just follow up and see  
18 what's changed or not, but he said that they were  
19 probably a little bit more attached to him,  
20 because he's the primary day-to-day caregiver, he  
21 had taken off of work once they were placed in  
22 the home, but that they also showed a strong  
23 attachment to Mr. [Roe], and in fact, that's  
24 exactly what I saw, and they were quite attached,  
25 strongly attached, to their older brother, [Tom,

1           Jr.], Mr. [Roe]'s son, who lives at the home.

2           Q.   Why don't you describe for the Court the  
3           opportunity you had to observe the family in  
4           their home?

5           A.   In May, I visited their home on two  
6           occasions, one day after the other, spent  
7           probably about three hours each day, both  
8           interviewing and observing.  The observations are  
9           informed by attachment theory.  There is no paper  
10          and pencil or any other kind of test to measure  
11          attachment, per se.  It's -- we use information  
12          that is derived from attachment theory to guide  
13          our observations, and what we're looking for is  
14          whether or not the children see the parents, and  
15          it could be someone other than the parents, since  
16          children form attachments to other people, too,  
17          but in this case, whether [John] and [James]  
18          see their parents as individuals who can offer  
19          them comfort, advice, are they easily comforted  
20          by these individuals.

21                    In the literature, there's a term called  
22          secure base, secure base behavior, and that's  
23          what we're looking for.  Is the parent, or  
24          parents, in this case, a secure base for the  
25          children so that when they are stressed, they

1           move towards that person, receive help in some  
2           form -- it can be advice, it can be information,  
3           it can be a hug, it can be some other kind of  
4           comforting -- and then be able to move away  
5           again, to effect more independent kind of  
6           behavior.

7                         What we're looking for is that kind of  
8           moving towards and moving away, in a sort of  
9           healthy manner that suggests a level of security  
10          in the attachment process. We make distinctions  
11          between different types of attachment. Children  
12          can be attached, but have very insecure  
13          attachments. Very often, children who are abused  
14          by their parents have strong attachments, but  
15          they're traumatic attachments. They're very  
16          insecure attachments. So it's not just a matter  
17          of, is a child attached to a parent, but what is  
18          the quality of attachment, how does that  
19          parent -- what does that parent provide the child  
20          as a basis for helping him or her to regulate  
21          their emotions, to handle stress, and then to  
22          become independent again, so that they can move  
23          out into the world, whether it be to literally  
24          leave the house to go to school, be able to  
25          function separate from that parent, or go out and

1 play with friends on the playground or any other  
2 kind of separation.

3 And so, as I observed the children with  
4 their dads and with their older brother, and saw  
5 them both in the house, outside, you know, in the  
6 yard, I saw -- I interviewed them and observed  
7 twice, just for reliability's sake. On any one  
8 day, kids can be -- you know, they can be in a  
9 bad mood, the parents can be in a bad mood,  
10 things can go wrong, so we want to make sure that  
11 if what we see on one day is reasonably  
12 replicated on at least the second time, and it  
13 was.

14 During that evaluation, I also had the  
15 opportunity to go with Mr. Gill to the children's  
16 schools, where I met briefly with the teachers,  
17 and the role of meeting with the teacher is  
18 twofold. It's, one, to find out how they're  
19 doing in school. I had already been told that  
20 [John] had some school problems, that it was  
21 likely he was going to have to repeat first  
22 grade, which is what happened, that he came into  
23 the family very much behind, you know, in terms  
24 of basic skills. So I wanted to find out how  
25 they were doing in school. But also, when we

1 talk to people like teachers, who we call  
2 collateral informants, we're looking at hopefully  
3 a more objective view of what's going on in the  
4 family. Teachers and others are often very good  
5 sources of information about how children are  
6 doing generally, how involved the parent might be  
7 in the child's academics, is the child coming to  
8 school clean, having eaten, is the child's work  
9 being brought in, is the parent involved in the  
10 school activities in any way, and the feedback  
11 from the teacher supported the view that these  
12 are very involved men, very loving parents, and  
13 they saw nothing, you know, that was of any  
14 concern for them.

15 Q. Well, let's go back to your first visit.

16 A. Okay.

17 Q. And please describe for the Court, as  
18 specifically as you can, exactly how you  
19 interacted, who you spoke to, what you observed.

20 A. Okay. I got there a little before the  
21 end of the school day. Well, I guess it was --  
22 it was after lunch, I guess it was. I was there  
23 for about three hours. When I first got there,  
24 Mr. Gill was home, and I started talking with  
25 him, and [James] was home. I started talking

1 with Mr. Gill, to get a little bit of background  
2 information on what was going on, observing  
3 [James] at the same time. He was only two and  
4 a half, maybe a little bit more, at that time.  
5 You're not going to have very detailed interviews  
6 or, you know, discussions with two-and-a-half-  
7 year-olds, but I'm watching how he comes and goes  
8 to his dad, how his dad relates to him, how he  
9 relates to his dad. So, even if I'm interviewing  
10 him, as I'm talking with you, I might be watching  
11 what's going on over there. I'm trained to be  
12 able to kind of parallel process, so to speak, in  
13 that regard.

14 We covered a lot of history about the  
15 children. At some point in time, Mr. [Roe]  
16 came home, and [James] -- excuse me, [John] was  
17 home. And again, I was speaking with  
18 Mr. [Roe], too, sometimes separately, sometimes  
19 with Mr. Gill, talking with the kids, watching  
20 the kids go back and forth, and then I think a  
21 little bit later than that, [Tom, Jr.] came  
22 home, and again, watching how he related to the  
23 two kids, how they related to him, how they  
24 related to his biological father and to Mr. Gill,  
25 as well.

1                   That continued for about three hours'  
2                   time, in various arrangements. At times, I spoke  
3                   directly with the kids, spent time with the kids.  
4                   I try to be a nonparticipant observer, but when  
5                   you're working with kids, they often don't let  
6                   you be nonparticipating. They come to you and  
7                   they ask questions, they seek to give you things,  
8                   and that happened frequently, and I would respond  
9                   appropriately, and then tried to move them back  
10                  away from me. But, you know, they were  
11                  approaching me occasionally, and they were  
12                  appropriately friendly, but not overly friendly.  
13                  We're looking for a certain degree of wariness in  
14                  children to strangers, and they had that, but  
15                  then they warmed up over time. And again, that's  
16                  basically what we did that day.

17                  Q. You went back a second day?

18                  A. A second day, I went back. I met  
19                  Mr. Gill a little bit before school was to let  
20                  out, because the plan was to go to pick up the  
21                  children, and when we did, I would meet briefly  
22                  with the teachers by myself, out of -- you know,  
23                  away from the child, away from Mr. Gill.

24                  So we drove over to [James]'s school  
25                  first. I was introduced to the teacher. I



1 believe she understood I was coming that day.  
2 She knew who I -- what my purpose was, although I  
3 explained it again. We sat and talked for a  
4 short while, maybe only 15 minutes, but again, it  
5 was enough to cover the information, the areas  
6 that I was interested in.

7           Then, from there, we went to [John]'s  
8 school and I met with his teacher for perhaps a  
9 little bit longer. Again, not with Mr. Gill  
10 present, but away from him. I got information  
11 about how [John] is doing, and the teacher  
12 confirmed that he was still struggling in school;  
13 he'd made a lot of progress. He was really very  
14 far behind when he first came in, but he was  
15 making progress, that he was going to be  
16 repeating first grade but that she was pleased  
17 with the level of progress and very pleased with  
18 the level of involvement of the parents, and had  
19 very positive things to say about the parents.

20           And at that point, then, we went back  
21 home. We got home, and again, I started to  
22 observe the kids and how they were relating to  
23 Mr. Gill. Soon after that, Mr. [Roe] came  
24 home, and again, different combinations, watching  
25 the kids coming and going and so forth.

1                   The kids wanted to go outside to play,  
2                   so Mr. Gill took the kids out. They wanted to  
3                   ride their bikes. He got their bikes ready,  
4                   helmets, you know, the whole thing, reminded them  
5                   about the rules, because they're riding on a  
6                   sidewalk, but there's a -- you know, a busy  
7                   street there. There's cars, you know, along the  
8                   curb, there's cars in driveways, and he reminded  
9                   them of the rules, and he went with them as they  
10                  were riding up and back. You know, sometimes,  
11                  when I'm with parents, they end up with talking  
12                  with me a lot and not focusing on the kids, and  
13                  frankly, Mr. Gill wasn't focusing on me at all.  
14                  He wasn't talking to me at all, letting me just  
15                  observe. So he was watching the kids, he was  
16                  maintaining good structure, cautioning them  
17                  occasionally, but just following them. We were  
18                  out there for about 20 minutes, after which we  
19                  went back inside, they got some snacks, and  
20                  again, it was, I think, soon after that, [Tom,  
21                  Jr.] came home, and it was more just observing  
22                  and watching them come and go.

23                         [John], at one point, came over and  
24                         asked me to read him a story. I did, but then  
25                         moved him away from me, so that he could be more

1           involved with whoever he was going to choose to  
2           be involved with. I saw normal levels of peer  
3           conflict, I should say sibling conflict, which  
4           were quickly dealt with and successfully dealt  
5           with by Mr. Gill, and it was a very low level of  
6           conflict over possessions and stuff.

7           Q. Now, did [John] have any understanding  
8           of why you were there?

9           A. No, neither child really had any  
10          understanding of it, and you wouldn't expect them  
11          to be -- this is the only home [James] has ever  
12          known. He was placed at around four months. He  
13          has no memory and we wouldn't expect him to have  
14          any memory of any earlier placement, given his  
15          early age of placement into this home.

16          [John] was placed around four. He does  
17          remember people from the past, although he was  
18          confused at times, according to Mr. Gill,  
19          about memories that had to do with his mother  
20          versus memories that had to do with his aunt. It  
21          was Mr. Gill's impression that probably some of  
22          the memories he was thinking of and attributing  
23          to interactions with his mother probably were  
24          interactions with his aunt, who he lived with for  
25          a while.

1                   He knows and has had contact with  
2                   sisters, and a great -- it's either a grandmother  
3                   or -- no, it's a great-great-grandmother. He's  
4                   had visits with them in the time of the  
5                   placement, both planned as well as -- I believe  
6                   they bumped into them once, you know, unplanned,  
7                   in the community. He misses his sister. I was  
8                   told that. He didn't share that with me. I  
9                   mean, this was not the kind of clinical  
10                  relationship --

11                 Q. Right.

12                 A. -- where I would have expected him to  
13                 share that kind of information with me.

14                         In my follow-up with Mr. Gill, he told  
15                         me that they recently tried to reach out to the  
16                         great-great-grandmother by telephone, but were  
17                         unable to get through. They haven't had contact,  
18                         I think, direct contact, in over two years, about  
19                         two years, but that they're open to contact. But  
20                         [John] has some memory of the past, vague,  
21                         doesn't understand what's going on now, doesn't  
22                         understand what adoption means. You don't expect  
23                         them to, not at this age.

24                                 [Tom, Sr.] -- excuse me, [Tom, Jr.]  
25                         knows what adoption means. I talked to him. You

1 know, I talked to him about what was going on,  
2 and he shared with me that at first he had some  
3 concern about when the kids came into the house,  
4 because he had experiences of kids coming and  
5 going. I think they had fostered seven or eight  
6 children previously, and you get connected to  
7 kids, even if they're much younger than you, and  
8 I think they always were, and then they were  
9 left -- the kids had to leave, to go either back  
10 home or somewhere else. And so initially, he had  
11 a little bit of reservation, but when he found  
12 out that the plan was going to be for adoption,  
13 he was very supportive of it, and he understands  
14 that adoption means permanent. You know, he  
15 doesn't necessarily understand the full aspect of  
16 what adoption means, but he understands it in an  
17 age-appropriate manner.

18 Q. And did you get any observations from  
19 [John], specifically, as to his understanding of  
20 the permanence of this relationship?

21 A. I don't remember if -- I don't remember  
22 if he specifically said anything about this being  
23 like a forever family or not. I just don't  
24 remember.

25 Q. Okay. Now, do you have an opinion as to

1           the harm that would result to [John] and  
2           [James] if they were to be removed from the  
3           care and custody --

4           A.    I do.

5           Q.    -- of Mr. Gill and Mr. [Roe]?

6           A.    I do.

7           Q.    And what is your opinion?

8           A.    I think it would be emotionally  
9           devastating for them.  For [James], it's the  
10          only home he's ever known.  Not only are these  
11          his parents in every sense of the word --  
12          appropriate to his age, of course -- he's very  
13          emotionally bonded, connected, attached to them.  
14          Disrupted attachments raise the risk,  
15          significantly, for all sorts of long-term  
16          problems.

17          For [John], he's a child who came into  
18          the family with a risk history already, previous  
19          disruptive placements.  To remove him at this  
20          time, when he has stability in his life,  
21          residential stability and emotional stability,  
22          would be devastating to him.  In my opinion, it  
23          would cause long-term damage.

24          Q.    And what would you expect to see, from a  
25          psychological standpoint, when you describe

1 long-term damage from a separation, a second  
2 separation, for [John]?

3 A. Academic problems, regression in  
4 academic performance, depression or  
5 depressive-like symptoms, certainly anxiety,  
6 separation anxiety in particular. We know that  
7 these are children -- Children who experience  
8 this kind of disrupted attachments, you know,  
9 regress in many different ways. He is not fully  
10 toilet trained at this point. He almost is. I  
11 would expect significant regression in his  
12 toileting behavior. I would expect sleep  
13 problems to occur, trust issues down the line to  
14 occur, trust issues even in the short term,  
15 having more difficulty connecting, you know, in  
16 the next placement.

17 Q. Did you come to any conclusion as to  
18 whether or not it was in [John] and [James]'s  
19 best interest as it relates to Mr. Gill's effort  
20 to adopt them?

21 A. Yes, and in my view it is in their  
22 interest to be adopted. Adoption affords them a  
23 level of permanency that is greater than they  
24 would have right now, not just legal permanency,  
25 but importantly, psychological permanency.

1                   As kids get older, they come to  
2                   recognize that when they're just foster children,  
3                   that this is not their dad, this is not really  
4                   their family in the sense that all the other kids  
5                   in the neighborhood have families. It can  
6                   undermine identity. And we know that children  
7                   who remain as long-term foster kids often will  
8                   age out of the system and not maintain  
9                   connections with their foster family. They're at  
10                  significant risk for drug abuse. They're at  
11                  significant risk for criminal behavior. They're  
12                  at significant risk for homelessness and for a  
13                  wide range of adjustment difficulties,  
14                  psychiatric problems.

15                 Q. Now, what effect, if any, does the fact  
16                 that Mr. Gill and Mr. [Roe] are gay have on  
17                 your opinion that it is in [James] and [John]'s  
18                 best interest to be adopted by Mr. Gill?

19                 A. It plays no role in my opinion. The  
20                 real issue here, in any family, is the quality of  
21                 parenting that is offered.

22                 Research in child development shows that  
23                 there are a number of different aspects of family  
24                 life that predict to healthy adjustment, and I  
25                 saw all of those in this family. They are good



1 parent-child relationships, good relationships  
2 between the parents themselves. Resources for  
3 the child to have at their disposal, whether it  
4 be economic resources, opportunities for  
5 education, recreational activities, good peer  
6 relationships. You know, these kids are pretty  
7 young yet, but they are developing peer  
8 relationships in normal ways. These are the key  
9 predictors of adjustment, not whether children  
10 grow up in a single-parent household or  
11 dual-parent household or a straight household or  
12 a gay or lesbian household, or frankly even an  
13 intact versus a divorced family household.

14 In divorced families, the things that  
15 place kids at risk are conflict, lack of  
16 resources, and other things that often co-occur  
17 with the breakup of the family.

18 Q. Do you believe there would also be an  
19 issue raised by taking [Tom, Jr.] out of these  
20 children's lives?

21 A. Oh, absolutely, absolutely. He is a key  
22 attachment figure for them. In fact, both  
23 parents confirmed that before the kids attached  
24 to them, they attached to [Tom, Jr.], and  
25 that's very common, because he's a playmate.



1 know, remember, the key issue I was looking at  
2 was the quality of the relationship, the  
3 attachment, and its implications. You know, if  
4 you think about, how do we study attachment in  
5 the research literature? We use something called  
6 the strange situation paradigm. It's a 20-minute  
7 observation. Out of 20 minutes of observing, we  
8 can get fairly clear -- a fairly clear idea of  
9 the quality of the relationship between the  
10 parent and the -- usually, we use this with  
11 babies and toddlers and maybe up through the  
12 preschool years, and attachment is a fairly  
13 stable process between parent and child, as long  
14 as the environment remains relatively stable.  
15 That's one of the reasons why I wanted to follow  
16 up with Mr. Gill, to make sure that there wasn't  
17 any major difficult changes. They have moved in  
18 the year I saw them, but they moved in the  
19 community. The kids go to the same school.  
20 They're still with the same friends, it's still  
21 the same support system, and nothing else of  
22 significance has changed that would, in my  
23 opinion, undermine the quality of the attachment.

24 So six hours of observations was plenty  
25 to get the information I needed to come to a

1 conclusion about whether these kids were well  
2 connected to their fathers.

3 Q. And are your opinions here today based  
4 solely on your visual observations during that  
5 six hours of visiting?

6 A. No. Certainly, the issue of potential  
7 harm and the issue of whether adoption is in  
8 their best interests is informed not just by my  
9 observations, it's informed by, you know, 32  
10 years of education, training, experience, my  
11 research in this field, my knowledge of the  
12 adoption field, my knowledge of the attachment  
13 literature. In other words, it's informed by  
14 many different things, and that's the -- I use  
15 that as the context for understanding what I'm  
16 observing and the meaning of that, what I'm  
17 observing, for the children's short-term and  
18 long-term well-being.

19 MS. BASS: Thank you.

20 I have nothing further of this  
21 witness.

22 THE COURT: Just one question. We  
23 have a legal mechanism in the statute,  
24 called permanent guardianship.

25 THE WITNESS: Uh-huh.

1           THE COURT:  So what would the  
2           implications be if this case resulted in  
3           a permanent guardianship?

4           THE WITNESS:  I don't know Florida  
5           law.  I know New Jersey and California  
6           law, which also have permanent  
7           guardianship, but that isn't necessarily  
8           permanent.  It can be challenged, and  
9           I've been involved in cases where it has  
10          been challenged.  So it doesn't provide  
11          them the same level of legal -- I  
12          shouldn't maybe -- In my experience in  
13          New Jersey and California, it has not  
14          provided the same level of legal  
15          certainty or legal permanence.

16          It also -- doesn't provide the same  
17          kind of psychological permanency.  To  
18          say, "This is my guardian," is one  
19          thing.  To say, "This is my parent,"  
20          "This is my mom and dad, my parent,"  
21          like everybody else in the neighborhood,  
22          is something else, and I have to  
23          acknowledge there's no research on  
24          children who are in legal guardianships  
25          and aging out what happens.

1           We know what happens in long-term  
2           foster care, with kids who age out of  
3           that, and they are at significant risk  
4           for all kinds of difficult life  
5           situations. But I think legal  
6           guardianship may add one additional step  
7           of certainty, but not enough, in my  
8           opinion.

9           THE COURT: Is there any research  
10          on the disruption rates?

11          THE WITNESS: In legal  
12          guardianships?

13          THE COURT: Yeah.

14          THE WITNESS: Not that I know of.

15          THE COURT: Thank you, Doctor.

16          Ms. Cooper?

17          MS. COOPER: No questions.

18          THE COURT: Let's see, whose turn  
19          is it? Ms. Martin?

20                                    CROSS EXAMINATION

21          BY MS. MARTIN:

22                  Q. Hi, Mr. Brodzinsky. How are you?

23                  A. Nice to see you again.

24                  Q. Very nice to meet you. I have just a  
25          handful of questions for you.

1 A. Uh-huh.

2 Q. In looking at your CV, I see that,  
3 again, you are a very well professed person, if  
4 that's the right word. You write a lot.

5 A. Uh-huh.

6 Q. Lots of publications and things. In  
7 terms of your -- on Page 2 of your CV, you have a  
8 section called Clinical and Consultant Positions.

9 A. Uh-huh.

10 Q. And if you could just clarify a couple  
11 things on there for me.

12 A. Sure.

13 Q. When you look at the 1985 to present  
14 practice --

15 A. Uh-huh.

16 Q. -- and you have a listing of various  
17 activities, and in that you have 550 forensic  
18 cases --

19 A. Correct.

20 Q. -- does that mean, when you say  
21 testifying a hundred times, I should infer that  
22 to be court time?

23 A. Yes.

24 Q. Okay, and in the forensic cases, how  
25 many of those, if you can tell me, were criminal

1 in matter?

2 A. A fairly small percentage, certainly I  
3 wouldn't say more than 10 percent. Most of those  
4 were Michael's hearings, if you understand that.

5 Q. Yes, I do.

6 A. Okay, I'm sorry. Yeah, most of those  
7 are Michael's hearings or evaluations for sexual  
8 abuse in a criminal case.

9 Q. And if only 10 percent were in criminal,  
10 what were the remainder?

11 A. Split between, I'd say, custody cases,  
12 termination of parental rights cases, adoption  
13 cases. Split, you know, in different ways. It  
14 varies from year to year. Some personal injury  
15 cases, too.

16 Q. When you're talking about the 550  
17 forensic cases, those that would be in the  
18 adoption arena, can you give me a percentage on  
19 that?

20 A. Okay. Well, I'm going to include  
21 termination of parental rights and wrongful  
22 adoptions together, because they're all, in some  
23 way or another, related to adoption.

24 Q. Do you have to?

25 THE COURT: Wrongful adoptions?



1 MS. MARTIN: Yeah --

2 THE WITNESS: No, no, no, no,  
3 not -- well, she's talking about --  
4 Termination of parental rights is really  
5 freeing the child for the possibility of  
6 adoption. So that, in some ways, is  
7 connected to adoption. Wrongful  
8 adoption is a separate issue.

9 THE COURT: That's a term I've  
10 never heard of.

11 THE WITNESS: What, wrongful  
12 adoption?

13 THE COURT: Yes.

14 THE WITNESS: Fraud cases.

15 MS. MARTIN: Those were the  
16 criminal ones.

17 THE WITNESS: Huh?

18 MS. MARTIN: Those would be the  
19 criminal ones.

20 THE WITNESS: Well, actually, the  
21 ones I've been involved with haven't  
22 been in criminal court, I mean, not --

23 MS. MARTIN: I was trying to be  
24 funny and I was not.

25 THE WITNESS: Oh, okay, I'm sorry.

1 MS. MARTIN: I was trying to be  
2 cute. It's been a long day.

3 THE WITNESS: Okay.

4 BY MS. MARTIN:

5 Q. Okay, if I could go back and rephrase  
6 the question, because we kind of got sidetracked.

7 A. Sure.

8 Q. In those 550 forensic cases, and I asked  
9 you about the number or percentage that would be  
10 adoption, and you indicated you needed to include  
11 in that the TPRs --

12 A. No, I was just -- I probably --

13 Q. No, that's --

14 A. A hundred, a hundred and twenty,  
15 something like that, maybe.

16 Q. And that would be the TPRs and the  
17 adoptions?

18 A. Uh-huh.

19 Q. Okay. And you have -- if I go down a  
20 little bit further, you indicate that you were  
21 involved in an ACLU challenge to the ban on  
22 adoption by gays and lesbians in Florida,  
23 parentheses, Lofton versus Kearney, close  
24 parentheses.

25 A. Correct.

1 Q. What role did you play in that lawsuit?

2 A. I -- by the way, I was deposed, I was  
3 never -- it didn't go to trial. I noticed, in my  
4 deposition, that I misspoke. It was Amer. versus  
5 Johnson case I went to trial with in here.

6 I was retained by the ACLU to testify  
7 to -- in both of those cases, to issues related  
8 to the research on gay and lesbian parenting and  
9 on adoption issues in general.

10 Q. Other than the ACLU challenge on the ban  
11 on adoption by gay and lesbians, which we'll just  
12 call the Lofton case --

13 A. Okay.

14 Q. -- have you been retained by the ACLU on  
15 any other matter?

16 A. On one other matter. That was the Amer.  
17 versus Johnson case.

18 Q. Could you share for the Court what that  
19 Amer. case was?

20 A. That was here in Florida, and that  
21 involved a challenge to the current ban on gay/  
22 lesbian adoption. I testified, I think it was  
23 Fort Lauderdale, and I testified to what the  
24 research shows about gay/lesbian parenting,  
25 adoption. I talked about adoption in general.

1 Q. Were you done?

2 A. Yeah, I think so.

3 Q. Today you were offered and accepted as  
4 an expert in clinical developmental psychology,  
5 foster care, and attachment disorder. Were you  
6 similarly certified as an expert or classified as  
7 an expert in the Amer. case, too?

8 A. I don't know the specifics of what I --  
9 I don't remember the specifics of it --

10 Q. Okay, if you don't remember.

11 A. But I would say just generally, the  
12 answer would be yes.

13 Q. And then you indicated you were an  
14 expert in the 11 different states.

15 A. Correct.

16 Q. Could you tell me -- break that down?  
17 Would that be 11 different times you testified?

18 MR. GONZALEZ: Objection -- sorry.

19 I believe it mischaracterizes his  
20 testimony.

21 THE COURT: You can answer, Doctor.

22 MR. GONZALEZ: Unless -- okay, I  
23 withdraw it. I withdraw the objection.

24 BY MS. MARTIN:

25 Q. Perhaps you could look at your CV with

1 me. Do you want to you look at Page 2?

2 A. It is 11.

3 Q. From the third bottom up, it says  
4 expert, and does it say 11?

5 A. It does say 11.

6 Q. Okay, right. Not that 10 is so  
7 significant from 11, but in the 10 different  
8 states, would that -- Am I inferring you  
9 testified 10 -- 11 times?

10 A. Well, in some states, in New Jersey and  
11 in New York, I've testified multiple times.

12 Q. Many more, okay.

13 A. Most of my testimony has been in New  
14 Jersey. Probably the next highest is in New  
15 York. I've testified in California twice,  
16 Michigan once, Pennsylvania three or four times,  
17 Texas a few times, Idaho once, Florida three  
18 times, Massachusetts several times, Hawaii once,  
19 Maryland, I think, a couple of times.

20 Q. And still on Page 2, under the same  
21 section I'm looking at, under the 1985 to present  
22 practice --

23 A. Uh-huh.

24 Q. -- you have some cases that even I  
25 recognize, and I'm not very good on a lot of

1           them, but some of them seem to be very  
2           high-profile cases, such as the Woody Allen and  
3           Mia Farrow. Is that -- would you consider that  
4           high profile?

5           A. Yes.

6           Q. How do you -- How do people find your  
7           services? How do they locate you?

8           A. I'm internationally known in the area of  
9           adoption, okay? And I don't know how people get  
10          to me. They get to me in different ways. I  
11          mean, certainly, the American Psychological  
12          Association has a referral service, so that I  
13          frequently get calls from attorneys who contact  
14          the American Psychological Association and say,  
15          "We're looking for an expert in X, Y or Z," and  
16          so I know I've gotten referrals that way. A lot  
17          is word of mouth through attorneys. And other  
18          than that, I don't know.

19          Q. In looking, again, at the same category,  
20          it indicates that you provided some kind of  
21          capacity in the gay marriage trial in Hawaii.

22          A. Correct.

23          Q. Could you share with me what your role  
24          in that litigation was?

25          A. Well, the way the State was arguing that

1 case, they were basically saying that only the  
2 traditional family -- children only fare well in  
3 traditional families, to a married couple, mother  
4 and father, okay?

5 Q. Is that a traditional family to you?

6 A. Well, from a research perspective, mom  
7 and dad, married, with children, is considered  
8 the traditional family. Other variations of that  
9 are -- certainly, today, the traditional family  
10 is not the most common form. The variations in  
11 the traditional are the most common.

12 Q. I apologize, I interrupted you. I'm  
13 sorry.

14 A. Okay. So, when I got a call from -- in  
15 this case, it was from LAMBDA, who I think was --  
16 I'm not sure if they were lead counsel or not,  
17 but they were certainly one of the people  
18 involved, they asked me to come in to address --  
19 initially, it was to address different aspects of  
20 family life that are not traditional. Since I  
21 taught courses in this, it was my research area,  
22 they knew of my work in adoption and foster care,  
23 and I was to come in and talk about how kids fare  
24 in foster care and adoption, that they can fare  
25 very well, and they subsequently found out that I

1           also taught a lot in the area of gay and lesbian  
2           parenting and in other aspects of uncommon family  
3           life, so that my testimony expanded to those  
4           areas, as well.

5           Q.   Okay, and for purposes of the record,  
6           could you tell me what LAMBDA is, if you can?

7           A.   I don't think I really can.

8           Q.   All right.

9           A.   I mean, it's an organization that is  
10          involved with legal issues and educational issues  
11          dealing with gays and lesbians and bisexuals and  
12          transgender individuals.

13          Q.   Fair enough.  Have you, besides the gay  
14          marriage trial in Hawaii, ever been hired by  
15          LAMBDA --

16          A.   No.

17          Q.   -- for any other issues?

18          A.   No.

19          Q.   You indicated that in your awards, in  
20          the 2002, you got the U.S. Congressional  
21          Coalition on Adoption, AA Angel?

22          A.   Angel In Adoption Award.

23          Q.   What was that for?

24          A.   It's for my work in adoption, as a  
25          researcher, as a -- you know, an advocate for



1           adopted kids, as my -- you know, in terms of my  
2           clinical work. Both my wife and I were nominated  
3           as -- together.

4           Q. And just for my educational purposes  
5           only, if you turn to Page 4, under the Editorial  
6           Reviewing and Editorial Boards --

7           A. Uh-huh.

8           Q. -- could you tell me what  
9           orthopsychiatry is? What is that?

10          A. It's an old-time organization that  
11          really is focused on children. Frankly, I don't  
12          even know what the word ortho refers to.

13          Q. Okay. Neither do I. I thought maybe  
14          you could enlighten me.

15          A. I'm often asked that, and I have to  
16          plead ignorance, myself.

17          Q. Okay, and I have just a couple more  
18          questions for you. If you go to Page 12 of your  
19          CV, under what's called In Preparation --

20          A. Uh-huh.

21          Q. -- you have a number of articles, and  
22          I'm assuming that means that they're in the  
23          process --

24          A. Exactly.

25          Q. In the process for publication, correct?

1           A. Uh-huh.

2           Q. And looking at the third one down, it's  
3           titled Adoption by Lesbians and Gay Men, a  
4           Nationwide Study of Adoption Agency Policies and  
5           Practices.

6           A. Right.

7           Q. Is that the one that you referred to  
8           today in your testimony?

9           A. The answer is yes, but this is a version  
10          of it. The full report that I produced for the  
11          Adoption Institute is on the website. It was  
12          published as a technical report. That's listed  
13          further down on this page. As editor of this  
14          book on adoption by lesbians and gay men, I also  
15          contributed a chapter, which was a version of  
16          that survey research. I took part of the  
17          information and put it into a different format.

18          Q. All right. When you say website, you  
19          mean your personal --

20          A. No.

21          Q. -- company website?

22          A. No, the institute's website.

23          Q. The institute meaning --

24          A. The Evan B. Donaldson Adoption  
25          Institute.

1 Q. Thank you. And you co-authored, with  
2 two other persons, an individual whose last name  
3 was Pertman, P-E-R-T-M-A-N --

4 A. Uh-huh.

5 Q. -- and an individual whose last name is  
6 Kunz, K-U-N-Z.

7 A. Uh-huh.

8 Q. Who is Mr. -- or who is Kunz, I should  
9 say?

10 A. Diane Kunz is a professional who runs  
11 something called the Center for Adoption Policy.  
12 I honestly don't know where it's located now. It  
13 used to be located in New York. I think she has  
14 relocated. Adam Pertman is the executive  
15 director of the Evan B. Donaldson Adoption  
16 Institute.

17 Q. Is Mr. Pertman still the executive  
18 director of Evan Donaldson?

19 A. He is. He is.

20 Q. And if I'm looking at the same page, a  
21 couple of lines down -- it's actually the last  
22 one on your In Preparation, it looks as though  
23 you're authoring another paper with them, The  
24 Adoption of Lesbians and Gay Men, a New American  
25 Reality. Are they the same individuals?

1           A. Where were you looking before? That's  
2 the only --

3           Q. I'm sorry, sir. I was looking at the  
4 third one down, on In Preparation --

5           A. Uh-huh.

6           Q. -- and then I was looking at the very  
7 last one in that same section.

8           A. Oh, I'm sorry. That's -- I was  
9 responding to the very last one. That's the  
10 only --

11          Q. Do you want to take back your answer and  
12 go again? I'm kidding. No. Okay, let me just  
13 do it again, because I want to make sure that  
14 your testimony is clear.

15          A. Okay.

16          Q. If you look at the third one down --

17          A. Okay.

18          Q. -- on In Preparation --

19          A. Uh-huh.

20          Q. -- we have the same authors. So you've  
21 identified them for me; they're the same persons,  
22 right?

23          A. That's right.

24          Q. Okay, and the Adoption by Lesbians and  
25 Gay Men, a Nationwide Study of Adoption Agency

1 Policies and Practices, is that the same study  
2 you were referring to in your earlier testimony?

3 A. Yes, and that's a chapter in the book  
4 that I'm editing with Mr. Pertman and Ms. Kunz.

5 Q. Okay, and now, since we're now on the  
6 same location, could you explain to me what the  
7 article is, the last in the In Preparation  
8 section?

9 A. That's not an article. That is the  
10 edited book.

11 Q. The edited book. All right, thank you.

12 Is that going to be used as a textbook,  
13 or what is the use of that?

14 A. No, it's like most of the books that  
15 professionals publish, it is to inform the other  
16 professionals in the community about what's going  
17 on in a particular field. In this particular  
18 case, it will be geared toward professionals,  
19 probably child welfare professionals, but also  
20 mental health. The authors of the various  
21 chapters come from a wide range of disciplines,  
22 from history, sociology, social work, psychology,  
23 law.

24 Q. If I understood your earlier testimony,  
25 you talked about some issues of children in terms

1 of the adoption arena, and you talked about  
2 adjustment; is that correct.

3 A. Uh-huh.

4 Q. Are you familiar with a term,  
5 "maladjustment"?

6 A. Sure.

7 Q. What does that mean to you?

8 A. Poor adjustment.

9 Q. Okay, the opposite of adjustment. Well,  
10 I guess it's not the opposite, but --

11 Are children who are in foster care --  
12 are they at a higher risk of maladjustment?

13 A. Yes. Compared to kids in the general  
14 population, yes.

15 Q. Okay, so you're comparing kids in the  
16 general population who are not in the foster  
17 care --

18 A. Exactly.

19 Q. -- and children in foster care?

20 A. Yes.

21 Q. What type of -- I know that you talked  
22 about some issues regarding adjustment. Could  
23 you just give me what you consider the top four  
24 or five maladjustment issues?

25 A. Well, it really depends on what they've

1           experienced. Kids go into foster care for a wide  
2           range of reasons: Neglect, abuse, physical or  
3           sexual, homelessness, witnessing domestic  
4           violence. You know, it depends. The nature of  
5           their problem will be connected to what they've  
6           experienced prior to going into care.

7                         So, for example, children who are  
8           sexually abused often present with post-traumatic  
9           stress disorder. They often present with  
10          depression. Kids who were neglected often  
11          present with anxiety disorders, with disrupted  
12          attachments, with depression. School adjustment  
13          problems are very common in children in foster  
14          care, partly because of the histories that  
15          they've experienced, but also, you know, when  
16          you're in foster care, we wish it would be a  
17          stable placement. Kids move from home to home to  
18          home too often. I've worked with kids in  
19          preschool years that have been in a dozen homes.

20                        Q. And in terms of children who are in  
21          foster care, is it a fairer statement to say that  
22          they come from a dysfunctional family of some  
23          kind?

24                        A. You mean their family of origins?

25                        Q. Yes, that's correct.

1           A. Yes. That's why they're in foster care.  
2           Their parents cannot care for them, for one  
3           reason or another.

4           Q. And would it be fair to say that  
5           children who, because they're coming from some  
6           kind of dysfunctional family, as a result of  
7           having to be put into foster care, would be at a  
8           higher risk of maladjustment?

9           A. Sure. The ultimate pattern of  
10          adjustment, though, that that is dependent upon  
11          the quality of care that they get either in  
12          foster care or in some other kind of placement,  
13          whether it be with kin, or perhaps they're going  
14          into adoption.

15          In this case, for example, [John] came  
16          into the home with very serious delays  
17          academically and so forth, with medical problems,  
18          and because of the quality of care that he's  
19          received, he's adjusting very, very well. And  
20          that's what we look for, we hope for, that foster  
21          care or adoption or placement into a kinship  
22          placement home, will afford that child  
23          high-quality care so that they can recover from  
24          the early trauma, the early adversity that  
25          they've experienced.



1           Q. How did you learn of the history of this  
2 family?

3           A. Through the home study report, as well  
4 as through the reports of the fathers themselves.

5           Q. In your experience as a clinical  
6 psychologist and also a developmental  
7 psychologist, particularly in the foster care  
8 environment, which you've been proffered as an  
9 expert in, do you read different types of studies  
10 to see what the -- to see how the mainstream  
11 empirical evidence is heading?

12          A. Sure. I have to keep up with the  
13 research.

14          Q. And in part of keeping up with the  
15 research in that same arena -- which seems to be  
16 very hard for me to say -- do you look at  
17 different types of long-term studies?

18          A. What do you mean, long-term studies?

19          Q. Do you know the term "longitudinal"?

20          A. Yes.

21          Q. Do you look at longitudinal studies?

22          A. Sure, to the extent that they're  
23 available.

24          Q. What does a longitudinal study provide  
25 you, in terms of looking at children in foster

1 care?

2 A. It helps us to understand how early  
3 experiences ultimately influence the  
4 developmental pathway. You can get similar  
5 information in longitudinal and cross-sectional  
6 studies for certain kinds of things, adjustment,  
7 for example, of children, you know, but what you  
8 can't get from a cross-sectional study that you  
9 can get from a longitudinal study is being able  
10 to look at, let's say, a child in adolescence and  
11 ask the question, what are the early experiences  
12 that they've had that influence the course of  
13 their pathway, either in terms of positive  
14 adjustment or negative adjustment.

15 Q. So, in your role as an expert in  
16 clinical psychology and developmental psychology,  
17 particularly in the foster care arena, is it  
18 helpful for you to have longitudinal studies, to  
19 see the development of the child over time?

20 A. To answer certain kinds of questions, it  
21 would be.

22 Q. What kinds of questions would it be  
23 helpful in?

24 A. To answer the question of what kinds of  
25 early experiences we can expect will influence a

1 child long term, and how development might be  
2 altered in one way or another by experiences that  
3 they have at different points in development.

4 Q. Earlier on, when we were going through  
5 your CV, I asked -- I think I asked you how many  
6 of the cases that you testified to pertained to  
7 adoption. Did I ask you that?

8 MS. BASS: Yes, you did.

9 THE WITNESS: Yes.

10 MS. MARTIN: Thank you.

11 BY MS. MARTIN:

12 Q. How many of those were pertaining to gay  
13 and lesbian adoption?

14 A. Probably only -- probably only four  
15 cases, specifically. With gay and lesbian issues  
16 in the divorce arena, another issue, I mean, but  
17 in terms of adoption, I've only been involved in  
18 those cases as it relates to cases down here in  
19 Florida.

20 Q. The ones you've already delineated for  
21 me?

22 A. Yeah.

23 Q. All right. How did you first become  
24 involved in the Gill case?

25 A. I got a call from Mr. Gonzalez, who

1 introduced himself, explained his role, that he  
2 is counsel for the children, explained that there  
3 was a case that was going to be going on, and he  
4 asked me -- he explained what he would want me to  
5 be doing and he asked whether I would be  
6 interested in doing it, and I said, "Sure."

7 Q. Had you worked with Mr. Gonzalez before?

8 A. Never.

9 Q. Do you know the law firm that  
10 Mr. Gonzalez works for?

11 A. No.

12 MS. MARTIN: Excuse me just one  
13 moment.

14 MS. BASS: Sure.

15 (Discussion off the record)

16 MS. MARTIN: Thank you. We're  
17 finished.

18 THE COURT: Okay.

19 MS. BASS: I have no redirect.

20 MR. GONZALEZ: We rest.

21 THE COURT: Thank you, Doctor.

22 MS. MARTIN: Thank you.

23 THE WITNESS: Okay.

24 THE COURT: So are we doing  
25 anything else this evening?

1 MS. MARTIN: I guess the ball is in  
2 my court, and to be candid with you, I  
3 didn't think I'd be ready today, so if  
4 you don't mind, if I could start off  
5 fresh in the morning?

6 THE COURT: You want to see the  
7 debate tonight.

8 MS. BASS: Your Honor, we have one  
9 problem, which I mentioned to counsel,  
10 and that is, when we changed the date, I  
11 have a hearing before Judge --

12 MS. MARTIN: Change the date?

13 MS. BASS: Changed the date of this  
14 trial.

15 MS. COOPER: When we rescheduled.

16 MS. BASS: I had a prescheduled  
17 hearing tomorrow at 8:00 a.m. in front  
18 of Judge Miller, which is scheduled for  
19 half an hour. So I expect I can make it  
20 back here by 9:00. At the time, we  
21 talked about starting another witness  
22 and going on without me, but in light of  
23 the fact I think we only have two  
24 witnesses left --

25 MS. MARTIN: That's correct.

1 THE COURT: So we might finish  
2 tomorrow?

3 MS. MARTIN: Buy a Lotto ticket.

4 THE COURT: Okay.

5 MS. MARTIN: No, I think it's very  
6 possible.

7 MS. BASS: Well, either that or  
8 maybe we can -- I don't know if you want  
9 to hear a closing. Maybe we can  
10 schedule that for Monday morning and  
11 then be done. I don't know how you --

12 MS. COOPER: And, Your Honor, we  
13 may or may not need rebuttal testimony,  
14 depending on what happens.

15 THE COURT: Can your associate sit  
16 in, so we can begin at 8:30?

17 MS. BASS: That's no problem with  
18 me.

19 THE COURT: Okay, great.

20 MS. MARTIN: So we're still  
21 starting at 8:30 tomorrow, then?

22 MS. BASS: Sure.

23 MR. ESSEKS: Could you tell who  
24 you're going to call first?

25 MS. MARTIN: Yes, I'll be happy to.

1 I'm going to call Dr. Rekers first.

2 THE COURT: All right, have a nice  
3 night, everyone.

4 MS. COOPER: Thank you.

5 MS. BASS: Thank you, Your Honor.

6 MS. MARTIN: Thank you, Judge.

7 (Thereupon, the hearing was  
8 adjourned at 5:20 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, JOAN L. BAILEY, Registered Diplomate Reporter, Florida Professional Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 6th day of October, 2008.

\_\_\_\_\_  
JOAN L. BAILEY, RDR, FPR

Notary Commission Number DD 64037  
Expiration June 14, 2011.

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IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JUVENILE DIVISION  
CASE NO.: 06-033881 FC 04

IN THE MATTER OF THE ADOPTION OF )  
 )  
 [John Doe] and )  
 [James Doe], )  
 minor children. )  
 )  
 \_\_\_\_\_ )

The above-entitled cause came on for  
hearing before THE HONORABLE CINDY S. LEDERMAN,  
in her courtroom at the Juvenile Justice Center  
3300 Northwest 27th Avenue, Second Floor, Miami,  
Miami-Dade County, Florida, on Friday, October 3,  
2008, beginning at approximately 8:30 a.m.

- - -

1 APPEARANCES:

2 THE AMERICAN CIVIL LIBERTIES UNION  
 3 FOUNDATION OF FLORIDA, INC., by  
 4 LESLIE COOPER, ESQ.,  
 and  
 5 ROBERT F. ROSENWALD, JR., ESQ.,  
 and  
 6 JAMES ESSEKS, ESQ.,  
 and  
 7 SHELBI D. DAY, ESQ.,  
 Counsel for Petitioner, Frank Martin Gill  
 and the ACLU.

8 OFFICE OF THE ATTORNEY GENERAL, by  
 9 VALERIE J. MARTIN, ASSISTANT ATTORNEY GENERAL,  
 and  
 10 KIERNAN P. MOYLAN, ASSISTANT ATTORNEY GENERAL,  
 and  
 11 CHARLES M. FAHLBUSCH, ASSISTANT ATTORNEY GENERAL,  
 Counsel for Department of Children & Families.

12 GREENBERG TRAUERIG, P.A., by  
 13 HILARIE BASS, ESQ.,  
 and  
 14 RICARDO A. GONZALEZ, ESQ.,  
 Counsel for the minor children.

15 JESSICA L. ALLEN, ESQ.,  
 On behalf of the Guardian Ad Litem Program.

16 RONALD B. GILBERT, ESQ., GUARDIAN AD LITEM.

17

18

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I N D E X

19

20 GEORGE A. REKERS, Ph.D.

21

Direct Examination (By Ms. Martin) 810

22

Cross Examination (By Mr. Esseks) 929

23

EXHIBITS

24

DCF's Exhibit E 824

25

1           THEREUPON:

2                   The following proceedings were had:

3                   THE COURT:  As of today, everyone  
4                   rested, except for the State, and the  
5                   State's case begins this morning.

6                   MS. MARTIN:  Yes.

7                   If Your Honor is ready to begin, we'd  
8                   like to call Dr. George Rekers.

9                   THE COURT:  Is Mr. Gill here?

10                  MR. ESSEKS:  Yes, Your Honor.

11                  THE COURT:  Sit on the chair in the end,  
12                  please.

13                  DR. REKERS:  Okay.

14           THEREUPON:

15                   GEORGE A. REKERS, Ph.D.

16                  was called as a witness by the Department of  
17                  Children & Families and, having first been duly  
18                  sworn, was examined and testified as follows:

19                  THE WITNESS:  Yes, I do.

20                  THE CLERK:  Thank you.

21                  MS. MARTIN:  May we proceed?

22                  THE COURT:  Uh-huh.

23                                 DIRECT EXAMINATION

24           BY MS. MARTIN:

25                   Q.  Good morning, sir.  How are you?

1           A.    Pretty good.

2           Q.    Sir, would you please state and spell  
3 your name for the court reporter?

4           A.    George Alan Rekers, R-E-K-E-R-S.

5           Q.    Sir, this -- I just wanted to let you  
6 know that you need to speak up loud for the court  
7 reporter, and make sure that you answer her  
8 loudly enough so she can take down her notes, so  
9 she understands it, because you have a tendency  
10 to drop your voice at the end of the  
11 conversation.

12                    Could you tell the Court about your  
13 educational background, please?

14           A.    Yes.  I have Bachelor's degree in  
15 psychology from Westmont College in Santa  
16 Barbara, California, and then a Master's degree,  
17 a C.Phil, Candidate in Philosophy, degree in  
18 psychology, and Ph.D. degree in developmental  
19 psychology from the University of California at  
20 Los Angeles, and then I immediately proceeded a  
21 post-doctoral study at Harvard University in  
22 clinical psychology, where I had, also, Harvard  
23 placement at the New England Medical Center in  
24 the Division of Child & Adolescence Psychiatry,  
25 for a clinical psychology internship.

1                   I took courses in clinical psychology,  
2                   and I had another placement training me in adult  
3                   clinical psychology, at the Boston Veterans  
4                   Administration Hospital.

5                   Q.    What is a C.Phil?

6                   A.    Well, I think only one or two  
7                   universities have it.  It's called Candidate in  
8                   Philosophy Degree, and it means you've completed  
9                   everything towards a Ph.D., except the  
10                  dissertation, and the University of California  
11                  created the degree, to give a higher pay rate for  
12                  people who have more than a master's degree.

13                  Q.    All right.  In terms of your Ph.D. from  
14                  the University of California, did you have any  
15                  thesis or paper that you did in your  
16                  developmental psychology degree?

17                  A.    Yes.  I had a dissertation on  
18                  pathological sex role development in children,  
19                  behavioral treatment and assessment.  I think  
20                  that's approximately the title.  And I had two  
21                  minor areas of study, psychology of learning and  
22                  clinical psychopathology.

23                  Q.    When you talk about clinical psychology,  
24                  could you explain to me what that means?

25                  A.    Clinical psychology is that branch of

1 the field of psychology that conducts research,  
2 but also is the professional practice area of  
3 psychology dealing with the assessment,  
4 psychological testing, diagnostic studies of  
5 individuals, and psychological treatment,  
6 psychotherapy with children, play therapy, and  
7 family therapy, and other treatment modalities.

8 Q. Okay. When you talk about clinical  
9 psychology, as a clinical psychologist, do you  
10 actually treat patients?

11 A. Yes.

12 Q. Is that called being a clinician? Am I  
13 correct?

14 A. Well, yeah. Some lay people just say  
15 clinician, uh-huh.

16 Q. Other than the degrees in -- which  
17 you've identified, did you subsequently obtain a  
18 degree in theology?

19 A. Yes, I have a Master of Divinity degree  
20 from Columbia International University, and a  
21 Doctor of Theology degree from the University of  
22 South Africa.

23 Q. And just for clarification, for the  
24 record, what year did you obtain those degrees?

25 A. That was later in my career. Master of

1 Divinity degree was in 1994, I believe, and  
2 Doctor of Theology degree, 1997.

3 Q. Are you currently employed?

4 A. I am currently a consultant, and I'm --  
5 I took early retirement from the University of  
6 South Carolina School of Medicine, where I still  
7 hold the title distinguished professor of  
8 neuropsychiatry and behavioral science emeritus.

9 Q. When did you retire early from the  
10 University Of South Carolina?

11 A. July 31, 2005.

12 Q. Since we're talking about your last  
13 employment, can you share with me briefly a  
14 summary of your professional career from the date  
15 that you obtained your Ph.D. in clinical -- in  
16 developmental psychology?

17 A. Yes. I was -- I received my Ph.D. in  
18 1972, and then I went to Harvard University,  
19 where my -- I had two titles, research fellow and  
20 visiting scholar in the Center for the Behavioral  
21 Sciences, and during that time, I was perusing a  
22 post-doctoral study in clinical psychology.  
23 Then -- that was for approximately a year and a  
24 half, along with the placement at the New England  
25 Medical Center.



1                   My Harvard appointment was actually 12  
2                   months, but then they placed me, and I was  
3                   finishing my clinical internship, another six  
4                   months, and then while I was at Harvard, I  
5                   received a large Federal research grant from the  
6                   National Institute of Mental Health at the  
7                   University of California, Los Angeles, and so  
8                   part of the time I was at Harvard, I was flying  
9                   back to UCLA setting up and hiring staff on a  
10                  research grant. So that somewhere in there, nine  
11                  or twelve months after I was at Harvard, I was  
12                  employed both, at the University of California,  
13                  and I was finishing my internship.

14                  Then I -- January 1974, I returned to  
15                  UCLA to pursue the research grant, the clinical  
16                  research grant, developing assessment and  
17                  treatment procedures for children with gender  
18                  disturbances, and at UCLA, my title was assistant  
19                  research psychologist, and after I was there a  
20                  while, they also gave me the title adjunct  
21                  assistant professor of psychology, where they  
22                  asked me to supervise graduate students in the  
23                  psychology clinic and teach a course, from time  
24                  to time.

25                  So I was there at UCLA, on the Federal

1 grant from the National Institute of Mental  
2 Health, until 1977, and that was my full-time  
3 employment. Along the way, I've done,  
4 though, part-time things here and there, but I'll  
5 give you the full-time ones.

6 Q. Yes, we're just looking for a summary --

7 A. Correct.

8 Q. -- so the Court can have a feel for your  
9 background.

10 A. Then 1977, I was appointed the --  
11 associate professor of psychiatry at the  
12 University of Florida College of Medicine, and  
13 within a few months, they also appointed me chief  
14 psychologist of the Division of Child &  
15 Adolescent Psychiatry, and they gave me a joint  
16 appointment in the Department of Clinical  
17 Psychology, which is a separate department, in  
18 the College of Health Related Professions, and,  
19 then, over time, I was asked to be -- joint  
20 appointment in the Pediatrics Department.

21 So I was there until 1980, at which time  
22 I accepted a full professor position and  
23 department head position at Kansas State  
24 University, and the -- that was a tenured  
25 position, in the Department of Family & Child

1           Development, and, then, in 1985, I accepted a  
2           position at the University of South Carolina  
3           School of Medicine as professor of  
4           neuropsychiatry and behavioral science, and as  
5           teaching psychologist at the Hall Psychiatric  
6           Institute.

7           Q.   Okay.  And you were in that last  
8           position until your retirement?

9           A.   Yes, for 20 years, uh-huh.

10          Q.   Okay.  Are you a member of any  
11          professional organizations?

12          A.   Yes.  I am a fellow of the American  
13          Academy of Clinical Psychology, which is a  
14          position to which I was elected to, and I'm a  
15          member of the Board of Directors of the National  
16          Association for Research and Therapy of  
17          Homosexuality.

18          Q.   Have you -- do you share any  
19          professional certifications or have you -- do you  
20          have any professional certifications, is the  
21          proper way to ask?

22          A.   Yes.  I have the National Board  
23          Certification in Clinical Psychology, which is  
24          called the Diplomate in Clinical Psychology, from  
25          the American Board of Professional Psychology.  I

1 am a licensed experimental psychologist and a  
2 licensed clinical psychologist, still, in the  
3 State of South Carolina, and I have -- I'm  
4 certified by the National Register of Health  
5 Service Providers in psychology.

6 Q. And each of those professional  
7 certifications you've just described, are they  
8 current -- currently present?

9 A. Yes.

10 Q. Have you -- you've indicated a couple of  
11 times that you were working on different grants.  
12 Can you explain for the Court what kind of grants  
13 that you were working on, just a brief summary?

14 A. I had several grants from the National  
15 Institute of Mental Health, while I was at UCLA,  
16 and also overlapping at University of Florida,  
17 although the grant was still in Los -- Los  
18 Angeles, for several years.

19 Then I've had -- I had a smaller grant  
20 from the National -- and that grant was, as I  
21 said before, developing assessment and treatment  
22 procedures for childhood gender disturbances,  
23 which is now known as -- some of those  
24 disturbances are called gender identity disorder  
25 in childhood, and I had a grant from the National

1 Institute on Alcoholism and Alcohol Abuse on  
2 adolescent alcohol abuse, and I had a couple of  
3 grants from the \*\*\*Enzer Foundation on adolescent  
4 substance abuse and some other issues, and then I  
5 had a grant from the Administration for Children,  
6 Youth & Families from the United States  
7 Department of Health and Human Services.

8 Q. Have you served as an adviser to any  
9 governmental entities or organizations?

10 A. Yes, about a dozen or so different  
11 government agencies, mostly Federal agencies. I  
12 had a role with the -- in family policy with the  
13 Domestic Policy Council in the White House. I  
14 was an invited expert in hearings on the Select  
15 Committee on Children, Youth and Families in the  
16 US House of Representatives, also in hearings  
17 before the Committee on Family and Human Services  
18 in the US Senate.

19 I've been a consultant to the Office on  
20 Family Policy, or some such thing, in the  
21 Department of Defense. I don't know the exact  
22 name of the office, but it's in the secretary's  
23 office.

24 I've been an advisor to the Secretary of  
25 Health and Human Services. I've been advisor to

1 various staff people and assistant secretaries in  
2 the Department of Education.

3 Q. Okay. And, sir --

4 A. And others.

5 Q. -- you have quite a few on your CV --

6 A. Right.

7 Q. -- but just to share a little bit with  
8 the Court and I hope to enter this into evidence,  
9 so we don't need to go through each and every  
10 one, but just a summary of them. Are there any  
11 other ones that are important, that you need to  
12 itemize for us? I didn't mean to cut you off.

13 A. Well, I've been a grant reviewer for the  
14 Department of Human Services adolescent pregnancy  
15 programs, and I've been a reviewer for the Head  
16 Start Program, and a consultant to the Director  
17 of the Office for Families in the US Department  
18 of Health and Human Services.

19 Q. Have you given lectures in the field of  
20 clinical psychology?

21 A. Yes.

22 Q. What kind of lectures and where have you  
23 provided that?

24 A. I've -- I've given, one time I counted  
25 them, over 200 lectures in universities and

1 professional organizations and academies in the  
2 United States, Europe, Asia, Africa, the Middle  
3 East, Latin America, at various universities and  
4 institutes of psychology and psychiatry and  
5 professional organizations.

6 Q. Have you participated as an editor or a  
7 reviewer in the scientific field?

8 A. Yes. I was -- I think the title was  
9 consulting editor for the Journal of Genetic  
10 Psychology, and then the Journal of Genetic  
11 Psychology Monographs, but then changed its name  
12 to Genetic Social and General Psychology  
13 Monographs, and then I've been an advisory editor  
14 to the Journal of Pediatric Psychology, and a  
15 journal called Behavioral Assessment, and then  
16 I've been a reviewer of half a dozen -- for half  
17 a dozen other journals, like Child Development,  
18 Journal of Abnormal Child Psychology, Journal of  
19 Consulting and Clinical Psychology.

20 Q. Okay. So the editorial review list you  
21 just provided to us, were those peer-reviewed  
22 publications?

23 A. Yes.

24 Q. Have you been qualified as an expert in  
25 the field of clinical or developmental psychology

1 in the past?

2 A. Yes.

3 Q. And how many times have you been  
4 qualified as an expert?

5 A. I haven't taken a tally. It's something  
6 like half a dozen to a dozen times,  
7 approximately.

8 Q. Can you share with me, to the best of  
9 your recollection, what type of cases that you've  
10 provided that expert testimony in?

11 A. I provided expert testimony, in terms of  
12 a deposition for the Lofton case here in Florida.  
13 I presented testimony in the Howard case, foster  
14 parenting, in the State of Arkansas, and then,  
15 just because of my work, primarily in clinical  
16 psychology, focusing on children and adolescents,  
17 I've often been called in to child custody  
18 hearings, if the parents subsequently divorce.

19 I've been -- because I was chief  
20 psychologist for an in-patient -- child  
21 in-patient unit at University of South Carolina,  
22 I was often called in to hearings on termination  
23 of parental rights in child abuse cases.

24 I was also a designated examiner for the  
25 court, that -- actually, the judge, probate



1 judge, would come to the hospital, in terms of  
2 commitment proceedings. In terms of releasing  
3 patients, being one of two or three examiners, is  
4 the patient ready to be released from the  
5 hospital.

6 Q. In your professional environment, have  
7 you published any articles or books, journals?

8 A. Yes. I've published dozens of journal  
9 articles, some in child development journals,  
10 some in psychiatry journals, some in clinical  
11 psychology journals, a variety of different  
12 journals, and I've published several books.

13 Q. The journals that you've provided --  
14 excuse me, that you've provided writings in, are  
15 those peer-reviewed?

16 A. Most of them. The vast majority were  
17 peer-reviewed journals, yes.

18 Q. Have you written any books, journal or  
19 type of publication that are non-scientific or  
20 non-academic?

21 A. Yes.

22 Q. What kind of books or articles or  
23 journals would those be?

24 A. I have -- I've written half a dozen or  
25 so books in the area of parenting, books --

1 popularized books for parenting, help for just  
2 the lay public, so they're written in more lay  
3 language, and they're also with Christian  
4 publishers, and so they included Christian advice  
5 to parents, as well as how to help their -- how  
6 to nurture their children and help them adjust to  
7 different areas.

8 Q. And so you've been retained as an expert  
9 in this case. Is the opinion that you're going  
10 to be offering an academic or scientific opinion,  
11 as opposed to a theological opinion?

12 A. Yes. I'm -- because I have a doctorate  
13 in psychology and a doctorate in theology, I'm  
14 very much aware of the different research methods  
15 in the two fields, and I'm very able to just  
16 testify today to just my professional judgment  
17 based on research and my clinical experience in  
18 my field of clinical psychology and child  
19 development.

20 Q. Okay. Sir, I'm going to hand you a  
21 document and ask you if you recognize it? Would  
22 you take a look at that, please?

23 THE COURT: Have we marked it?

24 MS. MARTIN: No. I believe it will  
25 be DCF E, as in elephant.

1 THE COURT: Thank you.

2 BY MS. MARTIN:

3 Q. Sir, do you recognize the document that  
4 I've just handed you?

5 A. Yes.

6 Q. Can you tell me what it is?

7 A. This is my curriculum vitae for my  
8 psychology credentials and work.

9 Q. In looking at that document, does it  
10 appear to your satisfaction to be the most recent  
11 update of your CV?

12 A. Yes, it does.

13 MS. MARTIN: At this time, I'd like  
14 to qualify -- I'd like to enter into  
15 evidence the CV of Dr. Rekers as a  
16 summary and in support of his expert  
17 opinion that he'll testify to today.

18 MR. ESSEKS: No objection, Your Honor.

19 THE COURT: Okay. What number is this?

20 MS. MARTIN: E.

21 Your Honor, at this time, I would like  
22 to qualify Dr. Rekers as an expert in the  
23 area of clinical psychology and behavioral  
24 science, and, in addition, to the potential  
25 risks and stressors associated with

1                   homosexually behaving adults and the effects  
2                   on children.

3                   MR. ESSEKS: Petitioner asserts no  
4                   objection.

5                   THE COURT: Thank you.

6                   Sir, what about you?

7                   MR. GONZALEZ: No objection.

8                   MS. MARTIN: I'm sorry, Your Honor,  
9                   the guardian --

10                   MS. ALLEN: Oh, no objection,  
11                   Judge. I'm sorry.

12 BY MS. MARTIN:

13                   Q. For purposes of today's testimony, would  
14                   you -- there's a lot of different words that have  
15                   been used during this proceeding. Could you  
16                   explain to the Court your understanding of the  
17                   term homosexuality?

18                   A. Well, yes. Sometimes it's defined in  
19                   terms of sexual behavior between two members of  
20                   the same gender, and that's the primary meaning  
21                   of the word that I use for this testimony,  
22                   because as I understand it, the law addresses  
23                   homosexually behaving individuals.

24                   So two individuals of the same gender  
25                   having a sexual relationship could be called

1 homosexual.

2 Other definitions are, homosexual  
3 orientation and some studies just ask a person,  
4 "What is your orientation? Is it homosexual,  
5 heterosexual or bisexual, for example, and it's  
6 just an orientation, that may or may not be  
7 expressed in behavior, and that original  
8 distinction between orientation, behaviors was  
9 made decades ago by some researchers, and then  
10 there's homosexual identity or gay identity or  
11 lesbian identity, and that's a little bit  
12 different.

13 The categories overlap somewhat, but  
14 there are some distinctions empirically between  
15 those.

16 Q. During today's proceedings, if I use the  
17 term homosexually behaving adult or individual,  
18 would you understand to be -- to meet your  
19 definition?

20 A. Yes.

21 Q. In terms of your academic or  
22 professional career, have you had any occasion to  
23 research different projects in psychology?

24 A. Yes.

25 Q. What type of projects have you

1 researched?

2 A. I had a major project that investigated  
3 children with atypical gender role behaviors,  
4 that come to the attention of clinicians, and at  
5 that time, there was no known successful  
6 treatment to reverse cross gender identity in  
7 children, and so -- and there are also inadequate  
8 clinical assessments procedures, as well, and so  
9 I developed some measures that were useful  
10 clinically, with children as young as four years  
11 old, four up to about ten or eleven years old,  
12 different behavioral assessment measures.

13 I had co-investigators on that grant,  
14 Professor Peter Bentlor at UCLA, who used parent  
15 report measures of sex type behaviors and  
16 attitudes and alike, and, then, with Professor  
17 Alexander Rosen, who is the chief psychologist at  
18 the UCLA Neuropsychiatric Institute, and he used  
19 standard psychological testing approaches in  
20 proving the projected tests.

21 Q. If I use the word cross-sectional  
22 studies, would you understand -- do you  
23 understand that term?

24 A. Yes.

25 Q. How do you understand that term?

1           A. Cross-sectional research studies number  
2 subjects at one discreet point in time. Now, it  
3 could be spread over several months, but it's  
4 distinguished from longitudinal research when you  
5 get measures at various points in time, usually  
6 at different intervals years later.

7           Q. Okay. And as we progress down this  
8 path, I'm going to ask you about different  
9 studies, but I wonder if I can just lay a little  
10 foundation for different types of studies and  
11 what would make a study a good study versus a  
12 poor study.

13                    Could you share with me some of the  
14 aspects of what we consider to be fallacies or  
15 flaws in different types of studies, whether it  
16 be cross-sectional or longitudinal?

17           A. Well, some of the flaws in a study is --  
18 would be in the area of external validity. If  
19 the study did not take a random sample or some  
20 other research technique to get a representative  
21 sample of a large population, but only study the  
22 select population, if they make generalizations  
23 to the wider population, that would be a flaw in  
24 external validity, because it's not valid to  
25 generalize from a select population to a wider

1 population.

2           Sometimes there's problems in internal  
3 validity, in terms of, are the assessment  
4 measures they're using really measuring what it  
5 purports to measure, and there's different types  
6 of validity, construct validity and alike, where  
7 you take a measure and relate it empirically to  
8 some external criterium to see if it's really  
9 measuring.

10           For example, you could have a depression  
11 scale. You call it a depression scale, but you  
12 have to do a validity study to see if it really  
13 correlates with, say, three independent  
14 clinicians assessing the same patient and  
15 deciding that they're depressed at some level,  
16 and then other flaws are in reliability. Some  
17 measures are not reliable, in that you give the  
18 same measure a few days later, you get a very  
19 different number.

20           Some studies have such a low  
21 participant, the response rate, that you don't  
22 know if you're just getting one biased part of  
23 the population. Say you have a response rate of  
24 20, 30 or 40 percent of the people that you  
25 attempt to gather data, you don't know if there's



1           some kind of bias, in terms of how the people are  
2           different that are turning you down, than the  
3           ones that, you know, accepted.

4                        So, let's see. Also, some flaws are  
5           statistical flaws, not using the right  
6           statistical analysis for the type of data.  
7           There's different types of data, nominal data,  
8           ordinal data, ratio data -- data, and different  
9           tests are appropriate for different types of  
10          data. Also --

11                      Q. When you're speaking of different types  
12          of data and the statistic, it would mean the  
13          statistical analysis that's derived from the  
14          responses? Is that what you're referring to?

15                      A. Yeah, it's the analysis of the data  
16          collected. Another common error in homosexual  
17          parenting research is affirming the null  
18          hypothesis.

19                      Q. What does that mean?

20                      A. When you do an experiment, you have your  
21          experimental hypothesis. Say, for example, that  
22          there's a difference between boys and girls on  
23          some measure, that you're measuring depression  
24          and in some population you say there's some --  
25          you hypothesize, before you do the study, that

1           there's a different between depression rates in  
2           boys and girls, and then you always have a null  
3           hypothesis, and that is the hypothesis that  
4           there's no difference, and with statistics, all  
5           you can do in science is to reject the null  
6           hypothesis, in favor of your experimental  
7           hypothesis at some probability level, but  
8           sometimes people run the experiment, and they'll  
9           come up with no difference, and they will embrace  
10          the null hypothesis, and say the null hypothesis  
11          is proof, and technically, with statistics, you  
12          cannot prove a null hypothesis, you can only  
13          reject a null hypothesis.

14                 Q.    Would that be the same as entering into  
15                 a research project with an objective goal already  
16                 in mind?

17                         MR. ESSEKS:  Objection, vague.

18                         THE WITNESS:  Yeah, I didn't  
19                         understand the question myself.

20                 BY MS. MARTIN:

21                 Q.    Okay.  When you're trying to prove a  
22                 null hypothesis, as a researcher, are you -- do  
23                 you have already a conceived idea of what the  
24                 result should be?

25                         Am I not making sense?

1           A. Well, technically, with statistics, you  
2 cannot prove a null hypothesis, but most  
3 experiments have, you know, an experimental  
4 hypothesis. There's some idea of what they're  
5 guessing they're going to find.

6           Q. Okay.

7           A. And that's -- that's stated in terms of  
8 some kind of difference, that an experiment has  
9 one or more independent variables and you're  
10 using statistical techniques to show that the  
11 independent variable caused or influenced the  
12 dependent variable or variables.

13          Q. What about different types of flaws or  
14 concerns with sampling sizes?

15          A. Yes. If you have a very small sample  
16 size, you don't have much statistical power to  
17 detect differences, and the best studies have  
18 large numbers of subjects, because with larger  
19 numbers of subjects, you have more statistical  
20 power to detect differences between groups, and  
21 so if you set up a study with a small number of  
22 subjects, say, 15, 20, 25 or 30 or 40, even if  
23 there is a difference, a study just takes a  
24 sample of what's assumed to be a larger  
25 population, and if you have a very small sample,

1           you're more likely to find no difference between  
2           the two groups -- two or more groups that -- that  
3           you have. You just don't have enough power to  
4           detect differences.

5           Q. What about criticisms regarding how the  
6           subjects are obtained?

7           A. Yes, some -- the most statistically pure  
8           experiment would be to use a totally random  
9           procedure to draw subjects from a specified  
10          group, and then there are other less -- less  
11          accurate kinds of ways to conduct research, where  
12          you just have a convenient sample -- they -- if  
13          you have a convenient sample or snowballing  
14          sample, where you have -- find two or three  
15          subjects and ask them if they know other people  
16          and then ask them if they know people, you don't  
17          know what kind of bias you're building into your  
18          study, because they're not drawn randomly from  
19          the population.

20                 Statistical techniques are based on  
21                 assumptions of random --randomly drawing a sample  
22                 from a general population.

23                 Now, if you just studied all the second  
24                 graders in a school, all the second grade girls  
25                 and all the second grade boys, you could use

1           those subjects, the convenient sample, and you  
2           could come up with a difference between those  
3           groups, and that could be valid just for that  
4           school, the second graders in that school, but  
5           you wouldn't necessarily generalize the two  
6           second grade students across the United States or  
7           even in the same state, in other schools.

8           Q.    So that would be an example of a study  
9           that would not be one that you could use to  
10          generalize, correct?

11          A.    Right, you couldn't generalize to a  
12          larger population.  You can generalize just to  
13          the school that the sample is drawn from.

14          Q.    Have you had occasion to research the  
15          issue regarding whether or not homosexually  
16          behaving partners, as compared to heterosexual  
17          partners, are less stable and less short-lived?

18          A.    Yes.

19          Q.    And would you share for me what type of  
20          research you've done in that field?

21          A.    I've looked at research studies and I  
22          have some notes on some specific statistics --

23          Q.    Sure.

24          A.    -- on the research studies, but one of  
25          the studies --

1                   MR. ESSEKS: Your Honor, if I can just  
2                   interject for a moment. The witness is  
3                   looking through some papers. I'd like to  
4                   see the papers.

5                   THE COURT: Can you show him?

6                   MS. MARTIN: Sure.

7                   MR. ESSEKS: Can I get a copy of  
8                   that?

9                   MS. BASS: Did you copy --

10                  MS. MARTIN: No, I did not know he  
11                  was bringing them.

12                  THE COURT: Have you looked at them?

13                  MS. MARTIN: I've looked at them  
14                  this morning, but I've not made a copy.  
15                  They're just notes of studies.

16                  MR. ESSEKS: I'd love to get a copy.

17                  MS. MARTIN: I have no problem with  
18                  that.

19                  THE WITNESS: Uh-huh, that would be  
20                  fine.

21                  MR. ESSEKS: Can you arrange for a  
22                  copy?

23                  MS. MARTIN: Sure. Your Honor, may  
24                  I take a five-minute break to make a  
25                  copy?

1 THE COURT: Okay.

2 How much do you have?

3 MS. MARTIN: Pardon me?

4 THE COURT: How much do you have?

5 THE WITNESS: I don't know, about  
6 30 pages or so.

7 MS. BASS: Could I also have a copy,  
8 please?

9 THE COURT: Okay.

10 (Short recess taken.)

11 MR. ESSEKS: Thank you, Your Honor for  
12 that recess.

13 BY MS. MARTIN:

14 Q. Dr. Rekers are you ready to proceed?

15 A. Yes.

16 Q. We took a short break and provided the  
17 other parties with copies of the handwritten  
18 notes and some of the typed notes that you  
19 brought to testify, to help refresh your memory,  
20 so we're ready to begin. Are you?

21 A. Yes.

22 Q. Okay. I believe the last question I  
23 asked you was whether or not you had the  
24 opportunity to conduct any research regarding the  
25 issue of whether homosexually behaving partners,

1 as compared to heterosexual partners, have a  
2 substantially less stable and short-lived  
3 relationship?

4 A. Yes, I have done a literature review on  
5 that issue and there's a study by Sanfort  
6 published in 2003.

7 Q. Well, could you summarize your opinion  
8 first.

9 A. Oh, just summarize my opinion?

10 Q. Yes. Yes.

11 A. Oh, okay.

12 Q. We'll start with -- we'll start broad  
13 and then try to work our way down, if you don't  
14 mind.

15 A. Okay. Can you state the question again?

16 Q. Sure. I believe the question was, have  
17 you had the opportunity, and I'll qualify a  
18 little bit, in your academic and professional  
19 career to study whether homosexually behaving  
20 individuals or partners, as compared to  
21 heterosexual partners or individuals, have less  
22 stable and less short-lived relationships?

23 A. Yes.

24 Q. Could you give me a summary of what your  
25 professional opinion would be on that subject?



1           A. Yes. Homosexually behaving individuals  
2           have larger -- substantially and significantly  
3           larger numbers of lifetime partners and there are  
4           fewer of them that maintain relationships over  
5           a long period of time, partly without benefit of  
6           marriage or social support and other sorts of  
7           things.

8                         There is a higher rate of relationship  
9           break up at earlier points in time in their  
10          relationship.

11          Q. Okay. And having given that global  
12          opinion, can you share with the Court some of the  
13          studies that you've used? Well, first of all,  
14          let me ask you, how many studies do you believe  
15          you read or reviewed in preparation to reach that  
16          opinion?

17          A. I'm not sure how many, but I -- I had to  
18          sort through studies to try to find studies that  
19          were based on a large representative or random  
20          sample of the general population and narrow it  
21          down to a few.

22                         So I probably looked through dozens of  
23          studies and narrowed it down to just a few that  
24          get to the main issue.

25          Q. And the purpose of going through the

1           many studies to find one that was random and/or  
2           had a large enough sample, was that so that you  
3           were assured as to the validity of the present  
4           study?

5                       MS. BASS:  Objection to the form of the  
6                       question.  Leading.

7                       MR. ESSEKS:  Objection.

8                       THE COURT:  I'm going to allow it.

9                       THE WITNESS:  Yes.  Yes, I was  
10                      concerned about finding studies that  
11                      would have the greatest external  
12                      validity, in terms of generalizing to  
13                      the general population, rather than  
14                      having been just selected from some  
15                      select population or small number of  
16                      subjects.

17                      BY MS. MARTIN:

18                      Q.  Okay.  And could you share with me, one  
19                      at a time, what your research found on your study  
20                      of this issue?

21                      A.  Well, there's one study by Sanfort,  
22                      2003, and this was a representative or random  
23                      study of the general population in the  
24                      Netherlands.  It was published in the Archives of  
25                      Sexual Behavior --

1 Q. I'm sorry, but could you please identify  
2 the name of the study, if you know it?

3 A. Oh, yes, yes. The study -- the title  
4 is, Same Sex Sexuality and Quality of Life,  
5 Findings from Netherlands Mental Health Survey  
6 and Incidence Study, Archives of Sexual Behavior,  
7 Volume 32, Number 1.

8 Q. Okay. You don't need to go that far.

9 A. Okay.

10 Q. It's just that if you can please  
11 identify the study for us, so we know which one  
12 you're speaking about.

13 MR. ESSEKS: Could the witness  
14 please identify what page of his outline  
15 the study is on, please?

16 MS. MARTIN: Your Honor, I don't see  
17 -- he has his notes, and I provided  
18 them -- I'm sorry, Judge.

19 THE COURT: I'm sorry, counsel, let me  
20 ask the question, who you're speaking to.

21 MR. ESSEKS: I apologize, Your Honor.  
22 I'm trying to figure out, to be clear about  
23 what the article is, since the testimony has  
24 not been very clear so far, for me.

25 THE COURT: What is the article and what

1 page is the article?

2 MS. MARTIN: Okay.

3 THE WITNESS: Okay. There's two  
4 pages, Page 11 and 23 of my notes.

5 MR. ESSEKS: Thank you.

6 THE COURT: Counsel.

7 MR. ESSEKS: Thank you.

8 BY MS. MARTIN:

9 Q. Dr. Rekers, I believe you had identified  
10 the article by Sanfort, and if I can just clarify  
11 with you, Same Sex Sexuality and Quality of Life,  
12 Findings from the Netherlands Mental Health  
13 Survey Incidence Study; is that correct?

14 A. Yes.

15 Q. Okay.

16 A. And the -- it had a good participation  
17 rate, 69.7 percent. It was a sample of the  
18 general population. They had 5,873 men and women  
19 reporting only heterosexual behavior, compared  
20 to -- they had 125 men and women reporting  
21 homosexual behavior.

22 That particular study, on Page 17, said  
23 that both, the homosexual men and the homosexual  
24 women, less frequently reported having a steady  
25 partner than did heterosexual men and women.

1 Q. And having reviewed that study or the  
2 findings of that study, is your professional  
3 opinion in agreeance with that?

4 A. Yes.

5 And another study --

6 Q. Dr. Rekers, if you'll excuse me just one  
7 moment.

8 A. Oh.

9 Q. I'm going to hand you a document and ask  
10 you if you recognize that document?

11 A. Yes. That's -- that's the study that  
12 I'm referring to.

13 Q. Okay. So that's the -- could you, just  
14 for the record, identify the document, by title,  
15 that I've handed you?

16 A. Same Sex Sexuality and Quality of Life,  
17 Findings from Netherlands Mental Health Survey  
18 and Incidence Study.

19 Q. Do you recognize that as the document  
20 that you read -- do you recognize this to be the  
21 journal that you just testified from?

22 A. Yes.

23 Q. Could you tell me where this was  
24 published?

25 A. In Archives of Sexual Behavior.

1 Q. And where was this study conducted?

2 A. In the Netherlands.

3 MS. MARTIN: I would like to offer  
4 in evidence the copy of the journal  
5 article that's titled Same Sex Sexuality  
6 and Quality of Life.

7 MR. ESSEKS: Your Honor, the Petitioner  
8 objects. This witness is qualified as an  
9 expert, and he can testify to his opinions,  
10 and he can testify based on hearsay, such as  
11 this document, but the hearsay doesn't come  
12 in evidence, Your Honor. That's our  
13 opposition, and I believe that's what the  
14 law says.

15 So he can talk about this, you know, for  
16 days and days and days, if the Court has the  
17 patience, but this does not come in. It's  
18 hearsay.

19 MS. BASS: Your Honor, let me just  
20 confirm the -- my agreement with that  
21 objection. Witnesses are allowed to rely on  
22 hearsay, they're unusual in that regard,  
23 experts have that ability, but they cannot  
24 put in the underlying third-party statements  
25 that they're relying upon. That does not

1           become evidence. It only become evidence  
2           through his mouth, as to the extent he's  
3           relying upon it.

4           THE COURT: I'll sustain the objection.

5           MS. MARTIN: Okay.

6           MR. ESSEKS: Thank you, Your  
7           Honor.

8           BY MS. MARTIN:

9           Q. Okay. Going back to the same document,  
10          Dr. Rekers. You indicated that it was done in  
11          the Netherlands. Can you tell me what year it  
12          was done?

13          A. 2003.

14          Q. And you started testifying about some of  
15          the percentages. Could you go through that with  
16          us again?

17          A. Well, this study, in general, found that  
18          homosexual men were found to have significantly  
19          lower quality of life than heterosexual men, on  
20          the same measures, in terms of mental health,  
21          emotional role functioning, their report of their  
22          physical, general health and their vitality, and  
23          the -- compared to the heterosexual men, the  
24          homosexual men evaluated their general level of  
25          health and mental health as less positive. They

1 reported more emotional problems that interfered  
2 with their work and daily activities. They felt  
3 less energetic, and then, back to your issue,  
4 they found that there was less partner stability  
5 in those individuals.

6 Q. And based on -- and the finding of less  
7 partner stability was based on those items that  
8 you just delineated?

9 A. Well, in part. Those could be  
10 contributors to having a less steady partner,  
11 because if you have -- depression, for example,  
12 was one of the findings. Major depression, that  
13 can interfere with longevity in a relationship.

14 Q. Were there any other factors that were  
15 considered in this particular study?

16 A. Yes, there were others in that study.  
17 This research group had some other studies coming  
18 from it, but more specific on the differential  
19 rates of psychiatric disorders.

20 Q. Where was the data for this study  
21 derived?

22 A. Well, it was a large government public  
23 health study conducted by the Dutch government.

24 Q. Okay. If I were to use the term  
25 NEMESIS, it's N-E-M-E-S-I-S, does that have



1 meaning to you?

2 A. That was a previous study. This is a  
3 more recent follow-up, but the same group had the  
4 study that -- they used the acronym NEMESIS.  
5 It's a different -- different set of  
6 publications.

7 Q. What does the term psychiatric disorders  
8 mean to you?

9 A. Psychiatric disorders are abnormal  
10 psychological manifestations of thinking, emotion  
11 or behavior that either causes stress to the  
12 individual or contribute to dysfunctions in  
13 various areas of functioning, and it's usually  
14 assessed formally with regard to diagnostic  
15 criteria, and there's -- the International  
16 Classification of Diseases have criteria for the  
17 mental disorders that's used in the United States  
18 and also the Diagnostic and Statistical Manual of  
19 Mental Disorders that's used by physicians,  
20 psychologists, psychiatrists, mental health  
21 professionals, to diagnose those disorders.

22 Q. Is that what people commonly talk about,  
23 the DSM?

24 A. Yes.

25 Q. Have you, in the past, used the DSM in

1 your professional career as a psychologist?

2 A. Yes, almost constantly, over the last  
3 three decades and more.

4 Q. And while we're on the term of the  
5 DMS -- DSM, was there a time in history where  
6 homosexuality was considered a psychiatric  
7 disorder?

8 A. Yes, it was -- in the Diagnostic and  
9 Statistical Manual of Mental Disorders, Second  
10 Edition, that I was trained under when I was at  
11 UCLA and at Harvard, at that time homosexuality,  
12 per se, was classified under sexual deviations  
13 and was considered a mental disorder.

14 Q. Is that true today?

15 A. No, it changed since then.

16 Q. Do you know when it changed?

17 A. It changed in stages. In the DSM-III,  
18 and in the RRR revision, there were stages where  
19 they had interim diagnosis of sexual orientation  
20 disturbance and egodystonic homosexuality, as a  
21 diagnosis. That is for individuals for whom it's  
22 a conflict for them, that was still a diagnosis,  
23 but egosyntonic homosexuality, which would be  
24 someone who does not have a conflict about their  
25 homosexuality, is considered not a disorder, and,

1           then, later, it was dropped.

2                       In the DSM-IV, they're still under  
3           sexual disorders not otherwise specified, and an  
4           example of not otherwise specified sexual  
5           disorder, which refers to sexual orientation,  
6           conflicts.

7                       So it was in stages that the terminology  
8           over the '80s, 1980s, and then into the '90s,  
9           it's been changed --

10           Q.   But it doesn't --

11           A.   -- in steps.

12           Q.   If you were to pull -- if you were to  
13           pull out the DSM today, would it have  
14           homosexuality as a psychiatric disorder?

15           A.   No.

16           Q.   Back to the study you have in front of  
17           you, Same Sex Sexuality study. In terms of  
18           psychiatric disorders, can you share -- can you  
19           give me a listing of what some might be, in your  
20           mind?

21           A.   Oh, just examples of psychiatric  
22           disorders?

23           Q.   Yes.

24           A.   So major depression, bipolar disorder,  
25           post-traumatic stress disorder, alcohol abuse,

1 alcohol dependence, substance abuse, substance  
2 dependence. These are also listed as mental  
3 disorders.

4 Q. And in terms of your professional and  
5 expert opinion in this case, have you come to a  
6 conclusion regarding whether or not homosexually  
7 behaving adults, as compared to heterosexual  
8 adults, have any disparity in psychiatric  
9 disorders?

10 A. Yes.

11 Q. What is -- could you summarize that  
12 opinion for me?

13 A. My opinion is based on national  
14 representative studies of large numbers of  
15 subjects that indicate that homosexually behaving  
16 individuals have two to four times the odds of  
17 having lifetime prevalence of major depression,  
18 the affective disorders in general, anxiety  
19 disorders, substance abuse, for example.

20 Q. And when you talk about lifetime  
21 prevalence, could you give me a definition of  
22 what that means?

23 A. Well -- well, that -- that would mean  
24 that over their lifespan, or when research is  
25 conducted, they would ask the subjects, over

1           their entire adult lifetime or into adolescent,  
2           have you ever had these disorders or they may use  
3           diagnostic -- formal diagnostic interview  
4           schedules to assess disorders currently, but then  
5           get histories -- mental health histories of the  
6           individuals. So it's a timespan in research.

7           Q. Can one time -- how many times do you  
8           have to have that occurrence before it's  
9           considered a lifetime prevalence?

10          A. Well, lifetime prevalence means it  
11          happens -- a particular disorder happens at least  
12          once in the person's lifetime.

13          Q. You've identified major depression,  
14          affective disorder and substance abuse. In your  
15          expert review, are there any other psychiatric  
16          disorders which would be more prevalent in  
17          homosexually behaving people as composed to  
18          heterosexual behaving people?

19          A. Alcohol dependence is found to be four  
20          times -- homosexual women have four times the  
21          increased risk of 12-month prevalence of alcohol  
22          dependence.

23                 Also, the studies look at suicide  
24          attempts. Homosexual men have had over four  
25          times increased risk of lifetime prevalence of

1 suicide attempts, and over twice the increased  
2 risk or prevalence of deliberate self harm.

3 Q. And we talked so far about the Same Sex  
4 Sexuality paper by Sanfort. In terms of the  
5 psychiatric disorders, are there any other major  
6 studies that you would have relied upon to reach  
7 that conclusion?

8 A. Yes. There was a -- there are a number  
9 of very good, large representative population  
10 studies of psychiatric or mental disorders in  
11 homosexuals versus heterosexuals and there's a  
12 meta-analysis of the best studies by King, in the  
13 BMC Psychiatry Journal. It's called A Systematic  
14 Review of Mental Disorder, Suicide, Deliberate  
15 Self Harm in Lesbian, Gay and Homosexual People.  
16 It was published in August this year, 2008, and  
17 they did a comprehensive meta-analysis. They  
18 searched and located 13,706 articles between 1966  
19 and April 2005, and then they had criteria for  
20 the best methodologically sound studies. They  
21 had four research criteria, and they found that  
22 just 28 of those publications met some of those  
23 criteria, and then those 28 publications reported  
24 on 214,344 heterosexuals and 11,971  
25 non-heterosexual people, that would be bisexual

1 and homosexually behaving people, and they  
2 found -- by the way, their criteria were random  
3 sampling, 60 percent or greater participation  
4 rate, sampling from the general population, not  
5 just a selected group, and sample size equal or  
6 greater to a hundred research subjects, and they  
7 found that men -- homosexual men demonstrated  
8 2.58 times an increased risk of lifetime  
9 prevalence of depression, compared to  
10 heterosexuals.

11 Homosexual men demonstrated 4.28 times  
12 increase risk of lifetime prevalence of suicide  
13 attempts, compared to heterosexuals. Homosexual  
14 men demonstrated 2.3 times the increased risk of  
15 lifetime prevalence of deliberate self harm,  
16 compared to heterosexuals, that includes suicide  
17 attempts, and homosexual men demonstrated 2.41  
18 increased risk of 12-month prevalence of drug  
19 dependence compared to heterosexuals, and then  
20 among the women --

21 Q. Before you go there, I have a question  
22 for you.

23 A. Okay.

24 Q. Could you define what is meta-analysis?

25 A. Meta-analysis is a systematic research

1 methods of combining research studies that have  
2 been published in refereed journals in some  
3 systematic way. So they go look and try to get  
4 the same measures in each one, and then combine  
5 all those studies.

6 Q. How do they do that, if some of the  
7 comparable, or the term they used in there is  
8 variables, must they all be identical for a  
9 meta-analysis study?

10 A. The measures have to be roughly similar.  
11 Sometimes, for example, a study -- in these  
12 studies, some studies reported what the subject  
13 said about their sexual behavior, others reported  
14 what they reported about their sexual  
15 orientation, but they combine those two. So  
16 they're approximately the same, they're not  
17 exactly the same, and then they -- in some cases,  
18 if the data is not matched up the same, they just  
19 can't use a study, if it's not -- the data is not  
20 collected in some other way.

21 Q. But the study that you -- that you've  
22 just gone through some detailed analysis of at  
23 least the -- I'm sorry, I'm at a loss.

24 The disparity amount, would that be --  
25 the numbers you've given me, that homosexual men



1           demonstrated 2.5 times increased lifetime  
2           prevalence of depression compared to  
3           heterosexuals, how do I describe that? Is that  
4           --

5           A. That's a risk ratio.

6           Q. Thank you.

7           A. Which is a statistical -- statistical  
8           formula.

9           Q. Uh-huh?

10          A. And, so, in these cases, heterosexual  
11          will be set at one, and, then, if the risk ratio  
12          of the homosexual group is twice the risk, it  
13          would be -- roughly this is how it works, it  
14          would be -- come out at 2.0. If it was -- if the  
15          homosexuals had half the risk, it would come out  
16          0.5, but they just set the number -- the mean for  
17          the heterosexual group is the one, and then they  
18          calculate from there.

19          Q. Okay. We'll go on to the women, because  
20          you were going to start there next, but just to  
21          layout for everybody to know what kind of study  
22          this is, can you tell me where it was published?

23          A. In BMC Psychiatry.

24          Q. Are you familiar with that publication?

25          A. Yes, I've come across it.

1           Q. Okay. And what did this particular  
2 study find, in terms of women?

3           A. It found, among homosexual women, the  
4 homosexual women demonstrated 2.05 times  
5 increased lifetime prevalence of depression,  
6 compared to heterosexuals.

7           Homosexual women demonstrated 1.82 times  
8 increased lifetime prevalence of suicide  
9 attempts, compared to heterosexuals.

10           Homosexual women demonstrated 4.0 times  
11 increased risk of 12-month prevalence of alcohol  
12 dependence, compared to heterosexuals.

13           Homosexual women demonstrated 3.5 times  
14 an increased risk of 12-month prevalence of drug  
15 dependence, compared to heterosexuals.

16           And homosexual women demonstrated 3.42  
17 times increased risk of 12-month prevalence of  
18 any substance use, disorder, compared to the  
19 heterosexuals.

20           Q. And in terms of looking at a study such  
21 as the King study that we're currently referring  
22 to, does the literature use the same terminology  
23 as homosexually behaving adult or individual as  
24 you or does it sometimes use different language?

25           A. Well, sometimes it uses homosexual

1 orientation, like I said, which some of these  
2 studies just ask the person to classify  
3 themselves. "Are you heterosexual, bisexual or  
4 homosexual?"

5 Others would say, "In the last five  
6 years, what has your sexual -- how many sexual  
7 partners have you had? How many male partners,  
8 how many female partners," and then the  
9 researcher makes the classification into  
10 exclusive heterosexual, bisexual or homosexual.

11 These studies combined bisexual and  
12 homosexual together, and so they, in doing the  
13 meta-analysis require people, to be counted as  
14 heterosexual, to be exclusively heterosexual,  
15 and, then, any amount of homosexual behavior or  
16 any report of bisexual or homosexual orientation  
17 classified them in the non-heterosexual group.

18 Q. Are you familiar or do you know of a  
19 woman named Susan Cochran?

20 A. Yes.

21 Q. Who is she, in terms of how you  
22 understand -- who was she to you?

23 A. She's a professor of epidemiology at the  
24 University of California at Los Angeles. She has  
25 a Ph.D. in clinical psychology, and four of her

1 studies were among the 28 publications that met  
2 these quality criteria. I think it was four.

3 Q. Do you have -- have a professional  
4 opinion about Ms. Cochran's work?

5 A. Well, it's -- it's striking that four of  
6 her publications in this area were found to have  
7 these top rigorous research criteria. Some of  
8 her other publications didn't show up, on the  
9 same topic, as having those criteria, but my  
10 opinion would be that she and her co-authors,  
11 because they're co-authored publications, are  
12 capable of very high quality research on the  
13 general population.

14 Q. Okay. And in terms of reviewing the  
15 literature source, and, indeed, in terms of your  
16 professional opinion regarding the substantially  
17 and significantly increased rate of lifetime  
18 prevalence of disorders among homosexually  
19 behaving individuals, compared to heterosexually  
20 behaving individuals, have you come across or  
21 considered any of Ms. Cochran's work?

22 A. Yes.

23 Q. What type of Ms. Cochran's work have you  
24 considered to reach your opinion?

25 A. One study was by Gilman, Cochran and

1           Colleagues, in 2001. The title was Risk of  
2           Psychiatric Disorders Among Individuals Reporting  
3           Same Sex Sexual Partners, in the National  
4           Co-Morbidity Survey, in the American Journal of  
5           Public Health.

6           Q. What does co-morbidity mean?

7           A. Morbidity refers to incidents --  
8           generally, just in the field of medicine,  
9           incidents of some illness. Sometimes it's used  
10          for incidents, sometimes it's prevalence. You  
11          have to look carefully at the study and see how  
12          they're using the dictionary definition of it.

13          Q. Okay. And in terms of the article you  
14          just referenced, the Prevalence of Mental  
15          Disorders, Psychological Tests and Mental Health,  
16          where was that article published, if at all?

17          A. Well, you switched to another one, that  
18          --

19          Q. Oh, I'm sorry, sir. Then why don't you  
20          go ahead and talk about the other one.

21          A. Well, those are the two -- the one I  
22          talked about, Gilman, Cochran and Colleagues, it  
23          was a random nationally representative household  
24          survey of the general United States population,  
25          participation rate was 82.4 percent, so it's a

1 good rate. The sample consisted of 4,785 men and  
2 women that reported they had exclusively opposite  
3 sexual partners, and it included 125 men and  
4 women reporting homosexual behavior in the past  
5 five years.

6 Q. Would that be -- that participation  
7 rate, 82.4 percent, would that be exceptionally  
8 high?

9 A. That would be very good, because most  
10 studies, if they can get 60 percent, that's  
11 considered good.

12 Q. Okay. And what did the Gilman and  
13 Cochran study disclose?

14 A. It had a lot of data in it, but they  
15 found, for example, the 12-month prevalence of  
16 major depression is 34.5 percent for homosexually  
17 behaving individuals, compared to 12.9 percent  
18 heterosexuals, and the odds ratio for homosexuals  
19 to have a lifetime prevalence of major depression  
20 was 1.9, compared to heterosexuals.

21 Q. May I interrupt you for a moment? You  
22 talked about the odds ratio. That's starting at  
23 one?

24 A. So one would be the heterosexuals.

25 Q. Okay.

1           A. And odds ratios are a little bit  
2 different than risk ratios statistically, but it  
3 pretty much sticks to the same thing.

4           Q. If you were to say that the ratio for  
5 homosexually behaving individuals is 34.5 and  
6 heterosexual is 12.9, would you say that's almost  
7 two-and-a-half percent more or three? I mean,  
8 I'm not very good at math.

9           A. Well, that would be more a risk ratio.

10          Q. All right.

11          A. The odds ratio is little bit more  
12 complex statistical formula.

13          Q. Go ahead.

14          A. The odds ratio for the homosexuals to  
15 have lifetime thoughts of suicide was 2.0,  
16 compared to heterosexual, and, of course,  
17 thoughts of suicide, that's one symptom of major  
18 depression -- one possible symptom. It's not in  
19 all people with major depression but it's one of  
20 the symptoms.

21                    When Gilman --

22          Q. Continue.

23          A. Gilman, Cochran and Colleagues found the  
24 12-month prevalence of any substance use disorder  
25 is 19.5 percent for homosexuals, compared to 7.2

1           for heterosexuals, and the odds ratios for  
2           homosexuals to have lifetime substance abuse  
3           disorder was 2.4, compared to heterosexuals.  
4           That was among the women.

5                         And then among the men, a few of the  
6           findings were that the odds ratio for  
7           homosexuals -- males to have lifetime drug abuse  
8           disorder was 2.8, compared to heterosexuals.  
9           Odds ratio for homosexual males to have a  
10          lifetime drug dependence disorder was 2.4,  
11          compared to heterosexuals, and the odds ratio for  
12          homosexuals to have lifetime thoughts of suicide  
13          was 2.2, compared to heterosexuals.

14                        Q. Did the Gilman and Cochran study discuss  
15          any other disorders, like anxiety?

16                        A. Yes. For example, with women, they  
17          found 12-month prevalence of anxiety disorders is  
18          40 percent for homosexually behaving women,  
19          compared to 22.4 percent for heterosexuals. The  
20          odds ratio for homosexuals to have a lifetime  
21          anxiety disorder was 1.8, compared to  
22          heterosexuals, and then one type of anxiety  
23          disorder is post-traumatic stress disorder. The  
24          12-month prevalence for post-traumatic stress  
25          disorder was 20.9 percent for homosexual women,



1 compared to 5.9 percent for heterosexuals.

2 Q. Did the -- you talked -- the study so  
3 far that we've discussed on Gilman and Cochran is  
4 pertaining to women, correct?

5 A. The last that I just gave you. I gave  
6 you a few statistics about men, too.

7 Q. Thank you.

8 Do you agree -- or in reviewing this  
9 study, is your expert opinion in agreeance with  
10 those findings?

11 A. Yes, I agree with this, because the  
12 methodology is a nationally representative  
13 sample, it was thousands of subjects from which  
14 they got 125 homosexually behaving people, and  
15 the response rate was very good. So I agree,  
16 this is one of the best studies available.

17 Q. Okay. You talked about Ms. Cochran and  
18 you complimented her on having four studies in  
19 this meta-study analysis. Did you consider any  
20 other of Ms. Cochran's work to be significantly  
21 good, in terms of your opinion on whether or not  
22 homosexually behaving individuals have higher  
23 risks of psychiatric disorders compared to  
24 heterosexuals?

25 A. Yes. There was a study in 2003 that she

1 published in the Journal of Consulting and  
2 Clinical Psychology, and it's entitled Prevalence  
3 of Mental Disorders, Psychological Distress and  
4 Mental Health Services Use Among Lesbian, Gay &  
5 Bisexuals in the United States.

6 Q. Where was that published?

7 A. Journal of Consulting and Clinical  
8 Psychology.

9 Q. Is that a peer-reviewed article?

10 A. Yes.

11 Q. And going back, is the Gilman and  
12 Cochran, The Risk of Psychiatric Disorders -- I  
13 mean, the one we just talked about a few moments  
14 ago, is the American Journal of Public Health  
15 also a peer-reviewed?

16 A. Yes, it is.

17 So this study was entitled, Prevalence  
18 of Mental Disorders, Psychological Distress and  
19 Mental Health Services Use Among Lesbian, Gay and  
20 Bisexuals in the United States, and, again, it  
21 was a random nationally representative household  
22 survey of the general population. This one had a  
23 participation rate of 60.8 percent.

24 Q. Does that 60.8 percent -- is that  
25 considered a good response rate for a random

1 sampling?

2 A. It certainly can --

3 MR. ESSEKS: Objection, asked and  
4 answered. THE COURT: Overruled.

5 THE WITNESS: Generally is  
6 considered -- anything above 60 percent  
7 is good. This is not as good as the  
8 first one, okay, in the 80s. I have  
9 more confidence in that survey, but this  
10 one has an acceptable response rate, and  
11 this sample, they -- instead of  
12 behavior, they asked the individuals  
13 about their sexual orientation, and they  
14 had 2,844 men and women reporting the  
15 heterosexual orientation exclusively,  
16 and 73 men and women reporting  
17 homosexual or bisexual orientation, and  
18 they found, for example, among the men,  
19 the 12-month prevalence of major  
20 depression was 31.0 percent for  
21 homosexuals, compared to 10.2 percent of  
22 the heterosexuals, and the adjusted odds  
23 ratio for the homosexuals having major  
24 depression was 3.57, compared to  
25 heterosexuals, and the 12-month

1 prevalence of having at least one  
2 psychiatric disorder was 39.8 percent  
3 for homosexuals, compared to 16.7  
4 percent of heterosexuals. The adjusted  
5 odds ratio for homosexuals having at  
6 least one disorder was 2.71, compared to  
7 heterosexuals.

8 And among women, I'm just highlighting  
9 some findings here, because it's a big  
10 study, the 12-month prevalence of having two  
11 or more disorders was 23.5 percent for  
12 homosexuals, compared to 7.7 percent for  
13 heterosexuals. So the adjusted odds ratio  
14 for homosexuals having two or more disorders  
15 was 2.88, compared to heterosexuals.

16 So, roughly, the Sanford study in the  
17 Netherlands, the Gilman study, and this  
18 study, they're coming up with roughly the  
19 same findings.

20 BY MS. MARTIN:

21 Q. In terms of research in the academic and  
22 professional field in which you operate, is it  
23 helpful to have studies -- large studies like  
24 this, that are based on random samplings, with  
25 large response rates, to be somewhat consistent?

1           A. Yes, it's called replication in -- in  
2 science, so that if you get roughly the same  
3 results at -- these are two different points in  
4 time, two different random samples of the general  
5 population, it increases your confidence in your  
6 conclusions.

7           Q. I'm going to move on to a different  
8 category now. Would you define for me, as you  
9 understand it to mean, depressing (sic)  
10 condition? If I use that term, what does it mean  
11 to you distressing condition?

12          A. Oh, distressing.

13          Q. I'm sorry, I misspoke.

14          A. Yeah, okay. Distressing conditions can  
15 be conditions or life circumstances or behavior  
16 patterns that may or may not constitute a  
17 psychiatric disorder, that a particular subset of  
18 the population may experience, and they could  
19 include things like -- in this case, looking at  
20 homosexually behaving individuals compared to  
21 heterosexually behaving individuals, things like  
22 suicide ideation, suicide attempts, relationship  
23 breakups, multiple sex partners, substance abuse,  
24 legal or illegal, and these kinds of distressing  
25 conditions can lead to instability in an adoptive

1           home, and -- so it would be variables to take  
2           into consideration, for people like me, who have  
3           dedicated their life to children and the  
4           well-being of children, and, also, I've provided  
5           therapy and assessment services to hundreds of  
6           foster children, these would be variables in  
7           parents, distressing conditions, that may  
8           adversely affect the home environment, may not be  
9           the best for the child's emotional well-being or  
10          development.

11           Q. In your professional opinion, as an  
12          expert here, have you reached an opinion whether  
13          a homosexually behaving individual, compared to a  
14          heterosexual behaving individual, suffer higher  
15          rates of distressing conditions?

16           A. Yes. As I've defined distressing  
17          conditions for this population, the research and  
18          representative samples of the general population  
19          do show substantially and significantly higher  
20          rates of these distressing conditions in  
21          homosexually behaving people compared to  
22          heterosexually behaving people.

23           Q. Okay. And you've delineated a couple.  
24          You talked about suicidal ideation, substance  
25          abuse, and I believe you said partnership

1           breakup?

2                   A. Yeah, and having multiple sexual  
3 partners, and each of those, you can even see, as  
4 I've done for three decades, I look at, what does  
5 the world look like through the eyes of -- of a  
6 child, and if the parent expresses suicidal  
7 ideation or makes a suicide attempt, that's very  
8 distressing for the child. As a parent, I just  
9 think that would make the child feel very  
10 anxious. The child -- I've seen cases of even  
11 losing a parent to a suicide attempt, or when it  
12 comes to multiple sexual partners, the child may  
13 have different people come into the home, get  
14 attached with one partner, having been there for  
15 a number of months, and then that partner is gone  
16 and a different one's there. That can be  
17 stressful for the child, because they develop  
18 attachment to people in the home, and it would be  
19 an emotional loss for the child.

20                   When it comes to substance abuse, that  
21 causes stress on the child, because parents  
22 abusing substances are less likely to have  
23 positive parenting and consistent parenting, and  
24 substance abuse in a parent leads to more child  
25 neglect, in some cases, child abuse, the

1 substance alcohol or drug abuse.

2 So those are conditions that have  
3 adverse effects on children in the home, when  
4 they occur in the parents.

5 Q. In terms of substance abuse, have you  
6 had occasion to look at any of the odds ratios  
7 between the use of -- the substance abuse rates  
8 between homosexual behaving individuals and  
9 heterosexual individuals?

10 A. Yes.

11 Q. What did your research and your  
12 professional opinion result in? What was your  
13 result?

14 A. Well, again, here is yet another Cochran  
15 study, entitled, Estimates of Alcohol Abuse and  
16 Clinical Treatment Needs Among Homosexually  
17 Active Men and Women in the U.S. Population,  
18 Journal of Consulting and Clinical Psychology,  
19 year 2000, and this is also a nationally  
20 representative household survey of the general  
21 United States population. The participation rate  
22 was good, it was 79 percent sample, and they had  
23 194 men and women reporting at least some same  
24 gender sexual partner in the past year, and 2,844  
25 men and women reporting only opposite gender



1 sexual partners, and they found that 30.3 percent  
2 of homosexually active women were very high or  
3 drunk three or more days in the past year,  
4 compared to 16.6 percent of heterosexual women.  
5 8.4 percent of homosexually active women were  
6 very high or drunk an average of once per week or  
7 more in the past year, compared to 2.3 percent of  
8 heterosexual women. 7.0 percent of homosexually  
9 active women reported heavy drinking in the past  
10 month, compared to 2.7 percent of heterosexual  
11 women.

12 So from that data, you can get risk  
13 ratios. So, for example, if you have 30 percent  
14 to 16, it's almost a risk ratio of two, roughly  
15 speaking.

16 Q. And did your results in -- in the review  
17 of the articles -- if I use the world empirical  
18 data, does that have significance to you?

19 A. Yeah, empirical data would be the data  
20 upon which you analyze -- you analyze it with  
21 statistics to come up with some conclusion.

22 Q. And in looking at the studies that you  
23 are familiar with, and based upon your  
24 professional and academic experience, what  
25 findings, if any, did you find, briefly

1 summarizing, regarding suicide ideation and  
2 suicide attempts and completions, between the  
3 heterosexually behaving and the homosexual  
4 behaving adults?

5 A. Well, again, with population studies,  
6 suicide contemplation in one study found 40.2  
7 percent versus 7.8 percent. When comparing  
8 homosexuals to heterosexuals, the odds are 7.7,  
9 four times higher among homosexual men, compared  
10 to heterosexual men. Deliberate self harm was  
11 14.6, percent versus two percent. In other  
12 words, there was a 10.23 times higher odds among  
13 homosexual men than among heterosexual men.

14 And in women, suicide contemplation was  
15 23 percent, versus 12 percent, roughly.  
16 Homosexual compared to heterosexual, it's over  
17 two times higher odds.

18 Another study, looking at twins, where  
19 they took sibling -- twin pairs of middle aged  
20 men, in this population-base Vietnam era twins  
21 registry, they had 6,434 pairs, who were concord,  
22 both were heterosexual behaviant. 103 pairs, one  
23 member was heterosexual and one was homosexual,  
24 and when they looked at suicide ideation, there  
25 was four times an increase in suicidal ideation

1 among the homosexual member of the pair, compared  
2 to the heterosexual, and in terms of attempted  
3 suicide in these twins, the homosexual oriented  
4 individuals had 6.5 times the rate of attempting  
5 suicide, compared to their heterosexual twin.

6 So there's a number of different studies  
7 like that, that -- and there's other population  
8 studies I mentioned earlier on psychiatric  
9 disorders, that gave you some data on suicide  
10 attempts, as well as showing that homosexual  
11 individuals have substantially and significantly  
12 higher rates of suicidal ideation and suicide  
13 attempts, from two to four times higher than  
14 heterosexual behaving people.

15 Q. Have you, in your professional and  
16 academic career, have occasion to write any  
17 articles on homosexual behaving individuals  
18 versus homosexual (sic) individuals?

19 A. Versus heterosexual individuals?

20 Q. Yeah, thank you, I'm sorry. Yeah, it's  
21 better to have two comparisons.

22 Would you like me to repeat the question  
23 or -- are you comfortable with the question or  
24 would you like it repeated?

25 A. Yeah, if you could repeat it.

1           Q. I'm not so sure I'm capable, as I  
2           demonstrated.

3                   In your professional and academic  
4           career, have you had occasion to write any books,  
5           publications or journals comparing homosexually  
6           behaving individuals to heterosexual behaving  
7           individuals?

8           A. Not in the sense of a population study  
9           like this, but I published a review on the  
10          development of homosexual orientation, two book  
11          chapters on that topic.

12                   I published two reviews of research  
13          pertaining to homosexual parenting, compared to  
14          heterosexual parenting.

15                   I may have published some other things,  
16          but I've -- I have over a hundred publications.  
17          I can't remember offhand if there were more.

18          Q. Would it help if you looked at your CV?  
19          I'm just curious, if you've done anything.

20                   And you talked about homosexual  
21          parenting. In your research and your  
22          professional career, is there -- based on your  
23          writings, is there a difference in parenting  
24          between the two groups?

25          A. The -- in my professional opinion,

1 looking at all the studies I've seen thus far,  
2 the research studies are inadequate. They are --  
3 they could be generalized, maybe, only to the  
4 small group that they are studying. The studies  
5 are generally not drawn -- well, I haven't seen  
6 any that are genuinely randomly drawn from the  
7 general population.

8 Most of them have small numbers of  
9 subjects, less than 50 subjects, so they have  
10 very little statistical power. Most of them are  
11 suggestive of research variables that need to be  
12 followed up in the future by more extensive  
13 research, and there are extensive methodological  
14 flaws.

15 In my one review, every study I could  
16 find for that date, every study had a major  
17 methodological flaw in it.

18 Q. Okay. Getting back to the distressing  
19 conditions. We talked about substance abuse. We  
20 talked about suicide. Were there any other  
21 distressing conditions that in your professional  
22 opinion showed a disparity between homosexual  
23 behaving adults and heterosexuals?

24 A. Well, we talked about alcohol abuse.  
25 There's several articles on alcohol abuse, but

1           then also substance abuse.

2                       There's a study by Drable & Trocki,  
3           T-R-O-C-K-I, published in the Journal of Lesbian  
4           Studies, entitled, Alcohol Consumption and  
5           Alcohol Related Problems and Other Substance Use  
6           Among Lesbian and Bisexual Women.

7                       This was a national representative  
8           household survey of the general U.S. population,  
9           and this case, they had a smaller number of  
10          homosexually identified individuals, 36  
11          identified as lesbian, 71 identified as  
12          heterosexual, but having had same sex partners,  
13          50 of them identified as bisexual, 3,727  
14          identified as heterosexual, and like the other  
15          Cochran study, they found 41.8 percent of the  
16          lesbians, 45.6 percent of bisexuals reported they  
17          were heavy alcohol drinkers, to 12.7 percent of  
18          the heterosexuals, but then they also had data on  
19          substance abuse.

20                      Compared to the exclusively  
21          heterosexually women, and even controlling for  
22          other variables, the odds of THC use -- that  
23          would be Marijuana, Hash, THC or grass, was 4.7  
24          odds ratio for lesbians, and 6.09 for bisexual  
25          women.

1           Q. And when you say, 4.7 odds for lesbians  
2           and 6.9 for bisexual women, that would be 4.7  
3           times more than a heterosexually woman? That's  
4           the question --

5           A. Yeah, not exactly, but it's roughly --  
6           the odds of them -- if you pull them from the  
7           same population -- say you pulled another woman  
8           from the population, and she happened to be  
9           lesbian, the odds would be 4.7 that she's a heavy  
10          drinker, compared to heterosexual would be a .1  
11          in that study.

12          Q. And you -- you indicated that was  
13          published in Journal of Lesbian Studies. Is that  
14          a peer-reviewed publication?

15          A. Yes, uh-huh.

16                 And then Cochran did a study on  
17          substance abuse, published in a journal called  
18          Addiction, entitled, prevalence of Non-Medical  
19          Drug Use and Dependence Among Homosexually Active  
20          Men and Women in the United States' Population,  
21          published in 2004, and this is, again, a  
22          nationally representative household survey of the  
23          general United States population. The sample  
24          consisted of 194 homosexually experienced  
25          individuals.

1           Q. Dr. Rekers, can you speak a little  
2           louder?

3           A. Okay. I hear an airplane. I'll repeat  
4           that sentence.

5                     The sample consisted of 194 homosexually  
6           experienced individuals and 2,844 heterosexual  
7           experienced men and women, and they found 37.2  
8           percent of homosexually active males reported  
9           lifetime use of cocaine, compared to 19.5 percent  
10          of heterosexual men. 34.7 percent of  
11          homosexually active males reported lifetime use  
12          of hallucinogens, compared to 18 percent of  
13          heterosexual men.

14                     Among the women, they found 38.5 percent  
15          of homosexually active females reported lifetime  
16          cocaine use, compared to 12.1 percent of  
17          heterosexual women. 22.9 percent of homosexually  
18          active females reported lifetime use of  
19          hallucinogens, compared to 9.9 percent of  
20          heterosexual women.

21                     They concluded that across studies,  
22          lesbians and gay men evidence higher prevalences  
23          of use and problems with illicit drug use.

24                     Q. Okay. And by, "illicit," you mean,  
25          illegal?



1 A. Yes.

2 Q. I mean, that's what the publication  
3 indicates?

4 A. Right. That was a quote from Page 994.

5 Q. Okay. And you've indicated that the --  
6 the numbers you just discussed was a publication  
7 by Cochran. Is that -- is that the same as Susan  
8 Cochran?

9 A. Right, Cochran and Colleagues. She's  
10 the first author.

11 Q. Okay. In terms of distressing  
12 conditions -- well, would you consider  
13 victimization a distressing condition?

14 A. Yes.

15 Q. Did your study of the articles or the  
16 data that's available on studies, and also based  
17 upon your professional academic career, have an  
18 opinion on whether or not homosexual behaving  
19 individuals have higher incidences of  
20 victimization as heterosexuals?

21 A. Yes, in terms of partner victimization.  
22 They've higher rates of victimizing one another  
23 in partnered relationships.

24 Q. And what did the studies that you  
25 reviewed, using your background and experience,

1 indicate in terms of these findings?

2 A. Well, there's a study by Balsam,  
3 published in 2005 in the Journal of Consulting  
4 and Clinical Psychology. The title is,  
5 Victimization Over the Lifespan, A Comparison of  
6 Lesbian, Gay, Bisexual and Heterosexual Siblings.

7 Q. So in this study, they're focusing on  
8 just Siblings and not partners?

9 A. Well, no. In this case, they --  
10 first -- it was a different research method.  
11 They first identified, recruited 557 lesbian and  
12 gay individuals and 163 bisexuals, and then what  
13 they did is, for their control comparison, asked  
14 them if they had Siblings, and then they did  
15 research on the sibling.

16 So it's kind of a controlled, within the  
17 family. So you could say, they'd still had the  
18 same family influence growing up, but one is  
19 heterosexual and one has had homosexual behavior.

20 Q. And what did the findings show?

21 A. They found more lifetime partnered  
22 psychological maltreatment and physical abuse  
23 among the lesbian, gay and bisexual participants,  
24 than the heterosexuals, and the lesbian, gay and  
25 bisexual participants were more likely to report

1 at least one physical assault by a partner.

2 Q. In terms of victimization -- well, first  
3 of all, let me ask you, is the Journal of  
4 Consulting and Clinical Psychology a  
5 peer-reviewed article?

6 A. Yeah, the articles in there are  
7 peer-reviewed.

8 Q. Okay. Are you familiar with an  
9 individual Greenwood, G.L. Greenwood?

10 A. Yes. That's the author of another  
11 study, entitled -- well, it's Greenwood with  
12 colleagues, and the title of the study was  
13 Battering Victimization Among a Probability-based  
14 Sample of Men Who Have Sex With Men, published in  
15 the American Journal of Public Health.

16 Q. Is that also a peer-reviewed article?

17 A. Yes, and this was in 2002.

18 Q. What kind of study was that?

19 A. This is a probability-based sample of  
20 2,881 men who have sex with men, in just four  
21 cities, San Francisco, Los Angeles, New York and  
22 Chicago.

23 Q. If I may stop you there. What's a  
24 probability study?

25 A. What they do is they -- it's a sample --

1           they pick different areas within the city. In  
2           this case, they were picking areas where they  
3           thought there would be more men who have sex with  
4           men, and then -- then they get a probability  
5           sample, at the end, of that area.

6                        So if it's a zip code, for example -- I  
7           think they used zip codes in this study, I'm not  
8           sure, but pick a zip code, and they think, we're  
9           going to get a lot of subjects here, and then  
10          they get a probability study from that area.

11                       So it's different than the kind of  
12          random general population studies that we're  
13          talking about in the previous studies.

14                      Q. When you do a probability study like  
15          that, how is that different than a convenient  
16          sampling?

17                      A. Well, it's a little bit -- it's more  
18          rigorous than just a convenient sample, because a  
19          convenient sample may be the homosexual people  
20          that the research investigatives, that just lives  
21          nearby where they're doing the research and a  
22          convenient can be just anything.

23                      Q. All right. And what did Mr. Greenwood  
24          and his colleagues come up with, in terms of a  
25          conclusion regarding the battering?

1           A. Well, they found -- well, their  
2 participation rate, by the way, was pretty good,  
3 77.9 percent. They found that during the  
4 previous five years, 34 percent experienced  
5 psychological abuse from a homosexual partner, 22  
6 percent reported physical abuse, 5.1 percent  
7 experienced sexual abuse, that means they were  
8 forced to have sex by a partner, and overall  
9 there was some type of battering victimization  
10 reported by 39.2 percent of the individuals.

11           Q. And this particular publication we're  
12 just speaking about now by Greenwood, did it have  
13 a comparison group of -- of heterosexual?

14           A. This one didn't.

15           Q. Would that indicate any kind of  
16 deficiency in the study?

17           A. Yes, we could have less confidence in  
18 the study, to know, on the issue of, are these  
19 rates higher than what you find in heterosexuals,  
20 because it doesn't address that question. It  
21 just looks at men having sex with men.

22                   The best we can do, there's another  
23 study Tjaden, T-J-A-D-E-N, that studied same-sex  
24 and opposite sex cohabitants, and they 7.7  
25 percent of heterosexual men reported lifetime

1       physical or sexual partner abuse. So, in this  
2       case, if you compare one study to the other, you  
3       would say, well, if Greenwood finds 39.2 percent  
4       in the homosexual men, and another study finds  
5       seven percent in heterosexual men have  
6       experienced victimization, that looks like a  
7       difference, but you don't have the same kind of  
8       confidence, because the two studies have been  
9       drawn from different populations. They may not  
10      be directly comparable. They may be different  
11      research methods.

12             Q. And is the study by Tjaden Comparing  
13      Violence Over the Lifetime and Sampling Same Sex  
14      and Opposite Sex Cohabitants, was that also a  
15      probability-based study?

16             A. That was a nationally representative  
17      study. So we're pretty confident there that  
18      this -- about 7.7 percent of heterosexual men  
19      report being victimized by partner violence, and  
20      then we know this one other sample, in these four  
21      cities, was coming up with a much higher rate,  
22      that's about five to six times a higher rate  
23      among homosexual men.

24             Q. When we started this discussion about  
25      distressing conditions, one of the other issues

1           that you discussed was partnership breakup. Can  
2           you talk a little bit about what your opinion  
3           would be in terms of relationship breakups  
4           between homosexually behaving adults and  
5           heterosexual adults?

6           A. Uh-huh. Yeah, I -- I mentioned that one  
7           Sanfort study, that concluded in 2003, both  
8           homosexual men and women less frequently reported  
9           having a steady partner than did heterosexual men  
10          and women. That's one indicator that they had  
11          relationships that perhaps broke up.

12          But another study by Edward Laumann,  
13          L-A-U-M-A-N-N, and Colleagues, conducted --  
14          published in 1994 -- this was, again, a study  
15          that's of the U.S. population, and was conducted  
16          by the National Opinion Research Center at the  
17          University of Chicago and they had 3,432  
18          respondents, who were randomly drawn from the  
19          non-institutionalized civilian population of the  
20          United States, by an area probability design.

21          Q. If I can stop you right there. When you  
22          talk about the probability design, I just want to  
23          make sure that it's clear what kind of study  
24          we're talking about. Is it a probability or is  
25          it national based?

1           A. Well, it's based on the general  
2           population. It's one way research is done on the  
3           general population. They will randomly draw  
4           different regions to draw from, and, then, within  
5           those regions, they'll make probability sampling.  
6           So it's a systematic way of getting a  
7           representative sample of the United States  
8           population, and this is widely -- study is widely  
9           considered the best study on sexual behavior of  
10          the general population of its type, of its  
11          particular type.

12          Q. Is Mr. Laumann's -- is it a journal or  
13          is it a book?

14          A. This was published in a book called The  
15          Social Organization of Sexuality, and the  
16          subtitle is, Sexual Practices in the United  
17          States, published by University of Chicago Press.

18          Q. And in terms of partnership breakup,  
19          what was Mr. Laumann's study's findings?

20          A. Well, this study studied the number of  
21          sexual partners, and they found that men with no  
22          same gender sexual partners since the age of 18  
23          had a mean of 15.7 lifetime sexual partners,  
24          compared to men with any same gender sexual  
25          partners, had a mean of 44.3 lifetime sexual



1 partners, which is nearly three times the number  
2 of lifetime sexual partners. So that in terms  
3 of partner breakups, if the individual is having  
4 three times the number of partners in a lifetime,  
5 then that's an indirect way to get at, there's  
6 more partner breakup, and they're just going to  
7 another partner.

8 He had parallel data for women with no  
9 same gender sexual partner since the age of 18,  
10 had a mean of 4.9 lifetime sexual partners, but  
11 women with any same gender sexual partners, had a  
12 mean of 18.7 lifetime sexual partners, which is  
13 nearly four times the number of partners.

14 Q. According to the Laumann's study, in  
15 terms of the number of partners, men --  
16 homosexual men had three times higher than  
17 heterosexual men?

18 A. Right, approximately.

19 Q. And according --

20 A. Approximately.

21 Q. Okay. I should say that, also.

22 And according to the Laumann study,  
23 homosexually behaving females had approximately  
24 four times higher the number of partners as did  
25 heterosexual females?

1 A. Right.

2 Q. And how -- what year was this data  
3 gathered?

4 A. In 1992.

5 Q. So it was published in '94, but gathered  
6 in '92?

7 A. That's right.

8 Q. Okay.

9 A. Then another --

10 Q. I'm sorry, I'm going to ask you another  
11 question.

12 Did the Laumann study look at it as a  
13 cross-sectional? Was it a point in time study?

14 A. Yes. However, they would ask, at that  
15 point in time, for lifetime partners, because  
16 some studies, they'll just ask for the last 12  
17 months or some studies have talked about -- asked  
18 them about sexual behavior in the last five  
19 years. This one, he asked both, for 12 months --  
20 or five year -- I guess, five-year and lifetime  
21 numbers of sexual partners.

22 Q. In terms of your review and your  
23 experience and academic base, are there any other  
24 articles, journals or books that talk about the  
25 number of partners of heterosexuals versus

1           homosexuals?

2                   A.  Yes, there are, but not with the same  
3           rigor as this particular study.  There are a lot  
4           of studies on that, they're just smaller samples  
5           and alike, and, of course, some of the studies  
6           I've already talked about --

7                   Q.  Uh-huh.

8                   A.  -- do have data on that, as well, and  
9           the Centers for Disease Control and Prevention  
10          have been conducting a lot of studies on numbers  
11          of sexual partners since the advent of AIDS, just  
12          because it's -- for public health purposes,  
13          they've done a lot more.  This was -- so there  
14          are other studies.

15                  Q.  The CDC is the Centers for Disease  
16          Control?

17                  A.  Yeah, Centers for Disease Control and  
18          Prevention.

19                  Q.  And Prevention.

20                         And in your professional opinion, is  
21          data that is obtained by the CDC reliable, in  
22          terms of how they gather their methodology?

23                  A.  Well, it depends what your criterium is  
24          for reliable.  Reliable for what purpose, you  
25          know?  So for some purposes, some health plan and

1 purposes, is reliable. For some other purposes,  
2 it may not be reliable or valid. It may not be  
3 valid to extend it for further purposes.

4 Q. So there are different -- there are  
5 different types of studies that you do and there  
6 may be different appropriate methods of gathering  
7 the data and methodology?

8 A. Right, uh-huh.

9 Q. I'm going to move on to a different  
10 subject.

11 In your professional opinion, and based  
12 upon your academic career and professional  
13 experience, is it in the best interest of the  
14 children to be in a home that's stable and  
15 secure?

16 A. Yes. Stability in a home environment  
17 and security is necessary for the child's  
18 emotional and psychological well-being, and  
19 research shows that instability leads to higher  
20 rates of child psychiatric disturbance, higher  
21 rates of conduct disorder, higher rates of  
22 adjustment disorder and anxiety disorders in  
23 children.

24 Q. Can you define very briefly what each of  
25 those disorders you just mentioned are?

1           A. Conduct disorder would be the child,  
2           they're assaulting another person, having some  
3           delinquent behavior, various sorts -- disobedient  
4           behavior, in lay terminology, and in diagnostic  
5           and statistic amount, it is a list of these kinds  
6           of behaviors, and you have to have a certain  
7           number of them, not any particular ones, but a  
8           certain number of them to get the diagnosis and  
9           has to have been occurring over a particular  
10          period of time.

11                    Anxiety disorders are disorders in which  
12          the child would feel highly anxious, worrying,  
13          fear -- feeling fearful, those kinds of things,  
14          and what was the other one I mentioned?

15                    Q. Attachment disorder?

16                    A. Not attachment disorder.

17                    Q. I'm sorry, I can't help you on that.

18                    I'm sorry, but I'll move on to a different  
19          question for you.

20                    A. Okay.

21                    Q. In your expert opinion, and based upon  
22          your experience, education and your review of the  
23          literature, are households with homosexual  
24          behaving adults as capable of providing a  
25          psychologically stable and secure home for

1 children, as compared to heterosexuals?

2 A. No.

3 Q. Why is that?

4 A. Because of the research I have been  
5 talking about, where you have two to four times  
6 the rate of these serious psychiatric disorders,  
7 that contributes to instability in the home  
8 environment, in terms of parenting, and so if  
9 you're comparing the two, if -- because  
10 homosexually behaving individuals have higher  
11 rates of major depression, for example, and  
12 suicide attempts, and suicidal ideation, that  
13 would interfere -- we know, from other research,  
14 that depressed parents, depressed fathers,  
15 depressed mothers, are less consistent in their  
16 parenting, less positive, have higher rates of  
17 neglecting child needs, and so, just in the  
18 general population of the United States,  
19 homosexual individuals being parents, you would  
20 expect, from the rates of psychiatric disorders,  
21 that that would disrupt parenting and providing a  
22 safe and secure and emotionally stable  
23 environment for the child, but, then, the other  
24 data on substance abuse, that that -- that two or  
25 three to four times higher risk ratio for those

1 disorders would indicate higher rates of child  
2 neglect, it's been established in the research,  
3 and I've seen it in my clinical practice, and  
4 then the higher rates of partner -- partners,  
5 would mean partner turnover for the child in the  
6 home, and so there may be a partner coming in  
7 which the child gets attached to, and then  
8 leaves, and so if those rates are, as have been  
9 established by Laumann and other studies, three  
10 to four times the number of sexual partners, then  
11 the child is going to be in a home where they're  
12 being co-parented at one time with one partner  
13 and then experiencing loss of someone they're  
14 attached to, and then a new partner coming in,  
15 and so if we look at the nationally  
16 representative random large studies also of  
17 victimization, when partners victimize one  
18 another, it interferes with parenting, as well,  
19 for the child.

20 So one would expect, from these large  
21 nationally representative samples of the United  
22 States population, that homosexuals, as a group,  
23 would have less capability of providing the kind  
24 of nurturing and secure emotional environment for  
25 children, and many children entering adoption

1           come from the foster care system, which I'm very  
2           familiar with, having served hundreds of foster  
3           children, having been a foster parent to five  
4           children myself, and then we adopted one boy of  
5           the foster care system, I know that research  
6           shows that foster children have substantially  
7           higher rates of psychiatric disorders themselves,  
8           so they're the most needy, most vulnerable of all  
9           children, and need to be placed in adoptive homes  
10          that have the lowest risk for inadequate  
11          parenting of those individuals.

12                 Q. Do you -- are there any studies that  
13                 stand out forefront in your mind regarding the  
14                 opinion that households of homosexuals, versus  
15                 heterosexual, provide a less stable environment  
16                 for children?

17                 A. Well, there have not been studies where  
18                 homosexual parents and heterosexual parents have  
19                 been drawn from the -- randomly, and in a  
20                 representative way, either some probability  
21                 sampling or random sampling from the general  
22                 population.

23                         So no study exists that would have  
24                         representative homosexual parents to compare to  
25                         heterosexual parents.



1                   So the best data we have is to look at  
2                   the national representative study, which -- of  
3                   which I've given you some examples, on the  
4                   variables in parents that affect child  
5                   well-being.

6                   There are other studies that show that  
7                   depression in a mother or a father generates  
8                   psychiatric disorders in children, and higher  
9                   rates of depression and other psychiatric  
10                  disorders in children, if the parents are  
11                  depressed.

12                  So as a scientist, as well as a  
13                  clinician, the -- and I've spent years looking at  
14                  research, I think the studies -- the type of  
15                  studies for which I've given you examples are the  
16                  best, most reliable studies, most valid, to make  
17                  the conclusions about the general U.S. population  
18                  of homosexuals adults and their ability to be  
19                  parents.

20                  Q. Okay. In your professional opinion, and  
21                  based upon your academic career and in your  
22                  experience in the field, are children in  
23                  households with homosexually behaving adults  
24                  exposed to more harmful stresses, above those  
25                  that would be typically found in a heterosexual

1 home?

2 A. Yes, there are unique stressors that a  
3 child encounters, a child or adolescent  
4 encounters, living with homosexual parent, and  
5 clinically I've seen half a dozen to a dozen  
6 homosexual parents bringing their children into  
7 me for help with child problems, but --

8 Q. In terms of overall, I mean --

9 A. But overall -- overall, there are unique  
10 stressors related to the general population, a  
11 large segment of the general U.S. population  
12 disapproving of homosexuals behavior, and as a  
13 result, many studies and reviews of studies show  
14 there are higher levels of homosexual individuals  
15 having less social community support and feeling  
16 stigmatized or discriminated against in various  
17 ways, and it filters down to children, but then  
18 the children, too -- you know, it takes us about  
19 18 years, if we're successful, to train children  
20 to be tolerant, loving, considerate of people who  
21 are different than you are, but within child peer  
22 groups, children can be very cruel and mean to  
23 each other, and -- so that if most of the kids  
24 have a mommy or a daddy, but not two mommies and  
25 not two daddies, the children can be very cruel

1 to one another, and even among the child peer  
2 groups, they use slang, like gay or dike or that  
3 sort of thing as put down words. So the children  
4 -- it filters down to the children the lesser  
5 social acceptance of homosexual behavior, when  
6 adults -- when other peers find out their adults  
7 are engaged in a homosexual behavior or  
8 relationship.

9 Q. When you speak of the increased  
10 stressors, are you speaking about the psychiatric  
11 disorder that we talked previously about?

12 A. Yes, it would be all of these. For a  
13 parent to have a psychiatric disorder is a major  
14 stressor on a child. For the child to discover  
15 that other people in the community disapprove of  
16 the parent's lifestyle, that's a stressor to the  
17 child. For the parent -- child's parent to have  
18 partner turnover, that also can be a stressor on  
19 the child, and these are unique -- a uniquely  
20 greater risk of stressors for children placed in  
21 a homosexual household, above and beyond just the  
22 normal stressors all children have in households  
23 just generally. They're just an added set of  
24 stressors.

25 Q. Are there any studies that is stand out

1           forefront in your mind that are good  
2           representative studies that discuss this issue?

3           A. Well, different parts of it. There's  
4           some review articles on -- on research studies  
5           that show that sexual minority individuals  
6           experience more stressful events than  
7           heterosexuals. There's a review published by  
8           Herek and Garnets, in the Annual Review of  
9           Clinical Psychology, in 2007, entitled, Sexual  
10          Orientation and Mental Health, and they stated  
11          that sexual minority individuals face a variety  
12          of objectively stressful events that heterosexual  
13          do not experience, and they talked about the  
14          stigmatized status of the individual, and this is  
15          just their general conclusion from looking at a  
16          variety of studies.

17                    It says that they face stressors, both,  
18                    related to stigma and then other stressors not  
19                    related to stigma.

20           Q. Does the Herek study that you just  
21           mentioned, does it discuss children or adults?

22           A. It's discussing the adults. So this  
23           would be what the parents -- stressors that the  
24           parents would be facing, that, in turn, if the  
25           parent is under more stress, then indirectly it

1 can influence the child in an adverse way.

2 Q. And this was published in the Annual  
3 Review of Clinical Psychology?

4 A. That's right.

5 Q. Is that a peer-reviewed article?

6 A. Yes.

7 Q. Are there any other studies that would  
8 discuss the effects on children?

9 A. There's some studies that they're not as  
10 representative, but they are suggestive. One was  
11 the -- I don't see it in front of me -- Gartrell  
12 study, conducted in the United States, from the  
13 American Journal of Orthopsychiatry. It's  
14 entitled, The National Lesbian Family Study.

15 Interviews with 10-year-old children,  
16 and this was the fourth report in a longitudinal  
17 study of a convenient sample, in this case, of  
18 10-year-old children conceived by donor  
19 insemination, in 78 lesbian families, and they  
20 found that by the age 10, that 43 percent of the  
21 children indicated they have experienced  
22 homophobia, and that was an increase of 25  
23 percent from age five, when they previously  
24 studied the children.

25 Sixty-nine percent of the children felt

1           angry, upset or sad about these incidents, and  
2           then they found that children who had experienced  
3           homophobia, the homophobia was associated with a  
4           higher problem score on the children's behavior  
5           checklist. So they experienced the stress that  
6           came out in problem behavior.

7                         Now, this is not a representative study.  
8           It's of a small number. It was 78 lesbian  
9           families. So it's just suggestive of an issue  
10          that needs further research.

11                        Q. When you say, "Suggestive of an issue  
12          that needs further research," is that because  
13          there aren't sufficient studies out there on this  
14          issue?

15                        A. That's right, uh-huh.

16                        Q. And could you define for me what  
17          orthopsychiatry is?

18                        A. It's just the whole of psychiatry. It's  
19          just -- they're accepting articles in all fields  
20          related to psychiatry and related mental health  
21          professions.

22                        Q. Is that, The Journal -- American Journal  
23          of Orthopsychology a peer-reviewed article?

24                        A. It's American Journal of  
25          Orthopsychiatry.

1 Q. Is that a peer-reviewed?

2 A. Yes, and it is peer-reviewed, and there  
3 was another study on the child's stress from  
4 disapproval of the homosexual lifestyle. It's  
5 another one --

6 Q. Let interrupt you a moment to get back  
7 to the other study about Gartrell.

8 The Gartrell study was interviews with  
9 10-year-old children?

10 A. Right.

11 Q. Is there any concern for researchers,  
12 when they're doing individual or narrative  
13 interviews with subjects?

14 A. Any concern?

15 Q. Yes, because you're taking --

16 A. It's just a different way of collecting  
17 data. It's not as systematic, it's not as  
18 representative, but many times, in psychology,  
19 the field has advanced from first collecting  
20 qualitative data first, so that you know what  
21 variables to look for and develop measures of in  
22 quantitative studies. So that's how we went from  
23 Freud's qualitative observations to research  
24 studies on -- you know, as far as catharticism  
25 and that sort of thing, or with children, Tjaden

1 studies in Switzerland for qualitative -- just  
2 observing and talking to them, and you develop  
3 from that hypothesis then to study in a  
4 quantitative way.

5 So it's kind of a first step, tentative  
6 step, in collecting data.

7 Q. All right. Thank you. Sorry for the  
8 interruption.

9 You want to talk to me about another  
10 study?

11 A. Another one was by Bass and Van Valen,  
12 published in Culture, Health and Sexuality, April  
13 2008, and the title is Children in Planned  
14 Lesbian Studies; Stigmatization, Psychological  
15 Adjustment and Protective Factors.

16 MS. BASS: I'm sorry, Doctor, what page  
17 are you reading from?

18 THE WITNESS: 36.

19 MS. BASS: Thank you.

20 THE WITNESS: And this, again, is a  
21 non-random convenience samples, so it's  
22 just suggestive that they had 63  
23 children from planned lesbian families,  
24 in the Netherlands, and they gave them a  
25 questionnaire regarding the



1           stigmatization, and 60.7 percent of the  
2           children reported peers are making  
3           jokes, because you're a child of two  
4           lesbian mothers, 56.7 percent reported  
5           or endorsed the item peers ask annoying  
6           questions about your parents and their  
7           sexual orientation, 45.2 of the children  
8           endorsed the item, peers are using  
9           abusive language related to the sexual  
10          orientation of my mothers, 30.6 percent  
11          endorsed the item, peers are gossiping  
12          about you and your lesbian mothers, 26.2  
13          percent endorsed the item, peers  
14          excluded you because of your  
15          non-traditional family situation.

16         BY MS. MARTIN:

17                 Q. Now, this study -- where was this study  
18         conducted?

19                 A. In the Netherlands.

20                 Q. Is it typical in researching data that  
21         you would gather data from different countries  
22         and different cultural background?

23                 A. Yeah, different countries conduct their  
24         studies. This is striking, because the  
25         Netherlands is recognized as one of the most

1           tolerant societies for homosexual behavior, and,  
2           yet, still, the children -- like I was saying  
3           before, maybe the adults in that society are  
4           tolerant, but children can be very cruel to each  
5           other, and it takes at least 18 years for us to  
6           socialize children to be loving and accepting of  
7           people different than themselves, and -- so even  
8           in the most -- the country with a reputation of  
9           one of the most tolerant of homosexual behavior,  
10          still large numbers -- a large percentage of the  
11          children are -- reported in this convenient  
12          sample that their peers are giving them a hard  
13          time about their homosexual parents.

14                 Q. And is the Culture Health and Sexuality  
15          a peer-reviewed publication?

16                 A. I think this one is. I'm not sure on  
17          this particular one. I think it is.

18                 Q. Is it important, when you're looking at  
19          the analysis, to consider whether or not an  
20          article is peer-reviewed?

21                 A. Yes. If it's peer-reviewed, I have more  
22          confidence in it, that -- peer-reviewed usually  
23          means there are two, three or four or more blind  
24          reviewers, who have professional credentials in  
25          the same field, and they look at the research

1 methodology and see that -- to make sure the  
2 study -- for example, that non-random convenient  
3 study here, the peer-reviewers would make sure,  
4 in the discussion section of the article, that  
5 they're not generalizing it to the general  
6 population, but make sure that they indicate the  
7 limitations of the study, and if they, therefore,  
8 said, "Well, around the world, this applies to  
9 every child," the peer-reviewer would say, "No,  
10 this applies to just your convenient sample in  
11 the Netherlands."

12 So a study can be published if it's a  
13 non-random convenient study, but the  
14 peer-reviewers would look at the -- the  
15 appropriate statistics, was the data collected in  
16 some kind of systematic standardized accepted  
17 way, and then, are the authors being judicious  
18 about what they make of the results.

19 Q. Would an individual that's in an  
20 academic environmental or clinical environment,  
21 would they also consider research that's not  
22 peer-reviewed?

23 A. Occasionally you would look at research  
24 not peer-reviewed, in the same way as I was  
25 talking about qualitative data. It could be very

1           suggestive of what studies or what variables you  
2           need to look at in future research.

3                        So people like me, I'm both, a  
4           clinician, my entire life, up until my health  
5           problems and having to take early retirement down  
6           here -- I was doing private practice or seeing  
7           patients in the medical school clinics and  
8           hospitals, and at the same time, doing research,  
9           and so I might read a study, that's not  
10          peer-reviewed, in an area that I'm interested in,  
11          to get ideas, particularly if there are not many  
12          good peer-reviewed studies in the area, and then,  
13          as a researcher, I might then design a study that  
14          I can collect data and submit it to a  
15          peer-reviewed journal.

16                        So it's one stage of research.  
17          Researchers, typically, like me, you'll look at a  
18          whole variety of different types of studies to  
19          get ideas.

20                        Q. Are there professional publications that  
21                        are not peer-reviewed?

22                        A. There's -- there are some. For example,  
23                        if you're invited to write -- invited to write a  
24                        book chapter in an edited book, and some of those  
25                        are peer-reviewed and some of them are not. So,

1           for example, I'm the editor of the Handbook of  
2           Child and Adolescence Sexual Problems, and I  
3           invited other physicians and psychologists and  
4           social workers to write chapters in that book,  
5           and -- in my particular book, I didn't send it  
6           out for a peer-reviewed, I was the only  
7           peer-reviewer, sending it back, you know, correct  
8           this, and that sort of thing, but other books or  
9           collected articles are systematically  
10          peer-reviewed.

11           Q. Moving along to a different category,  
12          are you familiar with a researcher named Sears?

13           A. Yes.

14           Q. And are you -- are you familiar with his  
15          work?

16           A. Yes. Sears was a professor at the  
17          University of South Carolina, so I knew him  
18          personally, and I contributed -- he invited me to  
19          contribute a chapter to another book -- a book  
20          that he published, but he published an article,  
21          Challenges for Educators, subtitle, Lesbian, Gay  
22          and Bisexual Families, in 1994, in the High  
23          School Journal. He's a professor of education.  
24          He's a gay studies professor.

25           Q. Okay. What is the High School Journal?

1           A. It's one of the journals in the field of  
2 education that focuses on studies in high school  
3 students.

4           Q. It is what it says?

5           A. Right.

6           Q. All right. And what kind of -- you said  
7 that Mr. Sears wrote a study on gay and lesbian  
8 issues?

9           A. Right.

10          Q. What issues did he study, that you've  
11 reviewed?

12          A. He wrote a review article in this  
13 journal, and he stated that the difficulties  
14 confronted by acknowledged lesbian mothers or gay  
15 fathers are in many ways similar to those faced  
16 by single parents and divorced households with  
17 the significant exception of the added --  
18 additional burden of wrestling with the social  
19 stigma associated with homosexuality, and then in  
20 his article, he reviewed different studies.

21                 The purpose of his article was to point  
22 out the problems that children with homosexual  
23 parents have as adolescents in the high school  
24 and how high school teachers, administrators  
25 could help those children, and he said, for

1           example, that as children enter adolescence,  
2           there's a greater likelihood that they will  
3           experience peer harassment about their parent's  
4           sexual identity and engage in a variety of  
5           self-protective mechanisms.

6                        So, in this article, he described from  
7           other research different coping styles of  
8           children with homosexual parents. Most of them  
9           different ways of trying to conceal the fact,  
10          from their peers, that they have homosexual  
11          parents. That the children, when they get into  
12          adolescent years, become even more synthesized to  
13          being in a different kind of household than most  
14          of the other -- vast majority of the other  
15          children, and then they have to develop coping  
16          and that this is an additional stress --  
17          additional unique stress for them. So that was  
18          the theme of his article.

19                      Q. And you indicated that Mr. Sears looked  
20           at other articles -- excuse me, looked at other  
21           articles when he prepared this publication?

22                      A. That's right, uh-huh.

23                      Q. Would that be considered a meta-analysis  
24           or meta-data?

25                      A. Well, it wasn't a formal meta-analysis.

1           It was more like a literature review, and he has  
2           a practical purpose, in that particular article,  
3           to develop ways to help these children in the  
4           school system.

5                        This article, or others -- I can't  
6           remember if it's in his article or others I've  
7           read, point out that teachers are more vigilant  
8           in disciplining children for making negative  
9           racial remarks, but they're less vigilant in  
10          disciplining the children for harassment around  
11          having homosexual parents, and so he said that --  
12          you know, because of that, and what he's found in  
13          these studies of the struggles the children have,  
14          the unique stressors of being in a homosexual  
15          household, different ways that the schools need  
16          to have -- teaching about tolerance of different  
17          lifestyles and acceptance and not being cruel to  
18          one another.

19                        So that was the purpose of this article.

20                        Q.   Would you define for me the term  
21          maladjustment?

22                        A.   Maladjustment can be referred either to  
23          one of the psychiatric disorders or it can just  
24          be a term referring to an individual who doesn't  
25          have a psychiatric disorder, who's having



1 difficulty adjusting to some situation or  
2 circumstance or some stressor in their life. So  
3 it's a more general term.

4 Q. Is it different than -- in your mind,  
5 than disorder?

6 A. Yes, because disorder would be one of  
7 the diagnosed disorders that have diagnostic  
8 criteria to make the diagnosis that -- that only  
9 mental health professionals should be making, or  
10 a physician or social worker, but maladjustment  
11 can apply to a child in a classroom, having been  
12 moved from one classroom to another and not  
13 adjusting well, but it's not a psychiatric  
14 disorder.

15 Q. And in your professional opinion, and  
16 based upon your educational and academic  
17 experience, and you've indicated and you shared  
18 with the Court that you also have some personal  
19 experience in the field, are children who are  
20 placed in foster care at an increased risk of  
21 some of these maladjustment issues, or -- I don't  
22 want to say disorders, but maladjustment?

23 A. Maladjustment.

24 Q. Uh-huh.

25 A. Yes. Children placed in foster care

1           have either experienced physical abuse or neglect  
2           or maybe death of their parents. One of the boys  
3           we had as a foster child lived with a single  
4           parent mother, and the mother was in an auto  
5           accident, and lost his mother, and the father was  
6           long gone, so they've experienced some traumatic  
7           stressful event and loss and then they've had the  
8           stress of having to deal with government agency  
9           workers talking to them and making decisions  
10          about their life and moving them and this sort of  
11          thing, and so the research shows that foster  
12          children are -- have substantially higher rates  
13          of both, maladjustment, in a non-clinical sense,  
14          and maladjustment in the sense of having more  
15          psychiatric disorders than children in the  
16          general population.

17                 Q. When you say, "significant," what does  
18                 -- could you quantify that for me?

19                 A. Well, I can quantify it in some studies.  
20                 There's a study by Halfron in the Journal of  
21                 Pediatrics, published in 1992, entitled, Mental  
22                 Health Service Utilization by Children in Foster  
23                 Care in California.

24                         In California, the -- the medicaid  
25                         system is called Medi-Cal --

1 Q. Uh-huh.

2 A. And the article was a study of paid  
3 claims to the California Medi-Cal program, and  
4 so, in that particular year, they had 27,446  
5 claims made for psychological or psychiatric care  
6 for foster children, and 39,166 claims made for  
7 psychological or psychiatric care for children  
8 not in foster care, and they found that children  
9 in foster care accounted for 41 percent of all  
10 users of mental health services, even though they  
11 represented less than four percent of the  
12 Medi-Cal eligible children.

13 So compared to the non-foster children,  
14 the children in foster care had 10 to 20 times  
15 the rate of utilization of mental health  
16 services.

17 There's another study by Harnan and  
18 Colleagues in 2000, published in the Archives of  
19 Pediatrics and Adolescent Medicine, entitle,  
20 Mental Health Care Utilization and Expenditures  
21 by Children in Foster Care, and this study  
22 reported -- this study reported on 39,500  
23 children on Medicaid in Pennsylvania, and they  
24 found that children in foster care were three to  
25 ten times more likely to receive a mental health

1 diagnosis, depending on what the diagnosis was.

2 Then another study by --

3 Q. Before you go further --

4 A. Okay.

5 Q. -- the Harnan article you just talked  
6 about, where was that published?

7 A. In Archives of Pediatrics and Adolescent  
8 Medicine.

9 Q. Now, is that also a peer-reviewed  
10 article?

11 A. Yes, that's a medical journal.

12 Q. And the publication you talked about  
13 concerning children utilizing Medi-Cal, which is  
14 the California study, where was that published?

15 A. In Pediatrics, and that's a  
16 peer-reviewed journal for pediatricians.

17 Q. And the purpose of these two articles  
18 was to demonstrate what?

19 A. To demonstrate that children in foster  
20 care have higher rates of -- substantially higher  
21 rates of psychiatric disorders, and they have  
22 substantially higher rates of mental health care  
23 utilization.

24 Q. Are you familiar with the term, parental  
25 affective disorder?

1           A. Yes.

2           Q. What is that?

3           A. A parental affective disorder is one of  
4 the mood disorders, and affect disorder is some  
5 disturbance in mood, either extreme shifts of  
6 mood or severity of, for example, depression, in  
7 one mood.

8                   So parental affective disorder could be  
9 bipolar disorder, major depression, dysthymia,  
10 and those -- those disorders can sometimes have  
11 secondary psychotic features attached to them,  
12 but not necessarily.

13           Q. Does parental affective disorder play  
14 into any of your expert opinion regarding  
15 heterosexual versus homosexual behaving  
16 individuals, in terms of their psychiatric  
17 disorders?

18           A. Yes, because the large population --  
19 random samples of the general population and  
20 probability samples of the general population  
21 show at least two times the rate of depressive  
22 disorders and other mood disorders in homosexual  
23 behaving individuals, compared to heterosexually  
24 behaving individuals. Then, the research on the  
25 effect of the parent's affective disorder on

1 child adjustment becomes significant to consider,  
2 with regard to placing children with parents with  
3 homosexual behavior.

4 Q. Are there any studies that are forefront  
5 in your mind that discuss the parental affective  
6 disorder, in terms of homosexual behaving adult  
7 versus heterosexual adults, and if so, could you  
8 briefly summarize one or two of them?

9 A. Uh-huh. Okay. One very good study is  
10 by Constance Hammen, a UCLA professor, published  
11 in the Journal of Consulting and Clinical  
12 Psychology, and it's entitled, Intergenerational  
13 Transmission of Depression, and the subtitle is,  
14 Test of an Interpersonal stress Model in a  
15 Community Sample.

16 Q. And where was that published?

17 A. This was published in the Journal of  
18 Consulting and Clinical Psychology, which is a  
19 referred journal.

20 Q. When you say, "refereed," you mean, per  
21 reviewed?

22 A. Peer-reviewed, uh-huh.

23 Q. It's the same thing?

24 A. Same thing, it's researched.

25 Q. What was the subject matter that this

1 study was looking at?

2 A. It was looking at how the mother's  
3 affective disorder influences the child  
4 adjustment -- her own child's adjustment, and  
5 they had a birth cohort that was being followed,  
6 consisting of 7,775 mothers, and in that group,  
7 when the children became 15 years of age, they --  
8 they did a clinical assessment of depression in  
9 all the mothers, and they found that 991 of the  
10 mothers had a depression score in the clinical  
11 range, 816 of them consented to participate in  
12 the research, which is an 82 percent response  
13 rate, which is a good response rate, and so that  
14 meant they had 414 boys and 402 teenage girls in  
15 the study, and they found maternal depression  
16 contributed to chronic interpersonal stress in  
17 the mothers, affecting the quality of parenting  
18 and the youth's social competence.

19 Q. So to make sure that I'm understanding  
20 it, the study by Hammen is for the proposition  
21 that mothers who had depression, that filtered  
22 down to the children, and the children had some  
23 effect from that depression?

24 A. Right, they -- and what they verified is  
25 that it's mediated through stress, so that when

1 the stress is experienced by the child, then  
2 generated problems in social competence, and  
3 became a strong predictor of depression in the  
4 child.

5 Q. Any other studies in that area, that you  
6 wish to briefly discuss, that are forefront in  
7 your mind?

8 A. Well, there's a review article that  
9 reviewed a lot of studies like this by Beardslee  
10 in 1988, in the Journal of the Academy of Child  
11 and Adolescent Psychiatry, entitled, Children of  
12 Affectively Ill Parents, A Review of the Past 10  
13 Years, and they concluded that a number of  
14 longitudinal studies confirm that children of  
15 affectively ill parents are at greater risk of  
16 psychiatric disorders, than children from homes  
17 of non-ill parents.

18 Q. Is that an longitudinal study? Can you  
19 show me at what age this study began and when it  
20 ended, if it's longitudinal?

21 A. Well, there's a number of these studies,  
22 so this is review of a lot of different studies,  
23 and most of them study children up to age 20, and  
24 they found that by age 20, if the parent had an  
25 affective disorder, then the child had a 40



1 percent chance of experiencing major depression.

2 Q. Okay. Are you familiar with the term  
3 non-traditional family?

4 A. Yes.

5 Q. What does that mean to you?

6 A. In research studies, it usually means  
7 some difference from a parent with a mother and a  
8 father -- biological mother and biological father  
9 raising their own biological children. So, in  
10 some studies, non-traditional would include a  
11 single parent family, and in some studies, it  
12 would inch include homosexual parent or parents.

13 Any -- anything different than the  
14 biological mother and father raising their  
15 children.

16 Stepfamilies, sometimes they're defined  
17 as non-traditional.

18 Q. Are you familiar with a gentleman named  
19 Michael Lamb?

20 A. Yes.

21 Q. How is -- how do you recognize his name?

22 A. Well, for many years he worked for the  
23 Federal Government, most of his career, in the  
24 National Institute -- Institutes of Health,  
25 heading up a research section on child

1 development.

2 So he had large Federal resources at his  
3 disposal to be conducting studies, and he, I  
4 think, is a developmental psychologist, not a  
5 clinical psychologist, but nothing I've read says  
6 that he's had clinical experience helping  
7 children with problems.

8 I think -- I think he's a developmental  
9 psychologist, and then he moved to England, after  
10 retiring, I guess, from the Federal system.

11 Q. Yes. Yes.

12 Michael Lamb testified -- if I were to  
13 tell you that Michael Lamb testified in terms of  
14 non-traditional families, and in that category,  
15 he included such things as a mother who works  
16 outside the home, children who go outside the  
17 home for day care and for those families where  
18 the role of the mother and father are split, so  
19 that the mother may be the bread winner and the  
20 father may be the one staying at home, in your  
21 mind, would that also be non-traditional  
22 families?

23 A. Well, some studies have considered them  
24 non-traditional. So it's -- we just define --  
25 the researchers define, for the purpose of their

1 publication, what they want to call  
2 non-traditional, and if you do it that way and  
3 keep on excluding things and only including  
4 father as the breadwinner and mother as  
5 stay-at-home full-time mother, then you get down  
6 to a small minority of the population that is  
7 even traditional, but it's just up to the  
8 researcher to make their own definition of  
9 non-traditional that they want to publish.

10 Q. As far as you're aware, and based upon  
11 your review of the literature, and also based  
12 upon your academic background and experience,  
13 have there been any research studies that look at  
14 the effects of homosexual parenting on a child's  
15 well-being, conducted on over more than a hundred  
16 homosexual parents and also from a representative  
17 study?

18 A. No.

19 Q. Have there been any longitudinal  
20 research study on the effects of homosexual  
21 parenting on a child's well-being, that's  
22 followed the children from -- well, I guess -- I  
23 was going to say childhood, but from being a  
24 young adolescent to adulthood?

25 A. None have followed them up until mid

1 adulthood.

2 Q. And would that be something that would  
3 be helpful, in your mind, for these studies, when  
4 you're looking at homosexual versus heterosexual  
5 raising children in distressing conditions?

6 A. Yes, because if you look at parallel  
7 research by Judith Wallerstein and Kelly, The  
8 Effects of Divorce on Children, they would  
9 find -- and they did a longitudinal study and  
10 followed these individuals over decades, into  
11 adulthood.

12 They found that for some children  
13 there'd be significant negative effects when  
14 they're younger, but for some, it didn't show up  
15 as a psychotherapy issue, for example, until the  
16 person is in their 30s or 40s and then it became  
17 a major adjustment issue for the individual, who  
18 perhaps repressed or suppressed the conflicts  
19 they have about the experience and then it crops  
20 up, you know, later in life.

21 Q. Okay. Would you agree that -- would it  
22 be your professional opinion and your expert  
23 opinion, based upon your academic research and  
24 your professional experience, that children  
25 raised in a homosexually behaving household fare

1           differently on a number of measures, those that  
2           you discussed today, than those children raised  
3           in heterosexual households?

4                       MS. BASS:  Objection to the form.  
5           Leading.

6                       THE COURT:  I'll allow it.

7                       THE WITNESS:  There was one word in  
8           there that I missed.

9           BY MS. MARTIN:

10                      Q.  Oh, boy, okay.

11                      A.  I'm sorry, there's one word in there I  
12           didn't get.  I'm sorry.

13                      Q.  I'll try again.

14                      Based upon your experience in the  
15           academic world and also your professional  
16           experience, would it be your expert opinion to  
17           agree with the statement that the children raised  
18           in homosexual behaving households -- in  
19           homosexual households fare differently on a  
20           number of measures, such as those that we  
21           discussed today, in terms of the distressing  
22           conditions, than similar children in heterosexual  
23           households?

24                      MS. BASS:  Just same objection, for the  
25           record.

1                   THE COURT: Same ruling.

2                   THE WITNESS: There's no direct  
3 research that's representative of the  
4 United States population on that issue,  
5 and much of the research is on such  
6 small samples and have methodological  
7 flaws, that there isn't direct research  
8 on that, in terms of number of measures  
9 that you mentioned.

10                  However, as a clinical child  
11 psychologist, I would consider empirical  
12 evidence from these large national  
13 representative studies on rates -- higher  
14 rates of psychiatric disorder, higher rates  
15 of substance abuse, higher rates of suicidal  
16 ideation, suicidal attempts, substantially  
17 higher, two to four times the odds in  
18 homosexual parents, and then taking that  
19 into account, along with the research that  
20 parental psychiatric disorder and substance  
21 abuse leads to adverse child outcomes,  
22 increases stress on the children, and taking  
23 into account, just clinically, my experience  
24 of children having, within the peer group,  
25 non-acceptance of other children when

1           they're different in any way, with all those  
2           stressors, one would expect, if you could do  
3           a representative study on the general  
4           population, in the way you framed it in the  
5           question, that if it was truly  
6           representative and had a large number of  
7           subjects, over a hundred subjects, that  
8           indeed the answer would turn out to be, yes,  
9           to that question.

10                    So that's what I would anticipate. That  
11                    would be my hypothesis, I think, informed by  
12                    this other empirical research.

13           BY MS. MARTIN:

14                    Q.    Would it be your expert opinion that  
15                    there is a child welfare basis to categorically  
16                    exclude homosexuals from adopting?

17                    A.    Yes.

18                    Q.    And would it -- it would be based upon  
19                    the discussion we had today?

20                    A.    Yes.

21                    Q.    Okay. Did there come a time or have you  
22                    ever published any law review articles?

23                    A.    Yes.

24                    Q.    How many law review articles have you  
25                    published?

1           A. Two.

2           Q. And are you familiar with an institution  
3 that's called St. Thomas?

4           A. St. Thomas University here in South  
5 Florida.

6           Q. Yes.

7           Would you share with me how it came  
8 about that you participated in a law review  
9 article?

10          A. I was invited to present a paper at  
11 Stetson University Law School in the Fall of  
12 2005, at a conference they had on the Lofton  
13 decision, which is the Federal Court -- the -- I  
14 don't know how to say it in legal terms, but the  
15 challenge to the Florida law prohibiting  
16 homosexuals from adopting children that was made  
17 through the Federal Courts, that ended up being  
18 appealed all the way to the U.S. Supreme Court,  
19 but the Lofton case was not successful.

20          So the entire conference was on the  
21 Lofton decision, and they had scholars from  
22 behavioral scientists and law professors and  
23 other present papers on both sides of the issue,  
24 should the law be upheld and should it be  
25 rescinded, and so I was invited to give the



1 paper, and so the paper I did was based on the  
2 research that I put together for the Howard case  
3 in Arkansas, where the regulation prohibiting  
4 homosexuals from being foster parents was being  
5 challenged.

6 So I took that, put it together, did a  
7 paper, and then someone at that conference  
8 decided to put together the papers presented at  
9 the conference in a law review journal, and I  
10 guess they looked around and the St. Thomas Law  
11 Review accepted the idea of having a special  
12 issue of the papers presented and expanded papers  
13 presented at that conference.

14 Q. Okay. And you indicated that you had  
15 published, I believe you testified, two law  
16 review articles?

17 A. Yes.

18 Q. And where was the other one published?

19 A. The other one was in the Regent  
20 University Law Review.

21 Q. And how did it come about that you  
22 published something in the Regent Law Review  
23 Journal?

24 A. At that time, too, I got an invitation  
25 from an editor of the Stanford Law Review, to --



1 THE WITNESS: -- check statistics.  
2 That's a different kind of review, I  
3 think.

4 MR. ESSEKS: Just, Your Honor, this  
5 witness has not established a foundation for  
6 how law reviews function.

7 THE COURT: I think it's just fact  
8 checking --

9 MS. BASS: Fact checking.

10 MS. MARTIN: Thank you. I have no  
11 other questions.

12 THE COURT: All right. Mr. Esseks.

13 MR. ESSEKS: Your Honor, we've been  
14 going for three hours. Could we take a  
15 short break?

16 THE COURT: Sure. Five minutes.

17 MR. ESSEKS: Could we have 10?

18 (Short recess taken.)

19 CROSS EXAMINATION

20 BY MR. ESSEKS:

21 Q. Good -- it's still morning. Good  
22 morning, Dr. Rekers.

23 A. Good morning.

24 Q. How are you holding up?

25 A. Pretty good.

1 Q. Okay. So I have a few questions for  
2 you. First off, you've been -- as you said in  
3 your direct testimony, you've been retained as an  
4 expert witness for the State, correct?

5 A. Yes.

6 Q. Okay. And before agreeing to be  
7 retained as an expert by expert -- by the State  
8 as an expert, you insisted on getting a retainer,  
9 an advanced payment from the State; is that  
10 right?

11 A. Yes.

12 Q. What was the amount of that advance  
13 payment?

14 A. \$60,900.

15 Q. Have you received funds from the State  
16 in addition to that amount?

17 A. No.

18 Q. Do you intend to bill the State for more  
19 funds, in addition to that amount?

20 A. Perhaps.

21 THE COURT: Was it 16 or 60?

22 MS. BASS: 60.

23 MR. ESSEKS: 60, 6-0.

24 MS. BASS: I thought it was 60,900,  
25 correct?

1                   THE WITNESS: Right, yeah, uh-huh,  
2                   based on \$300 an hour.

3 BY MS. MARTIN:

4                   Q. And I think you covered this, but I just  
5                   want to clarify it, you had a clinical practice  
6                   as a psychologist for several decades, right, Dr.  
7                   Rekers?

8                   A. Yes.

9                   Q. And during that -- those several decades  
10                  of counseling, you counseled between half a dozen  
11                  and a dozen children of gay parents, right?

12                  A. That's approximately right. I don't  
13                  keep counts, but that would be an approximation.

14                  Q. Okay. Now, you mentioned in your  
15                  testimony, Dr. Rekers, actually a fair number of  
16                  authors of articles and investigations into  
17                  various different psychological and other issues,  
18                  but one person that you didn't mention in your  
19                  testimony today was a man named Paul Cameron.  
20                  Are you familiar with Paul Cameron?

21                  A. Yes.

22                  Q. And in the St. Thomas Law Review article  
23                  that you testified about, you cite a number of  
24                  articles and some published works by Dr. Cameron;  
25                  is that correct?

1           A. Yes, a number. I don't know what the  
2 number is, but, yes.

3           Q. Certainly more than one, correct?

4           A. I don't remember. I'd have to look at  
5 it.

6           Q. Would you like to see --

7           A. It was several years ago.

8           Q. Do you have a copy of the St. Thomas Law  
9 Review in front of you?

10          A. Yeah, I thought I had it. No, I guess I  
11 don't.

12          Q. Here's a copy, because we're going to  
13 actually spend a little time with it, but I'm not  
14 going to introduce it into evidence, Your Honor.  
15 It's just for reference.

16                        Would you turn to Page 377 and 378 of  
17 that article?

18                        MS. MARTIN: I beg your pardon,  
19 what number?

20                        MR. ESSEKS: That would be 377 and  
21 378, and I'm working off of a computer  
22 generated version that has different  
23 page numbers from that one, but I think  
24 that's the one that we were just working  
25 on, and I believe that one that you're

1           working off is a photocopy of the actual  
2           published work.

3           So I think if you go to 378 -- 377,  
4           378, you'll find references to a number  
5           of work from Paul Cameron in the  
6           footnotes.

7           THE WITNESS: Oh, on 378. Okay.

8           BY MR. ESSEKS:

9           Q. Dr. Cameron -- Dr. Rekers, I apologize,  
10          is it true to say, therefore, that you have  
11          actually relied on Dr. Cameron's work, in your  
12          own work, on the issue of parenting by  
13          homosexuals?

14          A. Could you define rely? What do you mean  
15          by rely upon?

16          Q. Well, for example, Dr. Rekers have you  
17          cited the work of Dr. Cameron --

18          A. Yes.

19          Q. -- in the St. Thomas Law Review article.

20          A. Yeah, I cited it, uh-huh.

21          Q. Okay. And you cited it, I presume,  
22          because in your view, it supported some  
23          proposition that you wanted to assert in your  
24          article; is that correct?

25          MS. MARTIN: Objection. Could you

1 cite to him where you're referring to?

2 MR. ESSEKS: The pages that I  
3 indicated before.

4 MS. MARTIN: Uh-huh.

5 THE WITNESS: It looks like what it  
6 is, I reported or I made a summary of  
7 some data he reported in those  
8 publications.

9 BY MR. ESSEKS:

10 Q. Okay. Now, Dr. Rekers, you are aware  
11 that Dr. Cameron has critics who say that he  
12 distorts data? Is that a fair statement? You're  
13 aware of that?

14 A. I've heard that second and third-hand,  
15 but I don't -- I've not heard the critics  
16 directly. So it's hearsay, to me.

17 Q. But you're aware that such criticism is  
18 still out there, correct?

19 A. Yes.

20 Q. Okay. Now, Dr. Cameron was censured at  
21 one point by the American Psychological  
22 Association for distorting research on parenting  
23 by homosexuals, correct?

24 MS. MARTIN: Objection, facts not  
25 in evidence.



1 THE COURT: I'll allow it.

2 THE WITNESS: I don't know. I  
3 don't -- I have no direct evidence of  
4 that myself, that I recall, at this  
5 moment. I may have known at some point  
6 in time, but I don't recall.

7 BY MR. ESSEKS:

8 Q. Interesting you should mention that. I  
9 think you did know that in the past. In your  
10 deposition testimony in the Lofton case, that you  
11 mentioned earlier, you testified that, "Yes, Dr.  
12 Cameron was kicked out of the State Psychological  
13 Association, because of you his research  
14 regarding homosexuals." Do you recall that  
15 testimony?

16 A. Yes, but I checked that later with him,  
17 and he sent me letters showing that he had  
18 withdrawn from the Psychological -- American  
19 Psychological Association or resigned and wasn't  
20 kicked out.

21 So, in my mind, since then -- from  
22 information I've gotten since then, it's foggy  
23 what really happened. I don't know.

24 Q. And so it would be fair to say that your  
25 understanding is that Dr. Cameron resigned before

1 he could be kicked out?

2 A. That might be, but I don't know. I  
3 don't know for sure.

4 Q. Now, in the Spring of -- well, actually,  
5 let me go back.

6 Sometime in 2004, the State of Florida  
7 asked you to serve as an expert witness in a case  
8 about whether a homosexual person could become a  
9 permanent guardian to a child. Do you recall  
10 that?

11 A. Yes.

12 Q. And at the time, you were too busy, and  
13 so you suggested that the State approach Dr.  
14 Cameron instead?

15 A. I think I gave them a couple of other  
16 names, I'm not sure, but I may have referred  
17 Cameron to him at that point.

18 Q. In fact, you testified in your  
19 deposition in this case that you did, in fact,  
20 refer the State of Florida to Dr. Cameron in  
21 2004; is that right?

22 MS. MARTIN: That's improper  
23 impeachment.

24 THE COURT: I'll allow it.

25 THE WITNESS: I think that's true.

1 BY MR. ESSEKS:

2 Q. Okay. Now, as recently as the Spring of  
3 2007, you and Dr. Cameron continue to  
4 collaborate; isn't that correct?

5 A. I can't answer that, because I don't  
6 know what you mean by collaborate. I've never  
7 collaborated in research. Usually, when I think  
8 of collaboration, I think of collaborating in  
9 research or something like that, but I don't know  
10 what you mean.

11 Q. Let me ask you a more specific question,  
12 then.

13 A. Okay.

14 Q. Are you familiar with something called  
15 The Empirical Journal of Same-Sex Sexual  
16 Behavior?

17 A. Yes.

18 Q. Is that a journal that Dr. Cameron  
19 started to talk to you about in or about the  
20 Spring of 2007?

21 A. Yes.

22 Q. And did Dr. -- didn't Dr. Cameron invite  
23 you to be on the editorial board for that  
24 journal?

25 A. Yes.

1           Q. And you discussed with Dr. Cameron what  
2           the name of that journal should be? In fact, you  
3           suggested a different name from the one he had  
4           been using up to that point; isn't that right?

5           A. Yes, I -- a different variation.

6           Q. And Dr. Cameron has stated that you  
7           helped him conceptualize this journal of -- the  
8           Empirical Journal of Same-Sex Sexual Behavior,  
9           correct?

10          A. Yes, he said that, but it was primarily  
11          his idea. He called me -- I did bounce ideas off  
12          with him about it, but it -- he had the concept  
13          before contacting me.

14          Q. Okay. And that concept behind that  
15          journal was to create a journal that would,  
16          quote, not take any editorial stands or advocacy  
17          position for or against, quote, gay rights?

18          A. I think that's right. I think that's  
19          right.

20          Q. Now, Dr. Cameron is associated with an  
21          orientation called The Family Research Institute,  
22          right?

23          A. Yes.

24          Q. And Dr. Cameron and The Family Research  
25          Institute have taken, quote, very public advocacy

1 positions against, quote, gay rights?

2 A. Yes.

3 Q. And you decided that you didn't want to  
4 be involved with the Empirical Journal of  
5 Same-Sex Sexual Behavior?

6 A. Yes.

7 Q. And you reached that conclusion, in  
8 part, because of Dr. Cameron's -- because Dr.  
9 Cameron's, quote, longstanding reputation in the  
10 academic world and society in general, would make  
11 it impossible, close quote, for the journal to be  
12 credible as a journal, without any advocacy  
13 stance one way or the other on gay rights?

14 MS. MARTIN: Is there a question  
15 pending?

16 BY MR. ESSEKS:

17 Q. The question is, is that correct?

18 A. That's generally correct. I don't know  
19 where the words came from, if I wrote them or  
20 somebody else, but that's generally was my  
21 impression I got that spring from talking to a  
22 lot of other colleagues, should I do this or not,  
23 and that's what I was advised.

24 Q. And, in fact, you decided that it would  
25 be, quote, an uphill battle to launch a journal

1 and to have it accepted in the academic community  
2 if Dr. Cameron's name was included on the  
3 editorial board?

4 A. Yes.

5 Q. Now, you talked a little bit during your  
6 direct examination about domestic violence and  
7 victimization of one partner by another. Do you  
8 recall that testimony?

9 A. Yes, uh-huh.

10 Q. Okay. Now, just in terms of your  
11 approach to research, I understand, from your  
12 deposition, that you are not someone who  
13 regularly keeps up with the academic literature  
14 and research, it seems like in any field at all?  
15 Is that fair to say?

16 A. No, that's an exaggeration, so I think,  
17 no.

18 Q. Okay. Well, is there any field in which  
19 you read the academic literature and research  
20 published in peer-reviewed journals consistently  
21 as it comes out?

22 A. Well, my strategy is consistently to  
23 look up on -- different variables on the  
24 computerized searches. I don't subscribe to  
25 three or four journals and just read every

1 article in those journals. What I do is, I'm  
2 constantly updating myself and teaching and  
3 writing, that sort of thing, by doing  
4 computerized searches on different variables.

5 Q. Uh-huh.

6 A. And so that's my method of staying  
7 up-to-date. It's a different method.

8 Q. Understood.

9 But a consequence of that method is that  
10 you don't actually read regularly the academic  
11 research in peer-reviewed scientific journals on  
12 domestic violence?

13 A. No. Oh, on domestic violence?

14 Q. Is that correct?

15 A. No. Right, no, uh-huh.

16 Q. Okay. Now, men commit domestic violence  
17 at higher rates than women do, correct?

18 A. Yes.

19 Q. And in your direct examination, you  
20 testified about a study that appears, for the  
21 benefit of the rest of us, at Page 20 of your  
22 notes, and if you can look at it, as well.

23 By -- I think it's something Tjaden,  
24 T-J-A-D-E-N, and while you're looking, this is  
25 also the page in which you testified about a

1 study about Greenwood, also about domestic  
2 violence.

3 Do you recall that?

4 A. Yes.

5 Q. And so if I understood your testimony  
6 correctly, you were saying -- you were pointing  
7 out in the Greenwood study, which is a study only  
8 of men who have sex with men and the prevalence  
9 of domestic violence in those relationships, and  
10 then you pulled out the Tjaden study data about  
11 domestic violence against men in heterosexual  
12 relationships, and you were making a comparison  
13 there, correct?

14 A. I don't know -- I didn't talk about  
15 against men in the Tjaden study.

16 Q. Well, you -- I believe you testified,  
17 then, that 7.7 percent of heterosexual men  
18 reported a lifetime physical or sexual partner  
19 violence and that would be violence against them?

20 A. Oh, yes, against them, but not by male  
21 perpetrators necessarily.

22 Q. Understood.

23 A. That's what I was not understanding in  
24 your question.

25 Q. Now, the Tjaden study studied the rate



1 of -- the rate at which heterosexual women  
2 experienced sexual domestic violence in those  
3 relationships; isn't that correct?

4 A. I think that's right. I'd have to go  
5 back and look at the study to verify that for  
6 sure.

7 Q. And women experience domestic violence  
8 more than heterosexual men, gay men or lesbians;  
9 isn't that correct?

10 A. I think that's right, but I'm not sure,  
11 compared to gay men, because as I pointed out,  
12 the Greenwood study and this Tjaden study, they  
13 are using different samples. I made the point  
14 that I don't know if it's comparable. So I don't  
15 know -- at this point in time, I don't recall the  
16 differential rate toward homosexual men, and I,  
17 in my notes, say, "There's no hetero comparison  
18 equivalent in here," so I -- when I talked about  
19 this, I said that these are not as strong studies  
20 as all the other ones are dealing with  
21 heterosexual comparison groups built-in. So I  
22 hold this much more tentatively.

23 Q. Okay. I just want to clarify one thing  
24 about what you just said, Dr. Rekers. It's very  
25 true that your notes here say that with regard to

1 the Greenwood study, that there are no  
2 heterosexual comparison data in the Greenwood  
3 study, right?

4 A. Right, uh-huh.

5 Q. But the title of the Tjaden study is  
6 Comparing Violence Over the Lifespan in Samples  
7 of Same-Sex and Opposite Sex Cohabitants?

8 A. Yes.

9 Q. Okay. So doesn't that suggest that  
10 there were, in fact, heterosexual and homosexual  
11 comparative data in the Tjaden study?

12 A. Yeah, there may be, and that's why I put  
13 "skip" here, you know. I wasn't going to bring  
14 this up at all. "Skip" means, I didn't have  
15 enough data here to present, but I was asked  
16 about the study, so I gave what I knew about it,  
17 but I recognize my own notes that I didn't have  
18 enough comparative data in here, on either study,  
19 to use. So that's why I put, "skip."

20 Q. Okay. Now, you've also talked about  
21 relationship stability, and so I have some  
22 questions for you about that.

23 And just to clear one thing up, just as  
24 you don't regularly read the academic literature  
25 on domestic violence as it comes out, you don't

1           regularly read the academic literature on  
2           relationship stability as it gets published,  
3           either? Is that fair?

4           A. Right.

5           Q. Okay. Now, at your deposition in this  
6           litigation, you were asked, but couldn't say,  
7           whether on average couple stayed together longer  
8           when they have children? Is that right?

9           A. That could be. I just don't -- I don't  
10          remember. I could have said that.

11          Q. And do you know now whether couples tend  
12          to stay together longer when they have children,  
13          as opposed to when compared to couples that do  
14          not have children?

15          A. Well, since that time I did read a study  
16          that said that they do stay together longer with  
17          children, but I can't remember the exact study.

18          Q. Uh-huh. And at your deposition, you  
19          couldn't tell us what the heterosexual divorce  
20          rate was in this country?

21          MS. MARTIN: Objection, improper  
22          impeachment.

23          THE COURT: You didn't go into the page  
24          and --

25          MR. ESSEKS: Well, I can -- that's

1 fine.

2 BY MR. ESSEKS:

3 Q. You were deposed in this case in  
4 November of 2007. Do you remember that?

5 A. Yes.

6 Q. Do you recall not being able to answer  
7 the question about what the heterosexual divorce  
8 rate was in this country?

9 MS. MARTIN: Objection, improper  
10 impeachment.

11 THE COURT: I'll allow it.

12 THE WITNESS: I think, at that  
13 time, I was saying, at that moment in  
14 time, I couldn't recall the data, but  
15 the data are at different points in  
16 time.

17 The reason I couldn't recall it is  
18 because I know there's data after five years  
19 of marriage, ten, fifteen, twenty, and I  
20 didn't remember the exact numbers at these  
21 different intervals, and the research is  
22 also on cohorts, so like the Census Bureau  
23 has the cohort of people married between  
24 1960 and 1964, and then what their divorce  
25 rate is at five, ten, fifteen or twenty, and

1           then the cohort of, say, 1970 to '74, but  
2           there's so much -- so many numbers like  
3           that, and it was such a general question,  
4           that I just couldn't respond to it for those  
5           reasons.

6           BY MR. ESSEKS:

7           Q.    In fact, at your deposition, you  
8           couldn't give us any of the data?  That is, you  
9           couldn't even pick out one of the different  
10          markers that you're talking about, five years,  
11          ten years, whatever, and give us any rough  
12          estimate of what the heterosexual divorce rate  
13          was at all; is that correct?

14          MS. MARTIN:  Objection, improper  
15          impeachment.  I'm not quite sure how you  
16          would like to me object, but --

17          MR. ESSEKS:  Your Honor, this  
18          witness has been qualified as an expert  
19          in, among other things, in relationship  
20          stability, and this is an  
21          extraordinarily basic data that anybody,  
22          who actually is an expert, would be able  
23          to give me a sense, in his deposition a  
24          year ago.

25          THE COURT:  I understand that.  The

1 issue --

2 MS. MARTIN: I know it's a  
3 technical objection. There is an issue  
4 --

5 THE COURT: I think there's a  
6 technical issue. I still you use  
7 specifically --

8 BY MR. ESSEKS:

9 Q. If you don't remember, I can show you  
10 the deposition.

11 THE COURT: Right. Right. Right.

12 BY MR. ESSEKS:

13 Q. Can you tell us what the heterosexual  
14 divorce rate is today, using any of the different  
15 ways to chop up the data that you just alluded  
16 to?

17 A. Yes. At the twenty-year marker, for  
18 individuals in the -- married in the '60s,  
19 there's about 58 or 59 percent still married.

20 If you look at the cohorts starting in  
21 1997 (sic) to '74, it's closer to 50 percent, and  
22 thereafter, and then there's -- it's like a graph  
23 that's declining on numbers still together, but  
24 it's much more common for heterosexuals to be  
25 still together 20 years later, a higher

1 percentage of them. In this case, at least 50  
2 percent, depending on which cohort, 50 to 58  
3 percent, at 20 years, than in general for  
4 homosexuals, who still have the same partner 20  
5 years later.

6 Q. Uh-huh.

7 A. So like the general trend is what I'm  
8 talking about, but as I recall, under the  
9 deposition, under, you know, having promised to  
10 tell the truth, I didn't want to.

11 Q. I think -- I think you've answered the  
12 question.

13 A. -- give numbers -- yeah, I didn't want  
14 to give numbers, not having been prepared at that  
15 moment to give numbers.

16 Q. A person's level of education affects  
17 the likelihood that he or she will divorce; is  
18 that correct?

19 MS. MARTIN: Objection, exceeds the  
20 scope of direct.

21 THE COURT: Go ahead. I'm going to  
22 allow it.

23 THE WITNESS: Could you restate  
24 that?

25 BY MR. ESSEKS:

1           Q. Yes. A person's educational level  
2 affects the likelihood that he or she will  
3 divorce?

4           A. Yes.

5           Q. And people -- the degree of religiosity  
6 that a person has also affects the likelihood  
7 that the person will divorce?

8           MS. MARTIN: Your honor, may I make  
9 an objection? Counsel is making  
10 statements. If he's going to ask a  
11 question, could I ask him to phrase it  
12 as a question, please.

13           THE COURT: This is all testimony that  
14 you heard already.

15 BY MR. ESSEKS:

16           Q. Isn't it true, Dr. Rekers, that a  
17 person's degree of religiosity affects divorce  
18 rates?

19           A. It would be degree and type of  
20 religiosity.

21           Q. And the socioeconomic level affects the  
22 divorce rate, isn't that right?

23           A. Yes.

24           Q. And breakup rates for couples vary  
25 depending on the race of the couples?



1           A. Yes.

2           Q. And, now, Dr. Rekers, you personally  
3 don't favor automatically exclusion from the pool  
4 of adoptive parents any particular demographic  
5 group solely because of their divorce or breakup  
6 rates, unless, of course, that rate gets close to  
7 a hundred percent?

8           MS. MARTIN: Objection. There's no  
9 facts in evidence. It exceeds the  
10 direct.

11          MR. ESSEKS: Your Honor, he has  
12 testified that a whole series --

13          THE COURT: I don't understand the last  
14 part of your question.

15          MR. ESSEKS: Sure.

16          THE COURT: We have no testimony that  
17 relates to that.

18          MR. ESSEKS: I will rephrase, Your  
19 Honor.

20 BY MR. ESSEKS:

21          Q. Dr. Rekers, you don't favor  
22 automatically excluding from the pool of adoptive  
23 parents any particular demographic pool solely  
24 because of its divorce or breakup rate; is that  
25 correct?

1           A. Could you state that again, because it's  
2           a -- stated in the negative, so I don't know  
3           whether a yes or a no -- I'm trying to figure out  
4           what a yes or no answer from me would mean.

5           Q. Do you favor automatically excluding  
6           from the pool of adoptive parents any particular  
7           demographic group solely based on its divorce or  
8           breakup rate?

9           A. At the moment, I don't, but I haven't --  
10          I haven't given that particular issue a lot of  
11          thought or research, stated that way, any  
12          demographic group. I'd have to look at a lot of  
13          different demographic groups, but, you know,  
14          generally I'd agree. I haven't come to that  
15          conclusion, for any other group, but I also have  
16          not gone out of my way to study every possible  
17          demographic group.

18          Q. Dr. Rekers, do you remember being  
19          deposed in this action?

20          A. Yes.

21          Q. And do you recall that, I think it was  
22          Mr. Rosenwald that asked you a series of  
23          questions?

24          A. Yes.

25          Q. And you gave answers?

1           A. Sometimes.

2           Q. Sometimes, yes, and sometimes, no. We  
3 actually just discussed one of those instances.

4           I'd like you to look at Page 156 of the  
5 deposition testimony.

6           MR. ESSEKS: Your Honor, would you  
7 like a copy?

8           THE COURT: I don't. I'm just going to  
9 listen.

10          MR. ESSEKS: Okay.

11 BY MR. ESSEKS:

12          Q. If you look at Page 156, starting at  
13 Line 15 -- I can start at Line 13, which is the  
14 beginning of the question, but he withdrew the  
15 question, and then he started on 15, "Do you  
16 favor excluding demographics group with higher  
17 rates of divorce than the general population?"

18          "Answer: Again, if you had a group that  
19 had a hundred percent divorce rate or something  
20 close to it, there may be -- there may be a  
21 rational basis for excluding that demographic  
22 group on that one single variable alone, but if  
23 the magnitude were not that high, it would just  
24 need to be one variable, among other variables to  
25 consider, to arrive at such a decision, based on

1 the best interest of the child for potential  
2 adoption placement."

3 Did you give that testimony?

4 A. Yes.

5 Q. Okay.

6 A. I think the context of my answer was  
7 that I was talking about --

8 Q. Dr. Rekers, my question is finished.  
9 You've answered my question.

10 A. Oh, okay.

11 Q. Your counsel, if she so chooses, can ask  
12 you follow-up questions about that, okay?

13 A. Oh, okay.

14 Q. Now, there are homosexual couples that  
15 have been in relationships for many years; isn't  
16 that right?

17 A. I missed a word in there.

18 Q. There are homosexual couples, who have  
19 been in relations for many years; isn't that  
20 correct?

21 A. Yes.

22 Q. And you testified here today that you  
23 believe that same-sex relationships are less  
24 stable than heterosexual relationships?

25 A. Yes.

1           Q. And you based that opinion, in part, on  
2 data from a study from a -- from a gentleman  
3 named Laumann?

4           A. Yes.

5           Q. Okay. Now, the Laumann study, which you  
6 discussed, was about the number of sexual  
7 partners that people have over a lifetime, right?

8           A. Right.

9           Q. And so the Laumann study didn't talk  
10 about relationships, it just talked about sexual  
11 partners, right?

12          A. Right.

13          Q. And so the Laumann study doesn't say  
14 that, for example -- I just want to find it in  
15 your notes, Page 21.

16                 The Laumann study doesn't say that men  
17 with no same gender sexual partners since the age  
18 of 18 had a mean of 15.7 relationships, in terms  
19 of the way we talk about -- we consider  
20 relationship, in terms of, you know, living with  
21 someone, for example, over the course of a  
22 lifetime? It doesn't say that, does it?

23          A. No. No.

24          Q. In fact, that -- those 15.7 lifetime  
25 sexual partners could all have been one-night

1 stands?

2 A. Yes.

3 Q. So if what we're -- if what you're  
4 looking at is trying to decide whether -- how  
5 many different -- never mind. I've been reined  
6 in.

7 While we're talking about sexual  
8 partners, men have more sexual partners over a  
9 lifetime than women do, correct?

10 A. Yes, on the average.

11 Q. And different racial groups have  
12 different average numbers of sex partners over a  
13 lifetime, as well?

14 A. Yes.

15 Q. And the average number of lifetime sex  
16 partners also varies based on the person's  
17 religion?

18 A. Yes.

19 Q. And now I want to talk --

20 MR. ESSEKS: I'm sorry, Your Honor.

21 I'm just trying to shorten things.

22 BY MR. ESSEKS:

23 Q. You've -- Dr. Rekers, you testified in  
24 your deposition that you would automatically  
25 exclude from the pool of adoptive parents any

1 individual who had already had 19 sex partners in  
2 his or her lifetime by the time he or she applied  
3 to adopt?

4 MS. MARTIN: Objection, improper  
5 impeachment.

6 MR. ESSEKS: I'm not impeaching  
7 anything, Your Honor. I'm simply trying  
8 to establish what his opinion is.

9 THE COURT: Overruled.

10 THE WITNESS: I don't recall the  
11 context of that comment.

12 BY MR. ESSEKS:

13 Q. So is that no longer your view or is  
14 that not your view?

15 A. Well, as I -- you know, I continually  
16 learn and I continually read articles and I  
17 continually reevaluate and try to get closer and  
18 closer to the truth, and I can't remember the  
19 context of that conversation, how it came up,  
20 that I said such a thing, because I'm kind of  
21 puzzled. There may be some meaning to that in a  
22 context to somebody asking for a cut-off point or  
23 something, but it doesn't sound like my view  
24 today. I may have said something like that in  
25 the deposition.

1 Q. A year ago.

2 A. A year ago, in a different context, but  
3 it doesn't make sense to me today, as I hear it  
4 just pulled out of --

5 Q. I'll represent to you, Dr. Rekers, that  
6 we were discussing the Laumann data in the  
7 deposition, we were not discussing anything else,  
8 and -- but you're saying it's no longer your  
9 opinion that you would exclude from the pool of  
10 adoptive parents any individual who had already  
11 had 19 sexual partners at the time that --

12 A. I think -- I think I made the comment in  
13 the deposition that I wasn't looking at any one  
14 single variable, that I was looking at a cluster  
15 of variables in a lifestyle, that would lead me  
16 to be concerned, as a clinical psychologist, for  
17 child welfare, but I don't think --

18 Q. Well, Dr. --

19 A. And the 19 would have to be during the  
20 child's, you know, lifespan, but it doesn't sound  
21 like -- just taken out as a sentence, it doesn't  
22 sound like something I believe at the present  
23 time.

24 Q. Okay. Well, Dr. Rekers, how about we do  
25 this, I'd like you to look -- in your deposition



1 in this case, I'd like you to look at Page 172.

2 A. Oh, in this one there.

3 THE COURT: Could you read the question  
4 and the answer?

5 MR. ESSEKS: Yes. Yes, Your Honor.

6 THE COURT: Thank you.

7 BY MR. ESSEKS:

8 Q. Starting at Pages 18 -- I'm sorry, Page  
9 172, Line 18. "Question --"

10 A. What, 172?

11 Q. 172. I'll wait for you to get there.  
12 Are you there, sir?

13 A. Uh-huh.

14 Q. Okay. So 172, Line 18, "Question: So  
15 someone who's had 19 sexual partners prior to  
16 marriage should be categorically excluded from  
17 adopting?"

18 "Answer: Yeah, I think that would be a  
19 very good social policy for the children --"

20 A. Well, I -- well --

21 Q. Just let me finish.

22 A. Oh, I'm sorry.

23 Q. Did you give that testimony, Dr. Rekers?

24 A. I don't know where you are.

25 MS. BASS: Page 172, Line 18, bottom

1 right.

2 THE WITNESS: Oh, down here.

3 Yeah, it looks like --

4 BY MR. ESSEKS:

5 Q. You know, the question is, did you give  
6 that testimony, the exchange I just read?

7 A. Yeah, it looks like I did, but I can't  
8 be sure.

9 Q. Okay. Thank you.

10 Now, Dr. Rekers, you have read research  
11 on couple breakups by a researcher called Larry  
12 Kurdek; is that right?

13 A. Yeah, I recall reading articles by Larry  
14 Kurdek.

15 Q. And you also read research on couple  
16 breakups by a researcher named Gottman, correct?

17 A. I think so. Just sitting here right  
18 now, I can't recall exactly, but I think so.  
19 I've read thousands of articles and sometimes  
20 they become a blur, in terms of the name of the  
21 person attached to the article, that's why I  
22 brought notes and had actual things in front of  
23 me that I wanted to testify.

24 Q. And Dr. Rekers, in your St. Thomas Law  
25 Review article, in which you talk about the

1 research on parenting by gay people, you don't  
2 cite or discuss research either by Kurdek or by  
3 Gottman; is that correct?

4 A. I can't recall. There's over 200  
5 footnotes, and I don't know if at that point in  
6 time I had read those articles yet -- previously,  
7 or -- you know, I can't remember at what point in  
8 time I may have read those articles.

9 Q. The research by Kurdek on couple  
10 breakups and then by Gottman on same-sex couples  
11 was published prior to 2005, when your St. Thomas  
12 Law Review article came out, correct?

13 A. I'm not sure, but my article was written  
14 back in 2004. At this point in time, I can't  
15 remember those dates.

16 Q. You testified some about psychiatric  
17 disorders. Once again, I just have an initial  
18 question here. Just as it's true that you do not  
19 regularly keep up with and read the research in  
20 some other areas, on academic research, as it  
21 comes out, you do not regularly read the research  
22 on psychiatric disorder and epidemiology of  
23 psychiatric disorders as it is published, as it  
24 comes out in the professional literature; is that  
25 right?

1           A. That's right. It's impossible to read  
2           everything as everything is coming out.  
3           Thousands of studies are published every year. I  
4           do, however, consult the research at periodic  
5           points in time, for example, when I teach a  
6           course on abnormal psychology, I go and look  
7           things up at that point in time, but it's -- no  
8           one has enough time of the day to read all these  
9           different journals constantly.

10          Q. And certainly -- certainly --

11                 MS. MARTIN: I'm sorry, may the  
12                 witness finish that answer?

13                 MR. ESSEKS: Sure.

14                 THE WITNESS: And so in my field,  
15                 when it comes to studying research on  
16                 parents and on children and adolescents,  
17                 there are dozens and dozens of journals  
18                 with articles, and -- so like I said, I  
19                 use computerized searches, looking up  
20                 different variables.

21                 BY MR. ESSEKS:

22                 Q. And it's certainly especially hard to  
23                 keep up with the academic literature as it comes  
24                 out, if you're trying to be an expert in as many  
25                 different fields as you're trying to be an

1 expert; isn't that right?

2 MS. MARTIN: Objection,  
3 argumentative.

4 THE COURT: I'm going to allow it.

5 THE WITNESS: Well, basically I  
6 keep up with clinical child psychology  
7 and clinical adult psychology, which is  
8 one field, but that field has so many  
9 different journals, psychiatry journals,  
10 public health journals have articles on  
11 psychological and behavior disorders.  
12 So many different journals cover things  
13 in my one field. So I wouldn't agree,  
14 so many different fields, it's just  
15 these are subtopics within my field.

16 BY MR. ESSEKS:

17 Q. Okay. Dr. Rekers, can you name for us  
18 any of the leading journals in epidemiology?

19 A. Well, Journal of Public Health, the  
20 American Journal of Public Health. There'd be  
21 others. They don't come to mind right now.

22 Q. Okay. Dr. Rekers, women have greater  
23 rates of anxiety and depression than men do; is  
24 that right?

25 A. In the general population, yes.

1           Q. And I think you've actually said in this  
2 past that studies show that 41 percent of  
3 heterosexual women have psychiatric disorders at  
4 some point in their life? Does that sound about  
5 right?

6           A. Yes, uh-huh.

7           Q. And women have greater rates of eating  
8 disorders than men do?

9           A. Yes.

10          Q. And you, Dr. Rekers, you do not favor  
11 excluding women from being adoptive parents  
12 despite their higher rates of anxiety, depression  
13 and eating disorders, compared to men; is that  
14 correct?

15          A. That's correct.

16          Q. And the fact that one demographic group  
17 has an elevated rate of psychiatric disorders, by  
18 itself, is not a reason, in your view, to exclude  
19 that group from the pool of potential adoptive  
20 parents; is that right?

21          A. Right, not that one variable by itself.

22          Q. Now, the rate of psychiatric disorders  
23 in a particular demographic group may be affected  
24 by societal discrimination against that group; is  
25 that true?

1           A. That -- that's a common theory that you  
2           read in discussion sections of articles like  
3           this, but it hasn't been thoroughly investigated.

4           Q. Now, you've discussed in your testimony  
5           here today a series of articles about stigma and  
6           discrimination and stress that homosexual adults  
7           experience compared to heterosexual adults?

8           A. Yes.

9           Q. Now, studies show that people who report  
10          sexual relationships with same-sex partners, but  
11          do not themselves identify as gay or homosexual,  
12          have a higher prevalence of psychiatric disorders  
13          than those who do identify as gay or homosexual;  
14          is that right?

15          A. I've read some studies. I can't  
16          remember if they're representative random samples  
17          of the general population. They may be  
18          convenient samples. So in a tentative way, like  
19          all empirical research, some things are better  
20          established than others, that may be something  
21          that's beginning to emerge in the studies, but  
22          not fully established.

23          Q. Okay. Now, the State of Florida puts  
24          people who apply to be adoptive parents through  
25          some sort of screening process before approving

1           them; is that right?

2           A.   Yes.

3           Q.   Okay.  And the State can screen those  
4           applicants for psychological disorders using  
5           individual evaluations; isn't that right?

6           A.   Only present disorders, but not -- it's  
7           impossible to screen for lifetime prevalence.  
8           Even -- for example, I mentioned suicide  
9           probability.  I've given hundreds of patient  
10          various suicide probability scales and alike, and  
11          the best you can do is make a prediction in the  
12          present and the near future, say, the next week,  
13          before discharging a patient, but if someone's in  
14          a population of high rates of lifetime  
15          prevalence, you can't screen for what might  
16          happen next year or through the years of the life  
17          of a child, but if they're in a particular group  
18          that has two to four times the prevalence of  
19          lifetime suicide attempts, you'd say, in that  
20          group, they're higher risk, but you can't screen  
21          in the present for what might happen during the  
22          lifetime of a child, just -- you can just screen  
23          for the presence or absence of disorders  
24          presently, and mental health history in that  
25          person's past.



1           Q. Okay. But, Dr. Rekers, the problem that  
2           you've just identified is a problem that exists  
3           for any demographic population that has a  
4           heightened risk of psychiatric disorders; isn't  
5           that right?

6           A. Right.

7           Q. In your own opinion, Dr. Rekers, is it  
8           an open question whether homosexuality should be  
9           considered a mental disorder?

10          A. Yes, it's still a subject of debate in  
11          the field. I mentioned I'm a Member of the Board  
12          of the National Association for Research and  
13          Therapy of Homosexuality, and the psychiatrists  
14          and psychologists, clinical social workers in  
15          that group take varying positions on that. Some  
16          think the matter is settled, some think we need  
17          more research. So it's -- in some sense, it's an  
18          open controversial question within my profession.

19          Q. Doctor, I just want to go back for one  
20          quick question on the -- in the relationship  
21          stability and multiple sex partners topic that we  
22          were talking about just a few minutes ago, and  
23          I'm looking here at your notes that you prepared  
24          for your testimony today, and I'm looking at  
25          particularly Page 21 of those notes, where you

1           have your notes on the Laumann study, which is  
2           about the number of sex partners in different  
3           parts of the population, and you put -- you wrote  
4           for yourself, I gather -- this is -- well, first  
5           of all, this is a document that you wrote up  
6           yourself, correct?

7           A. Yes, uh-huh.

8           Q. And you wrote up a title for this page  
9           that originally read, "Partner relationship  
10          breakups, having multiple sexual partners in the  
11          previous year." Is that what you originally  
12          wrote?

13          A. Right.

14          Q. And then there's some scribbling on --  
15          on the top of the page, and scribbled out is the  
16          first three words, "Partner relationship  
17          breakups," leaving instead only "having multiple  
18          sexual partners in the previous year."

19          A. Right.

20          Q. The question for you is, were you the  
21          person who scribbled out those first three words?

22          A. Yes.

23          Q. Because part of the relationship  
24          breakups is not a fair characterization of what  
25          the Laumann study was actually focused on?

1           A. Well, that's not this page. I didn't  
2 want to confuse myself from a different page  
3 where I had the Sanfort study on partnership.

4           Q. Okay. I would like to turn --

5           A. I mean, on relationship.

6           Q. Are you finished?

7           A. Yeah.

8           Q. Okay. I'd like to turn to the issue of  
9 substance abuse. Rates of substance abuse vary  
10 based on demographic characteristics, such as  
11 race or religion; is that correct?

12          A. Yes.

13          Q. Native Americans have a higher rate of  
14 alcohol abuse than the general population does,  
15 correct?

16          A. Yes.

17          Q. And some kinds of substance abuse are  
18 more common among African-Americans than in the  
19 general population; is that right?

20          A. Yes.

21          Q. And religious groups that teach  
22 abstinence from drug and alcohol use have higher  
23 rates of substance abuse than the general  
24 population; is that true?

25          A. Yes, it tends to be true.

1           Q. Okay. And heterosexual men have greater  
2 rates of substance abuse than heterosexual women  
3 do?

4           A. Yes.

5           Q. And Dr. Rekers, you do not favor  
6 excluding from the pool of adoptive parents an  
7 entire demographic group solely because of  
8 elevated rates of substance abuse; isn't that  
9 true?

10          A. That's true. I've said, not any one of  
11 these variables, as a single variable, that I  
12 would exclude. It's the cluster of variables  
13 that are associated with homosexual behavior that  
14 impose risk to the well-being of children. It's  
15 not one variable alone.

16          Q. Understood.

17                 And so just to apply that to our  
18 situation here, the rate of substance among  
19 homosexuals is not by itself a reason, in your  
20 view, to exclude them from being adoptive  
21 parents; is that right?

22          A. Right.

23          Q. And, likewise, the rate of psychiatric  
24 disorders among homosexuals is not by itself, in  
25 your view, a reason to exclude homosexuals from

1           being adoptive parents; is that correct?

2           A. Right.

3           Q. Okay. Now, the State can screen  
4 applicants for adoption -- to be adoptive parents  
5 for drug abuse individually; is that right?

6           A. In the present. If they're using drugs  
7 in the present, yes, you can give screening tests  
8 to see if they've got drugs in their system, but  
9 that doesn't eliminate lifetime prevalence, you  
10 know, not screening out the lifetime prevalence,  
11 in other words.

12          Q. Yes, but -- and once again, the concern  
13 that you just raised about the possibility of  
14 future psychiatric disorders or future substance  
15 abuse, is a problem that would exist for any  
16 demographic group within the population that has  
17 elevated rates of either substance abuse or  
18 psychiatric disorders, compared to the general  
19 population of the country?

20          A. If you're just screening, that's true,  
21 but if you use screening, plus taking into  
22 account data for degree of high risk for a  
23 disorder in a group, then that would be another  
24 way to be screening. In other words, it's just  
25 not a drug test taken to see if there are

1 substances in a person's body in the present, but  
2 another way of screening is to identify high risk  
3 groups for lifetime prevalence.

4 Q. Well, Dr. Rekers, let's explore that for  
5 a minute. So you testified earlier that  
6 Native-Americans have a higher rate of alcohol  
7 abuse than the general population does, right?

8 A. Yes.

9 Q. And, in fact, that's a very  
10 significantly elevated rate of alcohol abuse, I  
11 mean, compared to the general population?

12 A. Yes.

13 Q. And so using the concern that you just  
14 raised, that is, you could say, okay, we can, in  
15 the State of Florida, screen Native-Americans and  
16 everybody else for substance abuse, including  
17 alcohol abuse, on an individual basis, as they  
18 come into the adoptive system, right, but using  
19 the logic you just articulated, wouldn't it also  
20 make sense to say, hey, this is a group of  
21 people, Native-Americans, who have a very  
22 significantly elevated rate of alcohol abuse, and  
23 since we're worried about not just the present,  
24 but the future, too, we should exclude them  
25 categorically from being eligible to adopt in

1 Florida?

2 A. No, because I said, not -- there's not  
3 just one variable I would want to exclude people  
4 from -- if the Native-Americans also had a  
5 cluster of other distressing conditions, other  
6 psychiatric disorders, other kinds of lifestyle  
7 patterns that are -- would make the majority of  
8 them at risk for lifetime prevalence conditions  
9 that would disrupt parenting a child in a  
10 significant way, yes, it would be a factor, but,  
11 you see, the Sanford studies show that a majority  
12 of homosexual behaving individuals have a  
13 lifetime prevalence of a psychiatric disorder,  
14 including substance disorders, whereas a majority  
15 of heterosexual individuals do not, and by the  
16 accumulation of risk for major depression or  
17 substance abuse or suicidal attempt or other  
18 distressing conditions I gave, then you get to a  
19 population that has enough risk factors for  
20 cluster of disorders, that would make a majority  
21 in that group at risk for a condition that would  
22 disrupt parenting, and that's what the Sanford  
23 study shows, that a majority of homosexual  
24 behaving individuals do have lifetime instance --  
25 or prevalence of debilitating psychiatric

1 disorder.

2 Q. So following up on that testimony, if  
3 you have Native-Americans, and they have higher  
4 rates of -- significantly higher rates of alcohol  
5 abuse and substance abuse, and if they also have  
6 significant higher rates of psychiatric  
7 disorders, and if they also have higher rates of  
8 relationship instability, is that enough for you  
9 to say that all of a sudden they should be  
10 excluded categorically?

11 THE COURT: I think you can add violence  
12 to that, as well.

13 THE WITNESS: Yeah, violence, yeah.

14 BY MR. ESSEKS:

15 Q. And violence, as well.

16 A. Yeah, if it turned out that a majority  
17 of the individuals in the Native-American  
18 population, that a majority of them were high  
19 risk for one of these things happening, as a  
20 lifetime prevalence, there could be a parallel  
21 rationale for excluding them, as -- that category  
22 as adoptive parents, because it would be not only  
23 them, but all the -- they would tend to hang  
24 around each other. So the children would be  
25 around a lot of other Native-Americans, who are



1 similar, doing the same sorts of things, you  
2 know, in that hypothetical situation.

3 So it would be a high risk, and, in  
4 fact, since you can't perfectly predict human  
5 behavior, the best you can do and the best the  
6 State can do is to look at risk levels, and if a  
7 particular kind of household poses multiple high  
8 risks for conditions that would be detrimental  
9 for children, then that would be a rational for  
10 excluding that group, for instance.

11 Q. And so -- so just one more example, Dr.  
12 Rekers. You testified that some religious groups  
13 that preach abstinence with regard to the use of  
14 alcohol and drugs, actually have significantly  
15 elevated rates of substance abuse in those  
16 populations; is that right?

17 A. Right. It's somewhat elevated. If you  
18 look at the percentages, it's not -- you know,  
19 but you have to look at magnitude of percentage,  
20 as well.

21 Q. And you also talked about some -- about  
22 the breakup rates and divorce rates in different  
23 populations, depending on religiosity and  
24 different religions, right?

25 And isn't it true that certain

1 fundamentalist Christian religions have very  
2 elevated rates of divorce?

3 A. I haven't look at the current research  
4 on that right now, but that might or may not be.  
5 I don't know that it's well established by  
6 representative research of the general  
7 population.

8 Q. Okay. I want to change gears for a  
9 second to stigma. You talked about societal  
10 disapproval of homosexuals, and you've -- I  
11 believe it is your view that societal disapproval  
12 of homosexuals would not be enough, by itself, to  
13 justify excluding homosexuals from the pool of  
14 potential adoptive parents; is that correct?

15 A. Yes.

16 Q. Okay. And children can get teased at  
17 school about many aspects of their family; isn't  
18 that right?

19 A. Yes.

20 Q. And kids sometimes get ostracized at  
21 school because of their race or their family's  
22 race, correct?

23 A. Yes.

24 Q. And kids sometimes get ostracized or  
25 teased at school for coming from a poor family,

1 economically poor family; is that right?

2 A. I haven't seen it, but, you know, it's  
3 theoretically possible.

4 Q. And kids sometimes get teased for other  
5 things about their family, for example, because  
6 their parents are obese; is that right?

7 A. It could be.

8 Q. And you, Dr. Rekers, do not favor  
9 excluding any demographic group from the pool of  
10 adoptive parents, where the children of that  
11 group suffer a disproportionate rate of  
12 ostracized or discrimination; isn't that right?

13 A. Yeah, not that single variable by  
14 itself.

15 Q. Now, Dr. Rekers, children of single  
16 heterosexuals have a substantially higher rate of  
17 adjustment problems compared to children of  
18 heterosexual couples; isn't that right?

19 A. Compared to heterosexual married  
20 couples.

21 Q. Okay. Now, but you don't favor  
22 excluding single heterosexuals from the pool of  
23 potential adoptive parents; isn't that right?

24 A. Right, for special circumstances. I  
25 think the best environment for an adoptive child

1           would be to have a mother and a father, but that  
2           a single heterosexual would be acceptable, if  
3           they're matched to the needs of the child.

4           Q.   So your view is that single  
5           heterosexuals are acceptable only in special  
6           circumstances?

7           MS. MARTIN:  Objection.  That's not  
8           what he testified to.

9           THE COURT:  Well, I'm not sure.  I'm  
10          going to allow it.  Go ahead.

11          THE WITNESS:  When they're  
12          matched -- for example, some teenage  
13          girl, who has been sexually abused and  
14          was taken out of the home for sexual  
15          abuse, may have fears and phobias toward  
16          men or whatever, and it might be just  
17          best for her to be in a single mother  
18          home.

19          That's why I said, matched, was my word,  
20          that it's matched -- the need of the child  
21          are matched to the single heterosexual  
22          adoptive parent.

23          BY MR. ESSEKS:

24          Q.   Okay.  But outside of the  
25          circumstances -- the kind of circumstances you're

1            talking about that, that is, where you've got a  
2            single parent that matches in a substantive way  
3            with the needs of a particular child, is it your  
4            view that outside of those circumstances, there  
5            should be a bar on single individuals adopting?

6            A. No, because every child needs to be  
7            matched to a family. That's the criterium for  
8            every child. We want to make sure the child's  
9            needs matches what the family has the ability to  
10           offer the child.

11           Q. Dr. Rekers, you're okay with single  
12           heterosexuals as adoptive the parents, even if  
13           they chose never to marry; isn't that right?

14           A. Yes.

15           Q. Children of parents who lack economic  
16           resources have greater adjustment problems than  
17           children from families with more economic  
18           resources; is that fair?

19           A. Not necessarily. It depends on culture,  
20           subculture, the community, but money alone is not  
21           the primary variable for childhood development,  
22           it's spending time, the parents' emotional  
23           nurturance in response to the child's needs.

24           I've seen children -- very disturbed  
25           children from fabulously wealthy homes, where the

1 parents just have -- they're busy professionals,  
2 they don't have time for the children.

3 Q. That's right. I think we've all seen  
4 those people.

5 But economic resources is certainly a  
6 factor in whether children elected to adjust well  
7 or not adjust well; isn't that true?

8 A. Not necessarily. You have to look at --  
9 a lot of other variables are more important for  
10 the child.

11 Q. I want to talk for a bit about research  
12 methodology. You spent some time talking about  
13 what you believed to be flaws in some of the  
14 academic research in the area of parenting by gay  
15 people.

16 Now, you've discussed the concept of  
17 peer-reviewed, I think at length, and if a study  
18 is cited in an accepted peer-reviewed scientific  
19 journal, you trust the peer-reviewed process to  
20 make judgments on methodology, correct?

21 A. They make some judgments, but I'm a  
22 reader and I make my judgments, and even a study  
23 that's not peer-reviewed, I can make any  
24 judgments, because I'm a peer -- I've been a  
25 peer-reviewer of many articles, and so I also

1 read the article with my own judgment.

2 Q. Okay. You've talked some about  
3 convenient samples versus nationally  
4 representative samples, and my question to you  
5 is, is it true that convenient samples are a  
6 commonly used research method in developmental  
7 psychology?

8 A. Yes.

9 Q. And convenient samples are commonly used  
10 to study hard to find population; isn't that  
11 right?

12 A. Yes.

13 Q. And you have used convenient samples in  
14 your own research?

15 A. Yes.

16 Q. And snowball sampling is a form of  
17 convenient sampling, right?

18 A. Yes, uh-huh.

19 Q. And is it -- snowball sampling is an  
20 accepted method of research in developmental  
21 psychology?

22 A. Yes.

23 Q. You've also talked about small sample  
24 size. Now, in your St. Thomas Law Review  
25 article, you -- in your St. Thomas Law Review

1 article, you talked -- I'm sorry, yes -- you  
2 talked about -- you talk about several narrative  
3 books recounting the experiences of children  
4 raised by homosexuals in that article.

5 A. Yes.

6 Q. And I direct you to Page 366, it should  
7 be, in the St. Thomas Law Review article.

8 And do you find there, Dr. Rekers, a  
9 heading that says, "251 complicated cases," and  
10 then it goes on?

11 A. Yes, uh-huh.

12 Q. Okay. In this portion of the article,  
13 you were discussing, as I said, a series of  
14 narrative books, non -- not books published for a  
15 scientific audience, but published for a lay  
16 audience, correct?

17 A. That's right.

18 Q. Okay. And you proceed in this portion  
19 of the article to discuss the problems and  
20 difficulties the children raised by homosexual  
21 parents face in their lives, as reported in these  
22 books?

23 A. Yes.

24 Q. And then you proceed to draw some  
25 conclusions from those observations, right?



1           A. I don't know about the conclusions, but  
2 I presented them.

3           Q. Okay. And I'd just like to go down the  
4 numbers here for a minute. I'm starting on Page  
5 366. The books that you discuss in this article  
6 at some length and rely on, that sample sizes  
7 included 38, 19, 7, 73, 19, 12, 33 and 50; is  
8 that correct?

9           A. You have the word rely in your question,  
10 and so I'd say, no, because of that word.

11          Q. Okay. I'll do a different question.  
12 Same question, but with discuss as opposed to  
13 rely. Is that now a correct statement?

14          A. Yes.

15          Q. Thank you.

16                 And just -- I think I may have covered  
17 this, but these books were not discussing  
18 populations that were drawn from representative  
19 samples, correct?

20          A. That's right.

21          Q. And there were no heterosexual  
22 comparators discussed in these books, correct?

23          A. I think that's right. There's quite a  
24 few books, but I'm just thinking -- I think  
25 that's correct.

1           Q. All right. And the authors of these  
2 books were not social scientists; is that  
3 correct?

4           A. That's right. It's just qualitative  
5 cases, as the title says.

6           MR. ESSEKS: And, Your Honor, well,  
7 I have actually -- I have a bunch more,  
8 and so, you know, we can break now --

9           THE COURT: Okay.

10          MR. ESSEKS: -- we can break in  
11 five minutes, but I think I'm not going  
12 to -- I think --

13          THE COURT: Okay. That's fine. I  
14 have -- is this a good point for you?

15          MR. ESSEKS: This is a fine point  
16 for me, Your Honor.

17          THE COURT: All right. The only issue I  
18 have is that I have a conference call from  
19 2:00 to 2:20, and I have to do my -- we'll  
20 come back at 2:20.

21                   (Discussion off the record.)

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C E R T I F I C A T E

STATE OF FLORIDA:

SS.

COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court Reporter, and a Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 4th day of October, 2008.

\_\_\_\_\_  
NIEVES SANCHEZ

1 IN THE CIRCUIT COURT OF THE  
2 11TH JUDICIAL CIRCUIT IN AND  
3 FOR MIAMI-DADE COUNTY, FLORIDA  
4 JUVENILE DIVISION  
5 CASE NO. 06-033882 FC 04  
6

7 IN THE MATTER OF THE ADOPTION OF  
8  
9 [John Doe] and  
10 [James Doe],  
11 minor children.  
12  
13  
14  
15  
16

17 \_\_\_\_\_/

18 The above-entitled case came on for hearing  
19 before THE HONORABLE CINDY S. LEDERMAN, Judge of the  
20 above styled Court, in her courtroom at the Juvenile  
21 Justice Center, 3300 Northwest 27th Avenue, Second  
22 Floor, Miami, Miami-Dade County, Florida, on Friday,  
23 October 3, 2008, beginning at approximately 8:30 a.m.  
24  
25

## 1 APPEARANCES:

2 THE AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION OF FLORIDA, INC., by  
4 LESLIE COOPER, ESQ.,  
5 and  
6 ROBERT F. ROSENWALD, JR., ESQ.  
7 and  
8 JAMES ESSEKS, ESQ.  
9 and  
10 SHELBI D. DAY, ESQ.  
11 Counsel for Petitioner, Frank Martin Gill  
12 and the ACLU.

13 OFFICE OF THE ATTORNEY GENERAL, by  
14 VALERIE J. MARTIN, ASSISTANT ATTORNEY GENERAL  
15 and  
16 KIERNAN P. MOYLAN, Assistant Attorney General  
17 and  
18 CHARLES M. FAHLBUSCH, Assistant Attorney General  
19 Counsel for Department of Children & Families.

20 GREENBERG TRAUIG, P.A., by  
21 HILARIE BASS, ESQ.  
22 and  
23 RICARDO A. GONZALEZ, ESQ.  
24 Counsel for the minor children.

25 JESSICA L. ALLEN, ESQ.  
On behalf of the Guardian Ad Litem Program.

RONALD B. GILBERT, ESQ., GUARDIAN AD ITEM.

FRANK MARTIN GILL, PETITIONER

20

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## I N D E X

3

4 GEORGE REKERS, Ph.D.

5 Cross Examination (By Mr. Esseks) 989

6 Cross Examination (By Ms. Bass) 1025

7 Redirect Examination (By Ms. Martin) 1048

8 Recross Examination (By Mr. Esseks) 1050

9

10

11 WALTER R. SCHUMM, Ph.D.

12 Direct Examination (By Mr. Moylan) 1057

13

14

## E X H I B I T S

15 Exhibit 13 995

16 Exhibit 14 1005

17 Exhibit 15 1009

18 Exhibit F 1070

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1 THEREUPON:

2 The following proceedings were had:

3 CROSS EXAMINATION (CONTINUED)

4 BY MR. ESSEKS:

5 Q. Doctor, it is your view, Dr. Rekers, that  
6 in order to have reliable scientific proof that  
7 parenting by homosexuals does not harm children, you  
8 would want to have studies following a representative  
9 sample of thousands of children, over a period of  
10 forty to fifty years, is that correct?

11 A. Well, the word "reliable" is inaccurate.

12 But, I think if they are reliable and  
13 valid, valid in the sense of external validity, being  
14 able to generalize from the studies to the general  
15 population, you would need a general population  
16 probability sample or random sample, because for all  
17 we know, convenience samples have been done on, say,  
18 attraction of 1 percent of homosexual parents who  
19 have unique characteristics, not representative of  
20 the general population of homosexual parents.

21 So, yes, you would need both  
22 representativeness to be valid -- for the purpose of  
23 being, having external validity to make statements of  
24 use for public policy, which is different than  
25 studies of use for a child development journal.



1           And you would need like Wallerstein's  
2 study, a longitudinal study over time, to see not  
3 only effects on the children in the present, but to  
4 investigate issues, such as is this person, having  
5 spent their entire lifetime with homosexual parents,  
6 are they equipped to succeed in a heterosexual  
7 marriage, where the vast majority of children do  
8 aspire to heterosexual marriage.

9           So, since that is a major theoretical  
10 developmental and practical issue, does homosexual  
11 parenting equip a child, by modeling and learning, to  
12 know how to negotiate their own marriage?

13           You would need to follow them up until they  
14 are forty years old or fifty years old, so they are  
15 in their marriage, to see if there is a differential  
16 divorce rate, for example, of these individuals.

17           You have to be given qualitative data,  
18 where, like Abby Goldberg's research, qualitative  
19 studies show that women raised by homosexual parents  
20 say they are ill equipped for marriage.

21           Now, that becomes a hypothesis that you  
22 could only address with following the child from  
23 toddlerhood until they are forty or fifty years old,  
24 and have a representative sample.

25           So, to answer all those questions of

1 external validity, yes, that is the kind of study  
2 that you would need.

3           And it also has practical significance for  
4 placement of children.

5           Q. Just to be clear, so what I understood you  
6 to say, I just want to be clear on this, is that,  
7 yes, you would need to have a representative sample  
8 of thousands of children over a period of forty to  
9 fifty years, in order to have reliable and valid  
10 scientific proof, that parenting by homosexuals does  
11 not harm children, is that true?

12          A. If you wanted to be, from a scientific  
13 perspective, very clear, and I would say a thousand,  
14 because you would want to check the different  
15 subgroups, you know, the subcultural groups and  
16 racial groups, totaling up, but if you really wanted  
17 to make a public policy decision based solely on  
18 science, that is what science would need to do.

19          Q. So, the answer to that question is yes, Dr.  
20 Rekers?

21          A. Yes, with my qualifications.

22          Q. Dr. Rekers, you can't point to any study  
23 following a representative sample of thousands of  
24 children, over forty to fifty years, looking at the  
25 effects on children of a mother working outside the

1 home, isn't that correct?

2 A. Right.

3 Q. And yet, you do not favor categorically  
4 excluding, from the pool of adoptive parents, any  
5 mother who works outside the home?

6 A. That is right, because they don't have all  
7 the risk factors that I talked about today.

8 Q. Doctor, you can't point to any study  
9 following a representative sample of thousands of  
10 children, over forty to fifty years, looking at the  
11 effects of a father staying at home, is that true?

12 A. Yes. But developmentally and theoretically  
13 and practically, there would not be a need for such a  
14 study.

15 Q. Dr. Rekers, you have, in your clinical  
16 practice, you have treated patients who are  
17 homosexual and want to change their sexual behavior?

18 A. Yes.

19 MS. MARTIN: Objection, relevancy.

20 THE COURT: Okay.

21 BY MR. ESSEKS:

22 Q. I didn't catch it, did you answer the  
23 question?

24 A. Yes.

25 Q. And, some of those patients, who are in

1 treatment with you for homosexuality, were adults,  
2 right?

3 A. Yes.

4 Q. And, some of them were children?

5 A. Some were teenagers, and that is a form of  
6 childhood.

7 Q. You mentioned, during the course of  
8 discussing your qualifications, that you were a Board  
9 member for the National Association for Research and  
10 Therapy on Homosexuality.

11 And my question to you is, that  
12 organization, is it an organization that quote,  
13 "upholds the right of individuals with unwanted  
14 homosexual attraction to receive effective  
15 psychological care and the right of professionals to  
16 offer that care"?

17 A. Yes.

18 Q. You, in addition to being a Board member,  
19 you gave the keynote address at the Annual Convention  
20 of NARTH, as that organization is known, in 2006, is  
21 that correct?

22 A. Yes, I think that is the right year.

23 Q. And, you have been given awards by NARTH as  
24 well, correct?

25 A. I was given an award for my research from

1 NARTH.

2 Q. The St. Thomas Law Review article, a draft  
3 of that article was first published, prior to that  
4 Law Review, was first published on the web site of  
5 the National Association for Research and Therapy on  
6 Homosexuality, correct?

7 A. Yes.

8 Q. Now, you are a member of, sorry, you were a  
9 founder of the Family Research Council, is that  
10 right?

11 A. Yes.

12 Yes, I was the founding CEO and Chairman.

13 Q. Dr. Rekers, you mentioned in your  
14 qualifications that you were trained and have  
15 degrees, both as a theologian and as a psychologist,  
16 correct?

17 A. Yes.

18 Q. There are times when you integrate theology  
19 and psychology, isn't that right?

20 A. Not in the formal scholarly way. But I  
21 have, in parenting books, before I became a  
22 theologian I have integrated Christian concepts and  
23 parenting advice in publications.

24 Q. Dr. Rekers, I would like to show you a  
25 document.

1                   It is -- I am going to ask you to tell us  
2 what it is.

3           A.    Could you restate that again?

4           Q.    Sure.  I have just handed you a document,  
5 Dr. Rekers, could you just tell us what it is?

6           A.    This is my vitae for my theological and  
7 ministry credentials and work in addition to  
8 psychology.

9                   It is kind of a combined way.  It also  
10 includes, I have an MBA in executive management.

11                   It also has, I believe, some business  
12 seminar publications as well, so it is all three of  
13 my graduate degrees, what I do in all three fields.

14                   MR. ESSEKS:  Your Honor, Petitioner moves  
15 the admission of this document.

16                   THE COURT:  Clerk.

17                   THE CLERK:  13.

18                   MS. MARTIN:  Objection to that.  That is  
19 not his professional CV.

20                   He testified his opinions today are based  
21 upon his academic and scientific background, not  
22 his degree on theology.

23                   MR. ESSEKS:  Your Honor, the significance  
24 of the document -- I understand and accept the  
25 fact that this witness is here on only one.

1           It is the Petitioner's assertion that, and  
2           we intend to show he actually has trouble  
3           figuring out which hat is which, and this goes  
4           to bias.

5           THE COURT: Overruled.

6           THE CLERK: 13.

7 BY MR. ESSEKS:

8           Q. We were talking about, well, actually I  
9           want you to turn to Bates Number 6087 in this  
10          document, Dr. Rekers, at the top of the page.

11          Are you there, sir?

12          A. Yes.

13          Q. At the top of the page, there is a heading  
14          Invited International Lectures, right?

15          A. Yes, uh-huh.

16          Q. It says 212 invited international lectures  
17          and consultations on clinical psychology and/or  
18          integrating psychology with Christian ethics and the  
19          gospel of Jesus Christ to community organizations and  
20          universities, including the following, and then there  
21          is a quite lengthy list covering 2007 back to 1987.

22          Is that accurate?

23          A. Yes.

24          And the way in which it is accurate, is  
25          many of these places, when I am invited by the

1 universities to speak, I also would contact any  
2 Christian campus ministries there, and also give  
3 talks to the Christian groups, when I am at the same  
4 location giving an academic talk.

5 Q. Those talks that you give are talks about  
6 integrating psychology with Christian ethics, right?

7 A. Right, with Christian ethics, but not  
8 theology, per se.

9 I haven't -- my theology degree didn't come  
10 until 1997, my doctorate in theology, which trained  
11 me in research methods and theology, so it was more  
12 ethics.

13 Q. Dr. Rekers, you have taught at the Fuller  
14 Graduate School of Psychology, is that right?

15 A. Yes, part-time.

16 Q. And, the Fuller Graduate School of  
17 Psychology is a branch of Fuller Theological  
18 Seminary?

19 A. Yes.

20 Q. Fuller Graduate School of Psychology itself  
21 integrates theology and psychology, correct?

22 A. Yes.

23 Q. At Fuller you were teaching psychology from  
24 a Christian perspective?

25 A. No. I taught psychology of learning, as I



1 recall.

2 I wasn't integrating at that point, per se,  
3 although students would bring up issues, and, of  
4 course, we would discuss their issues.

5 But, I was mainly there because they had a  
6 Child Development Center, and it was one of my  
7 regional data collection points for my large federal  
8 research grants up there in the Pasadena area.

9 While I was there, they asked me, from time  
10 to time, would you teach a course on this or that or  
11 the other thing, and so they were purely psychology  
12 classes.

13 They had psychology classes, theology  
14 classes and then integration courses.

15 I didn't teach any of the integration  
16 courses, I just taught some psychology courses.

17 Q. Dr. Rekers, do you remember being deposed  
18 in Howard versus The Child Welfare Agency Review  
19 Board, a case that was pending in State Court in  
20 Arkansas?

21 A. Yes.

22 Q. I am going to show you and counsel your  
23 deposition transcript from that litigation, and ask  
24 you to turn to Page 153, please.

25 And, actually, this is, it is a little

1 complicated. This is one whole set of documents.

2           There were two days of the deposition, so  
3 there are two Page 153's, so you need to look at the  
4 second one.

5           If you look at 153, starting at Line 15:

6           "Question: And that is the Fuller School  
7 of Psychology, did you say?

8           Answer: Right.

9           Question: Which is a branch of the Fuller  
10 Theological Seminary?

11          Answer: Right.

12          Question: And, so, was that teaching  
13 psychology from a Christian perspective, I  
14 guess?

15          Answer: Right. They have a Ph.D. program  
16 regarding theology classes and psychology  
17 classes.

18          Question: So, at Fuller, is the idea that  
19 they integrate the theology with the field of  
20 psychology?

21          Answer: Right."

22          Did you give that testimony, Doctor?

23          A. Yes.

24          Q. Now, you were also a consultant and adjunct  
25 professor at Trinity International university, is

1 that right?

2 A. Could you say that again?

3 Q. Sure.

4 You are a consultant and adjunct professor  
5 at Trinity International University, is that right?

6 A. I was in the past.

7 Q. You were, at one point?

8 A. Yes.

9 Q. And Trinity International is a religious  
10 university, is that right?

11 A. It is a fully accredited liberal arts  
12 college and graduate school, and it is sponsored by a  
13 Christian denomination.

14 Q. Right.

15 And at Trinity, you taught a class about  
16 integration of psychology and the Christian faith, is  
17 that right?

18 A. Yes.

19 Q. Is it fair to say that at Trinity all of  
20 the courses have something about the Christian  
21 perspective included, whenever it might be relevant?

22 MS. MARTIN: Objection, relevance.

23 THE COURT: Overruled.

24 BY MR. ESSEKS:

25 Q. Did you get the question, Doctor?

1 A. Could you repeat it?

2 Q. Sure.

3 Is it fair to say that, at Trinity, all of  
4 the courses have something about the Christian  
5 perspective included, whenever it might be relevant?

6 MS. MARTIN: Objection.

7 THE WITNESS: I don't know about all of the  
8 courses, but many of the courses, I would say.

9 MR. ESSEKS: Your Honor, this would be a  
10 good time to break.

11 Thank you.

12 THE COURT: See everybody at 2:20.

13 (Thereupon, at 1:15 p.m., recess was taken,  
14 after which at 2:20 p.m., the following  
15 proceedings were had:)

16 MR. ESSEKS: May I proceed, Your Honor?

17 BY MR. ESSEKS:

18 Q. You are set, Dr. Rekers?

19 A. Yes.

20 Q. I want to go back to one of the studies  
21 that you talked about in your direct testimony, which  
22 I think is the first study you talked about in any  
23 detail, and that one copy made it my way, so I think  
24 it made it your way as well.

25 It is Sanford, 2002, Same Sex Sexuality and

1 Quality of Life, do you have a copy of that before  
2 you?

3 A. Yes.

4 Q. So this was a study, that I believe you  
5 testified, demonstrated that homosexual men have a  
6 lower quality of life than heterosexual men regarding  
7 self esteem and mastery, is that right?

8 MS. MARTIN: I object, I don't think that  
9 was the testimony.

10 THE COURT: He said, "Is that right?"

11 MS. MARTIN: Fair enough.

12 THE WITNESS: It wasn't the words I used.

13 MR. ESSEKS: Okay.

14 THE WITNESS: But I said, lesser quality of  
15 life.

16 BY MR. ESSEKS:

17 Q. Lesser quality of life.

18 In fact, if you look at the first page of  
19 this study, this document, there is a summary in  
20 small type on the first page, right?

21 Do you see that?

22 A. Yes.

23 Q. If you go about two-thirds of the way down,  
24 there is a sentence that reads, Lesser quality, QL,  
25 which I take it means quality of life, is that right,

1 Doctor?

2 A. Yes.

3 Q. Lesser QL in homosexual men was  
4 predominantly explained by self esteem and mastery,  
5 is that right?

6 A. Yes.

7 Q. I would like you to turn to Page 19 in the  
8 document, and at the very top left-hand column, there  
9 is a sentence that starts at the end of that first  
10 line, that reads: "The level of mastery and self  
11 esteem was lower in homosexual men than in  
12 heterosexual men. Homosexual women did not differ  
13 from heterosexual women in this respect."

14 At the beginning of the next paragraph  
15 there is a heading, Predicting QL and it reads:  
16 "Because we found no differences in QL for women,  
17 only analyses for men are presented," is that what  
18 that study says?

19 A. Yes.

20 Q. So, there was no difference in quality of  
21 life between lesbians and heterosexual women in this  
22 study, correct?

23 A. Let me see.

24 No, that is not. Let's see.

25 Yes, on the quality of life measures, it

1 was non-significant.

2 Q. Now, I want to, actually what I want to  
3 bring back is the second CV that we introduced, which  
4 is Petitioner's --

5 MS. BASS: 13.

6 BY MR. ESSEKS:

7 Q. Do you have that in front of you?

8 A. Yes.

9 Q. If you look at Page 6091, there is a  
10 heading on that page, Doctor, are you there yet?

11 A. Yes.

12 Q. It says Books Published by Christian  
13 Publishers, and one of the titles is the Christian in  
14 an Age of Sexual Eclipse.

15 Another one is titled Growing Up Straight:  
16 What Every Family Should Know about Homosexuality,  
17 and the third is, Shaping Your Child's Sexual  
18 Identity.

19 And, my question for you is, are these  
20 books that you authored?

21 A. The first one I co-authored; the second  
22 two, I authored.

23 Q. Now, I would like to show you, first, a  
24 copy of one of the books, but first I have got to  
25 find it.

1           Dr. Rekers, I would ask you to look at this  
2 document, and tell us if it is a copy of the book you  
3 co-authored with Michael Braun, called The Christian  
4 in the Age of Sexual Eclipse?

5           A.    It looks like it.

6           MR. ESSEKS: Your Honor, I would,  
7           Petitioner would offer this book in evidence,  
8           not for its truth, but for the fact that he  
9           wrote it and it expresses opinions of his.

10          THE CLERK: 14.

11          MS. MARTIN: The Defendant objects, Your  
12          Honor. I think this is not a scientific book.

13                He has indicated that in his expert  
14          testimony, he has not relied upon his  
15          theological work.

16                In addition to that, this was published  
17          almost thirty years ago.

18          MR. ESSEKS: Your Honor, this goes to bias.

19          THE COURT: Introduced as 14.

20          BY MR. ESSEKS:

21                Q.    Dr. Rekers, first off, this is a book that  
22          you co-authored with Michael Braun, is that how you  
23          pronounce his name, sir?

24                A.    Braun.

25                Q.    Michael Braun is a pastor?



1 A. He was at that time. He is retired.

2 Q. This is a book, and if you leaf through it,  
3 start out with Page, I think it must be Page 11, it  
4 is not numbered but it is the first page of text.  
5 The introduction of the book is several pages in.

6 It says Introduction, A Problem of  
7 Confusion, do you see that, sir?

8 A. Yes.

9 Q. Then it says, there is a subtitle, A  
10 pastor's View, and if you turn to the next page, on  
11 Page 12, there is something that says, A  
12 Psychologist's View, do you see that?

13 A. Yes.

14 Q. So, is it accurate that anything with a  
15 Pastor's View was written by Reverend Braun?

16 A. Yes.

17 Q. Pastor Braun?

18 A. Yes.

19 Q. And anything that says a psychologist's  
20 view, was something that you wrote?

21 A. I think so. I think most of it, although  
22 we edited each other's work from time to time, but  
23 essentially, that is true.

24 MR. ESSEKS: Your Honor, I have highlighted  
25 a few passages in the book so that everybody

1 knows what I am going to focus everybody's  
2 attention on.

3 The highlighting is something I did, not  
4 something that Dr. Rekers did.

5 That is something I just want to make clear  
6 for the record.

7 Also, I am reminded to say that, either in  
8 this book or other books or all of the books  
9 that we are going to be talking about, these are  
10 books that we purchased on the Internet and they  
11 were used, and so some of them have handwriting  
12 on them.

13 I want to be clear on that, those are not  
14 writings from Dr. Rekers; they are also not  
15 writing from us.

16 They are just the copies of the books we  
17 could secure.

18 I want to say that for the record.

19 BY MR. ESSEKS:

20 Q. What I want to point your attention to, Dr.  
21 Rekers, is on Page 14 of The Christian in an Age of  
22 Sexual Eclipse.

23 There is a highlighted passage there, and I  
24 would like to read it into the record, and ask you a  
25 question about it.

1           That passage reads: Non Christian  
2           psychologists often encourage their clients to  
3           form their own values regarding sexual  
4           expression.

5           In so doing, they mistakenly assume that  
6           they are providing the most appropriate and  
7           sensitive counsel.

8           In reality, they are tacitly creating an  
9           impression that the universe was constructed  
10          with no moral law inherent to the system, but  
11          God has spoken.

12          God has given us explicit instruction as to  
13          what his moral laws are.

14          The psychologist who recommends that a  
15          person simply define his own sexual values ends  
16          up not being an advocate of human freedom,  
17          instead, he becomes a revolutionary, attempting  
18          to overthrow the moral laws of God.

19          Instead of being helped, the client is,  
20          therefore, led down a fanciful path of alleged  
21          morality called liberation.

22          But instead of offering true freedom, this  
23          path can lead only to ultimate personal  
24          destruction and social chaos."

25          And my question is, is that something that

1 you wrote in this book?

2 A. Yes.

3 Q. Now, you can put that aside for the moment,  
4 Dr. Rekers.

5 I want to show you another of your books,  
6 this one is called Growing Up Straight.

7 So Dr. Rekers, did you --

8 THE COURT: What are you marking?

9 MR. ESSEKS: Growing Up Straight.

10 BY MR. ESSEKS:

11 Q. Dr. Rekers, is this document a copy of your  
12 book, Growing Up Straight?

13 A. It looks like it, yes. I haven't checked  
14 every page, but, overall, it looks like it.

15 MR. ESSEKS: Petitioner moves the admission  
16 of this as Petitioner's Exhibit 15.

17 THE CLERK: 15.

18 MS. MARTIN: Defendant objects as  
19 irrelevant and also cumulative.

20 THE COURT: Overruled.

21 BY MR. ESSEKS:

22 Q. Dr. Rekers, this is a book that you  
23 authored on your own, correct?

24 A. Yes.

25 Q. It is an advice book for parents?

1 A. Yes.

2 Q. I would like you to turn several pages into  
3 the document, where there is a table of contents.

4 Have you found that page?

5 A. Yes.

6 Q. The headings read, there are three  
7 categories. Roman Numeral One is The Truth About  
8 homosexuality.

9 Roman Numeral Two is The Trap of  
10 homosexuality.

11 And Roman Numeral Three is Triumph Over  
12 Homosexuality, is that right?

13 A. Yes.

14 Q. And Chapter 2, under Roman Numeral One, is  
15 entitled, quote, "Gay Liberation -- The Lure of a  
16 Deceptive Fantasy World," is that correct?

17 A. Yes.

18 Q. I would like you to turn, Dr. Rekers, to  
19 Page 54, if you would, please.

20 And at the bottom of Page 54, there is a  
21 heading called The Search For Truth About  
22 Homosexuality, and I'm going to read a portion of  
23 this, and ask you a question.

24 The text reads: "An honest, scholarly  
25 search for the truth about Homosexuality should

1 not stop with psychological or medical  
2 information alone.

3 "Wise professionals should also consider  
4 evidence for moral truth as well.

5 "The Bible teaches that people are  
6 foolish, if they deny God's reality and live  
7 their lives as though He were not there."

8 And then there is a passage from scripture,  
9 which I am not going to read, and then two  
10 paragraphs down, it starts out:

11 "What happens when psychologists and  
12 psychiatrists search for truth about  
13 homosexuality, but close the door to any  
14 possibility of information from the Creator of  
15 the human race?

16 "What happens if scholars deliberately  
17 discard all moral evidence as irrelevant to  
18 their professional judgments?

19 "Romans describe the consequences of  
20 suppressing truth revealed by the Creator,"  
21 which is another passage of scripture which I  
22 will not read.

23 Then on the next page, on 56, it concludes:

24 "Those verses indicate that the existence  
25 of God is evident within each person, so

1           psychologists and psychiatrists who proceed, as  
2           though He does not exist, are deliberately  
3           suppressing truth.

4                     "To search for truth about homosexuality,  
5           in psychology and psychiatry, while ignoring  
6           God, will result in futile and foolish  
7           speculations."

8                     Dr. Rekers, is that what you wrote in this  
9           book?

10           A.     Yes, in 1982.

11                     This is when homosexuality was still a  
12           diagnosis, and the diagnostic --

13                     MS. COOPER: That is not what Dr. Berlin  
14           said. He said it was changed in 1973.

15                     THE WITNESS: It was a phase out, as I  
16           mentioned, to sexual orientation disturbance,  
17           but still those were sexual orientation  
18           disturbances, still a diagnosis.

19           BY MR. ESSEKS:

20                     Q.     Doctor, because are you talking about  
21           ego-dystonic homosexuality?

22           A.     Yes.

23                     Q.     Which is something where only for that  
24           small subset of homosexual people, for whom their  
25           sexual orientation causes significant distress to

1       them, is that what that meant at the time?

2           A.    It is unknown how small or large it is,  
3       because they are largely closeted people that don't  
4       announce their sexual orientation.

5           Q.    I would like to ask you, I have got another  
6       book for you, Shaping Your Child's Sexual Identity.

7                    One for you, one for the witness, very  
8       important.

9                    So Shaping Your Child's Sexual Identity,  
10       now, if you turn --

11                   Well, first of all, Dr. Rekers, do you  
12       recognize the document?

13           A.    Yes.

14           Q.    Is this a copy of your book, Shaping Your  
15       Child's Sexual Identity?

16           A.    It looks like it. I haven't checked every  
17       page, but it looks like the format and contents of  
18       the book.

19                   MR. ESSEKS: Petitioner moves the admission  
20       of this document as Petitioner's 16.

21                   MS. MARTIN: DCF objects as to relevance  
22       and as being cumulative.

23       BY MR. ESSEKS:

24           Q.    Dr. Rekers, would you turn to Page 89,  
25       please?



1 I want to ask you something about a  
2 statement you made in here about homosexuals and  
3 pedophilia.

4 On Page 89 is a highlighted passage that  
5 reads:

6 "The Gay Liberationists have taken the  
7 deliberate ploy of pressing first for  
8 legislation to legalize the sexual behavior  
9 between two consenting adults," in italics.

10 "After they have succeeded in winning the  
11 emotional war of soothing the public's queasy  
12 feelings about homosexual activity among adults,  
13 the next planned step of the Gay Liberationists  
14 is to press for an elimination of laws of age  
15 discrimination," parentheses, "in the  
16 terminology of the rhetoric of revolt," close  
17 parentheses.

18 "This means that the gay activists are now  
19 beginning to press for the quote, 'rights of  
20 children,'" close quotes, to engage in  
21 homosexual behavior with adults."

22 "This will be their battle to legalize  
23 pedophilia," exclamation point.

24 Did you write that?

25 A. I think, yes.

1           Q.    Now, we turn back to Growing Up Straight  
2 for a minute, we turn to Page 38.

3                    There is a passage that is highlighted in  
4 the text here which reads:

5                    "As a psychologist, who has counseled  
6 scores of homosexuals, I have observed the pain  
7 suffered by individual homosexuals, who have been  
8 manipulated by leaders of the homosexual revolt.

9                    "Alone, the homosexual sees the deviance  
10 of other types of homosexuals and he can even feel  
11 the need to change himself.

12                    "But, the homosexual leaders use the  
13 manipulative techniques of classical revolutionary  
14 strategies to achieve their own diabolical  
15 objectives, to the detriment of the individual  
16 suffering the effects of sexual perversion."

17                    Did you write that, Dr. Rekers?

18           A.    Yes.

19           Q.    If you turn to Page 40, on the top of the  
20 page under the heading that says, "America: A modern  
21 Sodom?"

22                    And then there is a highlighted passage  
23 that reads:

24                    "The Gay Liberation movement has sprung up  
25 within our own lifetime. Homosexual activists seek

1 to lure our children into a deceptive and destructive  
2 fantasy world that ignores the obvious physical,  
3 social and moral boundaries of sexual expression.

4 "Everything that the gay activists are  
5 working for stands diametrically opposed to  
6 everything concerned parents stand for in seeking  
7 future family fulfillment for their children.

8 "Parents who are more aware of the tactics  
9 of homosexual activists will be better prepared to  
10 protect their own children from the ploys of these  
11 enemies of normal sexual development."

12 Dr. Rekers, did you write that?

13 A. I think so.

14 Q. Turning back to The Christian in an Age of  
15 Sexual Eclipse, which is the first book we looked at,  
16 I would like you to turn, Dr. Rekers, to Page 12.

17 Page 12, bottom of the page, there are two  
18 highlighted passages and this is the beginning, right  
19 after A Psychologist's View, so this is your writing,  
20 correct?

21 A. On Page 12?

22 Q. On Page 12, anything under "A  
23 Psychologist's View" would be something that you  
24 wrote, is that correct?

25 A. Yes.

1 Q. The passages read:

2 "In my clinical training, as well as in my  
3 experience as a university psychologist, I have  
4 been impressed by the devastating radical  
5 changes in sexual roles, which have occurred in  
6 America over the past thirty years.

7 "In the push and shove of these social  
8 changes, many kinds of individual problems have  
9 cropped up for men, women and children.

10 "Some unresponsive and insensitive  
11 husbands have failed to provide their proper  
12 masculine leadership in the home.

13 "Some women have allowed themselves to be  
14 sucked into the resulting vacuum, overstepping a  
15 more natural supportive role in the home.

16 "This domestic upheaval has been labeled,  
17 by many psychologists, as the dominant wife  
18 syndrome.

19 "In other cases, I have seen emotional or  
20 merely materialistic motives, woo many mothers  
21 of preschool children, out of their homes and  
22 into the job market.

23 "This functional desertion has often  
24 caused serious emotional conflicts for their  
25 children."

1           And then skipping down to the lower part of  
2           the page where highlighting resumes:

3           "Those who counsel people in distress have  
4           to be impressed by the clear correlation between  
5           the accelerating deterioration of the family  
6           unit and the major changes that are taking place  
7           in our society's conception of the male and  
8           female roles.

9           "Could it be that the wholesale American  
10          abandonment of the God-ordained male and female  
11          roles has brought upon our families a  
12          destructive force, that will ultimately  
13          disintegrate marriage and family, if not soon  
14          reversed?

15          "I believe that the family will self  
16          destruct in direct proportion to its retreat  
17          from the Biblically defined male and female  
18          roles."

19          Did you write those words, Dr. Rekers?

20          A.    Yes, I think so.

21          Q.    Dr. Rekers, in addition to having a  
22          doctorate in theology, you have been ordained as a  
23          minister by the Southern Baptist Convention, is that  
24          right?

25          A.    Yes.

1 Q. And, you believe that there are universal  
2 moral principles that hold for everyone on the  
3 earth?

4 MS. MARTIN: Objection, Your Honor, I think  
5 this goes outside the scope.

6 I mean, how much more are they going to ask  
7 him about religious views?

8 THE COURT: Well, the reason that he  
9 believes that science integrated with morality  
10 is the way it should be made, I think it is  
11 appropriate, it goes with morality, something  
12 like that.

13 MR. ESSEKS: I only have a couple of  
14 questions, Your Honor.

15 BY MR. ESSEKS:

16 Q. Dr. Rekers, you believe that it is a  
17 universal moral principle that homosexual behavior is  
18 sinful, is that correct?

19 A. Well, I believe that is what the Bible  
20 teaches.

21 Q. And, it is your personal belief that the  
22 exclusion of homosexuals from foster parenting is in  
23 the best interest of the spiritual and moral  
24 development of children, is that correct?

25 A. Yes.

1           Q.    Now, Dr. Rekers, if scientific studies,  
2 meeting your criteria for reliability, that is the  
3 criteria for reliability that you talked about on  
4 direct examination, if such studies found that  
5 children of homosexual parents do just as well as  
6 other children, as a private citizen, you would still  
7 favor the exclusion of homosexuals from adopting, is  
8 that correct?

9           A.    Yes, private.

10                  I would change my professional opinion, but  
11 my private, spiritual convictions would still be the  
12 same.

13           Q.    Understood.

14                  We then could go back to the St. Thomas Law  
15 Review article for a moment, Dr. Rekers, do you have  
16 that in front of you?

17           A.    No, well, let me see.

18                  Okay, here it is.

19           Q.    Doctor, if you would, turn to Page 401 of  
20 your St. Thomas Law Review article, at the bottom of  
21 that page, are you there yet, sir?

22           A.    Yes.

23           Q.    At the bottom of that page, there is the  
24 following statement, which I will read.

25                  Now, this research --

1            "This research study, convenience samples  
2            of volunteer homosexuality parents, without  
3            reported psychological disorders and substance  
4            abuse, who were," quote, 'cherry picked,' by the  
5            investigators, and are thus not representative  
6            of the general population of homosexuals, the  
7            majority of whom have lifetime occurrence of  
8            psychological disorders, suicidal ideation,  
9            suicide attempt and substance abuse," period.

10            That is a statement from your article,  
11            correct?

12            A.    Yes.

13            Q.    Now, a majority of homosexuals do not have  
14            a lifetime occurrence of suicidal ideations, is that  
15            correct?

16            A.    Right, it should be "or," I pointed it out  
17            in the deposition, that that was a typo. It should  
18            be and slash or.

19            Q.    Okay, so, what should have been here is,  
20            that the majority of homosexuals have lifetime  
21            occurrence of psychological disorders, suicidal  
22            ideations, suicide attempts and/or substance abuse,  
23            is that what you are saying?

24            A.    Right.

25            Q.    But it is true that, it is not true that a



1 majority of homosexuals have a lifetime occurrence of  
2 suicidal ideation, is that correct?

3 A. Not that one thing, by itself.

4 Q. And it is not true that a majority of  
5 homosexuals have a lifetime of suicidal attempts?

6 A. That is right.

7 Q. And it is also not true that a majority of  
8 homosexuals have a lifetime occurrence of substance  
9 abuse, is that right?

10 A. That is right.

11 Q. The only one of these four, for which there  
12 is a lifetime occurrence, in a majority of  
13 homosexuals, is psychological disorders, correct?

14 A. Psychological disorders and substance  
15 abuse, if you put the two together, you get what Sam  
16 Thornton and others classify under psychiatric  
17 disorders.

18 I just separated out psychological from  
19 substance abuse.

20 Substance abuse disorders are diagnoses in  
21 the Diagnostic and Statistical Manual of Mental  
22 Disorders, which has been the criterion used in the  
23 studies.

24 So, in other words, the -- it is all of the  
25 above, all of these things, suicidal ideation and

1 suicide attempts are symptoms of usually one of the  
2 mood disorders, so it is subsumed under them.

3           So, it is basically the psychological  
4 disorders and substance abuse disorders combined give  
5 you lifetime prevalence rates in the studies.

6           Q.   Okay, Doctor, but that is not what you  
7 wrote, is it?

8           A.   That is what it says to me.

9           Q.   I will leave it at that.

10           Now, I want to turn back to some of your  
11 views about the placement of children in foster  
12 care.

13           I believe you testified, even on your  
14 direct examination, that children in foster care have  
15 already experienced a major loss, by being separated  
16 from their biological or legal parent, in the first  
17 place, correct?

18           A.   Yes.

19           Q.   If foster children develop attachments to  
20 other adults, and then lose their connection with  
21 those other adults, that creates additional stress on  
22 foster children, correct?

23           A.   Right, yes.

24           Q.   And research shows that the more  
25 transitions there are in the lives of foster

1 children, that is the more times that they are  
2 transferred from one foster home to another, the more  
3 difficult the adjustment of those foster children is,  
4 is that right?

5 A. Yes, there is research on that.

6 Q. But, Dr. Rekers, you believe that where you  
7 have a child who has been in foster care with a  
8 family with a homosexual household member and that  
9 child has been in that home for ten years, you would  
10 favor removing that child to place him in with a  
11 family without gay members, homosexual members, is  
12 that right?

13 A. Yes. If it is a foster child, the foster  
14 child would be in a home with fewer risks to his  
15 development, his or her development, if placed in a  
16 heterosexual family unit.

17 Q. You think that the child can get over the  
18 stress that comes from breaking ten years of  
19 relationship with the foster family, in a year?

20 A. Well, it depends how you define "get over."

21 If you define it, as I say, yes, I agree to  
22 that, if you mean the child no longer, after a year,  
23 is showing evidence of a psychiatric disorder related  
24 to that transition.

25 On the other hand, children remember

1 things, you know, for a long time.

2 A foster child I adopted was in multiple  
3 placements and he remembers a lot of these.

4 I mean, after six months placed in our  
5 home, as a teenager, he was no longer showing any  
6 disturbance, so in that sense, I am talking about in  
7 that statement, I am referring to the child no longer  
8 exhibiting signs of some psychiatric disorder, after  
9 one year.

10 It doesn't mean that the memory is erased,  
11 it is still something uncomfortable and painful to  
12 think about.

13 MR. ESSEKS: I have nothing further.

14 MS. BASS: I have a few questions.

15 CROSS EXAMINATION

16 BY MS. BASS:

17 Q. Dr. Rikers, as I understand your testimony,  
18 you suggest that the research is inadequate, as far  
19 as evaluating the differences between homosexual and  
20 heterosexual parenting?

21 A. The studies, yes, in the sense that the  
22 studies that set out to investigate that and apply it  
23 to the general population.

24 The studies may have validity to the  
25 population they studied, but it is a small, they are

1 all rather small samples that does not have external  
2 validity to the general population.

3 Q. You also agree, as I understand your  
4 testimony, that there is no direct research on the  
5 issue that homosexually raised children fare poorer  
6 than heterosexually raised children.

7 No direct research of that being the case,  
8 isn't that correct?

9 A. No, I don't remember saying that.

10 Q. Well, as I understand it, Dr. Rekers, you  
11 can't identify for this Court one study that you say  
12 is the basis for relying, for public policy to be  
13 based upon, that, in fact, finds significant material  
14 differences, as far as the well being of children  
15 raised by homosexuals versus heterosexuals, not one?

16 A. If they are small samples, if they have  
17 flaws in their research design, if they cannot be  
18 generalized to the U.S. population, no, I don't think  
19 they are sufficient for public policy.

20 Q. So, the answer to my question, Dr. Rekers,  
21 is that there --

22 A. Repeat the question.

23 Q. -- there is not one that you can identify  
24 for this Court, not one study, that you, not one  
25 study that you can identify for this Court, that

1 makes a finding that children raised by homosexual  
2 parents do worse or are less healthful than children  
3 raised by heterosexual parents. There is not one.

4 I have been listening now for four and a  
5 half hours, has there been one that you have  
6 identified, that I missed?

7 A. Well, you said, previously the question  
8 that you asked, added sufficient for public policy.

9 Now, you have changed the question, and  
10 that question, yes, there are studies, if you look at  
11 Stacey and Biblarz' review of studies, she has  
12 pointed out some findings, for example, that some of  
13 the studies show that children raised in homosexual  
14 headed homes have atypical or less typical gender  
15 role behavior, are more likely to explore the  
16 possibility of homosexual behavior themselves, as  
17 teenagers.

18 There are findings, there are many studies  
19 that have findings.

20 I am just saying that they are not  
21 sufficient for public policy decision, because  
22 methodologically they do not have external validity  
23 to be generalized to the general United States  
24 population, because they are not random samples.

25 They are not probability samples. They are

1 not large samples, and so, they are weak in a lot of  
2 ways.

3 Q. So, you don't believe they are adequate for  
4 the purpose of creating public policy, based upon  
5 their findings?

6 A. When you say they, what are you talking  
7 about, just the studies?

8 Q. These studies are not a sufficient basis?

9 A. The ones that just study homosexual parents  
10 and heterosexual parents with small samples.

11 Q. You believe they are inadequate, correct?

12 A. They are inadequate, yes, and many  
13 investigators have pointed out their major  
14 limitations methodologically.

15 Q. And you think they are either too small or  
16 not representative or don't have adequate  
17 methodology?

18 A. Yes.

19 Q. Okay. But, you do recognize, do you not,  
20 Dr. Rekers, that there are many other psychologists,  
21 internationally, that do believe there are studies  
22 out there sufficient to be the basis for public  
23 policy?

24 A. Oh, yes. Some people, their standards are  
25 much lower. They will accept convenience samples.

1 They will accept studies that have no statistical  
2 significance.

3 But, you know, a regular scientist really  
4 needs to be concerned about sampling methodology and  
5 representativeness and external validity to the  
6 general population.

7 Q. So, it is your testimony, Dr. Rekers, that  
8 if there are other psychologists relying on those  
9 studies, they don't have appropriate scientific  
10 rigor, is that what you are saying?

11 A. That is such a sweeping generalization, I  
12 can't answer that question.

13 Q. I thought that is what you just testified  
14 to.

15 MS. MARTIN: May he finish his answer?

16 THE WITNESS: I am saying that there are  
17 people, who identify themselves as activists for  
18 gay and lesbian causes, that have published a  
19 lot of these studies, and they are much more  
20 ready to use it for public policy or bring it  
21 before the American Psychological Association,  
22 as evidence to make policy pronouncements and  
23 recommendations to government, and that sort of  
24 thing.

25 Yes, they do exist, but many other scholars



1           have pointed out, and even some of those  
2           individuals, when they are pressed, or, if you  
3           look at some of their publications, they,  
4           themselves, like Charlotte Patterson, will say  
5           that the data is limited.

6           The vast majority of the studies have been  
7           done on lesbian mothers, very few on gay  
8           fathers, so that there are major limitations.

9           So a lot of times they make public  
10          pronouncements or they will write something, in  
11          an abstract, making strong statements about  
12          their study, but if you look in the discussion  
13          section, they, themselves, will indicate the  
14          limitations and the weaknesses of the study.

15          And I quoted some of those in the St.  
16          Thomas Law Review, quoted a number of those  
17          authors about the leading scholars in the area  
18          who collected data like that.

19          They, themselves, admit that the studies  
20          have major methodological weaknesses.

21 BY MS. BASS:

22          Q.    You mentioned the American Psychological  
23          Association, are you familiar with that source?

24          A.    Yes.

25          Q.    And it is one of the largest national

1 organizations of psychologists in the United States,  
2 is it not?

3 A. Yes. Not just clinical psychologists, but  
4 industrial psychologists, experimental psychologists,  
5 the whole variety in there.

6 Q. It is a very broad based organization, is  
7 it not?

8 A. Yes.

9 Q. Are you familiar with their reliance on  
10 studies regarding the differences in parenting  
11 between homosexual parents and heterosexual parents?

12 A. Yes, it is very controversial. There is --

13 Q. Let me read to you --

14 MS. MARTIN: I'm sorry, Judge. I think he  
15 is entitled to finish his answer.

16 MS. BASS: I'm sorry.

17 THE COURT: You may finish.

18 THE WITNESS: But, our profession of  
19 psychology is divided on this issue.

20 They are very, there are a lot of  
21 psychologists that have been very active in  
22 political, professional politics, who have  
23 gotten things passed.

24 But, there are hundreds of psychologists  
25 that disagree, and over the years have dropped

1 out of the American Psychological Association  
2 for this very reason.

3 In fact, the American Psychological Society  
4 was created to be a more academic society,  
5 because of displeasure with the American  
6 Psychological Association taking political  
7 stances that are not truly rooted in science,  
8 and, so, the APA makes a lot of very  
9 controversial statements within our profession.

10 BY MS. BASS:

11 Q. How many members are there of the American  
12 Psychological Association?

13 A. It is in the tens of thousands.

14 Q. Are you familiar with the position they  
15 took in July of 2004, where they stated that there is  
16 no scientific evidence that parenting effectiveness  
17 is related to parental sexual orientation, lesbian  
18 and gay parents are as likely as heterosexual parents  
19 to provide supportive and healthy environments for  
20 their children?

21 Research has shown that the adjustment,  
22 development and psychological well being of children  
23 is unrelated to parental sexual orientation, and that  
24 the children of lesbian and gay parents are as likely  
25 as those of heterosexual parents to flourish.

1                   Are you familiar with that finding of the  
2 American Psychological Association?

3           A.    Yes, and it is highly controversial.  There  
4 are many journal articles criticizing that statement  
5 and criticizing the methodology of those articles.

6                   And it was largely led by Professor  
7 Charlotte Patterson, who is a self-identified  
8 lesbian, who contributed to the authoring of that.  
9 And it is a highly controversial statement.

10          Q.    And, as I understand it, you describe this  
11 as a political statement?

12          A.    Yes, because science cannot prove that  
13 statement.

14                   It is not a scientific statement because it  
15 is affirming the null hypothesis.

16                   And any expert in statistics can tell you,  
17 you can only run statistical tests and analysis of  
18 data to reject the null hypothesis, you cannot  
19 embrace the null hypothesis.

20                   So, it is not a scientific statement.  It  
21 is a political statement in the guise of, you know,  
22 using scientific verbiage, and that is what makes it,  
23 among other things, so highly controversial among  
24 members of my profession.

25          Q.    From your perspective, any finding that

1 there is not a material difference in the parenting  
2 skills between homosexuals and heterosexuals is, by  
3 definition, a null hypothesis that cannot be based in  
4 science?

5 A. That is right. You cannot run a  
6 statistical test and affirm a null hypothesis.

7 Q. Dr. Rekers, as I understand what you  
8 testified, you do not believe psychologists are  
9 capable of evaluating future likely instability in a  
10 personality?

11 A. Well, long term, I said that in the sense  
12 of lifetime prevalence. You can make predictions  
13 short term, and sometimes up to a year.

14 But, the science of human behavior is not  
15 that accurate to make long term predictions, other  
16 than to identify risk groups that are high risk for  
17 certain characteristics.

18 You can say that, say, if it is high risk  
19 and 70 percent have prevalence for something, you can  
20 say, well, 70 percent of these people are going to  
21 end up with that.

22 But, you may have difficulty predicting  
23 which of the 70 out of a hundred are the ones that  
24 are going to manifest whatever the variable is.

25 Q. And, as I understand your testimony on

1 direct, you are not suggesting that, for example,  
2 because American Indians have a higher rate of  
3 alcoholism or depression, that we should exclude  
4 them, as a group, from being adoptive parents?

5 A. Right. I am saying that we should not use  
6 any one variable.

7 But, when you have a group that has a  
8 cluster or syndrome of multiple high risk factors for  
9 child development, then you could, on a scientific  
10 basis, have sufficient rationale for excluding that  
11 group.

12 Native American Indians, if it is just that  
13 one variable and alcohol abuse is just a minority of  
14 the individuals that develop heavy drinking and  
15 alcohol problems, that one variable by itself, that  
16 would just be a group that has one risk factor.

17 But, if you have a group that has multiple  
18 risk factors, and that a majority of individuals in  
19 that group have been shown, by the nationally  
20 representative studies, to manifest a serious  
21 psychiatric disturbance for substance abuse, then  
22 that would be a group that there would be a rational  
23 basis for excluding that group.

24 Q. Well, assume with me, if you would, that  
25 American Indians have been studied and found to have

1 higher percentages of alcoholism than the general  
2 population, higher percentages of depression, higher  
3 percentages of domestic violence and, let's say, some  
4 other reflective instances of psychological  
5 disorders.

6           Would you, if that were the case presented  
7 to you, recommend that states exclude that  
8 demographic as a categorical exclusion from those who  
9 could be adoptive parents?

10           MS. MARTIN: Objection, lack of evidence,  
11 lack of foundation.

12           MS. BASS: He is an expert and I am asking  
13 him to hypothesize, if that is what the facts  
14 reflected, what would his recommendation be to  
15 this Court?

16           THE WITNESS: It would depend on the  
17 magnitude, because if, in the general  
18 population, alcoholism, substance abuse, all  
19 these debilitating conditions, were at the 1  
20 percent level, and the Native Americans had  
21 tripped the level, and now they are at the 3  
22 percent level, I would say no.

23 BY MS. BASS:

24 Q. Well, I will make it easy for you.

25 I am going to give you the same sample that

1 you tried to suggest in the St. Thomas Law Review was  
2 the case with homosexuals, and that is, assume with  
3 me, if you will, that in excess of 50 percent of the  
4 American Indian population had one of the following:  
5 Depression, domestic violence, substance abuse, just  
6 as you did in that sentence, you added them all up,  
7 and you said more than 50 percent of the American  
8 Indian population suffer from these disorders.

9           If these were the facts, as you reviewed  
10 them, would you be prepared to recommend that states  
11 consider excluding that entire demographic group from  
12 the potential groups of adoptive parents?

13           A. No, not if it is just incident in one point  
14 of time, but if it is lifetime prevalent or an  
15 accumulation of risks, then, yes, that would warrant  
16 -- I would want to study it a bit more.

17           But, yes, that would be, then, a group  
18 where placement of a child poses such substantial  
19 harmful risk for the child.

20           Just like if somebody is convicted of  
21 domestic violence, has three convictions, maybe they  
22 are fully recovered, maybe they have been treated,  
23 maybe they served their time, maybe they could be a  
24 good parent, but still that would be a group that is  
25 just too high of a risk to place a child, who is very



1 vulnerable, with a group of convicted individuals of  
2 domestic violence.

3           So, if the prevalence, and everything, if  
4 everything that I have testified before about, and  
5 you just substitute Native American Indian in there  
6 instead of homosexual-behaving people, then, yes,  
7 there would be a rationale to exclude them.

8           Because the State needs, the State's  
9 obligation, when a child is -- when the State removes  
10 a child from their legal or biological parents, is to  
11 place that child in a substitute environment that is  
12 in the best interest of that child.

13           So, you want to reduce unnecessary, unique  
14 risks for parental conditions that would be adverse  
15 to that child.

16           Q. I assume, Dr. Rekers, you are familiar with  
17 the type of home study and psychological studies that  
18 are done of adoptive parents, before they are allowed  
19 to adopt?

20           A. Yes, I have gone through it myself.

21           Q. And you would agree with me, would you not,  
22 that those studies are an effort to allow us to  
23 identify what potential adoptive parents are at risk  
24 for suffering some of the disorders that you have  
25 described?

1           A.   Well, when I went through the process,  
2 nobody did any screening of my mental health.

3           Q.   Oh, is that right?

4                    So, you were allowed to adopt without any  
5 mental health screening?

6           A.   Right.

7           Q.   And that was acceptable--

8           A.   Yes, right here in the State of Florida in  
9 2005.

10          Q.   So, it is your testimony, as of 2005, the  
11 State of Florida did no screening to determine  
12 whether or not you had the propensity for depression  
13 or were a substance abuser or had a history of  
14 domestic violence?

15          A.   There's no clinical assessment, nothing  
16 that fits the standard of the professions of  
17 psychology or clinical psychology or psychiatry, you  
18 are right.

19          Q.   Now, as I understand, Dr. Rekers, you are  
20 not familiar with Mr. Gill, correct?

21          A.   Well, I have seen him here.

22          Q.   Other than sitting across the courtroom  
23 from him?

24          A.   Yes.

25          Q.   You have done no analysis of his

1 background, is that correct?

2 A. That is correct.

3 Q. You have no basis on which to express any  
4 judgment about Mr. Gill's capability as an adoptive  
5 parent, do you?

6 A. No, I would not agree with that.

7 Q. Based on his personal qualities, not based  
8 on studies of the general population.

9 I am talking about this human being sitting  
10 to my right, do you know anything about him or his  
11 capability to be an adoptive parent?

12 MS. MARTIN: Objection, he wasn't offered  
13 as an expert on Mr. Gill.

14 THE COURT: I think, answer the question  
15 and then we will move on.

16 THE WITNESS: All I know about Mr. Gill is  
17 that he has a sincere interest to be an adoptive  
18 parent, and that he is in a high risk group for,  
19 of which group a majority of the individuals  
20 would suffer, at some point in their lifetime,  
21 one of the conditions that is in the Diagnostic  
22 and Statistical Manual of Mental Disorders, at  
23 high risk for the disorders I talked about.

24 BY MS. BASS:

25 Q. When you say someone is at a high risk,

1 based on their involvement in a particular  
2 demographic, that doesn't mean, as to a particular  
3 individual in that demographic, that they have,  
4 necessarily, a higher propensity to depression or to  
5 domestic violence or to any of the other  
6 psychological disorders that you have described?

7           It simply means that the group, in general,  
8 has that propensity, correct?

9           A. That is right.

10          Q. The only way that you could make an  
11 independent and scientific judgment, as to that  
12 individual's propensity for those disorders, would be  
13 to do a study of that individual, isn't that also  
14 correct?

15          A. No. You could not do an evaluation that  
16 would predict lifetime prevalence of these  
17 disorders.

18                 You could do an evaluation to look at  
19 current functioning and see if there is currently  
20 there a disorder, and you could get a history,  
21 individual history of the person, see if they have  
22 ever had any of those disorders in the past.

23                 Now, if they did have more in the past,  
24 that would be one indicator that maybe they would be  
25 a little bit higher risk for it to repeat in the

1 future.

2 But, it doesn't predict lifetime prevalence  
3 over the life span of a child that might be placed in  
4 the home.

5 Q. And, you testified previously, that over 40  
6 percent of women, sometime during a lifetime  
7 prevalence, suffer from depression, correct?

8 It would be your testimony --

9 A. Well --

10 Q. Excuse me, let me finish the question.

11 It would be your testimony, at the time a  
12 woman was being evaluated about her ability to be an  
13 adoptive parent, you wouldn't be able to predict  
14 whether or not she might suffer depression in the  
15 future, isn't that correct?

16 A. You didn't quote the research correctly, so  
17 the answer is no.

18 Q. You would agree with me, would you not,  
19 that based on what you just described for any  
20 adoptive parent, we have no ability to predict, based  
21 on that individual, what the likelihood is that they  
22 will suffer from these psychological issues ten years  
23 in the future, isn't that what you have said?

24 A. No, that is not true, because people, in  
25 some groups, are very high risk, and some people, in

1 other groups, are at low risk.

2 Q. But that general information will not tell  
3 you as to the likelihood of an individual person's  
4 chances of suffering from depression or some other  
5 psychological problem in the future, will it?

6 A. That is wrong because chances means odds  
7 and the statistics show odds are two to four times  
8 higher risk ratio for members of the group that are  
9 homosexually, involved in homosexual behavior.

10 So, if the risk ratio, you know chance  
11 means the probability that they will, and certain  
12 individuals, in certain groups, have a much higher  
13 probability than other groups, and that is the most  
14 we can do with science in the current stage of  
15 development, the science of predicting mental health  
16 disorders.

17 You classify people in groups and see if  
18 they are in a group that has high risk, and then you  
19 -- that is how you can tell.

20 You can't tell by screening. Screening  
21 only gives you current and past mental health status.

22 Q. So, the answer to my question is no, we  
23 can't tell with that woman, who is going to come in  
24 as a potential adoptive parent, whether or not she is  
25 likely to be suffering from depression ten years from

1 now?

2 A. Yes, likely is a probability statement, and  
3 yes, some have greater likelihood than others.

4 You could tell if that woman had a family  
5 tree of a lot of depressed people or grandparent or  
6 aunt or mother and a sister that are depressed, that  
7 she would be more likely than if she didn't have a  
8 family tree of depression.

9 So, if you use a word like likely, chance,  
10 these are probability statements, and that is what we  
11 can make, based on the current scientific  
12 information, we can make probability statements.

13 Q. Dr. Rekers, have you familiarized yourself  
14 with the file of the two children, who are the  
15 subject of this adoption proceeding?

16 MS. MARTIN: Objection, it is outside of  
17 his scope of expertise. He wasn't offered for  
18 that.

19 MS. BASS: I am entitled to ask what he  
20 reviewed in coming to his opinion. If he  
21 thought it was irrelevant, he can tell me.

22 I think it is important to know.

23 THE COURT: You do not know anything about  
24 the children or Mr. Gill, is that correct?

25 THE WITNESS: That is right.

1 BY MS. BASS:

2 Q. Would it have any impact, on your opinion  
3 today, to know the extent of the personal attachment  
4 these two children have to Mr. Gill and Mr. [Roe]?

5 MS. MARTIN: Objection, it is outside the  
6 scope of his expertise.

7 MS. BASS: I am entitled to ask whether or  
8 not that knowledge would have an impact on his  
9 opinion.

10 If it doesn't, he can tell it to me.

11 THE COURT: Overruled.

12 THE WITNESS: It would have an impact in  
13 this sense, that if there was a greater  
14 attachment, then, under current Florida law,  
15 homosexually-behaving people can be a foster  
16 parent, and I might, if I evaluated Mr. Gill and  
17 his partner and the children, I might recommend  
18 continued foster placement, because foster  
19 placement allows for monitoring.

20 Monitoring in the future, if any of these  
21 psychiatric disorders or substance abuse occurs,  
22 then the child could be removed from harm.

23 But, it could be that Mr. Gill is in the  
24 minority percentage of homosexual-behaving  
25 individuals, that he would never have any of



1           these things happen in a lifetime.

2           But since he is in a high risk category,  
3           maybe to remain permanently the foster father,  
4           until age 18, would be the best, then he could  
5           adopt the child at age 18, outside of the State  
6           law.

7           So, it would affect me, if I knew about the  
8           attachment, I might make that recommendation.

9   BY MS. BASS:

10          Q.   Dr. Rekers, I assume that means there are  
11          certain circumstances where you would agree, that if  
12          there is not a substance abuse problem, and not a  
13          reflection of instability in the personal  
14          relationship, and not any depression, or any of the  
15          other psychological concerns you have testified  
16          about, that in that circumstance, it is quite  
17          possible that a homosexual parent could provide a  
18          warm and nurturing and loving home for a child?

19          A.   Well, at that point, they are still in a  
20          high risk category and they --

21          Q.   Could you give me a yes or no answer and  
22          then you can give any explanation you would like?

23                THE COURT:  Can you answer the question?

24                THE WITNESS:  Could you repeat it one more  
25          time?

1 MS. BASS: Could you please read the  
2 question back?

3 (Thereupon, the pending question was read  
4 back by the court reporter as above recorded.)

5 THE WITNESS: It is a possibility that  
6 should be continuously monitored over time,  
7 because it is a high risk category.

8 But, under the scenario you gave me, or  
9 hypothetical, that there is an intense or long  
10 term attachment between the two individuals,  
11 that might override immediate removal from the  
12 foster placement, and in an individual case  
13 might be good to remain in foster care,  
14 recognizing that it is still a high risk  
15 household, just needing continuous monitoring.

16 I don't even know the ages of the  
17 children.

18 I don't know, you know, if they are fifteen  
19 year olds, and have three more years of minority  
20 or if they are younger or whatever, but all  
21 those variables could be taken into account for  
22 a foster placement in the State of Florida.

23 MS. BASS: Thank you. I have nothing  
24 further.

25 THE COURT: Ms. Martin?

1 MS. MARTIN: I have just a very, very, very  
2 narrow redirect that has to do with the three  
3 books that were, have been identified.

4 I believe they have been identified in the  
5 Court's record as 13, 14 and 15.

6 THE CLERK: 13, 14, 15 and 16.

7 REDIRECT EXAMINATION

8 BY MS. MARTIN:

9 Q. Would you take a look at Petitioner's  
10 Number 14, if you have it in front of you, and then  
11 just tell me the date of publication, please?

12 A. 14 is Shaping A Child's Sexual Identity,  
13 copyright date, 1982.

14 Q. I am sorry, I think Number 14 is, I have it  
15 as the Age of Sexual Eclipse?

16 A. Mine has a 14 on it.

17 Q. I'm sorry, that is from the deposition.

18 A. Oh, I see.

19 Q. If you will pick up the one that is titled  
20 Eclipse?

21 A. Okay, the Christian in an Age of Sexual  
22 Eclipse.

23 Q. What was the year of publication on that?

24 A. I am trying to find the copyright date in  
25 it.

1 Q. Oh, I am sorry, if I may, do you mind if I  
2 exchange the actual book?

3 A. This one doesn't have the copyright date.  
4 1981.

5 Q. If counsel doesn't object, I'm going to  
6 send the other two books down now.

7 May I show you, Dr. Rekers, Number 15,  
8 which is entitled Growing Up Straight, shortened  
9 version of the title.

10 Could you look at that book and tell me the  
11 date of publication, please?

12 A. 1982.

13 Q. And similarly for the last book, 16,  
14 Shaping Your Child's Sexual Identify, could you do  
15 the same and tell me the date of publication on that  
16 book?

17 A. 1982.

18 Q. How many years has it been since 1982, if  
19 today is 2008?

20 THE COURT: The Court will take judicial  
21 notice.

22 THE WITNESS: 26.

23 BY MS. MARTIN:

24 Q. It's been quite some time since you  
25 published these, is that fair to say?

1           A.    Yes, and I don't endorse things I have  
2 written 26 years ago, any longer.

3                    Since then I was trained as a theologian,  
4 and I have gained, learned more knowledge in the  
5 field of psychology, and probably I would change  
6 things on every single page in those books now.

7                    So, I don't endorse any of the statements  
8 currently in those books.

9                    MS. MARTIN: I think I am done. Thank you,  
10 Judge.

11                   THE COURT: Are those books still out for  
12 the public?

13                   THE WITNESS: No, they have been out of  
14 print for many years. They only stayed in print  
15 three or four years.

16                    You know, the half life of a book is very  
17 short and there are used copies evidently, on  
18 Amazon or something.

19                   MR. ESSEKS: Thank you, your Honor, I just  
20 have one, a couple of little questions just  
21 about what you asked about.

22                                    REXCROSS EXAMINATION

23 BY MR. ESSEKS:

24                    Q.    Dr. Rekers, I believe you just said that  
25 you -- what was the term you used, you don't endorse?

1           A.    I don't endorse or necessarily believe  
2 anything written in these books.

3                    I haven't read them for 26 years.

4                    And, in 26 years I have learned a lot more  
5 about theology, getting a doctorate in theology.

6                    And, I have learned a lot more about child  
7 development and all these disorders, so, it is very  
8 dated material, one phase of my life a couple of  
9 dozen years ago.

10           Q.    Dr. Rekers, in 2001, you agreed with some  
11 of these statements, didn't you?

12           A.    I may have, in a deposition, individual  
13 statements, but I can't endorse.

14                    I would have to read the book and read each  
15 sentence to see which ones I would still agree with,  
16 and which ones I don't.

17           Q.    Well, let's just take an example.

18                    I will show you, Dr. Rekers, a copy of your  
19 deposition from Lofton versus Kearney, which took  
20 place on July 6th, 2001, which is not twenty  
21 something years ago.

22                    I would like to direct your attention to  
23 Page 328 in that deposition, starting at Line 20.  
24 Page 328, it says the question uh-huh.

25                    Well, let's go on to the next paragraph. I

1 think maybe that will help clarify.

2 If you will read along with me, it says --

3 THE WITNESS: I'm lost.

4 MS. MARTIN: I'm sorry, is this an attempt  
5 for impeachment? It is improper impeachment  
6 procedure.

7 If he wants to ask him a question, it is a  
8 technical question, so it is lack of foundation.

9 THE COURT: He is reading the question to  
10 him.

11 THE WITNESS: What page is it, again?

12 BY MR. ESSEKS:

13 Q. Sure, Page 328, Dr. Rekers, do you see  
14 that?

15 A. Yes.

16 Q. I started at Line 12, but starting at Line  
17 14, it says -- if you will read along with me, it  
18 says, quote:

19 "Non Christian psychologists often  
20 encourage their clients to form their own values  
21 regarding sexual expression.

22 "In so doing, they mistakenly assume that  
23 they are providing the most appropriate and  
24 sensitive counsel.

25 "In reality, they are tacitly creating an

1 impression that the universe was constructed  
2 with no moral laws inherent to the system, but  
3 God has spoken. God has given us specific  
4 instructions as to what his moral laws are, and  
5 a psychologist who recommends that a person  
6 simply define his own sexual values ends up not  
7 being an advocate of human freedom, instead he  
8 becomes a revolutionary in attempting to  
9 overthrow the moral law of God.

10 "Instead of being helped, the client is,  
11 therefore, led down a fanciful path of alleged  
12 morality called," quote, "'liberation', but  
13 instead of offering true freedom, this path can  
14 lead only to ultimate personal destruction and  
15 social chaos.

16 "Do you agree with the contents of that  
17 paragraph?

18 "Answer: Yes.

19 "Again, this was my co-author writing  
20 this, but I agree with it."

21 Did you give that testimony?

22 A. Yes, but I don't agree with it today.

23 THE COURT: When did you stop agreeing with  
24 it?

25 THE WITNESS: About a year after that,



1 2002.

2 THE COURT: Why?

3 THE WITNESS: Because it is too broad. It  
4 is broad sweeping.

5 And, in further thinking about it, and  
6 reflecting back more on my experience with many  
7 non Christian psychologists, many of whom are  
8 close friends of mine, I believe that it was too  
9 much of a sweeping stereotype and too broadly  
10 stated, and I wouldn't agree with that since  
11 then.

12 BY MR. ESSEKS:

13 Q. Dr. Rekers, could you find Exhibit 13,  
14 which is the CV of yours that we introduced when I  
15 was examining you?

16 A. Is that the one?

17 Q. I think it is.

18 So, when was this version of your vitae  
19 prepared?

20 A. Of course, these things accumulate over  
21 time.

22 I can't tell when it was last updated.

23 Q. It might help you to point out that on the  
24 first page it says that you have held the position of  
25 Distinguished Professor of Neuropsychiatry and

1 Behavioral Science Emeritus from 2006 to the present?

2 A. Yes.

3 Q. And that certainly suggests to me, this was  
4 prepared at sometime after 2006?

5 A. Yes.

6 Q. I would also point out to you that on Page  
7 6087, this is the page we looked at before where you  
8 talked about your lectures on integrating psychology  
9 and Christian ethics and you list a lecture that you  
10 gave to the European Leadership Forum in Hungary in  
11 2007, correct?

12 A. So it must have been last updated in 2007  
13 or 2008.

14 Q. If you look at Page 6091 in this document,  
15 this is where you list the books published by  
16 Christian publishers, so, in 2007, your vitae still  
17 contained, you still have these books out there, The  
18 Christian in an Age of Sexual Eclipse, Growing Up  
19 Straight, Shaping Your Child's Sexual Identity and  
20 several others that we have not discussed here today,  
21 is that correct?

22 A. Well, this is just a listing of all my  
23 publications.

24 Q. That you have disavowed?

25 A. Yes. Whether I agree with them or not, I



1 was called as a witness by the Respondent, and having  
2 been duly sworn, was examined and testified as  
3 follows:

4 DIRECT EXAMINATION

5 BY MR. MOYLAN:

6 Q. Please state your name for the record.

7 A. Walter Richard Schumm.

8 Q. Could you spell your last name?

9 A. S-C-H-U-M-M.

10 Q. Dr. Schumm, generally could you, please,  
11 discuss your educational background?

12 A. I received a Bachelor's degree in physics  
13 at the College of William and Mary in 1972.

14 Master's degree in Family and Child  
15 Development, Human Development, Kansas State  
16 University in 1976 and a Ph.D. in Family Studies at  
17 Purdue University in 1979.

18 Q. What year was that Ph.D. in?

19 A. 1979.

20 Q. Again, can you state for me, I didn't quite  
21 hear you, what is your Ph.D. in?

22 A. It is in Family Studies.

23 Q. Could you discuss your employment history  
24 for me?

25 A. I went on active duty with the U.S. Army

1 for two years after graduating from college. I was  
2 assigned to Fort Riley, Kansas.

3 After two years I went into the Master's  
4 program and worked as a graduate research assistant,  
5 also as a research associate during the summer.

6 I went to Purdue. I was a graduate  
7 research assistant there.

8 Of course, during this time I was in the  
9 Kansas Army National Guard, and the Indiana National  
10 Guard.

11 After I finished my degree, I was hired as  
12 an assistant professor at Kansas State University and  
13 have taught there since that time.

14 Concurrently until 2002, I was in the Army  
15 Reserve, and retired from the Army Reserve in 2002.

16 Q. You mentioned, while you were in the Army,  
17 I think, maybe I misunderstood you, you said you were  
18 a graduate assistant at that time or did some  
19 research at that time?

20 A. Well, I was a graduate assistant at Kansas  
21 State, and in the Master's program and in the Ph.D.  
22 program at Purdue.

23 Q. Okay, so did you start as a research  
24 assistant at Kansas State, and then go to Purdue?

25 A. Well, I did my Master's degree at Kansas

1 State and then I got my Doctorate degree at Purdue.

2 Q. Now, have you ever testified in a trial  
3 before?

4 A. Not in person. I submitted some evidence  
5 for the Doe versus Rumsfeld lawsuit regarding anthrax  
6 vaccine.

7 Q. Welcome to the experience.

8 What is important is if you will keep your  
9 voice up, so not only that the stenographer can hear  
10 you, but also the Judge and everybody else in the  
11 room because they are going to get to ask you  
12 questions at a later time.

13 Regarding your employment, can you kind of  
14 generally describe your duties now, at your current  
15 job?

16 A. I conduct research and teach university  
17 classes.

18 Q. Okay.

19 How do you spend your time, generally?

20 A. I generally probably spend about 20 to 30  
21 percent of my time teaching, getting ready for class,  
22 and the rest of the time is generally doing research,  
23 writing papers.

24 Q. So that would be 70 to 80 percent of your  
25 time, research?

1           A.    In practice, right now it is.

2           Q.    What classes do you teach?

3           A.    Classes, I have a list here to help my  
4 memory.

5                    I think, I can do this pretty much from  
6 memory.

7                    I do Marital Interaction. This is a  
8 graduate course on how couples relate to each other.

9                    I do the Family Course, which is a senior  
10 level undergraduate course.

11                   I do a course on Premarital Preparation and  
12 Counseling.

13                   And I have taught a variety of research  
14 methods, classes, Family Measurement, Advanced Family  
15 Data Analysis, courses on statistics.

16                   I have taught a course on Parenting some  
17 years ago.

18                   I taught a class in understanding Islam.

19           Q.    You mentioned research methods or research  
20 methodology, what does that mean?

21           A.    Generally, I am, depending on the level of  
22 the course and the particular class, I am trying to  
23 teach my graduate students how to measure variables  
24 in a reliable and valid way.

25                   I try to teach them how to analyze the data

1 properly, how to conduct multi varied analyses, and,  
2 you know, current fashion.

3           How to read general articles and critique  
4 those articles.

5           Q. Do you teach this in a general way or do  
6 you teach it on a specific type subject, or can you  
7 expand on that?

8           A. Well, I generally focus on the subject  
9 matter dealing with family issues, sometimes just  
10 because of my experience I bring in anthrax vaccine  
11 issues.

12          Q. Now, you mentioned statistics, do you teach  
13 that at a graduate level?

14          A. Yes. And, I have taught it at the  
15 undergraduate level at Highland Community College.

16          Q. Okay, so you -- obviously you teach classes  
17 at other schools other than your current place of  
18 employment, which you said was Kansas State?

19          A. I teach evening classes at Highland.

20                 Currently I'm teaching a beginning Algebra  
21 course there.

22                 Previously I taught the Introduction to  
23 Statistics class and the Marriage and Family class.

24          Q. Now, you mentioned that you teach classes  
25 on family issues. Do any of those issues deal with



1 couple relationships?

2 A. Yes.

3 Q. Can you expand on that?

4 A. I tend to focus on John Gottman's approach  
5 to family relationships.

6 For example, we just put together some  
7 material for the Kansas Army National Guard where we  
8 looked at the effects of maximizing positive affect,  
9 managing negative affect, avoiding escalation of  
10 conflict, and minimizing negative attribution bias as  
11 it pertains to pre-deployment, during deployment and  
12 post-deployment issues.

13 Q. And is that a study of families as well as  
14 methodology?

15 A. Well, that is sort of a combination of  
16 theory and family studies, but, you know, I teach  
17 Gottman pretty closely when I teach this material in  
18 my courses.

19 Q. Now, has any of the subject matter, which  
20 you have taught, included issues of same-sex couples?

21 A. Yes.

22 Q. Could you expand on that?

23 A. The Family Course that I teach, the senior  
24 level course, covers that as part of the course.

25 The Marital Interaction Class I teach

1 generally focuses on heterosexual couples, and when I  
2 teach undergraduate Marriage and Family classes, it  
3 is usually a topic.

4 Q. Can you discuss your research, in a general  
5 manner?

6 You touched on some of it. Can you expand  
7 on some of the other research that you do, and that  
8 you have done?

9 A. I have been working on a grant from the  
10 Office of the Army Chaplain looking at the effects of  
11 the current deployments overseas on the marriages of  
12 officers at Fort Leavenworth, so I have tried to see,  
13 you know, what effect that is having and what effect  
14 the impact of those deployments has on their  
15 retention plans.

16 We also evaluated the effectiveness of the  
17 Chaplain in terms of trying to deal with some of the  
18 stresses that are associated with this.

19 I also did a study at Fort Riley, Kansas,  
20 looking at the impact of deployments on the NCO's and  
21 junior enlisted personnel and looked at, you know,  
22 other factors, like in their children, if they have  
23 things like this in terms of marital stability and  
24 marital satisfaction.

25 We also have a grant, we were trying to

1 evaluate the Single Soldier Pick Program that the  
2 Army has for trying to help soldiers make better  
3 decisions in terms of mate selection.

4           So I am evaluating that program.

5           I also have a grant from the National  
6 Science Foundation to look at mobility in rural  
7 areas, so that they can be used by electrical  
8 engineers and mathematicians to develop modeling of  
9 epidemics in our rural areas, and how we can minimize  
10 the impact of those kind of epidemics.

11           Q. It sounds like some of these are research  
12 projects dealing with family studies and some of them  
13 are methodology, is that a fair assessment?

14           A. Right.

15           Q. And are some of them combined?

16           A. Well, I am usually brought into these  
17 projects because of my methodological expertise.

18           Q. Have you ever done any research as it  
19 pertains to non traditional families?

20           A. I have done a lot of work analyzing the  
21 characteristics of the studies that have been done in  
22 this area.

23           I have probably seen papers looking at the  
24 way methodology was used, properly or improperly in  
25 some of those studies.

1           I have been investigating the apparent  
2 impacts of, you know, gay and lesbian parenting on  
3 children, you know, in a number of different  
4 dimensions.

5           Q.   How would you define dimensions, again, how  
6 would you define non traditional families?

7           A.   That is a pretty broad swath.

8           I think it is, I mean it is sort of  
9 stereotype response, but I guess you could say the  
10 traditional two parent, you know, mother, father  
11 family would be the traditional one that everybody  
12 knows.

13           Only 7 percent of the families at any one  
14 time meet that particular criterion.

15           Q.   Has any of your research been published?

16           A.   Yes.

17           Q.   In peer-reviewed journals?

18           A.   Yes.

19           Q.   Can you tell me the subject matter of some  
20 of these things that have been published?

21           A.   Well, I published, recently I published a  
22 report in Individual Differences Research Journal,  
23 looking at the qualities of the Kansas Marital  
24 Satisfaction Scale, because they used two different  
25 versions of it with the soldiers at Fort Riley.

1           And they correlated that with their  
2 perception of marital instability, in order to see  
3 what the relationship was between a real practical  
4 outcome and the scale itself.

5           I published a number of articles looking at  
6 Islam and trying to analyze that particular world  
7 view from a statistical perspective, and published in  
8 Islamic journals overseas and within the United  
9 States.

10           I have published a number of articles  
11 looking at the effects of military deployments on  
12 families, and most recently had an article published  
13 looking at the null hypothesis that has been  
14 discussed in the literature for the past 25 years or  
15 so.

16           Q.    The null hypothesis regarding what?

17           A.    The null hypothesis that there is no  
18 effects of gay and lesbian parenting on the children  
19 of gay and lesbian parents.

20           Q.    What type of journals do you regularly  
21 publish in?

22           A.    It is a pretty wide range. I have  
23 published in the Journal of Marriage and the Family,  
24 Journal of Family Issues, Family Relations.

25           I was recently invited to apply to be an

1 editor of the Journal of Family Relations.

2 And I do a lot of publishing of  
3 psychological reports, and you have my vitae, you can  
4 check all the things I have published in.

5 I just can't rattle it off the top of my  
6 head.

7 Q. I appreciate that.

8 Now, you mentioned some journals. Are some  
9 of those journals where the author is charged a fee  
10 to submit to publish?

11 A. No. Well, I take that back. It used to be  
12 that for Family Relations and Journal of Marriage and  
13 the Family you were charged a 15 to \$25 fee to  
14 submit.

15 Q. Okay.

16 A. Whether it was accepted or not, but then  
17 you could purchase reprints afterwards, if you  
18 wanted, but you didn't have to purchase reprints.

19 Some journals charge you a little bit of  
20 money up front to submit.

21 Q. Okay.

22 A. For psychological reports, you are not  
23 charged any money to submit, you are not charged any  
24 money if the paper is rejected, but if the paper is  
25 accepted, then, not in every case, but in a lot of

1 cases you are charged a fee for the reprint.

2 Q. So, sometimes you are actually charged to  
3 print in that journal?

4 A. Well, you are charged for the reprints. So  
5 if you don't pay them, they wouldn't allow you to  
6 publish their print of reprints, but they don't  
7 charge you to submit.

8 Q. Is that in a peer --

9 A. It is peer review, yes.

10 In some cases they have let me publish  
11 things and I haven't had to pay for reprints.

12 Q. Now, in any journals that you spoke of that  
13 you regularly print in, is pretty much every paper  
14 that you submit accepted?

15 A. Acceptance rates vary from journal to  
16 journal.

17 My experience has been, with some journals,  
18 if you send them a paper, and it just isn't really  
19 good to start with, they don't give you a second  
20 chance to take a look at it, so you have to be pretty  
21 careful on that.

22 In other journals, they have higher  
23 acceptance rates.

24 I think Psychological Reports, for example,  
25 is running somewhere between 25 and 50 percent, but I

1 don't know the exact figure on that.

2 Q. Now, some of these journal papers that you  
3 have mentioned before, you mentioned one that is on  
4 same-sex relationships or same-sex treatments,  
5 homosexual-behaving individuals.

6 Do you have other works that are published  
7 on homosexual-behaving individuals?

8 A. Well, I have several pieces that are  
9 published discussing those issues, either from a  
10 methodological, primarily from a methodological point  
11 of view.

12 I have papers where I looked at and  
13 Golombok's research.

14 I have some papers that looked at Dr.  
15 Kirkpatrick's research.

16 Q. Have you authored any books?

17 A. I was a co-editor on the Source Book of  
18 Family Theory and Research Methodology that was  
19 published in 1993.

20 Q. Do you have any other books regarding or  
21 chapters in books regarding family studies?

22 A. I have numerous chapters I have listed on  
23 my CV.

24 I have a variety of books that I am working  
25 on, but I haven't published them yet.



1 Q. Would you like to see a copy of your CV for  
2 reference?

3 A. Sure.

4 MR. MOYLAN: Now I will have this marked.  
5 Respondent's Exhibit will be F.

6 MR. MOYLAN: Now, I will note for the Court  
7 that this is the CV that we provided, however,  
8 in an effort to conserve paper, I double-sided  
9 copied it, instead of presenting a single-sided  
10 copy.

11 So, if there is any concern, that is why it  
12 looks like that.

13 THE WITNESS: Would you restate your  
14 question, please?

15 BY MR. MOYLAN:

16 Q. We were talking about whether you had  
17 published any chapters in books regarding family  
18 studies?

19 A. I published the Introduction to Family  
20 Theories and Methods Conceptual Approach, which is on  
21 Page 3.

22 You will see that one of my papers was  
23 republished in the book in 1993 on the same page.

24 I did a chapter in Measurement in Family  
25 Studies that was published in 1999, on Page 4 in the

1 Handbook on Marriage and the Family.

2           And then I published a couple of chapters  
3 in 1990 in the Family Measurement Handbook of Family  
4 Measurement Techniques.

5           I published a chapter on the Marital  
6 Communication Inventory in 1983 in Hilsinger's Source  
7 Book for Marriage and Family Assessment.

8           Q.    Okay, I think that is sufficient.

9           Obviously there are others.

10           Are you cited by others?

11           A.    So far, I believe I have been cited by over  
12 1,600 times in the literature.

13           And, about 70 percent of those, 75 percent  
14 of those, somewhere in that ballpark, are citations  
15 by other scholars.

16           Q.    So, when you say by other scholars, then  
17 are sometimes you are citing yourself, is that what  
18 you mean?

19           A.    Yes, because if you have continuity of  
20 research, what you do is you tend to cite your  
21 previous research.

22           Q.    You mentioned some of the grants that you  
23 have received. Have you received other grants for  
24 your work?

25           A.    I received a grant from Kansas to evaluate

1 their drug treatment program in the year 2000, so I  
2 helped evaluate their drug treatment program and see  
3 how effective it was.

4 Q. Any other grants, other than the ones  
5 you've already mentioned from the military that you  
6 would like to talk about?

7 A. I had a grant in 1987 from the, I am  
8 forgetting the name, Lilly Foundation Grant.

9 It was contracted through the -- there was  
10 a theological seminary in Indianapolis, and they were  
11 trying to find out why the Christian Church,  
12 Disciples of Christ had lost 50 percent of their  
13 membership in the last 20 years.

14 So, they hired me to do an analysis of why,  
15 you know, their membership is declining.

16 Q. Have you received awards for your work?

17 A. Well, I received the 1990 Moran award from  
18 the American Home Economics Association for the best  
19 research of the year for that year.

20 Q. And that organization was what?

21 A. American Home Economics Association.

22 Q. Can you tell me what that organization is?

23 A. Well, it is an organization that was a  
24 professional group for the Colleges of Human Ecology  
25 and for extension people working on human ecology.

1                   It has changed its name to the American  
2 Association of Consumer and Family Sciences since  
3 that time.

4           Q.    And the award you received that year was  
5 given to one individual?

6           A.    Yes, it is one person per year.

7           Q.    Okay.

8           A.    And in 1994 I was selected as a Fellow with  
9 The National Council on Family Relations, which was a  
10 pretty limited status, but it is the highest  
11 professional rank that they give to people on a long  
12 term basis.

13          Q.    Now, have you been invited to give  
14 presentations on some of the subject matters that you  
15 discussed here today?

16          A.    I can't remember any of them right now. I  
17 am not a world globe trotter, like some people.

18          Q.    You have a CV here if you want to talk  
19 about -- you can refer from your CV if you are  
20 nervous giving it.

21          A.    I mean, I have given a number of  
22 presentations, but they are not invited. You submit  
23 your materials to the organization, and then it is  
24 peer reviewed.

25                   And then, if it is accepted, then you

1 present your report or your paper, and so I have done  
2 a lot of that.

3 I have, you know, dozens of different  
4 papers I have presented.

5 I generally present three or four papers  
6 every year at the National Council on Family  
7 Relations, but these are not invited, they are peer  
8 review. You submit and they get accepted or not.

9 Q. Now, when you said that you spend 70 or 80  
10 percent of your time on research, does that research  
11 include keeping up on research on family matters?

12 A. No. It is mainly work, you know, working  
13 on the grants that I do, plus, you know, other areas  
14 of interest that I have, so it inherently involves  
15 doing that.

16 Q. How do you do that? How do you keep up on  
17 research regarding family matters?

18 A. One approach I use, of course, it is a  
19 wonderful thing, I believe I mentioned it in a  
20 deposition.

21 But, you can just log on to the library  
22 system at K State and type in any topic you want, and  
23 it immediately will bring up, you know, dozens of  
24 journal articles that are the most recent ones on any  
25 particular topic area.

1           But, sometimes I just go to the library and  
2 just browse the shelves, and leaf through the  
3 journals to make sure I am not missing something,  
4 because, you know, the codes, the words, you know,  
5 that are properly coded into the computer system.

6           Q.    What journals would those be that you  
7 normally read?

8           A.    Well, it would be, you know, family studies  
9 journals that I don't subscribe to.

10           I subscribe to Family Relations and Journal  
11 of Marriage and the Family, so I get those  
12 automatically.

13           But these would be other things, you know,  
14 American Sociological Review, American Journal of  
15 Sociology.

16           There's just dozens of them in the library  
17 and sometimes they have new ones you find there.

18           Q.    In your pursuit of keeping up with family  
19 matters, does that include keeping up with issues in  
20 same-sex family issues?

21           A.    Yes. I spend a lot of time looking at  
22 that.

23           Q.    Does that include researching methodology?

24           A.    Yes.

25           Q.    How is it or how does other people's

1 research, how is it important to you? Why do you  
2 bother?

3 A. Well, I think, well, personally, I work for  
4 the State of Kansas and the taxpayers are paying my  
5 salary, so I feel I have a debt to them to make sure  
6 they are getting their money's worth.

7 So, I want to try to make sure that what I  
8 do is, you know, legitimate and, you know, discover  
9 information that, you know, benefits the community,  
10 the State, across the nation.

11 Q. When you say "get your money's worth," you  
12 mean a professional type thing or what do you mean by  
13 that?

14 A. I try to work hard when I am at the office  
15 and I guess, I would say not every professor has that  
16 attitude.

17 Q. Are you on any editorial boards or have you  
18 been on editorial boards?

19 A. Yes, some. I have reviewed, I have got a  
20 list here somewhere. I have to do it from memory  
21 here.

22 I have reviewed recently, from Journal of  
23 Marriage and the Family, Family Relationships.

24 I am an associate editor with Psychological  
25 Reports.

1 I have been asked to review journals for  
2 the American Journal of Ortho Psychiatry.

3 Marriage and the Family Review is another  
4 journal I review for.

5 Q. Is that on their editorial board or is that  
6 doing peer reviews?

7 A. It is doing peer reviews.

8 Q. Are you on any editorial boards?

9 A. Well, I have been. At one time I was on  
10 the Journal of Family Issues, I believe.

11 A lot of these people, they just list you  
12 by name. It is not like you are on the editorial  
13 board in particular, but they do list all the people  
14 that review and perform on a regular basis.

15 Like I said, I was invited to be the editor  
16 of Family Relations just recently.

17 Also, I reviewed manuscripts for Law  
18 Enforcement in Society, and also for Medical Veritas.

19 Q. Now you mentioned you had done some peer  
20 review. I apologize, I may have interrupted you.

21 You were going through, can you continue on  
22 on the things that you peer reviewed for?

23 A. Well, like I said, it is Journal of  
24 Marriage and the Family, Family Relations, Journal of  
25 Family Issues, Psychological Reports, Marriage and



1 Family Review, Armed Forces and Society and Medical  
2 Veritas are the ones I have reviewed for in the past  
3 year.

4 Previously, I have reviewed for a larger  
5 number of journals than that, but that should be  
6 listed on my CV.

7 Q. When you have done these reviews, as a  
8 result, for these journals, are these articles that  
9 you have reviewed, most of the time are they accepted  
10 or not accepted or how does that work?

11 THE COURT: I am not sure whether that is  
12 relevant.

13 MR. MOYLAN: Okay, sure, Judge.

14 Then, I would like to submit Dr. Schumm's  
15 CV into evidence.

16 THE COURT: First, any objection to the CV  
17 being introduced into evidence?

18 MR. ESSEKS: No objection.

19 THE COURT: That will be admitted.

20 MR. MOYLAN: Dr. Schumm, I am going to hand  
21 you this document. Do you recognize this  
22 document?

23 I am sorry, it is already in.

24 I would like to move to qualify Dr. Schumm  
25 as an expert in the fields of Social Science, in

1 Family and Child Development, empirical and  
2 theoretical, in the field of Family Studies and  
3 Research Methodology.

4 MS. COOPER: Can I hear that again, I'm  
5 sorry?

6 MR. MOYLAN: Sure, that's okay.

7 In the fields of Social Science, Family and  
8 Child Development, in the empirical and  
9 theoretical fields of Family Studies and in  
10 Research Methodology.

11 MS. COOPER: Your Honor, if I may.

12 THE COURT: Yes.

13 MS. COOPER: Your Honor, you said you  
14 wanted to hear evidence before ruling on the  
15 motion we filed.

16 We would like to include in our cross  
17 examination questions concerning qualification  
18 and afterwards post trial submissions, retain  
19 our opportunity to make an objection on  
20 qualifications at that time.

21 THE COURT: Okay.

22 No objection to the doctor's CV?

23 MR. ESSEKS: One moment, Your Honor.

24 MS. COOPER: I think we do have an  
25 objection to the qualifications.

1           We have no objection to the testimony  
2           coming in and pressing that argument in our post  
3           trial submission.

4           I also would want to raise the specific  
5           question about your expert in Social Science.

6           Was that the first topic you read?

7           MR. MOYLAN: In the field of Social  
8           Science.

9           THE COURT: That is broad.

10          Family studies, you don't have an issue  
11          with it?

12          MS. COOPER: No. Family and Child  
13          Development, he has a Master's in that.

14          We will continue to press and object to it  
15          again.

16          That is a separate question of objecting to  
17          the testimony being heard.

18          MR. MOYLAN: Your Honor, if I may request a  
19          ruling from the Judge at this time?

20          THE COURT: I will allow him at this point  
21          to testify as to Family and Child Development,  
22          that is what his Master's is in, Family Studies,  
23          and tell me again, research and methodology?

24          MR. MOYLAN: Dr. Schumm teaches many  
25          classes on research and --

1                   THE COURT: That, as well. Strike the  
2                   Social Science.

3 BY MR. MOYLAN:

4                   Q. Dr. Schumm, you mentioned you have done  
5 some research in Family Studies, regarding gay and  
6 lesbian parenting, correct?

7                   A. Yes.

8                   Q. When did you first become interested in  
9 this subject?

10                  A. Well, I have been interested in it as a  
11 corollary of my teaching duty since I started  
12 teaching, because it has been part of the courses off  
13 and on, that I have taught, so I had, you know, an  
14 interest in it in that perspective.

15                  Probably the thing that really piqued my  
16 interest, most recently, was the 2001 paper in the  
17 American Sociological Review by Stacey and Biblarz,  
18 where they started to raise issues about differences  
19 between what was theoretically relevant and what  
20 research was saying, so that was something that I  
21 definitely noticed.

22                  And then I became involved in some  
23 critiques of material terms by Kirkpatrick and Tasker  
24 and Golombok, where I thought I noticed some  
25 discrepancies in their research.

1           And then at some point, I was invited to  
2 present a paper at the, I believe it was called, the  
3 Lofton conference near Tampa.

4           I accepted that invitation and presented  
5 some material there, and then there was a follow-up  
6 where I was invited to present a paper at UCLA in  
7 April of the next year, and did so.

8           Q.    You mentioned the Lofton, what year was  
9 that?

10          A.    I think it was 2004.

11          Q.    Now, you said that you detected some  
12 inconsistencies or flaws. Can you explain how you  
13 review these articles to start looking for these  
14 things that you detect?

15          A.    It takes a whole course to explain that. I  
16 don't think you have that much time.

17                I just have a pretty good nose for looking  
18 at a journal article pretty quickly and determining  
19 if there is some type of inconsistency within the  
20 paper that doesn't match up.

21          Q.    Okay, and when you say, "inconsistency,"  
22 what do you mean? Help me out.

23                I don't want to take a course load of time,  
24 but help the Court understand how you get to that  
25 understanding.

1           A. Well, I try to look through what the  
2 subjects are and if there appears to be a consistent  
3 reason that they were selected.

4                   I look for discrepancies between groups of  
5 people, if they are comparing two groups of people,  
6 if the groups are equivalent to start with, or if  
7 they were actually different to start with.

8                   I look to see if the method of analysis is  
9 appropriate for the question at hand.

10                   And I look to see if they have assessed  
11 curvilinearity as well as linear relationships, try  
12 to make sure that the assumptions behind the  
13 statistics are appropriate.

14                   Although, you know, it is not uncommon for  
15 those to be violated just because of necessity.

16                   I try to look and see if the names they  
17 give the variables accurately match the content of  
18 the scales they use.

19                   I look for an integration between the  
20 measurement and the research and the paper and make  
21 sure that everything appears to fit well.

22                   I try to make sure that the conclusions of  
23 the paper fit what the results actually appeared to  
24 be.

25                   Those are the kinds of things I look for.

1           Q.    Can we group that whole thing as  
2 methodology, is that what you would say?

3           A.    Yes.

4           Q.    You look at, you said to me and something  
5 that struck me as funny, you said sometimes  
6 statistics are violated because of necessity. What  
7 does that mean?

8           A.    Sometimes people will pick groups that are  
9 random groups, and so they will use statistics that  
10 assume the groups were random, but really were not  
11 random, but they use the statistics because they  
12 really don't have much of a choice.

13                   And so, they have to assume the randomness  
14 is coming from the measurement or some other source  
15 besides the sample.

16           Q.    You also mentioned something that struck me  
17 as interesting. You mentioned that sometimes you  
18 look to see if the data matches the conclusion.

19           A.    Yes.

20                   Sometimes the results of the paper won't  
21 fit with what the people say that they found.

22           Q.    So, you are suggesting that people are able  
23 to print documents when there is a discrepancy within  
24 the paper like this?

25           A.    Well, sometimes reviewers miss that and

1 things get through, yes.

2 Q. Is that not the purpose of the peer review  
3 process?

4 A. Well, peer review is done by human beings  
5 that are fallible and they can make mistakes, and a  
6 lot of times they are tired.

7 Most peer reviewers are not paid for doing  
8 peer review. And so, they are doing it off the  
9 corner of their desk.

10 And sometimes they will hand it down to a  
11 graduate student to do it for them.

12 The graduate student may not have really  
13 been qualified in research methods yet, but they will  
14 turn it in, you know, as their own work or whatever.

15 So, there is a lot of ways that peer review  
16 can fail.

17 Q. Well, we were talking about the subject  
18 matter of gay and lesbian parenting and you have  
19 mentioned some of the works that you published.

20 Are any of the works that you have  
21 published on the subject of gay and lesbian  
22 parenting?

23 A. Yes.

24 Q. Could you tell me what that work is?

25 You can tell me by title.



1           A.    Let me just go to the CV here, just to make  
2   sure I don't miss anything.

3                    One paper was published in Psychological  
4   Reports in 2004 called Differential Risk Theory, as a  
5   subset of Social Exchange Theory, Implications for  
6   Making Gay Marriage Culturally Normative and for  
7   Understanding Stigma Against Homosexuals.

8           Q.    Have you recently published any papers on  
9   this subject matter?

10          A.    I am not done finding all of them yet  
11   here.

12                   There were a couple of other papers that  
13   were critiques of Golombok and Tasker and  
14   Kirkpatrick.

15                   The most recent paper I published was an  
16   analysis of 51 or more reviews of the literature in  
17   the area of gay parenting.

18          Q.    What was that paper entitled?

19          A.    It is called Reevaluation of the Null  
20   Differences Hypothesis Concerning Gay and Lesbian  
21   Parenting, as assessed in April of 1979 to 1986 and  
22   four later, 1997 to 1998 Dissertations.

23          Q.    When was this paper published?

24          A.    Recently it was accepted, I believe, August  
25   9th, yes, accepted August 9th of 2008.

1           MR. MOYLAN: And for your information, that  
2           was the same paper provided as an unpublished  
3           document with the Bates Stamps 6797 to 6898, in  
4           the response on August of 2008.

5           THE COURT: What Journal?

6           THE WITNESS: Psychological Reports Volume  
7           103, Pages 175 to 304.

8           MR. MOYLAN: Your Honor, it was originally  
9           provided to the Petitioner's representative as a  
10          draft document and has recently been accepted  
11          and it is --

12          THE COURT: It is in print?

13          THE WITNESS: It has been published.

14   BY MR. MOYLAN:

15          Q. When was this published?

16          A. Just this month. I mean, it was sent  
17          August 9th, but they sent me the reprints for it  
18          about a week and half ago.

19          Q. In what journal was it published?

20          A. Psychological Reports.

21          Q. Is that a peer-reviewed article?

22          A. Yes.

23          Q. Can you discuss the paper, generally?

24          A. What I did was I collected as many reviews  
25          of the literature as I could find, and I would say it

1 is about 51 plus several more.

2 I disqualified some of the reviews of the  
3 literature, but I had 51 that I specifically looked  
4 at to see if there were patterns of citing eight  
5 early dissertations that were done in the area of gay  
6 and lesbian parenting.

7 And then I had located, on my own, four  
8 dissertations that were done ten years ago on the  
9 same area and I wanted to see if there was a  
10 difference in the citation rate for the early  
11 dissertations as opposed to the later dissertations.

12 What I found was that the eight  
13 dissertations were cited at least 234 times in these  
14 51 reviews.

15 However, the four later dissertations were  
16 never cited.

17 Q. What was the purpose of looking at all  
18 these dissertations and this data? I mean, what were  
19 you looking to show?

20 A. Well, I was concerned because the  
21 dissertations were referred to quite frequently as  
22 providing, you know, pretty solid evidence for the no  
23 differences hypothesis and so I wanted to see if  
24 these dissertations actually had found no differences  
25 or not.



1 small of a sample or you had other methodological  
2 problems that caused you not to reject the null  
3 hypothesis.

4 Q. Aren't there things out there, statistics  
5 that prove the null hypothesis, like a coin flip?

6 A. Well, there are things that I have used to  
7 try to investigate whether people have really proven  
8 the null hypothesis, so it is checking that, but  
9 nobody can technically prove it.

10 Q. So, now, you reviewed these dissertations  
11 and you found that some were used in some senses and  
12 others were not used in other senses, so what did  
13 your findings go into to look at?

14 A. Well, what I found is that some of the  
15 early dissertations, I mean, most of them had serious  
16 limitations, but some of them did have data that  
17 would, I think, legitimately support the null  
18 hypothesis.

19 Then, there are others that some other  
20 people quoted as supporting the null hypothesis, but  
21 if you actually looked at their data, they actually  
22 didn't support the null hypothesis.

23 And then, in the four dissertations that  
24 were later dissertations, in many cases there was  
25 substantial information that appeared really to be a

1 rejection of the null hypothesis.

2 Q. If it rejected the null hypothesis, what  
3 would that conclude?

4 A. Well, that would suggest that there were  
5 statistically significant differences between  
6 children of gay and lesbian parents and heterosexual  
7 parents.

8 Q. Okay. So, you said some of the data in the  
9 beginning was insignificant? I didn't quite  
10 understand?

11 A. Well, some of the research in the  
12 dissertations did support the concept of the null  
13 hypothesis.

14 And then some of it, you know, provided  
15 mixed evidence.

16 And then there were some dissertations that  
17 provided fairly strong evidence in the other  
18 direction.

19 Q. Can you address the ones that actually  
20 supported the null hypothesis?

21 A. The paper, of course, goes into a lot of  
22 detail and you probably don't want me to explain.

23 One of the dissertations was by Puryear in  
24 1983, and Paul in 1994, for example, cited Puryear as  
25 having found nothing contrary to the null

1 hypothesis.

2           However, Patterson in 2005, in the  
3 publication of the APA, admitted that there were  
4 significant results there, but didn't say what the  
5 magnitude was.

6           If you go back to Puryear's original  
7 research, and it is listed here in one of the tables,  
8 they asked the children to draw pictures of their  
9 family, and the family pictures were analyzed in a  
10 number of different variables.

11           This is in Table 2, and they looked at was  
12 the family doing an activity together? Was the  
13 father demonstrating cooperative behavior? Was the  
14 mother cooperative? Was there another adult that was  
15 cooperative?

16           And the percentages were quite dramatic.  
17 The single parent heterosexual, and the parents in  
18 the study, 60 percent of the pictures of their  
19 children showed activity together, compared to 27  
20 percent of the lesbian mothers.

21           It was 73 to 10 for father cooperative.

22           67 to 10 for mother cooperative.

23           78 to 10 for other adult cooperative.

24           And three of those four were clearly very  
25 significant statistically, and one of them was a

1 trend.

2 MS. COOPER: Your Honor, if I may, I would  
3 like to know what the doctor is reading from.

4 MR. MOYLAN: I am sorry. Let me just go  
5 ahead and get you a copy. It was the same as  
6 what was provided. I think it may be on  
7 different pages, to make it easier for you to  
8 reference.

9 THE WITNESS: That is Table 2 on Page 288.

10 BY MR. MOYLAN:

11 Q. So, you are suggesting, from the data --  
12 Can you resummarize since we got interrupted there?

13 A. Well, Puryear's dissertation is an example  
14 where people say there was no effect but there really  
15 was a very substantial effect.

16 She tested three different outcomes and  
17 that was one of the three. They were kind of a split  
18 difference on the other two, one going in one  
19 direction and the other in another.

20 The other dissertations --

21 Q. Let's finish talking about Puryear there,  
22 just for a second.

23 You said a split result, what does that  
24 mean?

25 A. I believe she looked at two other



1 variables. It is in here.

2 I think it was self esteem and focus of  
3 control. One of them came out favorable towards the  
4 single patient, and another came out favorable  
5 towards the lesbian parents.

6 Q. Would that suggest favorable to one,  
7 favorable that there are differences?

8 A. It is possible that there is differences  
9 where this was an effect on one issue and not on the  
10 other or it could just be random error, and it just  
11 happened to turn out in different directions.

12 Q. Now, can you run statistical analysis of  
13 that data to show that data is good, bad or --

14 A. Well, I ran statistical analysis on the  
15 percentage differences to test whether they were  
16 statistically significant and what the magnitude of  
17 those differences were.

18 So, that is what is in Table 2 in terms of  
19 the odds ratios that I demonstrated and I also, I  
20 believe, included the Pearson already given estimate  
21 of the amount of the linear overlap between the two  
22 concepts, and I had Fisher's Exact Test because that  
23 provided --

24 Q. Okay. Slow down. Slow down for a minute.

25 Help me on the first one. You said it was

1 the what?

2 A. I used four different tests. I used the  
3 Chi-Square Test, because that is a relatively robust  
4 test of two nominal variables.

5 And I used the Fisher's Exact Test because  
6 it is more precise than the Chi-Square test, and it  
7 can handle situations where you have fewer than five  
8 cases expected in one of your cells.

9 I included the Pearson  $r$ , so a reader could  
10 have a rough estimate of how much linearity or common  
11 variance there was between the two variables.

12 And I included an odds ratio, that is used  
13 sometimes, to demonstrate the relative differences in  
14 odds of certain things happening between two groups.

15 Q. Now, earlier on there was some testimony  
16 regarding integrity of using the Chi-Square Test or  
17 the Fisher's Exact Test in certain situations.

18 As a methodologist, as a statistician, is  
19 this a proper place to use these tests?

20 A. The only problem with using them here would  
21 be that the samples were not random.

22 So we have to assume that the randomness,  
23 that the statistics require, is coming from the  
24 measurements as opposed to the sample.

25 But most of the research that has been done

1 with these dissertations is non random data, so if  
2 you become a statistical purist, you can't analyze  
3 anything.

4           So, as a pragmatic effect, you generally  
5 apply the statistics you have, to understand the data  
6 as best as you can, under the circumstances.

7           Q. Can you go on to some of the other  
8 dissertations?

9           A. The dissertation by Paul, I thought was a  
10 very interesting dissertation.

11           It didn't have a comparison group with it,  
12 so I had to generate a comparison group, but they  
13 asked these children, there was 15 men, 19 women, who  
14 had homosexual and bisexual parents.

15           They asked them how many of them self  
16 identified as gay, lesbian or bisexual.

17           And that definition of homosexuality, there  
18 was 23.5 percent.

19           They asked them in terms of same-gender  
20 sexual behavior, an additional five subjects  
21 concurred with that, which raised the percentage to  
22 35.3 percent.

23           Then they asked them if they had ever felt  
24 same-gender sexual attraction and another 6 subjects  
25 acknowledged that, so the total came to 52.9 percent

1 of subjects who had either had attraction or behavior  
2 or identity.

3 So, I compared those statistically to 612  
4 and 18 percent, because I was using Rivers' study.

5 He found of heterosexual parents, I think  
6 he found, I think it was 4.27 percent, or somewhere  
7 in that ballpark, had gay or lesbian children.

8 So I used that as the benchmark and used 6  
9 percent, so I was a little conservative, and then I  
10 kept increasing it to 12 or 18 percent to try to be  
11 as conservative as possible in comparing what Paul  
12 found with what we would expect in the population.

13 Q. What would you derive from, what was the  
14 result of Paul --

15 A. All of those percentages were significantly  
16 larger than what one would have expected to get from  
17 population estimates.

18 Q. What does that tell me, then?

19 A. That suggests that there is a relationship  
20 between parental sexual orientation and the  
21 children's sexual orientation.

22 Q. Can you tell me some of the -- you talked  
23 about, I guess, eight studies total.

24 Can you tell me some of the studies that  
25 really glared out at you as going to prove your

1 point?

2 A. Well, one study that was particularly  
3 notable, was Sirota's research.

4 She had studied gay fathers and had looked  
5 at daughters of gay fathers and daughters of  
6 heterosexual fathers, and had a fairly large sample  
7 for this type of research.

8 She had 68 daughters of gay fathers and 68  
9 daughters of heterosexual fathers.

10 Q. Where was this done?

11 A. This is her dissertation.

12 Q. Where was it done?

13 A. It was the university in New York, it was  
14 New York University, Garden City, New York.

15 Q. Okay.

16 A. She found -- she assessed sexual  
17 orientation, whether people had questioned her on  
18 sexual orientation growing up.

19 Most significantly, she had looked at  
20 insecure adult attachment, compared to the daughters,  
21 across the two sets of daughters.

22 She had looked at drug use by the  
23 daughters.

24 She looked at whether they felt  
25 uncomfortable seeking and being in love

1 relationships, and she also looked at whether the  
2 parents were divorced or separated.

3 Q. I am going to ask you two things. One, you  
4 are going to have to slow down.

5 You have got to remember that all of us are  
6 not statisticians or students that are qualified.

7 So, you may understand a lot of these  
8 things, but it may help to explain some of these  
9 things as we go along, okay?

10 So, could you kind of give a layman's  
11 understanding of what you are telling me?

12 A. Okay.

13 Well, what she found was that, and she had  
14 submission data here, in some cases there were only  
15 60 to 67 daughters in each group.

16 But, she has found for sexual orientation  
17 34 percent of the daughters of gay fathers reported  
18 lesbian or bisexual orientation compared to 3 percent  
19 of the daughters of the heterosexual fathers.

20 In terms of questioning their own sexual  
21 orientation, while growing up, she has found that  
22 69.8 percent of the daughters of the gay fathers had  
23 questioned their sexual orientation, compared to 23.3  
24 of the daughters of the heterosexual fathers.

25 Q. In what year was this done?

1 A. 1997.

2 Q. Where did they get this sample from?

3 A. She drew it from a nationally -- it was  
4 nationally represented, but she tried to have a  
5 geographical dispersion of people and it was standard  
6 techniques for contacting people.

7 I don't remember specifically how she did  
8 it, off the top of my head, but she was trying to get  
9 a wide dispersion of sources for the data.

10 Q. You said the data showed that there was  
11 significant difference between --

12 A. Right. It showed that sexual orientation  
13 and questioning of your sexual orientation appeared  
14 to differ between the children of these two groups of  
15 parents.

16 Q. In looking at that data, we talked about  
17 statistical significance.

18 Are those things statistically significant?

19 A. Yes.

20 Q. They are. And how do you decide what is  
21 statistically significant and what is not  
22 statistically significant?

23 A. Well, I used all four tests again, and  
24 these things that I have discussed were all of the  
25 things, actually, in Table 4 were statistically

1 significant on all of the tests.

2 Q. Did that study show any other differences?

3 A. Yes. It showed that there was a higher  
4 percentage of insecure adult attachment. 77.6  
5 percent versus 44.1.

6 There was a higher rate of drug use by the  
7 daughters, 44.1 percent versus 14.7.

8 There was a higher percentage of daughters  
9 who were uncomfortable seeking and being in love  
10 relationships, 42.4 versus 11.8.

11 Q. You keep on mentioning daughters, were  
12 there no sons?

13 A. No, this was only daughters. They did not  
14 look at sons.

15 She did not look at sons.

16 But there was higher rate of divorce in the  
17 group of gay fathers.

18 So, that is something that she did not  
19 control, which is within one of the limitations of  
20 the studies, because the alternative hypothesis would  
21 be that the difference in divorce accounted for some  
22 of those other differences.

23 Q. Was it cross sexual?

24 A. Yes.

25 Q. Did you find the data set to be significant



1 or flawed or how would you review the data set?

2 A. Well, the data set was fairly large as some  
3 of these studies go.

4 Even Wainwright and Patterson and Rivers,  
5 when they published in Developmental Psychology this  
6 past January, used sample sizes of 44 versus 44 or 18  
7 versus 18.

8 She used 68 versus 68, so her sample size  
9 is actually larger than the most current research  
10 that is out there as published in, you know,  
11 Developmental Psychology which most people would  
12 consider a top tier peer journal.

13 So her research is actually better in some  
14 respects, however, her samples were not random  
15 samples.

16 We call those convenience samples.

17 Q. And were they just straight convenience  
18 samples or --

19 A. She had geographical dispersion, but they  
20 were convenience samples.

21 Q. Would you criticize it in any other way?

22 A. It was pretty good otherwise. I mean, she  
23 had pretty good measures of attachment in some of the  
24 other issues, so I thought she did a good job of  
25 measurement.

1           Her analyses were relatively primitive. I  
2 mean, she used Chi-Square and that was pretty much  
3 it, so I had to, you know, recreate the data and then  
4 analyze it with other statistics.

5           Q. Is this one of the dissertations that you  
6 are suggesting that other people refer to as proving  
7 the null hypothesis?

8           A. No, this would be an example of something  
9 that would cause you to think that the null  
10 hypothesis had been rejected.

11          Q. But did anybody cite it as other than that  
12 or is this one of the articles that nobody has cited?

13          A. No, actually no one has cited this. It is  
14 quite remarkable.

15          Q. Now, so, some of the articles that you  
16 mentioned that people cite or some of the data that  
17 people cite as proving the null hypothesis, can you  
18 give me an example of one of those?

19          A. Well, most of the eight dissertations would  
20 be cited as examples of proving the null hypothesis.

21          Q. Okay, can you give me an example?

22          A. Well, you know, Gottman, in her review, for  
23 example, cites several of these dissertations and  
24 argues that this demonstrates that there aren't any  
25 differences between the groups.

1           Gottman admitted there were certain  
2 limitations here, but she goes on to say here, and I  
3 quote her on Page 276.

4           Gottman discussed the legal limitations in  
5 view of the fact that none of the above studies  
6 confirm the prediction that a parent's homosexuality  
7 may harm a child's development, if a child is allowed  
8 to remain with a parent.

9           She concluded that the judicial courts may  
10 want to consider these findings, but the null  
11 hypothesis was supported when resolving custody  
12 dispute involving homosexual parent.

13           Clearly Gottman believed that social  
14 science had some relevant research for the courts to  
15 consider and that courts which viewed homosexual  
16 parenting skeptically were in error.

17           Q.   And you mentioned that she recognized some  
18 of her limitations?

19           A.   She recognized the limitations of the  
20 papers that she was reviewing.

21           Q.   Would you think there were further  
22 limitations that she didn't recognize?

23           A.   She did a fair job of mentioning that there  
24 were limitations, but she didn't go down it as well  
25 as I would have done, dissertation by dissertation.

1           Q.    Okay, you think that she analyzed the data  
2    correctly?

3           A.    No, well, she certainly didn't analyze  
4    Puryear correctly, and missed that one, for example.

5                    Even her own data, in her own dissertation,  
6    is questionable, because she could have reported what  
7    the sexual orientation of her --

8                    She looked at daughters of three types of  
9    families, one was lesbian mothers, and then there  
10   was, I think it was an intact family, and the third  
11   one was single parent, but my memory is a little  
12   foggy on that.

13                   But she looked at the three groups of 35  
14   each and she didn't really break down the sexual  
15   orientation by each group.

16                   It was indicated by her, or somebody else  
17   later on, that 26 percent of the children in her  
18   total study had a lesbian bisexual orientation, but  
19   she didn't say how it varied from one group to  
20   another, in terms of how they actually identified  
21   themselves, so it made it difficult to compare the  
22   groups.

23           Q.    And you ran this data, as she ran them?

24           A.    No. Well, I would have run it, if she had  
25   given me the information, but the information wasn't

1 there for me to be able to compare it.

2 Q. So, then you took a look at her results and  
3 you concluded, from her results, that they were  
4 wrong?

5 A. Well, it is just hard to know what to make  
6 of her results, because she didn't break down the  
7 percentages of people in each group that had a  
8 bisexual or lesbian orientation.

9 Q. So, then, how can you conclude that this  
10 doesn't prove the null hypothesis?

11 A. Well, she argued, in essence, that it did  
12 prove it.

13 Q. Right.

14 But you are telling me that you can't argue  
15 that, so can you explain to the Court why that is?

16 Other than the statistical reason that you  
17 have already given, what is wrong with her study, can  
18 you tell me?

19 A. Well, because she was using, I believe she  
20 tried to use mean scores, but sexual orientation is,  
21 to some extent, a nominal level variable, and so she  
22 didn't report the nominal level data. She just  
23 reported it as if it was a ratio type variable, which  
24 it really isn't.

25 Q. Would that skew her data?

1           A.   Possibly. I just don't know. We don't  
2 know, I don't have the data to assess it.

3           Q.   So, in the end, what you are concluding, is  
4 that you can't tell whether she is right or wrong,  
5 but she can't assert that she is right?

6           A.   Well, I would agree with that.

7           Q.   Now, in looking at some of the other  
8 things, and some of the other experts that have  
9 reviewed your manuscript, that is now in publication,  
10 one of the Petitioner's experts came forward, a Dr.  
11 Lamb, and criticized you, that you were taking a look  
12 at non statistical differences and making them  
13 significant or statistically significant. Is that a  
14 fair assessment of what you have done?

15          A.   In the field of Social Science in general,  
16 there is a controversy about what level of  
17 significance you should use.

18                   The traditional level is P less than 05.

19          Q.   Slow down. What is P less than 05?

20          A.   That means that there is less than a 5  
21 percent chance that the results you got were due to  
22 random error.

23                   However, under some cases, for example,  
24 people will argue for a different -- and what I am  
25 going to quote from here is, this is from a textbook

1 called Study Design and Statistical Analysis,  
2 published by Cambridge University Press, published in  
3 2006 and --

4 Q. Hold on. Can you hold on just a second, so  
5 I can be so kind as to give them copies so that they  
6 can continue --

7 Can you tell me where you are, so they can  
8 reference this?

9 A. They note, for example, on Page 74, fourth  
10 line from the bottom, that for exploratory studies  
11 you may want to report the 90 percent confidence  
12 intervals, which is essentially saying that sometimes  
13 you use P less than 10 in some studies.

14 A lot of it depends on your situation. If  
15 you are talking about somebody, do they have cancer  
16 or not, you might be willing to shift your risk to  
17 not detecting it, as opposed to over detecting it.

18 And so, it depends on the situation, what  
19 level of statistical significance you want to use and  
20 what the type of problem is.

21 So, I am more flexible than some people in  
22 how I look at that, because I think it depends on the  
23 problem.

24 And my goal is to understand the data, not  
25 just conform to a particular rule about, you know,

1 what is the standard response statistically.

2 Q. Well, Dr. Lance Osberg (phonetic)  
3 specifically went to the fact that your study showed  
4 that, excuse me, that your -- what is now in  
5 publication, in front of you?

6 MS. COOPER: Objection to the form.

7 THE COURT: It is published.

8 MR. MOYLAN: I think he was referring to a  
9 different study, but --

10 MS. COOPER: It does not mean he was  
11 referring to this particular study.

12 THE COURT: Start again.

13 BY MR. MOYLAN:

14 Q. If somebody were to criticize the null  
15 hypothesis paper in front of you, because it is based  
16 on the fact that some of the things that you suggest  
17 show differences are not statistically significant,  
18 is that a fair assessment?

19 A. There are couple of situations where it is  
20 not significant at the 05 Level.

21 And I report whatever the significance is  
22 so the reader can understand a little bit more about  
23 what the data actually said or didn't say.

24 So, I try to report the level of  
25 significance, even though sometimes it wasn't a



1 statistical significant difference at the 05 Level.

2 Q. And so, if I were to say that the null  
3 hypothesis should just suggest, in these five  
4 variables, that if I were raised in a heterosexual  
5 family versus a homosexual-behaving family, there  
6 would be no differences, and those five things came  
7 out statistically insignificant, but skewed all  
8 statistically insignificant to one side, would that  
9 be the null hypothesis?

10 A. No, I think what is being referred to here  
11 is that in some studies multiple tests are done.

12 On this particular, the Rivers study and  
13 the Wainwright and Russell and Patterson studies,  
14 they will do a whole series of statistical tests.

15 In one case it was ten to twelve, in  
16 another case it was 13.

17 And they will say, well, we did all these  
18 tests and none of them are statistically  
19 significant.

20 But the problem is, when you are only using  
21 18 subjects in each group, your statistical power is  
22 very low, so it is very difficult to find a  
23 statistically significant result just because of your  
24 small sample size.

25 That is because all it takes is one odd

1 case and it is going to throw everything off, and so  
2 statistics guard against those odd ones.

3 Now, what I wanted to look for was, is  
4 there a pattern to these results, and what should  
5 happen if a null hypothesis is true.

6 It is like flipping a coin. If the coin is  
7 a fair coin, if you flip it over and over again, you  
8 should get half heads and half tails, okay.

9 Technically speaking, coins are actually  
10 over weighted more to tails, but that is a side  
11 point.

12 So you should get fifty-fifty.

13 So, if the null hypothesis is statistically  
14 true, and your affect size is really close to zero,  
15 you should get as many cases going on one side of the  
16 null, as you have on the other side of the null.

17 Which means that you should have, if you  
18 did 12 assessments, six times, more or less you  
19 should have results coming out better for gay parents  
20 and six times you should have results coming out  
21 better for children of heterosexual parents.

22 And that is how it should work it out.

23 But I notice in some of these studies,  
24 there was a pattern where it was more like 10 to 1 or  
25 13 to 2, which is as unlikely statistically as it

1 would be unlikely to get a coin toss that came out  
2 heads 11 times out of 13.

3 Q. When you say 13, what were these studies  
4 measuring?

5 A. They were looking at psychological  
6 variables.

7 Q. Such as?

8 A. Depressive affects, hostility, paranoia,  
9 things like that.

10 I could refer to the specific articles if  
11 you need me to.

12 Q. No, just --

13 A. Some of them looked at things like  
14 delinquency and issues like that, but -- or misuse of  
15 drugs was used in one of them.

16 Q. In those articles you are suggesting they  
17 established that there was no difference in whatever  
18 they measured, these disorders that you have  
19 referenced --

20 A. That is what they claimed, yes.

21 Q. -- so, from a heterosexually behaving  
22 household to a homosexual-behaving parented  
23 household?

24 A. Well, I was -- actually, it was determined  
25 on the basis of the gender of the parents, without

1 actually any reference to their sexual identity or  
2 behavior.

3           What they did was they took same-sex  
4 parents and opposite sex parents and that was a  
5 design flaw, because Patterson admitted that when she  
6 had 44 same-sex parents, that only 18 of them were,  
7 for sure, lesbian parents.

8           Q. You lost me there for a second. Are we  
9 talking about a specific set of --

10          A. I am talking about the Wainwright and  
11 Russell study.

12          Q. Okay.

13          A. That's what we were talking, 44 versus 44.

14          Q. Okay.

15          A. And she admits in her paper, I think it is  
16 the 2004 version, that only 18 of the couples were,  
17 for sure, lesbian couples and the others, it was  
18 iffy.

19          Q. 18 of the 44?

20          A. 18 of the 44, right.

21                 So, that is a design issue because we don't  
22 really know what we are comparing to, but the  
23 research is still taken as supporting the concept  
24 that there are no differences.

25          Q. So, in the studies that you looked at, and

1 how many studies did you look at, again?

2 A. This was 12 dissertations, not to be  
3 confused with the Wainwright, Russell and Rivers.

4 Q. No, I understand the dissertations, but the  
5 reviews of those dissertations that seek to prove the  
6 null hypothesis, how many did you look at?

7 A. I looked at 51.

8 Q. 51, okay.

9 A. And now, what was remarkable about that was  
10 I also evaluated each of the 12 dissertations for  
11 their methodological flaws, and I believe that is on  
12 Table 7.

13 Q. Okay, let's slow down here just for a  
14 second, because you understand what you have done and  
15 I don't know if it is clear to everybody else here,  
16 but let's go a little bit slower.

17 You looked at 51 reviews of these  
18 dissertations, correct?

19 A. 51 reviews of the literature, all of which  
20 cited at least one of these dissertations.

21 Q. Okay, so, there's 51 articles that you  
22 looked at that cite at least one of these 12  
23 dissertations?

24 A. 12 dissertations, right.

25 Q. And you are saying that within those 51

1 articles, eight of these dissertations, the quote,  
2 earlier dissertations, are cited a lot more --

3 A. 234 times.

4 Q. And then how many are the last four cited?

5 A. Zero.

6 Q. Zero times, okay.

7 And you are saying that these 51 articles,  
8 in some mix of them, seek to establish or prove what  
9 is called the null hypothesis, stating that there are  
10 no differences between heterosexually-behaving --

11 THE COURT: How many times have you asked  
12 the question?

13 MR. MOYLAN: I'm sorry, I didn't know if it  
14 is clear, if it is clear to the Court.

15 THE COURT: Yes.

16 MR. MOYLAN: Okay, great.

17 Thank you.

18 Sorry about that.

19 BY MR. MOYLAN:

20 Q. In finishing this up, are there others who  
21 have published works that suggest that you can't  
22 prove the null hypothesis on this?

23 A. A number of people have discussed the  
24 issue.

25 Q. Has anybody published works -- because the

1 article by Del Castro --

2 A. Del Castro wrote a review of the literature  
3 in 1993.

4 He talked about a lot of the issues that he  
5 saw in these dissertations and some of the other  
6 articles, so, it has been mentioned before.

7 What is remarkable is that the  
8 dissertations that are considered to have found  
9 support for the null hypothesis are the ones that are  
10 cited, but the ones that didn't find support for it  
11 have never been cited.

12 Q. Okay, I understand that and I think the  
13 Court understands.

14 The Del Castro article is in a journal?

15 A. Yes, Journal of Divorce, if I remember  
16 correctly.

17 Q. Is that a peer-reviewed journal?

18 A. Yes.

19 Q. Let's move on, now.

20 You mentioned you have researched  
21 relationships or done research on relationships, and  
22 I asked you about same-sex.

23 Can you talk about some of the research you  
24 have done, in general, about relationships?

25 A. Can I override you here for a second?

1           Because one of the points of this paper was  
2    that I correlated the number of errors in the twelve  
3    dissertations with how often they were cited and  
4    there was actually a negative relationship, so the  
5    more errors they have, the more often they were  
6    cited.

7           Q.    Okay.

8           A.    Which suggests something about the quality  
9    of peer review.

10           But, in the research, I have looked  
11   generally at marital satisfaction and marital  
12   stability and have generally used standard measures  
13   of stability-instability and I have used the Kansas  
14   Marital Satisfaction Scale and some other scales, and  
15   I have generally, I have looked at things like how  
16   the number of children and the ages of children  
17   affect relationships.

18           I have looked at how military life and  
19   deployments, in particular, affect it.

20           I have looked at how communication skills,  
21   empathy, congruence and positive regard, how those  
22   things influence the outcomes of relationships.

23           MR. MOYLAN: Your Honor, before I move into  
24   this subject, I know it's getting close to  
25   five. I know we are going over to Monday. I



1 know you have a reception to go to.

2 THE COURT: How much longer do you have?

3 MR. MOYLAN: At this pace it could be a  
4 little bit longer, significantly longer.

5 THE COURT: I am willing not to go to the  
6 reception if we can finish this.

7 Let me ask you this --

8 MS. BASS: I don't get the impression he is  
9 going to finish today and we certainly won't do  
10 our cross today.

11 THE COURT: You want to stop?

12 MR. MOYLAN: If we are going to another  
13 subject, I think maybe working on it will maybe  
14 help us on Monday.

15 MS. BASS: This is your last witness,  
16 correct?

17 MR. MOYLAN: Yes.

18 THE COURT: We will stop. I want to talk  
19 to the lawyers, so thank you, Dr. Schumm.

20 We will see you at 8:30 on Monday.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Stay on the record.

24 THE COURT: I will ask how much the  
25 taxpayers are paying.

1           This is what I want to talk about. You are  
2 almost finished?

3           MR. MOYLAN: Yes.

4           THE COURT: For me there is a gaping hole  
5 in what I have heard. I have not heard anything  
6 about the rights of the child, the protection  
7 issues of the rights to the child -- rights of  
8 the child.

9           We are in dependency court, extremely  
10 important. That is something I have not heard  
11 addressed in Lofton, wasn't addressed in Cox.  
12 It was not addressed.

13           I thought, does the child have his right to  
14 permanency? Is this a rational basis problem  
15 because the child is treated different with a  
16 different custody?

17           It could go on and on. These are important  
18 issues to me, that I want to address. I don't  
19 know the answer.

20           No one knows the answer.

21           To this point, it hadn't been, as far as I  
22 know, discussed in any of the prior cases.

23           This is dependency court.

24           MS. BASS: I had thought we were going to  
25 raise those issues from a legal standpoint in

1           our opening statement.

2                   We ended up going right into evidence, so,  
3           I had assumed there would be legal argument at  
4           the conclusion of the case.

5           MS. MARTIN: As did I.

6           THE COURT: You are telling me you don't  
7           need to put on any testimony about these issues,  
8           what the situation is here with this child?

9           MS. BASS: We do have significant testimony  
10          in the depositions.

11          THE COURT: I read them.

12                   Still the issue, the rational basis  
13          concerning the child, the constitutional rights  
14          of the child, never once has anything I read --  
15          there was nothing about the constitutional  
16          rights of the child.

17          MR. ESSEKS: On that point, all the  
18          evidence that we have presented here about the  
19          rationality of this, that we argue goes to the  
20          exclusions and goes to the rationality of the  
21          exclusion from both the perspective of the adult  
22          and the child.

23          THE COURT: But you hadn't talked about how  
24          it affects the child, other than it is not in  
25          his best interest.

1           Why isn't this a rational basis issue as  
2 well from the child's perspective?

3           It certainly is an argument I am hearing  
4 that it is from Mr. Gill's perspective.

5           The custody, I don't know. What about the  
6 child?

7           What about due process with regards to the  
8 child?

9           How does Chapter 39 enter into this?

10          What rights does it create, Constitutional  
11 rights?

12          I don't know. I have not heard that.

13          That is something that I think we talked  
14 about earlier, something that I really wanted to  
15 address here.

16          So, what I am going to suggest is that we  
17 continue this witness on Monday.

18          I don't know that we will have time, a lot  
19 of time to bring in someone to talk about the  
20 children.

21          I don't know. I will have to give you  
22 another day.

23          MS. BASS: We hear what you are saying,  
24 your Honor.

25          We believe we had created an appropriate

1 record, but if what you are saying is you would  
2 like to hear additional testimony on it, we  
3 will.

4 THE COURT: I think I actually would. I  
5 want you to think about it.

6 MS. BASS: Sure.

7 MR. ESSEKS: Your Honor, if I may, what  
8 would be comfortable for us, could you say a few  
9 more words about the kind of evidence that would  
10 be helpful?

11 THE COURT: Remember this?

12 MS. BASS: Yes.

13 THE COURT: I'm sorry, what is this?

14 MS. COOPER: It is our brief.

15 THE COURT: It does lay out some of them,  
16 not all.

17 See, as we go along, I am sitting here, I  
18 am guessing the child's advocates are back  
19 there, are sitting there thinking, okay, the  
20 child is absent from this argument.

21 We are here about the child and it is his  
22 opportunity.

23 So far we have had like Lofton. And I want  
24 to address -- and I don't know. I don't know.  
25 Maybe the child has no rights. Maybe it is not

1 a rational basis.

2 MS. COOPER: No, Your Honor, we clearly  
3 believe we have a heightened scrutiny standard  
4 issue to be applied to the children under both  
5 equal protection and --

6 THE COURT: The other issue is this. I  
7 really don't know. We have argued -- this is a  
8 lot of litigation we have had in regard to  
9 disabilities and other issues.

10 We have had, initiated largely with the  
11 Bush Administration -- we took the position that  
12 under Chapter 39, the rights and power of the  
13 Juvenile Judge are unique.

14 Does this, in any way, infringe on that  
15 power by taking the decision as to who can and  
16 can't adopt?

17 I don't know.

18 I think that -- go ahead, Ms. Bass.

19 There are just so many questions that are  
20 so fascinating to me.

21 MS. BASS: We agree, and we plan to raise  
22 all of those.

23 It was simply a question that, in our view,  
24 how much was legal argument and what we could  
25 put in the record to assist you, and other than

1 basically laying out the factual predicate that  
2 the State was utilizing to apply this, their  
3 assumption of the rest of it, we would make in  
4 legal argument.

5 Now, we will go back over the weekend and  
6 think about whether there is any additional  
7 evidence we could put on to assist you in that  
8 analysis.

9 THE COURT: Okay.

10 MS. MARTIN: And I have to admit, Judge, I  
11 was working along the same vein, that it would  
12 be more a legal argument, Cox legal equal  
13 protection argument was lacking.

14 It was my intent in closing, and the final  
15 summary of the case would be more legal  
16 argument, but if we are thinking about  
17 conforming to the Court's wishes, I don't know  
18 if I can do that by Monday.

19 THE COURT: I understand that.

20 What I would like you to do is think about  
21 it.

22 If you wish to put on more testimony, you  
23 tell me.

24 Apparently we have November 10th available  
25 and we will finish the trial on November 10th.

1 MS. COOPER: Very good.

2 THE COURT: Think about it.

3 MS. BASS: Thank you.

4 THE COURT: We are finished for the night.

5 We are in the middle of our last witness.

6 We will start at 8:30. We will go.

7 MR. ESSEKS: There is a possibility that  
8 the petitioner and the children would be  
9 offering some rebuttal to some of the  
10 testimony.

11 We haven't decided that. That is something  
12 we may be asking.

13 THE COURT: Obviously, you have  
14 discussions.

15 MS. MARTIN: I do have a concern, some of  
16 the parties have rested. If they are bringing  
17 in additional witnesses, it causes me concern.

18 THE COURT: Take your -- you can go about  
19 the rebuttal issue or children issue.

20 MS. MARTIN: All of the issues.

21 If they are talking about all new evidence,  
22 what does that do to the parties that have  
23 presented their case in chief?

24 MS. BASS: If we identify additional  
25 witnesses, we would talk with you, you would



1 determine whether or not this was an additional  
2 responsive witnesses.

3 THE COURT: I am not going to say, I am  
4 only going to hear from Ms. Bass.

5 MS. ALLEN: The guardian didn't rest. We  
6 didn't put anything on.

7 MS. BASS: With respect to Ms. Martin,  
8 obviously rebuttal testimony --

9 THE COURT: Think about it.

10 MS. COOPER: We will have to see.

11 MS. BASS: There was one other issue we  
12 have not resolved amongst ourselves.

13 There was some thought, although the  
14 proceeding has been closed, when it does come  
15 time for the closing statement, it might be  
16 appropriate to leave it open for whoever wanted  
17 to come in.

18 THE COURT: That law was passed to protect  
19 the child and potential adoptive parents.

20 If you waive that --

21 MS. BASS: There was concern up until this  
22 point.

23 As far as the presentation of witnesses, we  
24 may have a different view.

25 THE COURT: Let me know if you agree.

1 MS. BASS: We will discuss it with you.

2 THE COURT: Anything else?

3 MS. ALLEN: Are we going to have an extra  
4 day?

5 My witness was called by the children, but  
6 I never rested or said whether I would call any  
7 more.

8 Mr. Gilbert was on the witness list.

9 THE COURT: You need to talk.

10 I thought the guardian rested. If you  
11 didn't --

12 MS. ALLEN: No, Judge.

13 (Thereupon the trial was adjourned at 4:55  
14 p.m.)

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## 1 REPORTER'S CERTIFICATE

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3 STATE OF FLORIDA :

4 COUNTY OF MIAMI-DADE :

5

6 I, JOANNE CUSTIN, Court Reporter and a Notary  
7 Public for the State of Florida at Large, do hereby  
8 certify that I was authorized to and did report the  
9 above-entitled cause at the time and place aforesaid,  
10 and that the transcript is a true and complete record  
11 of my stenographic notes.

12 I further certify that I am not a relative,  
13 employee, attorney, or counsel of any of the parties,  
14 nor am I a relative or employee of any of the  
15 parties' attorney or counsel, nor am I financially  
16 interested in the action.

17 Dated this 5th day of October, 2008.

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23 JOANNE CUSTIN

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IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

JUVENILE DIVISION  
CASE NO.: 06-033881 FC 04

IN THE MATTER OF THE ADOPTION OF )  
 )  
 [John Doe] and )  
 [James Doe], )  
 minor children, )  
 )  
 \_\_\_\_\_ )

The above-entitled cause came on for  
hearing before THE HONORABLE CINDY S. LEDERMAN,  
in her courtroom at the Juvenile Justice Center  
3300 Northwest 27th Avenue, Second Floor, Miami,  
Miami-Dade County, Florida, on Monday, October 6,  
2008, beginning at approximately 8:30 a.m.

- - -

1 APPEARANCES:

2 THE AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION OF FLORIDA, INC., by  
4 LESLIE COOPER, ESQ.,  
5 and  
6 ROBERT F. ROSENWALD, JR., ESQ.,  
7 and  
8 JAMES ESSEKS, ESQ.,  
9 and  
10 SHELBI D. DAY, ESQ.,  
11 Counsel for Petitioner, Frank Martin Gill  
12 and the ACLU.

13 OFFICE OF THE ATTORNEY GENERAL, by  
14 VALERIE J. MARTIN, ASSISTANT ATTORNEY GENERAL,  
15 and  
16 KIERNAN P. MOYLAN, ASSISTANT ATTORNEY GENERAL,  
17 and  
18 CHARLES M. FAHLBUSCH, ASSISTANT ATTORNEY GENERAL,  
19 Counsel for Department of Children & Families.

20 GREENBERG TRAUERIG, P.A., by  
21 HILARIE BASS, ESQ.,  
22 and  
23 RICARDO A. GONZALEZ, ESQ.,  
24 Counsel for the minor children.

25 CHILDREN'S TRUST, by  
26 CHARLES M. AUSLANDER, ESQ.,  
27 Co-Counsel for the minor children.

28 JESSICA L. ALLEN, ESQ.,  
29 On behalf of the Guardian Ad Litem Program.

30 RONALD B. GILBERT, ESQ., GUARDIAN AD LITEM.

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## I N D E X

WALTER R. SCHUMM, Ph.D.	
Direct Examination (Cont'd, Mr. Moylan)	1133
Cross Examination (By Ms. Allen)	1170
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CHRISTINE THORNE	
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## EXHIBITS

Guardian Ad Litem's Exhibit C	1267
Guardian Ad Litem's Exhibit D	1281

1           THEREUPON:

2                   The following proceedings were had:

3                   THE COURT: Good morning, everybody.

4                   MS. COOPER: Good morning.

5                   MR. ROSENWALD: Good morning.

6                   Ms. BASS: Good morning, Your Honor.

7                   THE COURT: How are you doing, Doctor?

8                   DR. SCHUMM: Hi.

9                   THE CLERK: In the case of Gill, Case  
10                   Number 06-033881.

11                   THE COURT: All right. Shall we?

12                   MR. MOYLAN: If it please the  
13                   Court --

14                   THE COURT: Absolutely, thank you.

15                   How was your weekend? Were you  
16                   here all weekend?

17                   DR. SCHUMM: Yes.

18                   THE COURT: How was your weekend?

19                   DR. SCHUMM: It was pretty good. It  
20                   rained Saturday.

21                   THE COURT: We're sorry about that.

22                   DR. SCHUMM: I think you needed it.

23           THEREUPON:

24                   WALTER R. SCHUMM, Ph.D.

25                   was called as a witness by DCF and having

1 previously been duly sworn, was examined and  
2 testified as follows:

3 DIRECT EXAMINATION (CONTINUED)

4 BY MR. MOYLAN:

5 Q. Dr. Schumm, welcome back. You  
6 understand you're still under oath?

7 A. Yeah.

8 Q. Okay. As we ended the day, you were  
9 beginning to talk about how you had studied  
10 relationships and you'd introduced the fact that  
11 you had done some relationship studies over your  
12 career. Have you ever done any research on  
13 same-sex relationships?

14 A. Yes. I've looked at a number of issues  
15 in that area, and it's an interesting area,  
16 because the opinion appears to be shifting in  
17 this area. Herek published a paper, Law and  
18 Sexuality, in 1991, and he argued in that paper  
19 that researchers had not observed differences  
20 between children from gay and heterosexual  
21 households and the development of sexual  
22 orientation, and then in 1994, Falk stated that  
23 "The second assumption with respect to gender or  
24 sexual development, and perhaps most uniformly  
25 cited assumption, is that the child will be more



1           likely to become homosexual as a child raised" --  
2           "than a child raised by heterosexual parents,"  
3           and Falk indicated that this was a questionable  
4           value judgment, that having a child become  
5           homosexual is a negative consequence. She  
6           disagreed with this assumption as a fact.

7                         And Baumrind, in 1995, stated that  
8           Bailey, et al. never -- had concluded that the  
9           children of gay men and lesbians are not more  
10          likely than children of heterosexuals that adopt  
11          a homosexual orientation, and she went on to  
12          question that conclusion on theoretical and  
13          empirical grounds. She said, "Theoretically, one  
14          might expect children to identify with lifestyle  
15          features of their gay and lesbian parents. One  
16          might also expect gay and lesbian parents to be  
17          supporting, rather than condemnatory, of their  
18          child's nonnormative sexual orientation."

19                         The next year --

20                         MS. COOPER: Your Honor, if I may,  
21                         I'd like -- the witness is reading from  
22                         something and we'd like to know what  
23                         he's reading from.

24                         MR. MOYLAN: He's prepared some  
25                         notes, Your Honor.

1           THE COURT: Do we need to make copies of  
2 the notes?

3           MR. MOYLAN: No. In fact, in  
4 anticipation that that may be requested,  
5 the State has killed some more trees.

6           Okay.

7           THE WITNESS: Then Patterson &  
8 Redding addressed this issue, and said,  
9 "In all of these studies, the great  
10 majority of offsprings of both gay  
11 fathers and lesbian mothers described  
12 themselves as heterosexual."

13           They went on to say that, "Overall,  
14 then, results of research to date suggest  
15 that concerns about disruption of sexual  
16 identity among children of gay and lesbian  
17 parents are not warranted. Although studies  
18 have assessed over 300 offspring of lesbian  
19 or gay parents in many different samples, no  
20 evidence has been found for disturbances in  
21 the development of sexual identity among  
22 these individuals. Fears about difficulties  
23 with sexual identity among children of gay  
24 and lesbian parents have not been supported  
25 by the results of empirical research."

1           Then in 2001, Stacey & Biblarz argued  
2           that the social and psychological theory  
3           would predict at least some influence of  
4           parental sexual orientation on the sexual  
5           orientation or gender attitudes of children,  
6           a hypothesis that Peplau & Beals in 2004  
7           appeared to consider as plausible, on a  
8           comment they made on Page 242.

9           BY MR. MOYLAN:

10           Q.   Okay.  Dr. Schumm --

11           A.   Yes.

12           Q.   -- you're giving some sort of historical  
13           perspective, I guess, of -- help me out.

14           A.   Yeah, I'm trying to show how this has  
15           changed over time.

16           Q.   Okay.  And what is "this"

17           A.   How they -- well, we're looking at the  
18           hypothesis of, does the parents' sexual  
19           orientation influence the sexual orientation of  
20           the child.  So I'm looking at how this has  
21           changed over time, people's attitudes about  
22           this --

23           Q.   Okay.

24           A.   And then I'm going to present some data  
25           to address the issue.

1 Q. Okay. Please, go ahead. Excuse me.

2 A. Then Peplau & Beals, in 2004, stated  
3 that, "Whether the percentage of gay and lesbian  
4 offspring differs depending on the parents'  
5 sexual orientation is open to debate, and a final  
6 conclusion must await more extensive research.  
7 Second, children of lesbian parents appear to be  
8 more open to same-sexual sexual experiences."

9 In that same year, Dr. Patterson, in a  
10 book edited by Dr. Michael Lamb, stated that  
11 rates of non-heterosexuality observed among sons  
12 of gay fathers might be elevated over base rates  
13 for heterosexual parents, but that, at this time,  
14 the data do not allow unambiguous interpretation  
15 on this point.

16 Then, in 2006, Herek noted that  
17 sometimes this issue was discussed, but its  
18 relevance to policies is dubious because  
19 homosexuality is neither an illness nor a  
20 disability and the mental health professions do  
21 not regard a homosexual or bisexual orientation  
22 as harmful, undesirable or requiring intervention  
23 or prevention.

24 He also stated that some theorists have  
25 suggested it would be surprising if no

1 association existed between the sexual  
2 orientation of parents and that of their  
3 children, citing Baumrind, in 1995, and Stacey &  
4 Biblarz, 2001, but that empirical data on the  
5 association between parental and child sexual  
6 orientation were limited.

7 So what's happened is, the scientific  
8 consensus has shifted from being a myth, which is  
9 Herek, in 1991, to theoretically plausible, but  
10 little evidence, in the 1995 to 2001 time frame,  
11 to now -- in 2004, I mean, there was some  
12 ambiguous evidence, but now it's limited  
13 evidence, but it's not relevant.

14 Q. Now, so you're saying that -- to  
15 summarize, that there's been changes, but what  
16 direction is that change going to?

17 A. It appears that people have shifted from  
18 arguing that the hypothesis is false, to trending  
19 to think, well, it might be true, there may be  
20 limited evidence for it, but it's not relevant.  
21 So there appears to be a shift over time.

22 Q. Now, you just summarized, I guess, what  
23 would be called studies of this?

24 A. Yes, and people's comments on it, yes.

25 Q. Okay. Okay. And are these studies in

1 peer-reviewed journals?

2 A. Yes.

3 Q. They are?

4 Okay. And have you, yourself -- you  
5 said you were interested in it. When did you  
6 become interested in looking at this?

7 A. Well -- well, I think it was probably a  
8 year, year and a half ago, I started looking at  
9 that issue, because it was, obviously, an  
10 important issue, and it was also a controversial  
11 issue, and so that's the kind of thing that  
12 excites me, is when I find something that's  
13 important and also controversial.

14 Q. Okay. Have you done research, yourself,  
15 now, specifically, other than going through and  
16 reviewing these studies?

17 A. Yes.

18 Q. Okay. And have you prepared this  
19 research in any sort of written form?

20 A. Yes.

21 Q. Okay. And is that the manuscript that  
22 you provided, titled, Stability of Relationships?

23 A. No, it's different.

24 Q. Okay. What would it be?

25 A. I have a manuscript dealing with

1 analysis of ten books, and it's the -- called,  
2 Children of Homosexuals More Apt to be  
3 Homosexuals? A Reply to Morrison and to Cameron.

4 Q. Okay.

5 A. And this is a manuscript I prepared,  
6 because Cameron -- Paul Cameron had published a  
7 paper in the Journal of Biosocial Science, where  
8 he was trying to make the claim that children  
9 were more apt to be more homosexuals if their  
10 parents were, then a John or James Morrison  
11 published a paper in the same journal, which  
12 rebutted what Cameron said, and so this is my  
13 attempt to enter this debate and provide better  
14 data and statistics and whatnot, as to what the  
15 other people had done.

16 Q. Now, you mentioned the name Paul  
17 Cameron.

18 A. Yes.

19 Q. And his name has come up in this  
20 proceeding before, and has been criticized,  
21 because he, I guess, apparently did some sort of  
22 study on eight cities or something. Is this  
23 regarding that?

24 A. No, it's not regarding that study.  
25 This -- what he had done was, he tried to analyze

1 three popular books, that were written by various  
2 authors, about gay and lesbian parents and their  
3 children, discussing their family life, and so he  
4 tried to go through those three books and look  
5 and see if there was any relationship between  
6 parental sexual orientation and the child's  
7 sexual orientation, if there was an elevated  
8 rate.

9 Q. Okay.

10 A. What I did was, I felt that, first of  
11 all, he didn't use any statistics, and so he  
12 couldn't have tested his hypothesis, and,  
13 secondly, he only used three books, and Morrison  
14 suggested that he use some other books.

15 So I went ahead and picked the books  
16 that Morrison used, and then I found some books  
17 on top of that, so I was trying to have a more  
18 representative sample of the books, so it wasn't  
19 just the three that Cameron picked, and so I went  
20 through and came up with data from a number of  
21 children, and it's complex, because many times  
22 they don't say what the orientation of the child  
23 is. So when they didn't say, I assumed it was  
24 heterosexual, in order to be conservative.

25 Q. When you say -- why do you say that's



1 being conservative?

2 A. Because it works against the hypothesis.

3 Q. Well, what's the hypothesis?

4 A. Well, the hypothesis would be that gay  
5 and lesbian parents would be more likely to have  
6 gay or lesbian children.

7 Q. Okay.

8 A. At any rate, depending on the analysis,  
9 and it's probably too complicated to explain here  
10 in a short of time, I found that between 16.7  
11 percent and 58.7 percent of the children of the  
12 gay and lesbian parents, in these ten books, were  
13 themselves bisexual, gay or lesbian or at the  
14 very least engaged in that type of behavior at  
15 some point.

16 Q. And how did that, between 16.7 percent  
17 and 58.7 percent, fall with what Morrison found?

18 A. Well, they didn't actually find  
19 anything. I mean, Cameron, I think, was trying  
20 to argue that it was more like 35 percent, but I  
21 didn't regard his analysis as very effective,  
22 which is why I was trying to critique it.  
23 However, that rate does appear to be higher than  
24 the five to ten percent figures that are normally  
25 used looking at the general population samples.

1 Q. And when you say, "Five to ten percent  
2 normally used," who uses that?

3 A. Well, for example, Rivers, in his study  
4 of several thousand adolescents in Britain, found  
5 there was about a five percent rate of GLB  
6 identification among those youth.

7 Q. All right. Excuse me, could you clarify  
8 for the Court what you by mean GLB?

9 A. Gay, lesbian, bisexual.

10 Q. Okay.

11 A. The second thing I did was, I went  
12 through the literature, looking at articles,  
13 which are neither scientific papers nor  
14 dissertations, which looked at the issue of  
15 intergenerational transmission, and I found data  
16 from 2,847 children, which is considerably more  
17 than the 300 cases that was mentioned earlier by  
18 Patterson, and the percentage of non-heterosexual  
19 children here ranged between 18.6 and 20.3  
20 percent, compared to the 4.3 percent that I  
21 obtained for children of heterosexuals.

22 Q. Now, what are those numbers  
23 indicative -- what do they tell me?

24 A. Now, those differences are statistically  
25 significant. 4.3 percent comes from comparison

1 groups that were used in those studies, where  
2 they had a heterosexual comparison group.

3 Q. Okay. So you're saying that 4.3 percent  
4 of the children raised by heterosexual parents  
5 became --

6 A. Gay, lesbian or bisexual.

7 Q. Okay. And, then, what was the other  
8 number that you suggested?

9 A. 18.6 to 20.3 percent were the figures  
10 that were true for the parent -- for the children  
11 of the gay, lesbian and bisexual parent.

12 Q. And what of those children? What about  
13 those children?

14 A. That they had lesbian, gay or bisexual  
15 sexual orientation.

16 Q. Okay.

17 THE COURT: I'm trying to understand  
18 this. So you are talking about a manuscript  
19 that was based on samples for which there  
20 was not -- which were anecdotal stories in  
21 books?

22 THE WITNESS: That's the first --  
23 yes. It's ten books. And that was  
24 going through each family story.

25 THE COURT: Why does that have any

1 significance or importance whatsoever?

2 THE WITNESS: It's a -- basically  
3 what you call a qualitative study. It's  
4 looking at --

5 THE COURT: You can call it a bad  
6 qualitative study. I mean, am I wrong?

7 THE WITNESS: Well, it's -- you  
8 have to look at data from different  
9 perspectives. It's called  
10 triangulation.

11 THE COURT: But the data has to have  
12 some reliability. This is even worse than a  
13 convenience sample.

14 THE WITNESS: Well, it's  
15 interesting, because the authors of  
16 those books argued that they didn't  
17 believe that there was a relationship  
18 between parental and child sexual  
19 orientation.

20 So, if anything, the authors of the  
21 books are biased against any evidence for  
22 that hypothesis. So it's particularly  
23 interesting, if people are against the  
24 hypothesis, their own data substantiates it.

25 THE COURT: But you don't have a

1           legitimate sample.

2           THE WITNESS: Well, that's probably  
3           true, but it's a different way of  
4           looking at data.

5           THE COURT: I just wanted to make sure I  
6           understood.

7           THE WITNESS: Now, the second study  
8           here --

9           BY MR. MOYLAN:

10          Q. Actually, let me understand. You're  
11          suggesting that these 10 books were advocating  
12          that there is no difference?

13          A. Yes, some of the authors specifically  
14          said this.

15          Q. And these authors are recognized in the  
16          community as professionals, experts --

17          A. No, these are -- I don't know the  
18          qualifications of these authors. They just  
19          publish the books.

20          Q. Okay. And are they cited by other  
21          people?

22          A. Occasionally these books are cited, but  
23          no, it's generally for pointing out, you know,  
24          issues that gay or lesbian parents have to deal  
25          with.

1           Q. Okay. Now, the second set, you were  
2 actually doing actual statistics on the second  
3 group?

4           A. Yeah, the second study is based on 26  
5 studies, which either have been published in  
6 scholarly journals or they're based on  
7 dissertations --

8           Q. Okay.

9           A. -- where available. So that's a little  
10 bit more hard science.

11          Q. All right. And then go ahead and tell  
12 me again what you found in those studies.

13          A. Well, that's where the differences were,  
14 18.6 percent to 20.3 percent, compared to 4.3  
15 percent.

16          Q. Okay.

17          A. Now, the third source of evidence I have  
18 is based on the paper that was presented  
19 yesterday (sic). Tables 3, 4 and 6 present data  
20 that indicates that there's support for this  
21 hypothesis.

22          Q. Okay. And what is that data that's  
23 presented that supports this hypothesis?

24          A. Now -- okay. Table 3 is on Page 288,  
25 and that's where we have a range --

1           Q. Excuse me, Doctor. Could you tell me  
2 what you're reading from?

3           A. This is the paper entitled Reevaluation  
4 of the No Differences Hypothesis Concerning Gay  
5 and Lesbian Parenting, As Assessed in Eight Early  
6 (1979-1986) and Four Later (1997-1998)  
7 Dissertations."

8           Q. Okay.

9           A. And Table 3 looks at Paul's research,  
10 and this is the one which was mentioned Friday,  
11 where the identity to attraction runs from 23.5  
12 percent to 52.9 percent.

13          Q. Okay.

14          A. And, then, Table -- Table 4 is from  
15 Sirota's research, and this is where we had a 34  
16 percent versus a 3 percent sexual orientation,  
17 daughters of gay fathers, and then --

18          Q. Okay. Now, have you looked -- okay.  
19 Now, we've mentioned some of those numbers  
20 before, so I think they're already in the court  
21 record fully.

22          A. Right.

23          Q. So have you looked at other things, as  
24 well?

25          A. Well, Table 6 involves Koenig's

1 research, and that also found that people were  
2 more likely to question their sexual orientation  
3 if they had gay, lesbian or bisexual parents.

4 Q. Okay.

5 A. Their actual orientation was higher, but  
6 that wasn't statistically significant.

7 We also have Golombok and Tasker's  
8 research, that they published in their book in  
9 1997, and on 107 to 115, they talk about the fact  
10 that the children of lesbian mothers were more  
11 likely to consider same-sex sexual relationships  
12 and they're actually more likely to have them,  
13 even if they were not sexually attracted to  
14 people of the same gender, and that was also  
15 discussed in a paper that I published, in  
16 Psychological Reports, that was entitled What was  
17 Really Learned from Tasker and Golombok's 1995  
18 Study of Lesbian and Single Parent Mothers,  
19 published in 2004.

20 Q. Okay. Now, can you kind of summarize  
21 for me -- so what you're telling me is that  
22 there's some sort of, I guess, correlation  
23 between children that are raised in a homosexual  
24 or gay parenting household to becoming homosexual  
25 from gay parenting? Is that a summary? I mean,



1 tell me what your summary is.

2 A. Yeah, that's -- basically what I'm  
3 saying is that the trend in the field has been  
4 from an argument that this hypothesis is not  
5 true, to where they're beginning to hedge on it,  
6 and I think that the data suggests that the  
7 hypothesis is, in fact -- the alternative  
8 hypothesis is valid, that the null hypothesis can  
9 be rejected at this time, typically.

10 Q. So if there is this intergenerational  
11 transfer of sexual orientation, I mean, what does  
12 it matter? Do you think homosexuality is a  
13 mental disorder?

14 A. No, I don't.

15 It matters in two arguments. One, the  
16 legal argument is that Mark Strauss, who wrote a  
17 paper in the St. Thomas Law Review, and I can't  
18 remember the title of it, but he wrote a paper,  
19 and he said that two of the main reasons that the  
20 Florida law was invalid was because the Florida  
21 law assumed that this intergenerational  
22 transmission hypothesis was false, and he also  
23 said that there was an assumption that there  
24 would be an effect. So it's important from that  
25 angle.

1                   To me, it's important, because a lot of  
2                   people have said this hypothesis is not true,  
3                   and, yet, I think, when you look at the evidence,  
4                   there's actually plenty of evidence out there  
5                   that it is true.

6                   Now, it's still true that most of the  
7                   time, the majority of the children of gay,  
8                   lesbian or bisexual parents become heterosexual.  
9                   So that statement's still true, but most scholars  
10                  have previously said that there was no truth to  
11                  this hypothesis whatsoever, except, like I said,  
12                  they were beginning to hedge their bets over  
13                  time.

14                 Q. Oh, so in the real world, you say that  
15                 there's a legal argument, which there's not, and  
16                 then you say that you personally want to prove  
17                 that this isn't the null hypothesis, but is there  
18                 a practice --

19                 A. Right. I --

20                 MS. COOPER: Objection, leading.

21                 MS. BASS: Objection to the form.

22                 THE WITNESS: The --

23                 THE COURT: Can you restate that?

24                 MR. MOYLAN: Sure. Sure.

25                 BY MR. MOYLAN:

1           Q. You stated that there's a legal argument  
2 out there. You've also stated that you  
3 personally have interest in disproving, when  
4 someone suggests something scientifically factual  
5 that's not. Are there other reasons out there  
6 that create interest in this finding that you  
7 have?

8           A. Yes. The -- the thing that concerns me  
9 the most, and this -- with respect to this  
10 particular hypothesis, it's not the only thing  
11 that concerns me, but the one that concerns me  
12 the most is, for example, Pawelski, et al., in  
13 2006, cited Perrin, who had published a book in  
14 2002, and they point to research that indicated  
15 that at least 47 percent of gay and lesbian teens  
16 have seriously considered suicide and 36 percent  
17 have actually attempted suicide, that's a quote  
18 from Page 358.

19           So --

20           Q. So help me to understand.

21           A. If a child is gay, lesbian or bisexual,  
22 this is, in some sense, a life-threatening issue.  
23 So if there's a differential between two groups  
24 of people, and you have a higher differential of  
25 gay and lesbian children, I believe there's a

1 risk that you can have more people at least  
2 trying to take their lives and maybe succeeding  
3 at it, although the evidence is thinner on the  
4 success.

5 Q. And are there other situations like this  
6 that cause you concern? I mean, are we just  
7 talking about suicide or --

8 A. Well, I just wanted to highlight on  
9 suicide -- for example, I'm looking at a paper by  
10 L.S. Meyers, Psychological Bulletin, in 2003, and  
11 he says, on Page 684, "More recently, studies  
12 that used improved methodologies, such as random  
13 probability sampling, clear definitions and  
14 improved measurements of suicidality also found  
15 strong evidence for elevation and suicide related  
16 problems among LGB persons. A higher risk for  
17 suicide ideation and attempts among LGB group  
18 seems to start at least as early as high school,"  
19 and he goes on and talks about studies here. So  
20 this is a concern for youth.

21 Then the next paper I'm looking at here  
22 is by Susan Cochran and Vickie Mays --

23 MS. COOPER: Your Honor, if I may.

24 If the witness is going to be reading  
25 from papers, we would like copies.

1 BY MR. MOYLAN:

2 Q. You know, Dr. Schumm, I think that we  
3 can just testify about this, and if there's  
4 something specific that you want to refer to,  
5 then that -- when you get to that, then we'll  
6 make copies for --

7 A. Okay. Well, I'm just saying, there's  
8 numerous scientific articles, published by a  
9 variety of scholars, that indicate that there's  
10 an elevated suicidality risk among LGB youth.

11 Q. Okay.

12 A. So I don't think there's actually much  
13 scholarly controversy about that.

14 Q. Have you found in your studies that  
15 there are scholarly findings that show other  
16 heightened types of characteristics in gay and  
17 lesbian youth or gay and lesbian communities?

18 A. Well, what I'd like to refer to  
19 specifically in the Golombok and Tasker book,  
20 that was the study where they -- it was a  
21 longitudinal study started back in the 1970s and  
22 went on through at least the 1990s, so they  
23 followed the children of lesbian mothers and the  
24 children of a comparison group with heterosexual  
25 single parents.

1                   So these children were followed over  
2 a long period of time. So we know that the  
3 children of the lesbian mothers were, in fact,  
4 children of lesbian mothers and not just children  
5 of heterosexual parents, but there was a  
6 comparison here, and what they found, for the 25  
7 lesbian families and the 21 heterosexual parent  
8 families, that there were two attempted suicides  
9 among the lesbian families for the children, and  
10 one among the heterosexual parents.

11                   In terms of kids that were treated --  
12 children who were treated for anxiety or  
13 depression, there was a seven to four ratio.

14                   MS. COOPER: Your Honor, I'd like  
15 to know what the witness is reading  
16 from.

17                   THE WITNESS: I'm actually reading  
18 from a paper that I prepared called  
19 Re-examination of Evidence Concerning  
20 Child Development, Reported in Tasker  
21 and Golombok's Growing Up in a Lesbian  
22 Family.

23                   MR. MOYLAN: Which was provided,  
24 Your Honor, to both sides. If you'd  
25 like the Bates number, I can tell you

1           that.

2           THE COURT:  Has that been  
3           published?

4           THE WITNESS:  It's been submitted  
5           to a journal and it's still under  
6           review.

7           BY MR. MOYLAN:

8           Q.  What journal is that?

9           A.  I sent it to Psychological Reports.

10          Q.  Okay.

11          A.  I sent it to them a long time ago, but  
12          -- I keep checking on it, but it's still under  
13          review.

14          Q.  Can you summarize your understanding on  
15          suicide, so that maybe we can --

16          A.  Well, because of the small sample size  
17          here, these differences are not statistically  
18          significant, but the rates of total mental health  
19          consultations, attempted suicides, treatment for  
20          anxiety or depression and cut-off scores for  
21          depression were all higher for the children of  
22          the lesbian mothers, as opposed to the children  
23          of heterosexual mothers, in a specific study  
24          that's well-known and highly cited which pertains  
25          to this.

1                   So, you know, the differences aren't  
2                   statistically significant, but there's very few  
3                   studies that have looked at these families over  
4                   such a long time.

5                   Q. Okay.

6                   A. They have actually gone into -- I mean,  
7                   the children here are in their early 20s. So  
8                   it's allowed for an examination of what's  
9                   actually happening to them over a long period of  
10                  time. So that's the advantage that the study  
11                  has. The disadvantage is that it's fairly small  
12                  in size.

13                 Q. Now, let me ask a question, and I think  
14                 I might have asked it and got just sidetracked.  
15                 Have you found that there are other things -- in  
16                 your research, have you discovered other  
17                 differences in the gay and lesbian community  
18                 population that show differences between  
19                 heterosexual individuals and homosexual  
20                 individuals?

21                 A. Well, one of the things I've done is,  
22                 I've also tried to look at the psychological  
23                 effects on children of gay and lesbian parents,  
24                 as opposed to children of heterosexual parents.

25                 Q. Okay.



1           A. I've tried to look at some of the more  
2 recent data, because the more recent data is  
3 generally of higher quality.

4           Q. And can you tell me some of the data  
5 that you looked at or the authors that you  
6 reviewed in this?

7           A. Well, one study that's recent, for  
8 example, is by Ian Rivers, and --

9           Q. Okay. Dr. Schumm, you can't read, you  
10 need to testify.

11          A. Okay, right. In this particular study,  
12 he looked at 13 different psychological symptoms,  
13 from the brief symptom inventory, and comparing  
14 the children of the same-sex couples, which he  
15 presumably assumed were, generally-speaking,  
16 lesbian couples, 'cause they were same-sex female  
17 couples, and looking at the total sample of all  
18 of the opposite sex couples, of the 13  
19 comparisons that were made, there was one tie,  
20 there was one difference, where it favored -- in  
21 other words, psychologically, the children of the  
22 same-sex couples were better off, but the other  
23 11 comparisons favored the children of the  
24 heterosexual parents.

25           Now, the effect sizes here were on the

1 order of .19, 0.29, which is a small to medium  
2 effect size in the psychological literature, but  
3 because he was comparing 18 subjects of same-sex  
4 parents with hundreds of subjects of opposite sex  
5 parents, the differences, case by case, were not  
6 statistically significant, but if one assumes  
7 that everything else being equal, you should have  
8 a 50/50 split between how these things come out.

9 Like flipping a coin 13 times. You  
10 normally wouldn't expect it to come out 11 heads  
11 and two tails.

12 So if you use that analogy, it is  
13 statistically significant that beyond chance  
14 things came out better for the children of  
15 heterosexual parents.

16 Now, you can argue that, well, there's  
17 some correlation about these mental conditions,  
18 because they probably correlate with each other,  
19 but even if you reduce the sample size by two or  
20 three coin flips here, you still get a  
21 significant result, but regardless, it looks like  
22 the evidence is leaning towards the children of  
23 heterosexuals having better mental health.

24 Now, there was another study done, this  
25 one by Wainwright and Patterson, in 2006, and



1           tried to look at what were the odds that you  
2           would have this much of an imbalance in  
3           psychological conditions between children of  
4           same-sex and opposite sex couples, and my  
5           statistics suggest that that's not very likely,  
6           to get that degree of imbalance.

7           Q. Okay. Have you looked at studies that  
8           would suggest there's differences between  
9           heterosexually-behaving individuals and  
10          homosexually-behaving individuals, not dealing  
11          specifically with children?

12          A. By adults, you mean?

13          Q. Sure, adults.

14          A. Okay. Well, I did a review of the  
15          literature called distressing conditions, and  
16          this basically summarizes or discusses a large  
17          number of different papers, and I just made kind  
18          of a quick summary of how many of these different  
19          studies tended to show differences between  
20          heterosexual and homosexual individuals, and some  
21          of these studies deal with youth, some of them  
22          deal with women, some of them deal with men, but  
23          the strongest results, of what I found, appeared  
24          to deal with affective disorders, depression,  
25          anxiety, suicidal tendencies, and at least 35

1 studies indicated that gay, lesbian, bisexual  
2 individuals are more likely to have these  
3 distressing conditions.

4 In terms of some of the other issues,  
5 like alcohol abuse, I found 15 studies in that  
6 direction. I have -- for drug abuse, it was 13,  
7 for smoking, it was about nine. There were  
8 smaller numbers for issues of overweight, and  
9 three for gambling, and I found one on  
10 delinquency.

11 Q. And -- and these studies -- when you're  
12 telling me you found those studies, what did  
13 these studies show?

14 A. Now, they generally show elevated rates  
15 of these distressing conditions for people who  
16 identify as gay, lesbian or bisexual.

17 Q. Compared to?

18 A. Heterosexual individuals.

19 Q. Okay. Now --

20 A. For example, King produced a review of  
21 the literature just this past September, where  
22 he, himself, looked at many of these issues, and  
23 the vast majority of studies that he reviewed,  
24 and he tried to review the very best studies,  
25 indicated essentially the same result.

1 Q. And those same results are?

2 A. A higher level of distressing conditions  
3 in the gay, lesbian and bisexual individuals.

4 Q. Okay. Can you tell me some of the names  
5 of studies that King and that you studied?

6 A. Well, in the paper here, you know, we  
7 have, under "Affective Disorders," Abelson 2006,  
8 King 2008.

9 Q. You don't need to read them, just give  
10 me a summary of a couple of them.

11 A. Well, like King, for example, he did a  
12 meta-analysis of the research literature and he  
13 started out with 14,000 studies, I believe, and  
14 then he narrowed it down to smaller numbers and  
15 tried to pick the very best studies he could  
16 find. He actually graded each of the studies, in  
17 term of the number of traits that it had, and I  
18 think -- not any study, I think, met all five of  
19 his criteria, and several of them met four of the  
20 criteria, and so he basically tried to get the  
21 very best possible research he could find, and  
22 with that very best research, he found support  
23 for an elevated level of these distressing  
24 conditions. He's mainly looking at the affective  
25 disorders.

1           Q. Okay. So when you say there's an  
2 elevated level, I mean, are we talking  
3 statistically significant?

4           A. Yes, Statistically significantly higher,  
5 in the majority of the cases.

6           Q. And can you give me a relative measure  
7 of that?

8           A. Like a relative percentage?

9           Q. Yes, or a comparison of the two, to tell  
10 the Court what this difference is.

11          A. Well, there's a number of studies that  
12 have tried to look at that. Susan Cochran's  
13 studies, among others, have looked at that, and  
14 the general figure I would argue is that  
15 generally it looks like you're running about 30  
16 percent comorbidity of different conditions  
17 versus 10 to 15 percent, maybe sometimes as high  
18 as 20 percent, but we're looking at roughly 30  
19 percent. Some studies, you'll find, is upwards  
20 of 50 percent for gay, lesbian individuals in  
21 some characteristics.

22          Q. Okay. Now, again, why does this matter,  
23 I mean, as we sit here today, because homosexual  
24 behaving individuals may have higher -- higher  
25 probability of these thing? Why does it

1 matter --

2 A. Right.

3 Q. -- in terms of child development?

4 A. Well, I think it -- it suggests, in a  
5 general sense, that there's -- people that have  
6 these different conditions are going to be in a  
7 more difficult place as parents to try to set  
8 themselves up as good role models and to try to  
9 be effective teachers of their children, and some  
10 of these conditions, like smoking, second-hand  
11 smoke, for example, is a major health risk for  
12 children.

13 So some of them are very concrete, you  
14 know, alcohol abuse, drug abuse, these are very  
15 concrete issues, but I think the literature is  
16 pretty clear that mothers who are depressed  
17 generally don't make an -- as effective nurturing  
18 parents as mothers who are not depressed.

19 Q. Give me a second.

20 All right. Dr. Schumm, I'd like to talk  
21 about one more thing here. One of the  
22 petitioner's experts addressed stability of  
23 relationships amongst or comparing a number of  
24 groups, and one of the groups that she compared  
25 the early relationships of are same-sex couples



1           versus differing sex couples. Have you looked at  
2           that -- this issue, in your studies?

3           A. You're speaking in terms of stability of  
4           relationships?

5           Q. Correct.

6           Have you done studies on this issue?

7           A. Yes.

8           Q. Okay. And what have those -- well, let  
9           me ask, are these -- are these studies in written  
10          form?

11          A. Well, one study I did, which has been  
12          published, was the study with myself and Cynthia  
13          Akagi and Kathy Bosch, which publishers passed,  
14          on Journal of Psychological Reports, and in that  
15          study I looked at different satisfaction levels  
16          across lesbian couples, as compared to  
17          heterosexual females, and then as compared to  
18          heterosexual males.

19          Q. Okay.

20          A. So that's a study that I looked at  
21          satisfaction issues.

22          Q. Okay. And have you done other studies?

23          A. Well, I've looked at the data pertaining  
24          to stability of relationships, and --

25          Q. And have you done that in written form?

1 A. Yes.

2 Q. Okay. And what would that written form  
3 be?

4 A. That's an item called Stability of  
5 Relationships.

6 Q. Okay. Is this document published?

7 A. Yeah. Well, it's not published. I  
8 haven't even submitted this one. It's just a  
9 research manuscript I developed.

10 Q. Oh, okay. All right. And, then, can  
11 you tell me what you found?

12 A. Well, what I found is that the majority  
13 of studies here indicate that there's greater  
14 rates of instability among gay, lesbian, bisexual  
15 relationships than there is among heterosexual  
16 relationships.

17 For example, the USA National Lesbian  
18 Family Study was following 73 lesbian families  
19 for a number of years, and between the time that  
20 the child was born and when the child was 10  
21 years old, 45 percent of the relationships had  
22 broken up, among those lesbian parents, whereas  
23 the information presented by the experts earlier  
24 showed that in heterosexual marriages, you'd  
25 expect about a 30 percent breakup rate.

1 Q. Okay. And that information, are you  
2 referring to Dr. Cochran's notes, which she  
3 shared here with us?

4 A. Well, I'm not sure who provided them,  
5 but I have --

6 Q. Well, it should be Dr. Peplau, excuse  
7 me.

8 A. It's these notes here.

9 Q. Okay. So you've had a chance to review  
10 those notes?

11 A. Yes.

12 Q. Okay. And what could you tell me from  
13 your review of those notes?

14 A. They indicate that there's some  
15 differences in stability as a function of race.  
16 There's some differences in stability as a  
17 function of education. There appears to be some  
18 differences as the function of income, as well.

19 Q. Okay. But do they suggest differences  
20 in heterosexual versus homosexual?

21 A. I didn't see anything in these  
22 particular two pages that looked at that issue.

23 Q. Okay. But you've looked at that issue?

24 A. Right.

25 Q. And your findings are, again?

1           A. Well, again, what Gartrell, et al. did  
2           in 2006, they looked at the sisters of these  
3           lesbian parents, to see what their divorce rate  
4           was, and it was about 30 percent over a  
5           12-year-period, and so, basically, it's  
6           borderline statistically significant, if you  
7           equate the 12 years and the 10 years in a  
8           reasonable matter, that would be a statistically  
9           significant difference, because I don't think  
10          it's fair to compare heterosexuals with 12 years  
11          of opportunity to divorce with non-heterosexuals  
12          who only had 10 years of opportunity to divorce.

13                        So to try to equalize the comparison,  
14          the difference would be significant. Otherwise,  
15          it would fall just a little bit short of that.

16                        Larry Kurdek looked at stability of  
17          relationships of couples in a number of studies  
18          and finds that there's a greater level of  
19          instability among gay and lesbian couples. He  
20          specifically said in one article that both, gay  
21          and lesbian couples, are more likely to dissolve  
22          their relationships than heterosexual couples  
23          were.

24                        Q. All right. So in summary -- could you  
25          give me a summary of your findings on this, Dr.

1 Schumm?

2 A. All right. Well, there's actually many,  
3 many, many other studies involved here, but the  
4 general summary is that there's a higher rate of  
5 relationship dissolution among gay, lesbian,  
6 bisexual couples than there is among heterosexual  
7 couples.

8 MR. MOYLAN: Your Honor --

9 THE COURT: Uh-huh.

10 MR. MOYLAN: Your Honor, at this  
11 point, we have no further questions.

12 THE COURT: Okay. Who wants to go next?  
13 Ms. Allen, do have any questions?

14 MS. ALLEN: No. I just have one  
15 question, actually.

16 CROSS EXAMINATION

17 BY MS. ALLEN:

18 Q. Do you think that the rate of breakup  
19 among homosexuals would decrease if they were  
20 allowed to marry?

21 A. It's a good question. There's been some  
22 preliminary studies done looking at the rate of  
23 breakups of people who have married in Vermont  
24 and Massachusetts, and what we find is that the  
25 rates are about the same for those couples who

1 marry, as opposed to heterosexuals in general.

2 The question is, do we have a selection  
3 effect here? In other words, it's like trying to  
4 compare covenant marriages with non-covenant  
5 marriages. Certain types of people are going to  
6 choose covenant marriages that may be different  
7 from the people who don't.

8 So the people who chose to get married,  
9 who are lesbians, gay, bisexual, is a small  
10 proportion of the total population of people in  
11 close relationships.

12 So you have to control for the selection  
13 effect in order to really understand what the  
14 differences are, and I haven't seen anybody  
15 that's controlled for that yet, but I'm looking  
16 forward to the research, to see how it comes out.

17 Q. Okay.

18 A. But it certainly would be desirable, if  
19 marriage allowed people to maintain more stable  
20 relationships.

21 MS. ALLEN: Okay. I have no questions.

22 Thank you.

23 THE COURT: Who wants to go next?

24 MS. BASS: You want me to go?

25 Okay.

1 MS. COOPER: Okay.

2 CROSS EXAMINATION

3 BY MS. BASS:

4 Q. I just have a few questions, Doctor.  
5 You indicated there were differences in stability  
6 rates due to economics and race, for example?

7 A. Yes.

8 Q. As I understand, the information you  
9 were relying on reflected that there was a  
10 difference of 47 percent for African-Americans  
11 versus 32 percent for white non-Hispanics, as far  
12 as predictors of dissolution?

13 A. That's in one study, yes.

14 MR. MOYLAN: You didn't -- Your  
15 Honor, objection. Outside the scope of  
16 direct. He didn't testify to that --

17 THE COURT: Overruled.

18 BY MS. BASS:

19 Q. Are -- Are you suggesting that the State  
20 of Florida should consider preventing  
21 African-Americans from adopting, because they  
22 have the highest dissolution rate in their  
23 relationships?

24 A. Well, that's really an excellent  
25 question, though. I do want to address this

1 issue. I think everybody is concerned with  
2 people who are minorities, that they're subject  
3 to discrimination, and that discrimination can  
4 have adverse effects on minorities. I assume  
5 everybody would agree with that.

6 MR. MOYLAN: You're testifying --  
7 THE WITNESS: Yeah, well, I assume  
8 -- I mean, it's common knowledge that  
9 sociologically the model is minority  
10 status, lack of opportunity, distressing  
11 conditions. That's kind of the sequence  
12 that people assume.

13 Now, there's many factors to keep in  
14 mind when one is looking at this minority  
15 issue. First of all, a person who's  
16 African-American is, generally speaking,  
17 born that way. So as a consequence, they  
18 have no opportunity to change their race.  
19 It's a fixed -- what we call a fixed factor  
20 in sociology.

21 Likewise, gender is a similar thing. If  
22 a person is born biologically female, with  
23 rare exceptions of transsexual surgery or  
24 whatever, generally a person stays female,  
25 or male, whatever they're born. So, again,



1           that's a fixed factor. So race and gender  
2           are fixed minority factors.

3                   Generally what people believe is that  
4           people who are minorities experience  
5           limitations on their opportunity, and those  
6           limitations lead to the distressing  
7           conditions.

8                   Well, what's intriguing about the  
9           literature on sexual orientation is that --  
10          I've got a whole stack of studies here, and  
11          even Census data, people of gay, lesbian,  
12          bisexual sexual orientation, in the vast  
13          majority of studies, have higher levels of  
14          education than other people.

15                   So minorities, based on race and gender,  
16          have lower levels of education, whereas gay,  
17          lesbian, bisexual individuals have higher  
18          levels of education, and generally, not  
19          always, but generally have higher levels of  
20          income and higher levels of occupational  
21          status.

22                   So what that means is, the sociological  
23          model is extremely different. In one model,  
24          the minorities are disadvantaged. In the  
25          other model, they're advantaged.

1                   So that means that you have a condition  
2                   where people who are advantaged are having  
3                   more distressing conditions, which is the  
4                   opposite of what you'd expect. So,  
5                   logically, you expect it to go from minority  
6                   status, to lack of opportunity, to  
7                   distressing conditions, but with sexual  
8                   orientation, we have a minority status that  
9                   goes into higher opportunity, better  
10                  education, and yet more distressing  
11                  conditions.

12                BY MS. BASS:

13                  Q. I'm sorry, Doctor, could you please  
14                  answer my question? My question was simply this,  
15                  are you suggesting that the State of Florida has  
16                  a rational basis to restrict the ability of  
17                  African-Americans to adopt, because they have a  
18                  higher percentage of instability in their  
19                  relationships --

20                  A. No.

21                  Q. -- than Caucasians?

22                  A. No.

23                  Q. You also suggested that second-hand  
24                  smoke was a health risk and that that was somehow  
25                  relevant to the evaluation of homosexuals; is

1           that correct? Is that --

2           A. An elevated conditions of smoking,  
3           according to a number of studies, yes.

4           Q. And so is it your suggestion that that's  
5           a rational basis for the State of Florida to  
6           restrict the ability of homosexuals to adopt,  
7           that they have a higher rate of smoking? Is that  
8           what you're testifying to?

9           A. No. I'd say, by itself, no.

10          Q. Thank you.

11                    You also suggested that mothers who are  
12           depressed don't make as good mothers as those who  
13           aren't depressed? Isn't that what you're  
14           suggesting?

15          A. Yes.

16          Q. Okay. Are you suggesting that because  
17           women have a 41 percent rate of life prevalence  
18           of depression, that the State should be  
19           restricting the ability of women to adopt in this  
20           state?

21          A. No.

22          Q. You suggested that -- you relied on  
23           studies relating to what you believed to be  
24           differential patterns of homosexuality in  
25           children of homosexual parents, correct?

1 A. Please say that again. I --

2 Q. As I understand, you have testified to  
3 your view that there are elevated rates of  
4 homosexual children if they are raised in homes  
5 of homosexual parents?

6 A. Yes.

7 Q. Okay. Now, isn't it correct, Doctor,  
8 that you've made no distinction in those studies  
9 between children who are adopted and children who  
10 are the biological children of those homosexual  
11 parents?

12 A. Relatively few studies have looked at  
13 adopted children. There's only one study I'm  
14 aware of that has compared adopted children of  
15 heterosexual versus homosexual couples.

16 Q. The answer, then, to my question is, no?

17 A. Right. Yes. Yes.

18 Q. That was not something you considered in  
19 opining as to elevated rates of homosexuality of  
20 children raised by gay parents?

21 A. No, no, because the data is not --  
22 there's not much data available on that.

23 Q. Okay. So the answer is, we don't know  
24 whether or not there's an elevated rate of  
25 homosexuality for adopted children raised by gay

1 parents?

2 A. No, because there's no research on it,  
3 that I'm aware of.

4 Q. Thank you.

5 A. Actually, there is research on family  
6 functioning, but not on intergenerational  
7 transmission of sexual orientation.

8 Q. You also talked about elevated rates of  
9 suicide of homosexual children. Now, isn't it  
10 true that none of those studies factor in whether  
11 or not the children were growing up in a home  
12 where their homosexuality was recognized and  
13 not -- where the child was not ostracized for  
14 their homosexuality, correct?

15 A. Right. That's precisely why I mentioned  
16 the Golombok and Tasker research, because that's  
17 one of the studies that did look at that.

18 Q. But none of the rest of them did, did  
19 they?

20 A. No, I don't think so, no.

21 MS. BASS: All right. I have  
22 nothing further.

23 THE COURT: Who's questioning?

24 MS. BASS: Oh, I'm sorry.

25 BY MS. BASS:

1           Q. In the Tasker study, the one that -- the  
2           one study that you did reference, that recognize  
3           or distinguish between the adoptive -- between  
4           the supportive homes versus the homes that were  
5           not supportive of the sexual orientation of the  
6           children, that study found no significant  
7           difference?

8           A. Right. The rates were elevated, but it  
9           wasn't statistically significant, which is what I  
10          said.

11          MS. BASS: Okay. Thank you. I  
12          have nothing further.

13          MS. COOPER: Your Honor, I do have  
14          some questions for cross, but may I  
15          request a short break to confer briefly  
16          with counsel?

17          THE COURT: Okay, but let's talk about  
18          today. This is your last witness?

19          We can spare five minutes. Is that what  
20          you need?

21          MR. ROSENWALD: Yes. That would be  
22          great.

23          MS. COOPER: Thank you.

24          (Thereupon, A brief recess was taken.)

25          THE COURT: Are you ready?

1 MS. COOPER: Yes, Your Honor.

2 Thank you.

3 CROSS EXAMINATION

4 BY MS. COOPER:

5 Q. Good morning, Dr. Schumm.

6 A. Good morning.

7 Q. First, I just want to clarify a few  
8 points about your background and expertise. You  
9 have no degree in psychology; is that correct?

10 A. No.

11 Q. You don't?

12 A. Oh, I have a degree in family studies.

13 Q. You don't have a degree in psychology?

14 A. No.

15 Q. And you don't have a degree in  
16 sociology?

17 A. My degree is family studies.

18 Q. So the answer is that -- that's correct,  
19 you don't have a degree in sociology?

20 A. Yes, that's right.

21 Q. And you're not a social worker; is that  
22 correct?

23 A. No. No.

24 Q. And child development is not one of your  
25 assigned areas in your department at Kansas

1 State; is that correct?

2 A. No. I teach parenting skills, but I  
3 don't teach child development, no.

4 Q. And that's not one of your assigned  
5 areas at Kansas State?

6 A. No.

7 Q. That's correct?

8 A. Yes, that's correct.

9 Q. You do not regularly read the top-tier  
10 journals in the field of child development, such  
11 as the Journal of Child Development and the  
12 Journal of Developmental Psychology; is that  
13 correct?

14 A. No, I do read them.

15 Q. And you regularly read them?

16 A. Because they're relevant to family  
17 studies issues. I read them probably every three  
18 months or something. I don't normally -- I don't  
19 subscribe to them, so I don't get issues.

20 Q. Uh-huh.

21 Is it your testimony that you regularly  
22 read them?

23 A. Well, I try to go over to the library  
24 and browse through the journals and those are  
25 some of the journals I look at when I do that,



1 but it depends on your definition of regularly.

2 Q. Okay. Dr. Schumm, you were deposed in  
3 this case in November of last year; is that  
4 correct?

5 A. Yes.

6 Q. And you gave -- I asked you questions  
7 and you answered them under oath; is that  
8 correct?

9 A. Yes.

10 Q. I'd like to show you a copy of your  
11 deposition.

12 A. Sure.

13 MS. COOPER: I assume you have a  
14 copy.

15 MS. MARTIN: Uh-huh.

16 BY MS. COOPER:

17 Q. And I'd just like to turn your attention  
18 to Page 107, and if you'll look with me -- I'll  
19 wait until you get there.

20 Okay. On Page 107, bottom left corner,  
21 "Question: What are the top-tier journals in the  
22 field of children's development?

23 "Answer: Oh, I'd say -- I would say,  
24 Child Development, Developmental Psychology.

25 "Mr. Gonzalez: Can you repeat that?

1                   "The Witness: Child Development and  
2                   Developmental Psychology.

3                   "Mr. Gonzalez: Thank you.

4                   "By Ms. Cooper: Question: Do you  
5                   regularly review those journals?

6                   "Answer: No, I read them based on  
7                   searches of literature on -- in context."

8                   Did I read that correctly?

9                   THE WITNESS: Uh-huh, yes.

10                  BY MS. COOPER:

11                  Q. Is that your testimony?

12                  Okay. You do -- sorry.

13                  You do not consider yourself to be an  
14                  expert in child development, relative to other  
15                  people who focus entirely on child development;  
16                  is that correct?

17                  A. That's correct.

18                  Q. And you don't consider yourself an  
19                  expert on child welfare policy or practice?

20                  A. No.

21                  Q. You don't?

22                  A. No.

23                  Q. Okay. And you never taught a course on  
24                  child welfare and it's not a major emphasis of  
25                  your classes; is that correct?

1           A. Well, I think I published a paper in a  
2 child welfare journal once, but I don't consider  
3 it a major focus of my classes.

4           Q. Okay. Now, you've talked about the  
5 subject of what you've called excesses of  
6 distressing conditions, and I have a few  
7 questions for you, first about your background  
8 and expertise in those areas.

9                     You never taught any courses on  
10 psychiatric disorders; is that right?

11           A. No, ma'am. No.

12           Q. And in the courses you do teach, you  
13 don't address psychological issues of gay people;  
14 is that correct?

15           A. I generally address relationship issues.

16           Q. So you don't address psychological  
17 issues; is that correct?

18           A. No, I can't say I never address them,  
19 but I generally focus on stability and  
20 satisfaction issues.

21           Q. Uh-huh.

22                     You don't keep up with the  
23 epidemiological research on psychological  
24 disorders and mother -- and other mental health  
25 issues, outside of the military context; is that

1 correct?

2 A. You have to run that one by me again,  
3 because you're tying a couple of concepts  
4 together here.

5 Q. Sure.

6 In general, you don't keep up with the  
7 epidemiological research on psychiatric  
8 disorders; is that correct?

9 A. I've done some work in it, but it  
10 depends on what you mean by keep up with it.  
11 It's not a major focus of what I do normally.

12 Q. You don't consider yourself an expert on  
13 the prevalence of psychiatric disorders in the  
14 population; is that correct?

15 A. I've read some material on that, but I  
16 -- being humble, I try to be careful about  
17 calling myself an expert in too many different  
18 things, but --

19 Q. Uh-huh.

20 A. -- most people would probably say that  
21 wasn't my main area of expertise.

22 Q. Now, you've never taught any courses on  
23 substance abuse; is that correct?

24 A. No, I haven't.

25 Q. And in the courses you do teach, you

1 don't address substance abuse by gay people; is  
2 that correct?

3 A. No, I don't. I focus on relationship  
4 issues when I teach courses.

5 Q. Uh-huh.

6 And substance abuse is normally not a  
7 focus of your research; is that correct?

8 A. No.

9 Q. Okay. No, it's not a focus?

10 A. No, right. No, it's not a focus.

11 Q. Uh-huh.

12 And you don't consider yourself an  
13 expert on substance abuse; is that correct?

14 A. No.

15 Q. That's not correct, or, no you don't --

16 A. No, I don't.

17 Q. Okay. I'll try to ask it the opposite  
18 way, to make that easier.

19 And you're not aware of any demographic  
20 differences in substance abuse rates, other than  
21 sexual orientation differences; is that correct?

22 A. No, I'm aware there's -- there are  
23 racial differences and some gender differences in  
24 those areas.

25 Q. Okay. And prior to working on this

1 case, being retained by the State to work on this  
2 case, smoking was not -- smoking rates was --  
3 that was not an issue that you had studied or  
4 kept up with; is that right?

5 A. Other than just my concern about  
6 second-hand smoke and children, it wasn't.

7 Q. Uh-huh.

8 But in terms of demographic rates, rates  
9 of smoking among demographic groups --

10 A. Well, no, I didn't pay much attention to  
11 that.

12 Q. I think you have to speak up a little  
13 bit. Thanks.

14 And you haven't studied what predicts  
15 smoking demographically; is that correct?

16 A. No.

17 Q. Okay. This is just an issue you looked  
18 at for purposes of this case?

19 A. It's just one of the topics of  
20 distressing conditions that a number of people  
21 have looked at, and I was trying to assess the  
22 literature in that area.

23 Q. And you did that for purposes of this  
24 case?

25 A. In terms of smoking, yes.

1           Q. Okay. And am I correct that at the time  
2 of your deposition in November, you said that  
3 you, quote, haven't thought about smoking as a  
4 basis for exclusion of people from adopting?

5           A. Right. That's right.

6           Q. Now, as for the studies that you read on  
7 the topic of excess of distressing conditions  
8 among gay people compared to heterosexuals, in  
9 the full range, with respect to psychological  
10 disorders and substance abuse and suicide, things  
11 like that that you've been discussing, is it true  
12 that most of them you first looked at in late --  
13 late July or August of 2007, after being retained  
14 in this case?

15          A. No, because I think -- a lot of them,  
16 that's true, and a lot of them hadn't been  
17 published until after that, because some of the  
18 studies are recent, but I know I looked at some  
19 of those issues for the Lofton case. At the very  
20 least, other people presented them at that  
21 conference.

22                    So I had exposure to those issues prior  
23 to this case.

24          Q. I understand that you had exposure to  
25 the issue, but my question had to do with studies

1           that you've read, and I'd like to turn to Page  
2           320 of your deposition.

3           A. Uh-huh.

4           Q. And on Line 15, "Question: Okay, and  
5           these studies and others that you may have looked  
6           at on the topic of excess of distressing  
7           conditions -- I'll use that shorthand if that's  
8           okay -- when did you first look at these studies?

9                     "Answer: Most of them, I first looked  
10           at after -- you know, sometime in probably late  
11           July or August.

12                    "Question: After you were retained in  
13           this case?

14                    "Answer: Uh-huh.

15                    "Question: Out loud.

16                    "Answer: Yes."

17                    THE WITNESS: And that's true,  
18           because most of them I probably did, but  
19           some of them were looked at before.

20           BY MS. COOPER:

21                    Q. Okay. Now, a number of authors of  
22           scholarly journal articles in the area of the  
23           disparate rates of these distressing conditions  
24           of psychiatric disorders, et cetera --

25                    A. Yes.



1 Q. -- a number of authors believe that  
2 minority stress explains a substantial portion of  
3 the excess of distress conditions experienced by  
4 gay people; is that right?

5 A. Yes. Yes.

6 Q. And -- you have said, this is widely  
7 believed by scholars, correct?

8 A. Yes.

9 Q. But you would like to be able to  
10 disprove this and prove that the higher rates of  
11 distress among gay people are not the results of  
12 homophobia; is that correct?

13 MR. MOYLAN: Objection, Your Honor.

14 Not -- it's not within the scope of  
15 direct. I don't remember the word  
16 homophobia or even anything close to  
17 that.

18 THE COURT: Overruled.

19 BY MS. COOPER:

20 Q. So -- I'm sorry, I --

21 A. Well, I would say it's -- it's an  
22 interesting issue that deserves some attention.  
23 I have noted there are some studies that have  
24 looked at that issue.

25 Q. Well, let me repeat the question, in

1 case -- sorry that I distracted you by looking  
2 for files.

3 The question was, you would like to be  
4 able to disprove this minority stress hypothesis  
5 and prove that the higher rates of distress among  
6 gay people are not the result of homophobia; is  
7 that correct?

8 A. Well, I have a vague recollection I  
9 wrote an e-mail to that effect at one point in  
10 time, but my general concern is to test  
11 hypotheses that I think are relevant, and that's  
12 what I like to do.

13 Q. Well, let's show you that e-mail I think  
14 you may be thinking about. I'd like to show you  
15 a document bearing Bates Number 5476, for  
16 identification.

17 Here you go, Dr. Schumm.

18 Dr. Schumm, is this an e-mail you wrote  
19 to George Rekers in May of 2006?

20 A. I believe it is.

21 Q. Yeah, and I -- actually, I should  
22 clarify that I'm referring to the bottom half of  
23 this page. And if you will look with me in the  
24 part that's your e-mail, I'm going to refer to --  
25 well, I'll read the whole thing, just for

1 clarity.

2 "George, I went through your paper.  
3 Very well done, though I am surprised they have  
4 agreed to publish something so long. I felt bad  
5 about mine being 47 pages long.

6 "My only fear is that gays will argue  
7 that gays are only worse off because of the  
8 effects of homophobia, and if we all just, quote,  
9 accepted them -- accepted, close quote, them,  
10 then their conscience wouldn't hurt and they  
11 would have high self-esteem, et cetera, et  
12 cetera. It would be so neat to find a study with  
13 controls for perceived discrimination and then  
14 show differences persisted despite controlling  
15 for the discrimination."

16 I'll stop there. The e-mail goes on,  
17 but that's the relevant passage.

18 A. Right.

19 Q. Did you write that to George Rekers?

20 A. Yes, uh-huh.

21 Q. Okay. Thank you.

22 Now, in your manuscript that you  
23 discussed today, with the title Distressing  
24 Conditions and Comorbidity and it went on -- let  
25 me see if I can read the whole title, Distressing

1           Conditions and Comorbidity Among Bisexual,  
2           Homosexual and Heterosexual Identified Men,  
3           Evidence from the 2002 National Survey of Family  
4           Growth --

5           A. I didn't discuss that today.

6           Q. Oh, that wasn't the one you discussed  
7           today?

8           A. No.

9           Q. All right. Well, let's -- let's discuss  
10          it briefly.

11          A. No, this is the manuscript I discussed  
12          today.

13          Q. Okay. Well, I'd like to ask you --

14                 MR. MOYLAN: Objection, Your Honor.  
15                 Outside of the scope of direct.

16                 MS. COOPER: Your Honor, he's been  
17                 discussing distressing conditions as an  
18                 opinion.

19                 THE COURT: I'll allow it.

20          BY MS. COOPER:

21                 Q. Well, first of all, I do want to clarify  
22                 that both the article -- or the manuscript that  
23                 you're referring to, with the title, Distressing  
24                 Conditions, as well as the one I just identified,  
25                 with the longer title, Distressing Conditions and

1 Comorbidity, et cetera, both of these were  
2 manuscripts that you prepared for purposes of  
3 this litigation; is that correct?

4 A. Yes.

5 Q. Okay. And they have not been published  
6 in journals?

7 A. No.

8 Q. Okay. Now, in the manuscript that I'm  
9 referring to, with the longer title, Distressing  
10 Condition and Comorbidity, et cetera, for  
11 shorthand, you wrote that the National Survey of  
12 Family Growth found racial difference in rates of  
13 distressing conditions; isn't that correct?

14 A. There were differences between Asians  
15 and African-Americans and Whites --

16 Q. Uh-huh.

17 A. -- in terms of percentages, yes.

18 Q. And you also found that there were  
19 religious differences in rates of distressing  
20 conditions; is that right?

21 A. Yes.

22 Q. Uh-huh.

23 Okay. As well as gender differences?

24 A. No, I didn't -- I only -- this is only  
25 assessed for men. It wasn't assessed for women.

1 Q. Okay. But you agree that women are more  
2 vulnerable to depressive effect and eating  
3 disorders than men; isn't that correct?

4 A. Women are more -- the research I've seen  
5 suggests that women are more vulnerable to  
6 affective disorders, but men are actually more  
7 vulnerable to other psychiatric disorders.

8 Q. Okay. And you agree that the stress of  
9 low socioeconomic status is associated with some  
10 distressing conditions, correct?

11 A. And, actually, it's sort of surprising.  
12 It varies a little bit. You'd think most of the  
13 time it would be, but it's -- it depends on the  
14 specific condition and it sometimes interacts  
15 with gender and age and some other factors.

16 Q. Uh-huh.

17 Now, at the time of your deposition, you  
18 didn't know if gay people had higher or lower  
19 rates of, say, drug abuse than Native Americans;  
20 is that right?

21 A. No.

22 Q. You didn't know?

23 A. No, I didn't know. I still don't know.

24 Q. Okay. And you don't know whether gay  
25 people have the highest rate of smoking, compared

1 to other demographic groups, as such as racial  
2 and religious groups?

3 A. No.

4 Q. No, you don't know?

5 A. No, I don't know.

6 Q. Now, in this piece of manuscript called  
7 Distressing Conditions and Comorbidity, et  
8 cetera, you looked at findings from the National  
9 Survey of Family Growth; is that correct?

10 A. Yes.

11 Q. And you identified in this manuscript a  
12 number of distressing conditions that -- that  
13 were evaluated by that National Survey of Family  
14 Growth; is that right?

15 A. Well, what I did was, I summarized a  
16 number of them, to create a measure of whether  
17 there were any of these conditions or not, and,  
18 then, using that binary difference, I looked at  
19 how that varied as a function of race and  
20 religious differences.

21 Q. Understood.

22 Now, in that manuscript, some of the  
23 distressing conditions that you identified and  
24 evaluated were drug use; is that correct?

25 A. I'll have to double-check. I think that

1           may have been in there. Let me check. Yes, that  
2           was one of them.

3           Q. Okay. And one of the factors, and there  
4           were a number of them that you included, and one  
5           of the factors that you included as a, quote,  
6           distressing condition, was ever having had anal  
7           sex?

8           A. Yes.

9           Q. And you consider Susan Cochran a leading  
10          researcher on the disparities and distressing  
11          conditions between heterosexual and gay people;  
12          is that right?

13          A. That's one of them, yes.

14          Q. Uh-huh.

15                 And you've cited work by Dr. Cochran in  
16          support of your opinions on this subject; isn't  
17          that right?

18          A. Yes.

19          Q. I want to ask you some questions about a  
20          different topic.

21                 Now, you testified about the issue of  
22          relationships, couple relationships?

23          A. Yes.

24          Q. You agree that some same-sex couples  
25          succeed in maintaining long-term sexually



1 faithful relationships, even without the  
2 institutional support of legal marriage; isn't  
3 that correct?

4 A. Some do.

5 Q. Uh-huh.

6 Larry Kurdek is a respected researcher  
7 in the field?

8 A. Yes.

9 Q. And Kurdek, in his research, he found  
10 that gay couples without children and  
11 heterosexual married couple without children had  
12 comparable rates of relationship dissolution,  
13 didn't he?

14 A. I have to double-check my paper. I know  
15 the problem with his research was that he didn't  
16 have couples with children that were gay, lesbian  
17 or bisexual. So he didn't actually have a  
18 comparison of them with couples with children.

19 Q. So you don't know the answer to my  
20 question, then?

21 A. Not unless I double-check what he wrote  
22 earlier.

23 Q. Okay. Okay. You agree that  
24 African-Americans have higher relationship  
25 breakup rates than other races, correct?

1 A. Yes.

2 Q. And there is evidence that couples who  
3 differ in terms of religious commitments have  
4 elevated divorce rates, correct?

5 A. Yes.

6 Q. In fact, intergenerational transmission  
7 -- well, not, in fact, a separate point,  
8 intergenerational transmission of divorce,  
9 meaning, if your parents are divorced, you're  
10 more likely to get divorced, that's, in your  
11 view, an established fact; is that correct?

12 A. Yes.

13 Q. And those who marry at younger ages have  
14 higher divorce rates, correct?

15 A. Yes.

16 Q. Indeed, age at marriage is generally  
17 considered to be the best predictor of the  
18 likelihood of breakup, correct?

19 A. It's the best demographic predictor, at  
20 least.

21 Q. Uh-huh.

22 And the probability of divorce is as  
23 high as 80 percent for those who marry at a very  
24 young age, correct?

25 A. The number -- under the age of 15.

1           Q. Okay. And you don't know whether  
2 African-American couples or gay couples have  
3 higher breakup rates, correct?

4           A. Well, to assess that precisely, I think  
5 you need to know what the breakup rates were of  
6 African-American gay couples versus  
7 African-American non-gay couples, and off the top  
8 of my head, I'm not aware of research that's  
9 looked at that.

10          Q. So you don't know the answer to that  
11 question?

12          A. No, I don't know precisely. I'd like to  
13 be able to answer it.

14          Q. Dr. Schumm, you agree there are a number  
15 of factors that are recognized as predictors of  
16 stable couple relationships, as such couples who  
17 have good ability to resolve conflict  
18 constructively, good communication skills, more  
19 homogeneity in things like values, education and  
20 religion, less stress and more positivity,  
21 generally those couples do better, in terms of  
22 stability; is that correct?

23          A. Yes.

24          Q. And these are qualities that any dyadic  
25 relationship, gay or heterosexual, could have; is

1           that correct?

2           A.   Yes.

3           Q.   And having children is associated with  
4           increased couple stability, correct?

5           A.   Increased couple stability, sometimes  
6           decreased couple satisfaction.

7           Q.   Okay.  I want to ask you some questions  
8           now about the issue of the sexual orientation of  
9           the children of gay parents, a subject you  
10          testified about.

11          I first want to talk about your  
12          background in this area.  You haven't addressed  
13          the origin or etiology of sexual orientation in  
14          any of your classes; is that correct?

15          A.   Well, I've -- I think I've addressed it,  
16          in terms of research questions on it, but  
17          normally I have not historically addressed it in  
18          most of my classes.

19          Q.   And in your view, that's a developmental  
20          issue and you leave that to the developmental  
21          courses, right?

22          A.   Well, to some extent.  I mean, there's  
23          -- there are factors that do predict the  
24          development of sexual orientation, but -- so I  
25          could address those as an expert witness, if you

1           wanted me to, but I haven't been asked to do it,  
2           so --

3           Q. No, but I'm asking about your  
4           background. I'm asking about your background in  
5           this area. Is it not your view that origin or  
6           etiology of sexual orientation is a developmental  
7           issue that you would leave to the developmental  
8           courses?

9           A. Generally speaking, I'd say that's  
10          probably true, but I can't say I've never  
11          addressed it in a class.

12          Q. Okay. And you haven't published any  
13          papers that address the issue of sexual identity  
14          development; is that correct?

15          A. I don't remember any off the top of my  
16          head, no.

17          Q. Okay. Let me switch gears and talk a  
18          little about -- about some of your testimony on  
19          this topic of the sexual orientation of children  
20          of gay parents.

21                 You discussed an analysis of 10 popular  
22          books on children of gay parents?

23          A. Yes.

24          Q. Is that right?

25          A. Yes.

1           Q. And popular books, is that a fair  
2           characterization?

3           A. Yes.

4           Q. These aren't books that were written by  
5           scientists; is that right?

6           A. No.

7           Q. And -- and most of these books you read  
8           for the first time since you retained -- you were  
9           retained to be an expert witness in this case; is  
10          that right?

11          A. Well, I'm not sure of the exact timing.  
12          I started working on that project when I saw that  
13          Cameron had published a paper in the Journal of  
14          Biosocial Science, and I thought that it could be  
15          addressed, and I can't remember what -- the  
16          timing of that versus the case. It's probably  
17          after the case, but it depends on when that paper  
18          came out.

19          Q. Uh-huh.

20                 If you'll turn with me to Page 393 of  
21          your deposition transcript.

22          A. Uh-huh.

23          Q. Okay. And I'd like to call your  
24          attention to Line 5. There's a -- in the  
25          question, there's something unrelated, off point,

1 and I'll skip to the second sentence.

2 "Question: Before you were retained on  
3 this case, had you read any of these books," and  
4 the books that you were discussing at that point  
5 were -- were these series of books.

6 "Answer: -- "

7 MR. MOYLAN: At this point, I'm not  
8 clear, Your Honor, what books we're  
9 talking about.

10 MS. COOPER: Okay.

11 THE COURT: Those 10 books --

12 MR. MOYLAN: Within the deposition,  
13 it's unclear to me.

14 THE COURT: Oh, okay.

15 BY MS. COOPER:

16 Q. I'm happy to clarify. If you'll turn  
17 with me to Page 392, which is just on the same  
18 piece of paper, higher up. I'm happy to read  
19 through it, but --

20 A. Well, obviously I had read those books  
21 at the deposition. What I'm not sure about is --  
22 because I can't -- it's been a long time, I can't  
23 remember exactly when I read them versus when I  
24 was retained on the case.

25 Q. All right. And in the -- on Page 390 --

1           A. It was obviously after Cameron published  
2 his paper, but --

3           Q. Uh-huh.

4                   And the books that were discussed on  
5 Page 392, if you'd look along with me, am I  
6 right, were books by Howey & Samuels, Gottlieb,  
7 Rafkin, Asten, these are -- these are the books  
8 you were discussing that are the narrative books?

9           A. Yes, right. That's correct.

10          Q. Okay. Now, going back to Page 393, Line  
11 5, or I should say, Line 6, second sentence of  
12 the question, "Before you were retained on this  
13 case, had you read any of these books?"

14                   "Answer: Well, I can't guarantee I  
15 haven't read a couple of them, that are early  
16 books, but most of them I haven't read, because I  
17 had to get them through interlibrary loans, they  
18 don't even have them in our library."

19                   Was that your testimony?

20          A. Well, for sure some of them I hadn't  
21 read -- I mean, what I take this to mean is, I  
22 think I read some of them before, but some of  
23 them I think I probably read after, but exactly  
24 how that ties in with the date of testimony is  
25 pretty vague in my mind.



1 Q. Okay. But the testimony here, I read  
2 accurately? That's your testimony?

3 A. Well, no, I mean, those are accurate  
4 statements there --

5 Q. Okay.

6 A. -- but I'm not sure that that says  
7 exactly when I found all of them, particularly in  
8 reference to when I was retained.

9 Q. Okay. And in these various books,  
10 narrative books, I'll use that shorthand --

11 A. Right.

12 Q. -- the authors -- authors of these books  
13 do not claim that their samples are  
14 representative; is that correct?

15 A. No.

16 Q. They don't claim that?

17 A. No, they don't claim it.

18 Q. Now, you would agree that it's not  
19 widely accepted with any -- within any scientific  
20 field that there's an intergenerational  
21 transmission of gay orientation from parent to  
22 child; is that correct?

23 A. Well, the problem there is, I think the  
24 general -- if you look at the consensus over the  
25 past 20 years, that's probably a fair statement.



1 with that, given the exceptions that I noted, in  
2 terms of people, including Dr. Peplau, who seem  
3 to be -- and Dr. Patterson, who seem to be sort  
4 of hedging their bets on it lately, in the more  
5 recent years.

6 Q. Uh-huh.

7 But you would -- you would agree that  
8 the view is generally rejected within the  
9 scientific field?

10 A. Yes.

11 Q. Okay. And the American Psychological  
12 Association had made -- has made statements to  
13 that effect, correct?

14 A. Well, I don't know for sure, because I  
15 haven't had their documents in front of me. I  
16 wouldn't be surprised if they did, but -- well --  
17 and so I bet that they did, but I can't swear to  
18 it, because I don't know for sure.

19 Q. Uh-huh.

20 Switching gears a little bit. Dr.  
21 Schumm, is it true that other groups, besides gay  
22 people, experience prejudice in society?

23 A. Yes.

24 Q. And --

25 MR. MOYLAN: Objection, Your Honor.

1 He didn't testify to this, and the  
2 relevance, for that matter.

3 MR. MOYLAN: I thought he touched  
4 on the topic of stigma in his testimony.

5 THE COURT: We did. I'm going to allow  
6 this line of questioning.

7 MR. MOYLAN: I only have two  
8 questions, Your Honor, if I may -- or,  
9 actually, only one more.

10 BY MS. COOPER:

11 Q. And other groups who experience  
12 prejudice, their children may experience teasing  
13 because of that; is that correct?

14 A. Yes.

15 Q. Okay.

16 A. I mean, that's an example of one type of  
17 discrimination. I'm not going to say it's the  
18 only.

19 Q. Now, you've talked about the research on  
20 outcomes for children raised by gay parents. You  
21 talked about statistical re-analysis you've done,  
22 and other comments on the body of research, so I  
23 have some questions on that topic.

24 A. Yeah.

25 Q. Dr. Schumm, convenience samples are

1 frequently used in psychological research; is  
2 that correct?

3 A. Well, it depends what you mean by  
4 "frequently." They have been used. A number of  
5 the -- particularly the early studies, dealing  
6 with sexual orientation, used convenience  
7 samples, because they had to, to get a reasonable  
8 number of subjects for the study.

9 Q. And in your view, is the Gay Parent  
10 Family Research the only body of psychological  
11 research that uses convenience samples?

12 A. No, other people use it, as well.

13 Q. It's used in other areas?

14 A. Yes.

15 Q. Okay. And it's not your view that  
16 the -- particularly the more recent research on  
17 gay parent families is meaningless, is it?

18 A. No, I think, if I remember right, I said  
19 at the deposition that the research has actually  
20 improved over time and they're using more random  
21 samples, as opposed to convenience samples.

22 Q. And in your view, some of the studies  
23 done in the last decade especially, on gay parent  
24 families, are of insufficient quality to merit  
25 publication in the top journals in the field; is

1           that correct?

2           A. Well, that's an opinion question.

3           Q. But that is your opinion, isn't that  
4           correct?

5           A. Well, a lot of studies get published  
6           that have limitations to them, and so --

7           Q. But, Dr. Schumm, that wasn't my  
8           question. My question is whether, in your view,  
9           some of the studies done in the last decade on  
10          gay parent families are of sufficient quality to  
11          merit publication in top journals in the field?

12          A. And then my response is, there are some  
13          studies which may not be of sufficient quality to  
14          merit publication, but sometimes, just because  
15          the area is new, they probably ought to be  
16          published, just to get people thinking about  
17          things, so --

18          Q. Can I call your attention to Page 553 of  
19          your deposition transcript? Do you have your --  
20          do you have a copy in front of you?

21          Okay. Well, you can check it if you'd  
22          like. I'll read it first and you can check it  
23          later, if you need to, but the question is on  
24          Line 22 of Page 553, "Question: Do you think  
25          that the quality of the research and the better

1 studies on gay parent families in the last --  
2 well, since 1995, do you think that the quality  
3 of the methodology is sufficient to be published  
4 in the top journals in the field?"

5 "Answer: Well, that depends on the  
6 given article. I think at least some of them  
7 are."

8 Q. Is that your testimony?

9 A. Fine. I think there's articles that  
10 deserve to be published, but that doesn't mean I  
11 necessarily agree with what they did  
12 methodologically, but I'm not saying they  
13 shouldn't be published, 'cause I disagree with  
14 their methodologies."

15 Q. And in your view, there's no such thing  
16 as a perfect study; is that correct?

17 A. Not unless you have a lot of money.

18 Q. Okay. So the answer is --

19 A. Practically speaking, no.

20 Q. Okay. And it's probable that any given  
21 study will have limitations; is that correct?

22 A. Very likely.

23 Q. And virtually anyone's research may not  
24 be optimal methodologically, correct?

25 A. Yes.

1 Q. Uh-huh.

2 Now, you wrote a piece called  
3 Non-Marital Sexual Behavior; is that correct?

4 A. Now, this the 1983 piece or '84 or  
5 something.

6 Q. That's something you authored?

7 A. Yes.

8 Q. Okay. And in that publication, you  
9 wrote that "Given the probability that any one  
10 study will have some limitations, it is easy for  
11 opponents to find something flawed in almost any  
12 study," and then you set out the basis for  
13 discrediting it, "Even if the opponents are  
14 motivated largely by their values" -- "value  
15 biases, rather than by a neutral desire to see  
16 research improve"? Is that the --

17 A. That's true, yes.

18 Q. Okay. Is it the convention among social  
19 scientists to report non-statistically  
20 significant differences?

21 A. It depends. Susan Cochran, for example,  
22 in one of her papers, she reported a "P" level of  
23 .06, and she was discussing what she did.  
24 Generally people -- it depends. If you're -- if  
25 it's exploratory research, you can oftentimes go



1 to "P" less than .10. If you have a one-sided  
2 hypothesis, then you can cut your significance  
3 level in half, so it effectively becomes "P" less  
4 than .10.

5 So there's a kind of wiggle room between  
6 .05 and .10, depending on whether it's a  
7 one-sided hypothesis or whether it's exploratory  
8 research.

9 Past .10, you're getting into things  
10 which could be considered trends.

11 Now, I'll confess, I'm a little  
12 idiosyncratic, because I will sometimes report  
13 stuff that is .15 or .20, because I think --

14 Q. Meaning it's a smaller difference?

15 A. Right, because I think that that can be  
16 useful to the reader, particularly if you're  
17 dealing with small samples, because sometimes, if  
18 you have very small samples, the power is so low  
19 statistically that you almost never find results  
20 of a significance at the .05 level, because  
21 there's such a small number of cases.

22 Q. So you -- you would demand a smaller --  
23 that smaller differences be reported than  
24 actually the convention in the field?

25 A. I wouldn't demand anything. I'm just

1 saying, it depends on the situation that you're  
2 dealing with. I mean, I'm not in a position to  
3 demand anything.

4 Q. You have said that you don't trust Paul  
5 Cameron's research so much; is that correct?

6 A. Yes.

7 Q. Psychological Reports is a journal that  
8 charges a page cost, right? You have to pay for  
9 publication, correct?

10 A. For the record, so does the proceedings  
11 in the National Academy of Sciences and BMC  
12 Medicine and a number of other major journals.

13 Q. The answer is, yes, though?

14 A. Yes, they do, and that's fine.

15 Q. All right. In your view, it's  
16 considered a third-tier journal, out of three  
17 tiers, at your Department at Kansas State?

18 A. Well, the department considers it to be  
19 that. I actually did some research on it, to  
20 test that hypothesis.

21 Q. Does your department consider it to be a  
22 third-tier journal, out of three --

23 A. Yes, the department does.

24 Q. Okay. And the articles that -- on the  
25 statistical re-analysis that you have had

1 published on the body of research looking at --  
2 or some of the studies looking at gay parent  
3 families, those were all published in  
4 Psychological Reports?

5 A. Yes.

6 Q. Okay.

7 A. Except for the St. Thomas Law Review.

8 Q. And that's a law journal, correct?

9 A. Yes.

10 Q. That's not a scientific journal,  
11 correct?

12 A. I don't know how lawyers evaluate it.

13 Q. Okay. And a number of Paul Cameron  
14 studies have been published in Psychological  
15 Reports, correct?

16 A. Right, and he also published, I believe,  
17 in Adolescence and Journal of Biosocial Science.

18 Q. But the bulk of his studies were  
19 published in Psychological Reports, correct?

20 A. I think so, but I have not counted them  
21 up.

22 Q. Uh-huh.

23 Have you ever submitted papers on --  
24 looking at the research on gay parent families?  
25 Have you ever submitted such papers to journals

1 for publication and had them rejected?

2 A. Well, the truth of the matter is that  
3 the 10 books narrative paper I submitted to the  
4 Journal of Biosocial Science, and -- they  
5 actually sent me an e-mail rejecting it, but I  
6 didn't see the e-mail. So, then, when I didn't  
7 get the criticisms of the reviewers back, I said,  
8 "Well, I want to see the criticisms of the  
9 reviewers."

10 So then I revised it, based on the  
11 criticisms of the reviewers, and sent it back, at  
12 which point they accepted it. I kind of reversed  
13 their rejection letter, and then took it under  
14 review, and so that's where it is right now,  
15 because they wanted me to analyze the data from  
16 those books, in terms of family level factors,  
17 which I'm working on. So it's still in a revise  
18 and resubmit, but I confess that only is because  
19 I didn't read the e-mail that they had rejected  
20 it.

21 Q. Apart from that one study, have you ever  
22 -- or that one paper, have you ever had other  
23 submissions on this topic of gay parent families  
24 rejected by any journal?

25 A. Now, what occurs to me is, I -- I had

1           some reviewers that wanted to reject the paper I  
2           did on Psych Reports on the relationships with  
3           the lesbian satisfaction, and somebody said it  
4           should be rejected, because they said I was too  
5           pro-homosexual and I was biased against children,  
6           and so they wanted to reject it for that reason,  
7           but the editors overrode the objections of that  
8           reviewer.

9           Q.    You're aware that the American  
10           Psychological Association has recognized that the  
11           scientific research shows that gay and  
12           heterosexual people make equally good parents,  
13           correct?

14           MR. MOYLAN:  Objection, he didn't  
15           testify to that.

16           THE WITNESS:  I need you -- I need  
17           you to read that again, if you could.

18           BY MS. COOPER:

19           Q.    Sure.  You are aware, are you not, that  
20           the American Psychological Association has  
21           recognized that the scientific research shows  
22           that gay and heterosexual people make equally  
23           good parents?

24           MR. MOYLAN:  Objection, outside the  
25           scope.

1 THE COURT: I'm going to allow it.

2 BY MS. COOPER:

3 Q. You can answer.

4 A. Oh, okay. I wasn't sure what that  
5 meant.

6 Well -- well, I have not read the  
7 original documents from the American  
8 Psychological Association, so it's sort of  
9 hearsay to me, but I believe that's probably what  
10 they've done.

11 Q. That's your understanding?

12 A. That's my understanding.

13 Q. And is it your -- you're also aware that  
14 the -- this is the same -- excuse me, I'll start  
15 that again.

16 Are you also aware that this is the  
17 position of the American Academy of Pediatrics?

18 A. Same situation. I haven't -- I'm not  
19 sure I read their original documents, but that's  
20 my opinion of what they said, yes. I believe  
21 that's what they said.

22 Q. Uh-huh.

23 And in your view, on this issue -- well,  
24 actually, let me back up.

25 You also understand this to be the

1 position of the National Association of Social  
2 Workers; is that correct?

3 MR. MOYLAN: Objection, Your Honor,  
4 lack of foundation.

5 THE COURT: What's your foundation?

6 MS. COOPER: Your Honor, he's  
7 testifying about the well-being of  
8 children of gay parents, and I think the  
9 professional associations, in the  
10 relevant field, their views are relevant  
11 to his opinion.

12 MR. MOYLAN: Your Honor, he  
13 testified that he's not read or wasn't  
14 aware to his understanding of these  
15 things.

16 THE COURT: Well, but let's answer the  
17 question. Go ahead.

18 THE WITNESS: I mean, I haven't  
19 read the original documents from the  
20 National Association of Social Workers.  
21 I have read other articles that say that  
22 they have taken these positions, and I  
23 have no reason to doubt that they've  
24 taken those positions.

25 BY MS. COOPER:

1 Q. Uh-huh.

2 So on this issue of the well-being of  
3 children of gay parents, you feel like you're,  
4 quote, taking on the entire world, just about,  
5 close quote, isn't that right?

6 A. Well, in the deposition I called it a  
7 David and Goliath situation, if I remember.

8 Q. And that you're the David on this; is  
9 that correct?

10 A. Right.

11 Q. Uh-huh.

12 Because the rest of the scientific  
13 community disagrees with you?

14 A. Right, but, see, the thing is, I'm the  
15 only person that has the 2,847 cases of data in  
16 my computer, of which I've been able to do an  
17 analysis of 26 studies, so that creates a  
18 different situation than just being some strange  
19 gentleman trying to, you know, be the John Brown  
20 of the Civil War or something. So I'm trying to  
21 make my points based on data, and I recognize  
22 that that's not conventional, but I would submit  
23 that Donald Rumsfeld didn't like me either,  
24 because my positions on Anthrax weren't  
25 conventional either, but they eventually lost



1           that lawsuit, partly because I was able to show  
2           that they were essentially lying about some of  
3           their statistics on the Anthrax vaccine.

4           Q.   And switching gears a little bit, Dr.  
5           Schumm, you agree that some gay people can make  
6           good parents; isn't that right?

7           A.   Yes.

8           Q.   And you agree that some children of gay  
9           parents can be healthy and well-adjusted; is that  
10          right?

11          A.   Yes.

12          Q.   And you agree that it's possible that  
13          there are some children for whom being adopted by  
14          their gay foster parent would be beneficial,  
15          right?

16          A.   Well, I -- I don't know if that's a  
17          scientific fact, but my personal opinion is, yes.

18          Q.   Uh-huh.

19                 And you could think of situations in  
20          which a particular child's best interest would be  
21          undermined by the blanket exclusion of gay people  
22          from adopting; is that right?

23          A.   That's a little more complex question.  
24          I mean, it's a hypothetical type question.  And  
25          it's a current reverse of the previous question,

1 in a sense. So I'd say that is a possibility.

2 Q. Uh-huh.

3 And you agree that if Florida didn't  
4 have a ban on adoption by gay people, that there  
5 would be the benefit that some gay parents could  
6 adopt and benefit children; is that correct?

7 A. Well, it's a possibility. It's -- it's  
8 a little risky, because the paper by Ramona  
9 Oswald that was published recently looked at the  
10 527 gay people in Illinois, and they only found  
11 five, out of that whole bunch, that appeared to  
12 have children. They went through, and they were  
13 biological children, and we're talking a very  
14 small percentage of things here, but, you know,  
15 just from a logical perspective, you could -- if  
16 you only found one person in Florida that was  
17 willing to adopt, you'd have to agree with the  
18 statement, so --

19 Q. I understand.

20 And you believe it's appropriate to  
21 allow gay people to be considered as foster  
22 parents, right?

23 A. Yes. I mean, it's irrelevant, because  
24 Florida law says that they can.

25 Q. Uh-huh.

1                   And in your view, the trouble with  
2                   answering the question of whether there's a basis  
3                   to bar children from being adopted by their gay  
4                   foster parents is that, quote, "Everything  
5                   probably depends on the circumstances of each  
6                   case, regardless of the sexual orientation  
7                   issues," is that right?

8                   A. You'll have to run that one by me again.

9                   Q. Sure.

10                  At your deposition, I had asked you  
11                  about whether there's a basis to bar children  
12                  from being adopted by their gay foster parents,  
13                  and -- and your response was, "It's hard to  
14                  answer that question, because everything probably  
15                  depends on the circumstances of each case,  
16                  regardless of the sexual orientation issues"?

17                  A. Well, my view is that in an ideal world,  
18                  probably everything would be handled on a case by  
19                  case basis, and we didn't need -- we didn't even  
20                  need legislatures, we'd just get 10,000 more  
21                  judges and they'd all handle everything on their  
22                  own particular case. So ideologically that's  
23                  kind of my position.

24                  In the real world, we don't have enough  
25                  judges to do that, and so legislatures, I

1 believe, are entitled to make laws that in some  
2 cases may be more restrictive than my ideal view  
3 of the world.

4 Q. I'd like to just read from your  
5 deposition, on Page 182.

6 "Question: So in your view, to go back  
7 to my question about whether there's a basis to  
8 bar the adoption by the foster parent who has  
9 been raising the children for some time, would  
10 that depend on the circumstance of each case?

11 "Answer: Well, I don't know that. The  
12 trouble with trying to answer that question is  
13 that everything probably depends on the  
14 circumstances of each case, regardless of the  
15 sexual orientation issue."

16 Did I read -- was that your testimony?

17 A. Yeah.

18 Q. Okay.

19 THE COURT: Can I Interject?

20 So your -- is it your opinion that a  
21 case-by-case determination by the judiciary  
22 is appropriate? Is that correct?

23 THE WITNESS: Well, if you want to  
24 know my idealistic position, and this is  
25 constrained by reality, my idealistic

1 position would be that the state  
2 legislature could say that convicts and  
3 very old people or certain categories of  
4 people, they would write a law saying,  
5 "Well, these people shouldn't be allowed  
6 to adopt," if they can provide evidence  
7 for it.

8 Personally, what I'd like is if they  
9 gave the courts a little bit of leeway,  
10 where the courts could make case-by-case  
11 exceptions to some of these issues based on  
12 the particulars of the situation, so that  
13 what the society would do is, they would  
14 keep the macrosociological rules in place,  
15 but that at a court level, you could make  
16 individual exceptions to those things.

17 What I don't like about this case is,  
18 what we have is a binary situation, where  
19 you maybe trash the law or keep the law, and  
20 I would prefer a situation where you kept  
21 the law, but you allowed the courts to make  
22 individual exceptions on specific bases.  
23 That's my idealistic position.

24 Now, the realities in life are different  
25 from that, and the legal system doesn't

1           operate the way I wish it would, so --

2           BY MS. COOPER:

3           Q.   Understood.

4                     Dr. Schumm, you wrote an article called,  
5           quote, Comments on Marriage and Contemporary  
6           Culture, Five Models that Might Help Families; is  
7           that correct?

8           A.   Yes, yes.

9           Q.   Okay.  And that was published in the  
10          Journal of Psychology and -- sorry, the Journal  
11          of Psychology and Theology?

12          A.   Yes.

13          Q.   And that was in 2003?

14          A.   Yes.

15          Q.   And that journal, the Journal of  
16          Psychology and Theology, publishes articles that  
17          integrate faith and research; is that correct?

18          A.   Yes.

19          Q.   And on -- in that article, you wrote,  
20          quote, "With respect to integration of faith and  
21          research, I have been trying to use statistics to  
22          highlight the truth of the Scripture;" is that  
23          correct?

24          A.   Well, to analyze them, yes.

25          Q.   But did I read that correctly, Dr.

1 Schumm?

2 A. Well, you read it correctly, but like I  
3 said in the deposition, my approach to this is  
4 to -- like it goes back to the case of the  
5 Titanic, that there was -- there's a verse called  
6 Proverbs 30 Verse 9 --

7 Q. Dr. Schumm, and I don't mean to  
8 interrupt you, but my question --

9 A. Well, I'm explaining my position.

10 Q. -- was only whether I read it  
11 correctly --

12 A. But you read it --

13 Q. -- and Counsel for the State can ask you  
14 follow-up questions after I'm through, if they'd  
15 like.

16 A. Well, you read it correctly. I'm just  
17 trying to explain it.

18 Q. Okay. Thank you.

19 Now, you also wrote in that article that  
20 you have been developing a, quote, "Prescientific  
21 theory of family life, a theory that would be  
22 similar to other contemporary family theories in  
23 structure, but with Scriptural content, a task  
24 that has proved far easier to attempt than to  
25 complete. The models presented largely reflect

1           that effort. With respect to family life,  
2           education, my goal is to present material that is  
3           true to the principles of Scripture and takes  
4           advantage of the best research in marital  
5           interaction." Is that what you wrote?

6           A. Yes.

7           Q. Okay. And so you recognize that there's  
8           some religious basis here to this family life  
9           theory, that it's not a science -- a scientific  
10          theory devoid of religious awareness, correct?

11          A. I don't see them as incompatible.

12          Q. But is that correct, that it's a --  
13          there's a religious basis to your theory?

14          A. Well, I'm not sure if I agree with your  
15          characterization of the term religious.

16          Q. Okay. And you also wrote in the same  
17          article, quote, "Scripture is the ultimate truth,  
18          but current research can highlight which problems  
19          are most prevalent now and provide anecdotes that  
20          can help us understand practical implications of  
21          Scripture more readily in our time and culture;"  
22          is that right?

23          A. Right, and I also further explained it  
24          in the deposition.

25          Q. Okay. But that's -- that's what you



1 wrote; is that right?

2 A. Yes.

3 Q. Okay. Now, you wrote a -- I guess, a  
4 book chapter or part of a book with Dr. Rekers,  
5 called Sex Should Occur Only Within Marriage; is  
6 that right?

7 A. That's right.

8 Q. Okay.

9 A. That was an invited chapter, where we  
10 were supposed to take one side of an issue and  
11 make a case for it.

12 Q. Uh-huh.

13 And in that piece, you and Dr. Rekers  
14 wrote, "Within the limitations imposed by  
15 context, errors in translation and errors of  
16 individual interpretation, we prefer to accept  
17 the authority of the Bible as the best guide for  
18 sexual decision making, as well as for many other  
19 areas of life. We consider Scripture to be  
20 important, not because of tradition or  
21 institutional affiliation, but because after  
22 recent study, we make the assumption that they  
23 contain the wisdom of the Creator regarding the  
24 human condition and effective ways of relating to  
25 others interpersonally. In particular, we turn

1 to the life of Jesus as a guide for our own value  
2 system." Is that what you said?

3 A. Well, like I said in the deposition,  
4 that was a long time ago.

5 Q. My question is, is that what you said?

6 A. Well, that's what the chapter says, but  
7 whether I wrote it myself or Dr. Rekers wrote it,  
8 I can't remember for sure, because that was a  
9 long time ago.

10 Q. But your name is on it as a co-author,  
11 correct?

12 A. Yes, yes, yes.

13 Q. Okay. And in that same book chapter,  
14 you and Dr. Rekers said, quote, "We disagree with  
15 homosexual practices;" is that correct?

16 A. I think that's said in there, yes.

17 Q. Uh-huh.

18 Now, you believe that some people make  
19 the choice to be gay based on their perception of  
20 the pros and cons of the lifestyle; is that  
21 right?

22 A. Well, I've said at great conferences --  
23 like Lofton, I said, "It's logical to be  
24 homosexual." So I agree that for some people  
25 it's a logical decision, which Diana Baumrind in

1 1995 also agreed with it.

2 Q. Uh-huh.

3 And you believe it's logical, based on  
4 the evaluation of the pros and cons of the gay  
5 lifestyle?

6 A. Right.

7 Q. Okay. Okay. I'm sorry.

8 Now -- and you have written that you  
9 believe that, quote, "If gay relationships become  
10 socially acceptable, a heterosexual spouse who is  
11 thinking of leaving a marriage would have even  
12 more acceptable choices, and thus would be more  
13 likely to do so;" is that right?

14 A. Well, the exchange theory says that  
15 comparison levels for alternatives determine  
16 stability, so, yes, I would agree with that  
17 assumption.

18 Q. Okay. You also wrote an article called,  
19 quote, "A Reply to Belkin's Argument that Ending  
20 the," quote, "Gay Ban," close quote, "will not  
21 influence military performance," is that right?

22 A. Yes.

23 Q. And that was published in Psychological  
24 Reports in 2004?

25 A. I think it was.

1 Q. Uh-huh.

2 And in this article, you identify a  
3 number of concerns that you had about openly gay  
4 service members in the military, correct?

5 A. Yes.

6 Q. Okay. And one concern was, quote, "I  
7 think it is logical that if an individual is  
8 willing intentionally to violate one important  
9 social norm, they are more likely to violate less  
10 important social norms (military regulations, in  
11 this case)." You wrote that?

12 A. Yes, and I also followed up by saying,  
13 in the book by Humphries, that looked at a number  
14 of cases where gays were discriminated against, I  
15 think it was 68 percent of those people have also  
16 violated other military regulations. So I think  
17 the data actually supports my position on that.

18 Q. Another concern you expressed is about  
19 what you called, quote, sexual asymmetry, right?

20 A. Yes, that's true.

21 Q. And that is -- tell me if I'm  
22 understanding this correctly -- that because gay  
23 men only need to unzip to have oral sex, that  
24 makes it quick and easy, and it's easier to do it  
25 without getting caught, so because of that you

1 believe allowing gay people in the military would  
2 create an inequality, because heterosexual  
3 soldiers would have to take their clothes all the  
4 way off to have sex, creating a great -- "

5 MR. MOYLAN: Objection, Your Honor,  
6 relevance.

7 BY MS. COOPER:

8 Q. " -- creating a --"

9 MR. MOYLAN: I'm sorry, excuse me.  
10 You finish, then I speak.

11 BY MS. COOPER:

12 Q. " -- creating a greater risk of getting  
13 caught and punished." Is that --

14 MR. MOYLAN: Objection, Your Honor,  
15 relevance.

16 THE COURT: I'm going to allow it.

17 BY MS. COOPER:

18 Q. Is that a fair description of your  
19 concern about the sexual asymmetry?

20 A. I'm not sure it's a fair description.  
21 That was an exploratory type paper, where I was  
22 trying to investigate, in my own mind, the issues  
23 surrounding that. Belkin, as I mentioned in the  
24 deposition, critically -- Belkin and Siegel  
25 criticized my paper pretty heavily, so I'm back

1 in the "Let's think about this" mode, of whether  
2 I was right or not, so --

3 Q. But this was an issue you identified?

4 A. -- that's what I -- that's a concern I  
5 had at the time.

6 Q. That you raised in this paper?

7 A. Whether it's still my concern or not,  
8 it's kind of up in the air, because they had some  
9 valid criticisms of the paper, and so I'm still  
10 thinking about these criticisms and haven't  
11 really tried to revise the paper or do anything  
12 with it since.

13 Q. Okay. And in that same paper, where you  
14 raise this concern, you equated this sexual  
15 asymmetry or inequality with, you know, one group  
16 of soldiers, quote, "being fed extra junk food  
17 snacks," isn't that right?

18 MR. MOYLAN: Object, Your Honor,  
19 relevance.

20 THE COURT: What's the relevance in --

21 MS. COOPER: Going to -- excuse me?

22 THE COURT: -- this question?

23 MS. COOPER: I think this line of  
24 questioning is going to demonstrate that  
25 Dr. Schumm has some opinions or

1           assumptions about gay people that are  
2           quite extreme and may affect his  
3           objectivity in this trial.

4           THE COURT: This question relates to  
5           that issue?

6           MR. MOYLAN: Yes.

7           THE COURT: Okay.

8           THE WITNESS: Well, I guess I  
9           should preface this by saying that I  
10          spent 34 years in uniform, so I have a  
11          lot of practical experience in this. I  
12          served as a platoon commander. I served  
13          as a company commander. I served as a  
14          battalion commander, and I served as a  
15          brigade commander.

16         BY MS. COOPER:

17           Q. But Dr. Rekers, my question was whether  
18          you wrote that or not.

19           A. I'm not Dr. Rekers.

20           Q. Dr. Rekers, I apologize. Dr. Schumm.

21           A. In my brigade --

22           Q. We spent time with Dr. Rekers the other  
23          day.

24           A. My brigade units were selected in the  
25          top 50 percent of units in the world, so I think

1 I know what I'm talking about. My unit was  
2 investigated for sexual harassment purposes, and  
3 they found no indications of anything at all.

4 Q. But Dr. Schumm, I --

5 A. My concern here addresses fairness to  
6 the soldiers, and it's not fair to treat one  
7 group of soldiers differently than another.

8 Q. I really had a very narrow question,  
9 which was only, did you write that in your reply  
10 to the Belkin article, that this equality was  
11 equated to one group of soldiers being fed extra  
12 junk food snacks?

13 A. Well, I don't remember using the term  
14 extra junk food snacks, but the general concept  
15 is appropriate. I may have written it. It's  
16 just that I don't remember. I haven't looked at  
17 that paper for a long time.

18 Q. Now, you mentioned the social exchange  
19 theory a few moments ago --

20 A. Yes.

21 Q. -- and I understand that you -- from  
22 some of these manuscripts you prepared for this  
23 litigation and other things you've written, that  
24 the theory is that there are certain advantages  
25 that gay couples have, compared to heterosexual



1 couples, such as no risk of unwanted pregnancy,  
2 better communication, things like that, so that  
3 -- to treat gay and heterosexual couples in all  
4 aspects equally would effectively create an  
5 inequality; is that right?

6 A. That's true.

7 MR. MOYLAN: Your Honor, objection.

8 Outside the scope of the direct.

9 MS. COOPER: Once again, Your  
10 Honor, I think this goes to bias.

11 THE COURT: I'll allow it.

12 BY MS. COOPER:

13 Q. First of all, did I describe that theory  
14 roughly correctly?

15 A. Well, the exchange theory says that the  
16 overall proffer in the given situation is a  
17 function of the rewards and the costs, and the  
18 costs include the risks that people take. So  
19 risk assumes a cost. I'm just saying, you can  
20 analyze same gender and mixed gender  
21 relationships, that same gender relationships do  
22 not have a risk of pregnancy. You don't have to  
23 figure out how to communicate with somebody who  
24 has a totally different physiology, hormonal  
25 system, even a nervous system. That creates

1 extra work, and even Peplau and some other people  
2 have said this -- if you want me to look it up, I  
3 can find this -- where they admit -- I mean, for  
4 example, one of the key differences is that men,  
5 and I believe it was Dr. Peplau that said it, are  
6 more sort of sexually oriented than women are,  
7 and so this creates a condition, which there was  
8 a recent article, where 75 percent of men want  
9 sex more often than women do.

10 There's other conditions here. If you  
11 look at Myers Briggs, 75 percent of men are "T"  
12 individuals, which means they tend to think in  
13 terms of truth, and 25 percent of women are "T."

14 That means, if you have a mixed gender  
15 relationship, you have about a 50 percent  
16 guaranteed chance that you're going to have an  
17 incompatible personality type, whereas if you  
18 have a same gender relationship -- I mean, it  
19 doesn't have anything to do with -- this part,  
20 with homosexuality or sexuality at all.

21 If you have two people of the same  
22 gender interacting, the odds are better that  
23 they'll be compatible, in terms of their  
24 personality. If you have people of different  
25 genders interacting, the odds are much greater of

1           having incompatibility between their  
2           personalities.

3                       So my argument is that people in mixed  
4           gender relationships have higher risks, but what  
5           they provide for society is two biological  
6           children, coming from those risks, and in some  
7           sense, I think it's fair to privilege them over  
8           people who aren't assuming the same risks and  
9           aren't producing the same condition, two  
10          biological children from the same two people.

11                      So I'm trying to be very logical and  
12          straightforward about it. If somebody wants to  
13          say that's bias, I guess you can have at it, but  
14          I'm working real hard not to be biased. I'm  
15          trying to look at the exchange theory and what  
16          the facts of the human condition are.

17                      Q. Thank you.

18                      And you're familiar with a journal  
19          called The Empirical Journal of Same-Sex Sexual  
20          Behavior, right?

21                      A. Well, I don't know how familiar I am  
22          with it. I've heard of it, and I'm still a  
23          reviewer on its board of editors or something,  
24          but, actually, I haven't even seen a single issue  
25          of it.

1 Q. Okay. And this was a journal founded by  
2 Paul Cameron, correct?

3 A. Well, Paul Cameron and George Rekers, I  
4 don't know exactly how you parse it out, but they  
5 had something to do with it.

6 Q. Uh-huh. Uh-huh.

7 And you say you're on the board as a  
8 reviewer?

9 A. Correct, yes. In fact, at the  
10 deposition, I said I'd reviewed one paper for it.

11 Q. That was a Paul Cameron paper, right?

12 A. I think so.

13 Q. Uh-huh.

14 A. I feel kind of embarrassed by it,  
15 because technically you're not supposed to know  
16 who the author is when you review a paper, but I  
17 think I figured out it was from Paul.

18 Q. Okay. And prior to the -- your  
19 involvement in this case, you knew of Dr. Michael  
20 Lamb, right?

21 A. Yes.

22 Q. And he's got a great reputation as a  
23 researcher, in your view, correct?

24 A. Yes. Yeah.

25 Q. He's well-known and considered an

1 important person in the field; is that right?

2 A. Yes.

3 Q. And you're familiar with his work on the  
4 father's role, correct?

5 A. Yes.

6 Q. Just one moment and I'll be finishing  
7 up.

8 A. Okay.

9 Q. You talked in your testimony on Friday  
10 about a paper that you prepared, a manuscript,  
11 that discusses some dissertations that were  
12 written on the topic of children raised by gay  
13 parents, right, and you analyzed some material in  
14 those dissertations?

15 A. Yes.

16 Q. Those are not papers that were published  
17 in peer-reviewed academic journals; is that  
18 right?

19 A. Well, some of the -- I've reviewed 12  
20 dissertations. Some of them are published and  
21 some are not.

22 Q. Some were subsequently published by a  
23 journal?

24 A. Yes, yes, yes.

25 Q. Okay. And you've talked today about

1           some of the studies that are published in  
2           journals or not, either way, studies that have  
3           looked at the sexual orientation of the children  
4           of gay parents, and those studies that you  
5           testified about to -- to support your conclusion  
6           on that topic, were not studies that were drawn  
7           from random samples; is that correct?

8           A. Well, I don't recall all 26 off the top  
9           of my head. Some of them, I'm sure, were  
10          convenience samples.

11          Q. And you -- you also talked about your  
12          review of some popular books and what those books  
13          showed with respect to the sexual orientation of  
14          the children of gay parents, and am I right that  
15          you counted an individual as having -- in the gay  
16          group, right, even if they just had a same-sex  
17          experience, but didn't identify necessarily as  
18          gay; is that right?

19          MR. MOYLAN: Objection, Your Honor.

20          I think that's not what he testified to.

21          THE COURT: I'll allow it. Go ahead.

22          THE WITNESS: Well, the paper  
23          actually lists exactly how I coded  
24          everything. I think there were some  
25          cases where there was a close call, and

1 I coded it as heterosexual, and other  
2 cases where I coded it as  
3 non-heterosexual. I was really coding  
4 it as non-heterosexual versus  
5 heterosexual, but, you know, there were  
6 some cases where it was kind of a  
7 judgment call and I tried to be as fair  
8 as I could about trying to make the call  
9 on it.

10 BY MS. COOPER:

11 Q. So if somebody, in their narrative,  
12 reported having had a same-sex sexual  
13 relationship, would they be coded as homosexual  
14 or heterosexual?

15 A. Probably, based on how I recall how I  
16 coded it --

17 Q. Probably it would be --

18 A. Probably it would have been. I mean,  
19 I'd have to look at a specific case to say,  
20 but --

21 Q. Which -- which, homosexual or  
22 heterosexual?

23 A. Well, non-heterosexual, if they had a  
24 homosexual experience.

25 Q. Okay.

1           A. But I used the same criteria for the  
2 children of heterosexuals.

3           Q. And you're being paid by the State for  
4 your time in this case?

5           A. Part of it.

6           Q. Uh-huh.

7                   How much have you been paid so far?

8           A. I don't have an exact figure, but I --  
9 my estimate is -- I'm paid at -- mostly what I've  
10 been paid is \$125 an hour, and that's worked out  
11 to -- I'm going to say, it's at least \$15,000,  
12 but they've also paid me for travel in some  
13 cases, too, so --

14          Q. But for your time, approximately 15,000?

15          A. That's what I recall. There's hours I  
16 haven't billed them for and there's travel I  
17 haven't been paid for, and things like that,  
18 so --

19          Q. At the conclusion of -- of your time in  
20 this case, how much more do you expect to be  
21 paid?

22          A. Well, the total amount is -- you know,  
23 because of the contract, it cannot exceed  
24 \$35,000. I don't know if it's going to get that  
25 far or not, based on the number of hours I've



1           spent. I'm not sure how you count travel  
2           expenses and all of that.

3           Q. So you have a contract with the State  
4           that you can be paid something up to \$35,000, but  
5           nothing more than that?

6           A. Yeah, basically.

7           MS. COOPER: Okay. We have nothing  
8           further, Your Honor.

9           THE COURT: Okay. Do you have anything?

10          MR. MOYLAN: No, Your Honor,  
11          nothing further.

12          THE COURT: Thank you, Dr. Schumm.  
13          You're free to go.

14          DR. SCHUMM: Okay, thank you.

15          MS. ALLEN: Judge -- can we take a  
16          10-minute rest room break, Judge?

17          THE COURT: Can I just ask where we're  
18          going next?

19          MS. ALLEN: Well, I think the guardian  
20          is going to put their case on.

21          THE COURT: Okay. So 10 minutes?

22          MS. ALLEN: Okay. Thank you.

23          (Thereupon, a brief recess was taken.)

24          MS. MARTIN: Your Honor, for the record,  
25          DCF would like to object to the order of the

1 presentation of this case. The case in  
2 chief has been presented and closed by both  
3 the petitioner and the minor children.

4 When DCF was called to present their  
5 case, the guardian ad litem had no objection  
6 and DCF is prejudiced by having them go  
7 after we have closed our case in chief.

8 THE COURT: Okay. Please respond.

9 MS. BASS: Your Honor, the  
10 testimony that I understand that the  
11 guardian is putting on does not  
12 respond --

13 MS. ALLEN: No.

14 MS. BASS: -- directly to the  
15 experts, so I don't know how it could  
16 possibly be prejudicial to have heard  
17 this expert testimony first.

18 THE COURT: In any case, when we're  
19 finished, if you feel that you need to  
20 do something else, let me know and we'll  
21 talk about it, okay?

22 MS. MARTIN: Thank you, Your Honor.

23 MS. ALLEN: Okay. Your Honor, first I  
24 want to introduce the deposition testimony  
25 that was already entered into the court

1 record.

2 THE COURT: If I recall, that's four  
3 depositions?

4 MS. ALLEN: Exactly.

5 THE COURT: I think we did that on the  
6 first day; is that correct?

7 MS. BASS: We were just going to  
8 read into the record specifics -- a  
9 limited number of transcripts.

10 MS. ALLEN: All right. I'm going  
11 to start with Ms. Gonzalez.

12 MS. MARTIN: Your Honor, DCF would  
13 object to that. In the guardian ad litem's  
14 pre-trial catalog, she lists no exhibits at  
15 all, in the pre-trial.

16 THE COURT: I've got these already.

17 MS. MARTIN: I agree, and I understand  
18 that they're already entered, so I don't  
19 object to the reading of them, because  
20 they're entered, and I understand that.

21 MS. ALLEN: Okay. The first one is the  
22 deposition of Ada Gonzalez.

23 And at Page 28, Line 13.

24 MS. MARTIN: Could you, please, wait for  
25 me to catch up with you?

1 MS. ALLEN: Sure.

2 MS. MARTIN: I'm sorry, could you orient  
3 me again?

4 MS. ALLEN: Sure. Page 28 of Ada  
5 Gonzalez's deposition, Line 13.

6 MS. MARTIN: Uh-huh.

7 MS. ALLEN: Everybody ready?

8 "Question: Is it DCF's policy to  
9 encourage adoption by foster parents?"

10 MS. MARTIN: I'm sorry, are you on Ada  
11 Gonzalez's depo, because my Page 29 does not  
12 read as yours?

13 MS. ALLEN: No, 28.

14 MS. MARTIN: Oh, thank you.

15 MS. ALLEN: Sorry.

16 MS. MARTIN: Okay.

17 MS. ALLEN: And Line 13.

18 MS. MARTIN: Uh-huh.

19 MS. ALLEN: Okay.

20 (Thereupon, the deposition Ada Gonzalez  
21 was read as follows:)

22 MS. ALLEN: "Question: Is it DCF's  
23 policy to encourage adoption by foster  
24 parents?"

25 MS. BASS: "It would -- I guess I

1           would answer it yes, if reunification is  
2           not the goal, if there are no relatives  
3           that have already been explored. You  
4           know, it is one of the options of  
5           recruitment, to encourage foster parents  
6           to adopt."

7           MS. ALLEN: Okay. And next I'm going to  
8           Page 41 of the same deposition, Line 25, and  
9           the last question is, "Why are foster  
10          parents encouraged to adopt," and then next  
11          page, "when they are?"

12          MS. BASS: "If foster parents  
13          already are in the homes -- I'm sorry,  
14          if children are already in the homes  
15          with foster parents at the time that the  
16          goal of adoption is established and  
17          there is -- and at that time, if the  
18          families have been recruited and were  
19          not available or willing to adopt, the  
20          foster parents were then encouraged to  
21          adopt."

22          MS. ALLEN: And the next line,  
23          "Question: Why is the fact that the kids  
24          are in the home with the foster parents  
25          already relevant to that determination?"

1 MS. BASS: "Because they have  
2 already established a relationship."

3 MS. ALLEN: "And what is the value of  
4 that relationship?"

5 MS. BASS: "Obviously, the best  
6 interests of the child. You don't want  
7 to move children unnecessarily. You  
8 want to respect their bonds and their  
9 attachments."

10 MS. ALLEN: Okay. And next I'm moving  
11 to Page 53, same deposition, Line 24.

12 "Question: Okay. Can you tell me if  
13 movement from one foster home to another has  
14 any consequences for children?"

15 MS. BASS: "Of course. You know,  
16 you want to have the least movements as  
17 possible for a child, not to disrupt  
18 their daily living and schools and  
19 friends and relationships, et cetera."

20 MS. ALLEN: "Question:" And why -- "And  
21 I know this seems obvious, but can you just  
22 tell me why?"

23 MS. BASS: "For the well-being of  
24 the child and his emotional and physical  
25 environment, not to, you know, have to

1           be dealing with different people and  
2           having broken relationships.

3           MS. ALLEN: "Question: Would you say  
4           that moving from one family to another can  
5           be harmful for foster kids?"

6           MS. BASS: "It may."

7           MS. ALLEN: "Question: What kind of  
8           harms come out of that?"

9           MS. BASS: "It could be emotional,  
10          some developmental."

11          MS. ALLEN: "Like what?"

12          MS. BASS: "You know, again, it  
13          depends on the age of the child, how the  
14          movement was carried out, how much  
15          preparation, what were the specific  
16          needs of the child."

17          MS. ALLEN: "Question: Well, let's just  
18          go through a couple of the examples you  
19          gave. You said that moving from one school  
20          to another could be disruptive."

21          MS. BASS: "Uh-huh."

22          MS. ALLEN: "Question: Tell me how that  
23          might harm a foster child."

24          MS. BASS: "They could get  
25          depressed, you know. It could be a good

1            thing in some cases, you know.  It  
2            depends on the individual child."

3                    MS. ALLEN:  "Is it hard academically to  
4            switch schools?"

5                    MS. BASS:  "It could be, depending  
6            on when -- what time of the year it was  
7            done.  If it's done during the  
8            summertime, that you're switching  
9            schools anyway, it wouldn't maybe make  
10           such a difference.  You know, it depends  
11           on the age of the child, the timing."

12                   MS. ALLEN:  "Question:  Is it disruptive  
13           to a child, having to switch families and  
14           schools, as to their group of friends,  
15           social network?"

16                   MS. BASS:  "Yes.  It could be."

17                   MS. ALLEN:  "How could it harm a child?"

18                   MS. BASS:  "Again, their well-  
19           being.  They may be just" -- "they may  
20           just be unhappy about that situation."

21                   MS. ALLEN:  Okay.  And the next line I'm  
22           reading is Page 58, Line 7.

23                   "Question:  Does DCF have any policy  
24           regarding gays and -- "

25                   Are you okay?



1 MS. MARTIN: Yes, thank you, but could  
2 you start with the whole question?

3 MS. ALLEN: Sure.

4 "Okay. Can you tell me, what is DCF's  
5 policies regarding -- or policy -- let me  
6 rephrase that. Does DCF have any policy  
7 regarding gays and lesbians serving as  
8 foster parent?

9 MS. BASS: "No. There's no  
10 exception or disqualification."

11 MS. ALLEN: Okay. And Page 63, Line 4.

12 "Okay. Are there any special  
13 considerations applied if the home study  
14 reveals that the foster parent is gay or  
15 lesbian?"

16 MS. BASS: "Special  
17 considerations?"

18 MS. ALLEN: "Question: What do you do  
19 if you find out that they're gay?"

20 MS. BASS: "Nothing. It's no  
21 problem to be a foster parent and be  
22 gay."

23 MS. ALLEN: "Question" -- oh, I'm sorry,  
24 Page 67, Line 15.

25 "Question: Does a case worker have to

1           get any special approval from anyone -- let  
2           me back up. Is there any special approval  
3           needed to approve a prospective foster  
4           parent if they reveal or it's determined  
5           that they are gay?"

6           MS. BASS: "The same as any other  
7           foster parent."

8           MS. ALLEN: And next page -- or Page 72,  
9           I'm sorry, Line 4.

10           "Question: Okay. If DCF learned that,  
11           I guess, someone who performs recruiting was  
12           recruiting at a gay community event, would that  
13           be a problem for DCF?"

14           And Ms. Martin objected to the form.

15           MS. BASS: "Would they be  
16           recruiting for foster or adoption?"

17           MS. ALLEN: "Question: For foster  
18           care."

19           And Ms. Martin objected to the form.

20           MS. BASS: "It would not be a  
21           problem, as there is no restriction on  
22           that."

23           MS. ALLEN: Okay. Page 75, Line 2.

24           "Question: Are you aware of any harms  
25           to children associated with being in the

1 care of gay foster parents?"

2 MS. BASS: "No."

3 MS. ALLEN: And Page 78, Line 24.

4 "Okay. Let me just interrupt you.

5 If -- excluding the non-cooperative foster

6 parents, is it ever in a child's best

7 interest to have permanency with the gay

8 foster parent that they are placed with?

9 Assuming that the foster parent has the best

10 interests of the child in mind and will

11 always act in the child's best interest, is

12 it ever appropriate for a foster child to

13 remain in the permanent care of his gay

14 foster parent?"

15 MS. BASS: "Yes."

16 MS. ALLEN: And objection by Ms. Martin.

17 "Question: And when is that?"

18 MS. BASS: "Again, you were talking

19 about a very young child, but there are

20 children who have been raised by these

21 foster parents and, you know, they would

22 have a difficult time being moved from

23 that foster home. In those types of

24 situations, I believe that, you know,

25 the child is already adjusted to that

1 placement and that that would be -- you  
2 know, if that placement is meeting that  
3 child's need, it would be detrimental to  
4 then move the child."

5 MS. ALLEN: Okay. And Page 87, Line 13.

6 "Is there any risk of a child being  
7 removed from a gay foster parent to whom he  
8 is bonded and attached, to be placed instead  
9 with another family who's eligible to  
10 adopt?"

11 MS. BASS: "It could happen, yes."

12 MS. ALLEN: And Page 91, Line 12.

13 "Does the ban on gay adoption get in the  
14 way of DCF's ability to find permanent  
15 placements for children in the foster care  
16 of gay people?"

17 MS. BASS: "Yes. I'm not sure I  
18 understood your question, but if we're  
19 not allowed to place for adoption, of  
20 course it gets in the way.

21 MS. ALLEN: And down to Line 22.

22 "Question: Let me restate it. Are  
23 there any differences or disadvantages  
24 between a guardianship and an adoption?"

25 And Ms. Martin objected to the form.

1                   So Page 92, Line 3, "Question: Okay,  
2                   you can answer."

3                   MS. BASS: "Adoption, if  
4                   reunification cannot happen, is the  
5                   optimal goal, because when a child is  
6                   adopted, the child becomes legally as if  
7                   born to the couple. The dependency case  
8                   is closed and the DCF supervision is  
9                   also closed.

10                  MS. ALLEN: "Question: And why is  
11                  that advantageous?"

12                  "Ms. Martin: Object to the form.

13                  MS. BASS: "There are positives  
14                  related to the children no longer having  
15                  to say they're in custody. There are  
16                  advantages financially for the family  
17                  who's adopting. There's incentives to  
18                  adopt that are not available, that I'm  
19                  not aware of, to guardianship."

20                  MS. ALLEN: Okay. And so now we are  
21                  going to move to the deposition testimony of  
22                  Ms. Katherine -- Kathleen Waters.

23                  MS. MARTIN: Again, DCF objects. They  
24                  didn't put her as a witness on their witness  
25                  list.

1 MS. ALLEN: Okay. Page 28, Line 17.

2 Everybody's there? Okay.

3 "Question: Okay. Yesterday I asked  
4 Ms. Frizzell a couple of questions that she  
5 suggested I ask you, and she said you'd be  
6 the expert on it.

7 "I understand that for children in  
8 foster care, they get Medicaid, and that  
9 children who are adopted out of the foster  
10 care system generally are entitled to  
11 Medicaid. The question is, whether children  
12 who are in foster care and then enter into a  
13 permanent guardianship situation, whether  
14 those children are still entitled to  
15 Medicaid? Ms. Frizzell answered it, but it  
16 -- but I -- but suggested I ask you."

17 MS. BASS: "I believe, if they're  
18 non-relatives, they would not."

19 MS. ALLEN: Okay. And Line 7,  
20 "Question" -- well, let me go up to 4,  
21 "Question: Okay. Then I -- similarly, I  
22 understand that children in foster care, or,  
23 should I say, families with children in  
24 foster care -- let me start that again.  
25 Foster parents can adopt -- all right, and I

1 understand that children who are adopted out  
2 of the foster care system, in those cases,  
3 the adoptive parents may be entitled to  
4 adoption maintenance and subsidies; is that  
5 correct?"

6 MS. BASS: "If the children fit the  
7 criteria.

8 MS. ALLEN: "Question: Right."

9 MS. BASS: "And are eligible."

10 MS. ALLEN: "Question: Now, in a  
11 guardianship, if a child comes out of foster  
12 care into a permanent guardianship, would  
13 those guardians be entitled to something  
14 like an adoption maintenance subsidy?"

15 MS. BASS: "Only if they're  
16 relatives."

17 MS. ALLEN: Okay. Okay. And now we're  
18 moving to the deposition of Gay Frizzell.

19 It starts here.

20 MS. MARTIN: Again, Your Honor, just for  
21 the record, DCF also objects to the reading  
22 of the deposition, since this witness is not  
23 listed on the guardian ad litem's witness  
24 list.

25 THE COURT: Once again, they're exhibits

1           that have been admitted into evidence. The  
2           objection is overruled.

3           MS. ALLEN: Okay. On Page 49 of Ms.  
4           Frizzell's deposition, Line 8.

5           "Question: Can you tell me again what  
6           the specific concern about the inconsistent  
7           policies that you raised was?"

8           MS. BASS: "That children placed  
9           with foster families, gay foster  
10          families, could not be adopted by those  
11          foster families.

12          MS. ALLEN: "Question: Why is that a  
13          concern?"

14          MS. BASS: "Because it means  
15          another move for the child. If the  
16          child -- well, if the child goes home,  
17          it is another home, if the child is  
18          reunified, but if the child is to  
19          achieve permanency, it means a move for  
20          the child."

21          MS. ALLEN: "Question: To another  
22          family who could adopt?"

23          MS. BASS: "Correct."

24          MS. ALLEN: And same deposition, Page  
25          56, Line 20.



1                   "Question: Is adoption the preferred  
2 form of permanency over guardianship?"

3                   MS. BASS: "Yes. Florida law,  
4 yes."

5                   MS. ALLEN: "Question: So just to make  
6 sure I'm clear, that both guardianship and  
7 adoption are forms of permanency, but  
8 adoption is preferred over guardianship."

9                   MS. BASS: "Correct."

10                  MS. ALLEN: "Okay. Why is that? Why is  
11 adoption preferred over guardianship?"

12                  THE COURT: This is Dr. Casanova from  
13 ATI. She's not affiliated with the case.  
14 Do you have any problems with her sitting  
15 in?

16                  MS. BASS: We have no objection.

17                  MS. ALLEN: Okay.

18                  THE COURT: Thank you very much. I'm  
19 sorry, go ahead.

20                  MS. ALLEN: Okay. We're going next to  
21 Line 2, Page 57.

22                  "Okay. Why is that? Why is adoption  
23 preferred over guardianship?"

24                  MS. BASS: "Our State law expressly  
25 provides for it. I believe the reasons

1 are that it's a cleaner legal  
2 resolution."

3 MS. ALLEN: "Why do you mean that or  
4 why -- the question is, what do you mean by  
5 that?"

6 MS. BASS: "That adoption is a  
7 forever relationship with parents,  
8 stability. Guardianship has some of  
9 those legal benefits, but not all, not  
10 all the same as adoption."

11 MS. ALLEN: "Question: Okay. Are there  
12 any material benefits children get through  
13 adoption that they don't get through  
14 guardianship?"

15 MS. BASS: "I believe they get  
16 inheritance, but I wouldn't -- I'm not  
17 an expert on that."

18 MS. ALLEN: Okay, Line 22.

19 "Question: So when a child is in a  
20 guardianship arrangement and there's not --  
21 and there's not an adoption, are those  
22 not -- those people aren't his parents? Is  
23 that what you're saying?"

24 MS. BASS: "They're not legally his  
25 parents, right, his or her parents."

1 MS. ALLEN: Okay. "Question: And does  
2 adoption affect how a child perceives his  
3 role in a family?"

4 MS. BASS: "I think, again, on a  
5 case-by-case basis, adoption does affect  
6 how a child perceives him or herself."

7 MS. ALLEN: And "Question: Can you  
8 explain what you mean by that?"

9 MS. BASS: "In that he feels a  
10 sense of belonging, that a legal  
11 commitment has been made to him or her,  
12 a legal -- again, a legal connection."

13 MS. ALLEN: I think that's it.  
14 That's it.

15 That's the case worker.

16 Okay. And Your Honor, I think we'd like  
17 to call Christine Thorne, case manager for  
18 -- or she's actually replacing the testimony  
19 of Ada Gonzalez, who was asked to be here  
20 today for direct examination, and DCF  
21 offered up Ms. Christine Thorne instead.

22 MS. MARTIN: Your Honor, DCF, for the  
23 record, would like to make an objection to  
24 that. First of all, based upon the Court's  
25 request yesterday (sic), DCF attempted to

1 contact Ms. Gonzalez, and, obviously, she  
2 wasn't available.

3 We object to the out-of-turn call of the  
4 witness in its entirety. This witness was  
5 not listed by the guardian ad litem and DCF  
6 is prejudiced by having her present  
7 testimony on that.

8 In light of the anticipation of the  
9 Court's ruling, we did bring another DCF  
10 person to testify, but we are submitting her  
11 to the Court over objection.

12 THE COURT: This is Ms. Thorne?

13 MS. MARTIN: Correct.

14 MS. ALLEN: And, Judge -- and, Judge,  
15 she's our -- a rebuttal witness for the  
16 Guardian Ad Litem Program, and we did list  
17 rebuttal witnesses in our pretrial catalog.

18 MS. BASS: Your Honor, again, Ms.  
19 Gonzalez was the 30(b)(6) representative  
20 put forth by the State as the expert on  
21 foster care placement.

22 When we asked that she be produced,  
23 we were told that for some reason she  
24 was unavailable, it was never explained  
25 why, and we were told that Ms. Thorne

1 was going to be her substitute.

2 MS. MARTIN: Judge, just for the record,  
3 though, they could have called Ms. Gonzalez  
4 live. I understand that the testimony was  
5 admitted as evidence in this matter, but to  
6 say that -- she wasn't asked to be here  
7 live. To now all of a sudden call her here  
8 under 30(b)(6), which is a Federal Rule, to  
9 ask for that witness to come forward now is  
10 prejudicial to the State.

11 Again, the State, understanding or  
12 anticipating the Court's ruling, we did  
13 bring somebody, but I'd like it noted on the  
14 record that DCF objects to the out-of-turn  
15 of this witness in its entirety. That being  
16 said, Ms. Thorne is here.

17 THE COURT: Thank you, Ms. Martin.

18 How are you? That's your chair.

19 MS. THORNE: The hot seat.

20 THEREUPON:

21 CHRISTINE THORNE

22 was called as a witness by the Guardian Ad Litem  
23 Program and, having first been duly sworn, was  
24 examined and testified as follows:

25 THE CLERK: State your name, for the

1 record.

2 THE WITNESS: Christine Thorne.

3 MS. ALLEN: Judge, I'm providing the  
4 parties with the Rights and Expectations for  
5 Children and Youth in Shelter and Foster  
6 Care provided by DCF.

7 THE CLERK: That will be Guardian Ad  
8 Litem's Exhibit C.

9 MS. ALLEN: That's fine.

10 MS. MARTIN: Your Honor, again, DCF  
11 would object to the entrance of this, if  
12 she's using it for rebuttal --

13 THE COURT: I just had it marked.

14 MS. ALLEN: Yeah, I don't know even if  
15 I'm going to introduce this.

16 MS. MARTIN: My apologies.

17 DIRECT EXAMINATION

18 BY MS. ALLEN:

19 Q. Okay. Good morning, Ms. Thorne. I'm  
20 Jessica Allen, for the Guardian Ad Litem Program.

21 A. Okay. Hello.

22 Q. And could you, please, state your name,  
23 for the record?

24 A. Christine Thorne.

25 Q. And where do you work?

1           A. For the Department of Children and  
2 Families.

3           Q. And what title do you possess there?

4           A. My working title is quality assurance  
5 manager.

6           THE COURT: Quality -- quality assurance  
7 manager?

8           THE WITNESS: Yes.

9 BY MS. ALLEN:

10          Q. There's a plane coming, so -- and how  
11 long have you held that position?

12          A. One year.

13          Q. What are your duties and  
14 responsibilities?

15          A. My unit reviews child protective  
16 investigations, and at times, case management  
17 cases, to determine if they've met all of the  
18 standards that apply to them.

19          Q. Okay. Would you say you're qualified to  
20 testify about DCF regulations, operating  
21 procedures, other policies and practices  
22 regarding foster care?

23          A. Yes.

24          Q. Such as the eligibility requirements to  
25 be a foster parent?

1 A. Yes.

2 Q. Placement of children in foster care  
3 with lesbian and gay men, including permanent  
4 placement?

5 A. Yes.

6 Q. And the recruitment of lesbian and gays  
7 to become foster parents?

8 A. Yes.

9 Q. Okay. Are the regulations, operating  
10 procedures and policies regarding foster care  
11 written anywhere?

12 A. Yes.

13 Q. Such as where?

14 A. I'm sorry, would you repeat that?

15 Q. Sure. Regulations, operating  
16 procedures, policies regarding foster care.

17 A. It's -- foster care licensing or foster  
18 care? You've got the administrative rules. As  
19 it pertains to licensing, you have 65C-13. As it  
20 pertains to foster care, you've got --

21 Q. Just quickly, 65C-13, that's the Florida  
22 Administrative Code?

23 A. Yes.

24 Q. Okay.

25 A. And Florida Administrative Code 65C, I



1 think, 28, 29 and 30 pertaining to child  
2 protective investigations and the care in foster  
3 care.

4 Q. And are some of those policies also in  
5 Chapter 39, Florida Statutes?

6 A. Yes.

7 Q. What about Chapter 409, Florida  
8 Statutes?

9 A. That relates to foster home licensing.

10 Q. Okay. And are the community-based care  
11 agencies in the Department of Children and  
12 Families bound by these same regulations,  
13 operating procedures, policies and practice as  
14 we've just listed?

15 A. Yes.

16 MS. MARTIN: Objection, lack of  
17 foundation.

18 MS. BASS: I suggest you qualify --

19 THE COURT: I think in the depositions  
20 there was a discussion, as well, so I'm  
21 going to overrule it. I think we all  
22 understand them.

23 MS. MARTIN: Okay.

24 BY MS. ALLEN:

25 Q. Are you familiar with Section 39.001,

1 Florida Statutes?

2 A. Not specifically.

3 MS. ALLEN: Okay. I have copies here.  
4 I can give one to everybody, and the Judge  
5 can take judicial notice of the Florida  
6 Statutes. This is the one I just  
7 referenced.

8 MS. BASS: Thank you.

9 BY MS. ALLEN:

10 Q. Okay. And you can see where they're  
11 listed by number and whatnot, right?

12 A. Uh-huh.

13 Q. Yes?

14 A. Yes.

15 Q. Okay. If you want to take a second and  
16 look at 39.001, Florida Statutes, and just tell  
17 me when you're ready.

18 You can just read along, and I'll ask  
19 you specifics about each one.

20 A. All right. That's fine.

21 Q. Would you agree that Section 39.001  
22 grants certain rights and protections to  
23 dependent children, including children in foster  
24 care?

25 MS. MARTIN: Objection, leading.

1 THE COURT: Overruled.

2 THE WITNESS: Yes.

3 BY MS. ALLEN:

4 Q. Okay. If you take a look at 39.001,  
5 Subsection (1)(h), if you can find it on there.

6 A. (1)(h).

7 Q. Okay.

8 A. Uh-huh.

9 Q. Would you agree that pursuant to that  
10 statute, the State is to ensure that permanent  
11 placement with a biological or adoptive family is  
12 achieved as soon as possible for every child in  
13 foster care and that no child remain in foster  
14 care for longer than one year?

15 A. Yes.

16 Q. To your knowledge, is the State's duty  
17 to ensure that a permanent placement with an  
18 adoptive family is achieved as soon as possible  
19 applicable to each and every child in foster  
20 care?

21 A. Yes.

22 Q. Are you aware of any law, regulation,  
23 policy or procedure that specifically excludes  
24 any group of foster children from the assurance  
25 to provide them with a permanent placement with

1 an adoptive family?

2 A. No.

3 Q. Are you aware of any law, regulation,  
4 policy or procedure that specifically excludes  
5 foster children placed with homosexual foster  
6 parents from the assurance to provide them a  
7 permanent placement with an adoptive family as  
8 soon as possible?

9 A. Repeat that, please.

10 Q. Sure.

11 Do you know of any law, regulation,  
12 policy, procedure that specifically excludes  
13 foster children who are placed with homosexual  
14 foster parents from the insurance -- from the  
15 assurance to the children to provide them a  
16 permanent placement with an adoptive family as  
17 soon as possible?

18 A. No.

19 Q. Anything in Chapter 409?

20 A. Not to my knowledge.

21 Q. Anything in Chapter -- in the Florida  
22 Statutes?

23 A. Not to my knowledge.

24 Q. Okay. Anything in the Administrative  
25 Code or DCF operating procedures?

1           A. Not to my knowledge.

2           Q. To your knowledge, is the duty to ensure  
3 that no child remains in foster care longer than  
4 one year applicable to each and every child in  
5 foster care?

6           A. Yes.

7           Q. Are you aware of any law, regulation,  
8 policy or procedure that specifically excludes  
9 any group of foster children from the provision  
10 that no child remains in foster care for longer  
11 than a year?

12          A. No.

13          Q. Are you aware of any law, regulation,  
14 policy or procedure that specifically excludes  
15 foster children placed with homosexual foster  
16 parents from the provision that no child remains  
17 in foster care longer than one year?

18          A. No.

19          Q. Okay. And, now, if you'll take a look  
20 at Chapter 39.001, Subsection (1)(1). You got  
21 it?

22          A. Here.

23          Q. Yes. And "To provide judicial and other  
24 procedures to assure due process through which  
25 children, parents, and guardians and other

1 interested parties are assured fair hearings by a  
2 respectful and receptive court or other tribunal  
3 and their recognition, protection, and  
4 enforcement of the constitution and other legal  
5 rights." Is that -- is that -- that's what that  
6 says?

7 A. Yes.

8 MS. MARTIN: Objection. Could you read  
9 the whole statement?

10 MS. ALLEN: Sure. I have to look at  
11 hers.

12 BY MS. ALLEN:

13 Q. "While ensuring that public safety  
14 interests and the authority and dignity of the  
15 courts are adequately protected."

16 MS. MARTIN: Thank you.

17 BY MS. ALLEN;

18 Q. Okay. And, Ms. Thorne, are you aware of  
19 any law, regulation, policy or procedure that  
20 denies any group of foster children due process  
21 rights through the enforcement of their  
22 constitutional and other legal rights?

23 A. No.

24 Q. Are you aware of any law, regulation,  
25 policy or procedure that denies foster children

1 placed with homosexual foster parents due process  
2 rights for the enforcement of their  
3 constitutional and other legal rights?

4 A. No.

5 Q. And, then, you don't recall anything  
6 from Chapter 49 (sic), Florida Statutes, 65C-13  
7 of the Administrative Code or DCF operating  
8 procedures?

9 A. No.

10 Q. Okay. Now, I want you to take a look at  
11 39.00 -- Subsection (1)(m), and I may have to  
12 read off of yours, since mine is not -- okay.  
13 "To ensure that the children under the  
14 jurisdiction of the courts are provided equal  
15 treatment with respect to goals, objectives,  
16 services, and case plans, without regard to the  
17 location of their placement. It is the further  
18 intent of the Legislature that, when children are  
19 removed from their homes, disruption to their  
20 education be minimized to the extent possible."

21 Where am I?

22 MS MARTIN: What is the question?

23 MS. ALLEN: I'm reading it now.

24 BY MS. ALLEN:

25 Q. Are you aware of any law, regulation,

1 policy or procedure that denies any group of  
2 foster children equal treatment under the law?

3 A. No.

4 Q. Are you aware of any law, regulation,  
5 policy or procedure that denies foster children  
6 placed with homosexual foster parents equal  
7 treatment under the law?

8 A. No.

9 Q. And nothing in Chapter 49 (sic), Florida  
10 Statutes --

11 A. 39?

12 Q. Yeah. The Administrative Code, DCF  
13 operating procedures?

14 A. No.

15 Q. Okay. And let's see, Statute 39.001,  
16 Subsection (1)(b)(1). We may have to flip back  
17 for that one.

18 (b)(1), correct.

19 Okay. So does (b)(1) state, "The health  
20 and safety of the children shall be of paramount  
21 concern"?

22 A. Yes.

23 Q. Are you aware of any law, regulation,  
24 policy or procedure that states that the health  
25 and safety of foster children placed with



1 homosexual parents should not be of paramount  
2 concern?

3 A. No.

4 Q. Okay. And nothing in what we discussed,  
5 Chapter 49 (sic) --

6 A. No.

7 Q. -- the statutes, the Code?

8 A. No.

9 Q. Okay. Now, I'll turn to section -- or  
10 Chapter 39.001, Subsection (d).

11 A. Subsection (d)?

12 Q. We may have missed that one.

13 MS. MARTIN: D, as in David?

14 MR. GONZALEZ: First page.

15 BY MS. ALLEN:

16 Q. Let me just make sure it's what I've  
17 got. Okay. "To provide a child protection  
18 system that is sensitive to the social and  
19 cultural diversity of the State." Is that what  
20 that says?

21 A. Yes.

22 Q. Okay. And, now, Chapter 39.001,  
23 Subsection (3)(a), and I'll help you find that.  
24 That's 1. We may have to go -- 3.

25 Okay. And it's Subsection (3)(a). Did

1 we find (3)(a)? There we go.

2 Chapter 39 expressly provides that the  
3 State is to provide all dependent children a  
4 stable and permanent home, correct?

5 MS. MARTIN: No, it's not.

6 MR. GONZALEZ: That's (b).

7 BY MS. ALLEN:

8 Q. I'm sorry, (b).

9 Oh, okay. That was a mixup. Sorry.

10 MS. MARTIN: Could you repeat the  
11 question?

12 BY MS. ALLEN:

13 Q. Chapter 39.001 (3), Subsection (b).  
14 Chapter 39 expressively provides that the State  
15 is to provide all dependent children with a  
16 stable and permanent home, correct?

17 A. Yes.

18 Q. And to your knowledge, is the State's  
19 duty to provide all dependent children a stable  
20 and permanent home applicable to each and every  
21 child in foster care?

22 A. Yeah.

23 Q. Are you aware of any law, regulation,  
24 policy or procedure that specifically excludes  
25 any group of foster children?

1 A. No.

2 Q. Are you aware of any law, regulation,  
3 policy or procedure that specifically excludes  
4 foster children placed with homosexual foster  
5 parents?

6 A. No.

7 Q. Can you define for the Court what the  
8 term permanency means?

9 A. The child is to -- achieving permanency  
10 is just that, finding a stable placement, a  
11 stable home for the child, until they reach the  
12 age of majority.

13 Q. Are you familiar with the term  
14 permanency goals?

15 A. Yes.

16 Q. And what -- can you tell me what that  
17 means?

18 A. When a dependent child is in here, you  
19 need to develop a case plan on specifying a goal  
20 that you want to reach within as short a time as  
21 possible, a permanency goal, reunification,  
22 adoption.

23 Q. And what's the optimal permanency goal?

24 A. Reunification.

25 Q. And after reunification?

1 A. Adoption.

2 Q. And now I'm going to read to you from  
3 Chapter 39.621, if you can pass that up for me.

4 MS. BASS: Thank you.

5 BY MS. ALLEN:

6 Q. I'll share that one with you.

7 MR. GONZALEZ: We have an extra one.

8 MS. ALLEN: Oh, okay, great.

9 THE CLERK: This will be Exhibit D.

10 BY MR. ALLEN:

11 Q. Okay. Okay. Yeah, take a look at that  
12 for a second.

13 A. You said, 39.621?

14 Q. Yeah. It should be -- oh, did I give  
15 you the wrong one again? No, take mine.

16 Okay. Okay. Okay. So, yeah, this is  
17 39.621. Would you agree that Section 39.621 of  
18 the Florida Statutes addresses the issue of  
19 permanency for dependent children?

20 A. Yes.

21 Q. Okay. And, now, take a look at 39.621  
22 Subsection (5), and you found that?

23 Okay. Is it fair to say that the best  
24 interest of the child is the primary  
25 consideration in determining the permanency goal

1 for every dependent child?

2 A. Yes.

3 Q. Well, would you say this is true for  
4 every child in foster care?

5 A. Yes.

6 Q. This is true for foster children placed  
7 in the care of gay foster parents?

8 A. Yes.

9 Q. You're not aware of any law, regulation,  
10 policy or procedure that states that the best  
11 interest of the child should not be the primary  
12 consideration in determining the permanency goal  
13 for the children placed in the care of gay foster  
14 parents?

15 A. No.

16 Q. Okay. And, now, take a look at 39.621,  
17 Subsection (6). It should be right there. If  
18 you need a second to take a look at it, go ahead.

19 Okay. Isn't it true that where  
20 unification with the child's parents is not  
21 possible, adoption is the preferred permanency  
22 option?

23 A. Yes.

24 Q. Is this true for every child in the  
25 foster care system?

1 A. Yes.

2 Q. Is this true for foster children placed  
3 in the care of gay foster parents?

4 A. Yes.

5 Q. And you're not aware of any law,  
6 regulation, policy or procedure that states that  
7 with respect to children placed in the care of  
8 gay foster parents adoption is not the primary  
9 permanency option if reunification with the  
10 parents is not possible?

11 A. No.

12 Q. Okay. Now we're going to flip back to  
13 39.621, Subsection (2), okay?

14 Isn't it true that -- it's true, isn't  
15 it, that where reunification is not possible,  
16 39.621, Subsection (2), explicitly provides that  
17 adoption is the permanent placement objective?

18 MS. MARTIN: Objection, asked and  
19 answered.

20 MS. ALLEN: Okay.

21 THE COURT: I'll allow it.

22 THE WITNESS: Yes.

23 BY MS. ALLEN:

24 Q. Okay. Is that true, even above a  
25 permanent guardianship?

1 A. Yes.

2 Q. Above a permanent placement with a  
3 relative?

4 A. Yes.

5 Q. Above another planned permanent living  
6 arrangement?

7 A. Yes.

8 Q. And this is true for foster children  
9 placed in the care of gay foster parents, right?

10 A. Yes.

11 Q. Okay. You're not aware of any law,  
12 regulation, policy or procedure that states that  
13 in the care of foster children placed in the care  
14 of gay foster parents adoption is not the  
15 permanent placement objective, if reunification  
16 is not possible?

17 A. No.

18 Q. Okay. And now we're going to flip back  
19 to 39.621, Subsection -- Section (5), Subsection  
20 (b).

21 (5)(b). There you go.

22 In making a permanency determination,  
23 the Court must consider the recommendation of the  
24 guardian ad litem, correct?

25 A. Yes.

1 Q. This is true for foster parents (sic)  
2 placed in the care of gay foster parents, right?

3 A. Yes.

4 Q. So you're not aware of any law,  
5 regulation, policy or procedure that excludes  
6 foster children placed in the gay -- care of gay  
7 foster parents?

8 A. No.

9 Q. Okay. And, now, I'm going to ask you --  
10 and I've already passed this out. It's the  
11 Rights and Expectations for Children and Youth in  
12 Child Care and Foster Care.

13 And you've got one.

14 Have you seen this document before?

15 A. I can't say I have. I may have seen a  
16 different version of it.

17 Q. Is this a publication produced by DCF?

18 A. It appears to be.

19 Q. Does DCF use this in the regular course  
20 of business?

21 A. I don't know that I can answer that, but  
22 I would probably guess, yes.

23 Q. Okay. And who is this brochure intended  
24 for?

25 A. For the children in foster care.



1           Q. Okay. Let me see. I'm going to read to  
2           you certain portions of this brochure and then  
3           I'm going to ask you certain questions about what  
4           I've read, okay?

5           A. All right.

6           Q. All right. If you take a look at this,  
7           you'll see a section, where it says, "What rights  
8           do you have"?

9           A. Uh-huh, yes.

10          Q. Okay. Is one of those rights to know  
11          your rights?

12                 MS. MARTIN: Objection, lack of  
13                 foundation and personal knowledge. She  
14                 testified she doesn't know the document.

15                 THE COURT: I think the document speaks  
16                 for itself.

17                 MS. ALLEN: Okay. So I'll just withdraw  
18                 it, Judge.

19                 THE COURT: I'll sustain the objection.

20                 MS. ALLEN: Okay. So I'm going to rest  
21                 now, Judge, with this witness.

22                 THE COURT: Anyone else have any  
23                 questions of this witness?

24                 MS. BASS: I have no questions,  
25                 thank you.

1 THE COURT: Ms. Cooper, do you have any  
2 questions of Ms. Thorne?

3 MS. COOPER: No questions.

4 MS. MARTIN: No questions.

5 THE COURT: So now everyone has rested?

6 MR. GONZALEZ: No. She rested with this  
7 witness.

8 MS. ALLEN: With this witness, yes.

9 MS. MARTIN: Your Honor -- for  
10 clarification, Judge, the documents by the  
11 guardian ad litem that were identified were  
12 not entered into evidence?

13 THE COURT: No.

14 MS. ALLEN: Right. No, I didn't enter  
15 them into evidence.

16 And, Judge, if there's no objection, I'd  
17 like to call Ron Gilbert back to the stand.  
18 He's my witness, but he was called by the  
19 children, so -- and it would be limited  
20 to --

21 THE COURT: The testimony we just heard?

22 MS. ALLEN: Correct.

23 THE COURT: Over your objection.

24 MS. MARTIN: And you anticipated mine  
25 that time.

1 MS. ALLEN: And it won't be very long.

2 THEREUPON:

3 RONALD B. GILBERT

4 was called as a witness by the Guardian Ad Litem  
5 Program and, having previously been sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ALLEN:

9 Q. Ron, you testified that you've been a  
10 guardian ad litem for seven years?

11 A. Yes.

12 Q. And in that amount of time, you filed  
13 judicial review reports and permanency reports,  
14 as mandated by Florida Statute?

15 A. Yes.

16 Q. Okay. Did you file a permanency report  
17 in this case?

18 A. Yes.

19 Q. At what time period are you expected to  
20 file a permanency report in this case?

21 A. Under 39.621, every 12 months.

22 Q. Why every 12 months?

23 A. Because, as I understand the law, the  
24 State has an obligation to attempt permanency  
25 within a year from the date that the child comes

1           into dependency.

2           Q.   And after that time period, are the  
3           parents served with termination of parental  
4           rights proceedings, generally?

5           A.   Unless there's an early termination,  
6           yes.

7           Q.   Okay.  And do you recall when these  
8           children were available for adoption?

9           A.   I think, over a year ago, I'm not  
10          exactly sure, maybe two years.

11          Q.   Okay.  And if the TPR in this case was  
12          finished in August of '06, then how many years  
13          has it been now that these children have had  
14          neither legal nor -- have legal parents?

15          A.   Over two years.

16          Q.   Over two years?

17                   And would you consider that a violation  
18          of Florida Law?

19          A.   Yes.

20                   MS. ALLEN:  Okay.  And I have no further  
21          questions, Judge.

22                   THE COURT:  Anything else for  
23          Mr. Gilbert?

24                   MS. BASS:  No questions.

25                                   CROSS EXAMINATION

1 BY MS. MARTIN:

2 Q. I have just one question for you,  
3 Mr. Gilbert. As the guardian ad litem, is it  
4 true that you are the guardian ad litem for  
5 children other than those at issue in this  
6 lawsuit?

7 A. Excuse me?

8 Q. Are you the guardian ad litem for  
9 children other than those that are involved in  
10 this lawsuit?

11 A. In -- at present?

12 Q. Correct.

13 A. Yes.

14 Q. Have you, in the past, been responsible  
15 for other children, as well?

16 A. What do you mean, "Responsible"?

17 Q. As the guardian ad litem.

18 A. Yes.

19 Q. And in those instances, have you ever  
20 had occasion where you were responsible for  
21 children that have been without placement in a  
22 permanent situation for more than a year?

23 A. Yes.

24 Q. So would you say that in those instances  
25 it was also a violation of the law?

1 A. Yes.

2 Q. And how many such instances can you  
3 recall that occurred?

4 A. I think, out of the 30 cases, I would  
5 say, probably 10 to 12.

6 MS. MARTIN: Okay. Thank you.

7 THE WITNESS: Regrettably.

8 MS. ALLEN: I just have one more in  
9 rebuttal.

10 REDIRECT EXAMINATION

11 BY MS. ALLEN:

12 Q. Ron, those cases that have gone -- those  
13 10 to 12 cases that have gone over the statutory  
14 time period, was it due to any Florida Statute  
15 that would not permit that adoption to proceed  
16 within the statutory framework?

17 A. No.

18 MS. ALLEN: I have no further questions,  
19 Judge.

20 THE COURT: Thank you, Mr. Gilbert.

21 Anything else, Ms. Allen?

22 MS. ALLEN: Okay. Judge, we call Yves  
23 Francois, the case manager in this case for  
24 CFCE.

25 MS. MARTIN: DCF also objects to the

1 calling of this witness, as he's not listed  
2 and they're out of turn. DCF is prejudiced  
3 by having this witness testify at this time.

4 THE COURT: He's been designated as the  
5 Department representative.

6 MS. ALLEN: This is true.

7 MR. FRANCOIS: Good morning.

8 MS. BASS: Your Honor, the  
9 testimony is limited to the issue of the  
10 permanent guardianship that was raised  
11 in the State's case and why that's --  
12 what the alternative permanency options  
13 are, to the extent the Court --

14 THE COURT: I'm going to allow it for  
15 that purpose, then.

16 MS. BASS: Thank you.

17 THEREUPON:

18 YVES FRANCOIS  
19 was called as a witness by the Guardian Ad Litem  
20 Program and, having first been duly sworn, was  
21 examined and testified as follows:

22 THE CLERK: And would you state your  
23 name, for the record?

24 THE WITNESS: Yves Francois.

25 DIRECT EXAMINATION

1 BY MS. ALLEN:

2 Q. Good morning, Mr. Francois.

3 A. Good morning.

4 Q. I'm Jessica Allen, for the Guardian  
5 Program.

6 I'm going to sort of limit your  
7 testimony, but I want to ask you a few  
8 preliminary questions. Where are you employed?

9 A. I'm employed at the Center for Family  
10 and Child Enrichment.

11 Q. And that's commonly known as CFCE?

12 A. That is correct.

13 Q. What services does CFCE provide?

14 A. We provide foster care services for  
15 children that are in the custody of the  
16 Department or in the process of being reunified  
17 with their relatives, children that have been  
18 taken into our care because of abuse and other,  
19 you know, safety issues.

20 Q. Is there a relationship between CFCE and  
21 DCF?

22 A. CFCE is a subcontractor for OurKids,  
23 which is the lead CBC agency for Miami-Dade and  
24 Monroe County, in the community-based program.

25 Q. Okay. What position do you hold with



1 CFCE?

2 A. I am the adoption supervisor.

3 Q. Okay. How many cases have you handled  
4 throughout your career?

5 A. As a supervisor, it's been -- it's been  
6 quite a few. I would say over 500, but prior to  
7 being the supervisor, I was also a family service  
8 counselor, doing adoptions for the Department of  
9 Children & Families prior to privatization. So  
10 it's quite a few. I mean, I couldn't really give  
11 you a number.

12 Q. Okay. Are you the case worker assigned  
13 to this case?

14 A. Yes.

15 Q. And when were you assigned to this case?

16 A. I assigned myself to the case  
17 approximately around August of 2006, because I  
18 felt there was some uncomfortability with the  
19 previous case manager that was working the case.

20 Q. Okay. Who placed the children with  
21 Mr. Gill and Mr. [Roe]?

22 A. The children were placed in Mr. Gill's  
23 residence by the prospective -- excuse me, child  
24 protection investigator, in December of 2004,  
25 prior to the roll-out, prior to the case going to

1 CFCE.

2 Q. What is permanent placement or  
3 permanency plan?

4 A. Permanency plan is a plan where we, the  
5 agency, and all the pertinent parties, try to  
6 determine which is the best plan, you know,  
7 permanently for the child, whether it be -- you  
8 know, is this child going to be adopted, being  
9 assigned to a biological family or adopted or  
10 guardianship. That's what we call a permanency  
11 plan. The permanency placement is where the  
12 child is placed, you know.

13 Q. Okay. And you were not involved in the  
14 placement of the children with Mr. Gill and Mr.  
15 [Roe]?

16 A. No, the children were placed with  
17 Mr. Gill and Mr. [Roe] as a foster placement.

18 Q. Okay. What are the various permanency  
19 options or goals?

20 A. There is, obviously, the first one,  
21 which is reunification to the biological parents,  
22 you know, and if that doesn't happen, their  
23 rights are terminated, in most cases, and, then,  
24 from there on, we go for a guardian -- excuse me,  
25 adoption. So the two extremes are unification,

1 adoption and in between you have guardianship,  
2 PLA, which is another plan, permanent living  
3 arrangement. There is also another arrangement  
4 with a family relative or other adult. All those  
5 are considered permanency plans.

6 Q. So after a TPR, adoption is the  
7 preferred permanency goal?

8 A. Yes, once the parental rights are  
9 terminated, it is the preferred goal --  
10 permanency goal, because that is when the child  
11 will actually see -- achieve true permanency. In  
12 other words, not having to be involved with the  
13 system at all, he or she would have, you know,  
14 parents that are, you know, caring for them, and  
15 he or she has become their heir.

16 Q. Okay. So there are legal rights, as  
17 well, you're saying?

18 A. Yes.

19 Q. Okay. Who are the children placed with  
20 Mr. Gill and Mr. [Roe]?

21 A. The children placed with Mr. Gill and  
22 Mr. [Roe] are [Jam] -- I mean, excuse me,  
23 [James Doe] and [John Doe].

24 Q. Okay. Has a permanency plan been  
25 established for those two children?

1           A. Yes, the permanency plan for those two  
2 children has been adoption, since the parents'  
3 rights were terminated, I believe, in December of  
4 2005 or February 2006. I don't have the exact  
5 date.

6           Q. Okay. So that's the plan, but what is  
7 the primary permanency goal for [John] and  
8 [James]?

9           A. The primary permanency goal is also  
10 adoption, and -- and that we also have a  
11 concurrent goal of guardianship with children  
12 that, you know, are of that age, but their  
13 primary permanency goal is adoption.

14          Q. Has anyone else applied to adopt these  
15 two children?

16          A. No, no one else has applied to adopt  
17 these two children. However, since the parents'  
18 rights were terminated, and Mr. Gill indicated  
19 that he wanted to adopt the children, we had to  
20 place a hold on the children, because we had, in  
21 fact, someone interested in adopting them, and  
22 what that means is that they could not go out --  
23 they could not be placed -- they're placed on the  
24 Adoption Exchange, but they could not go out to  
25 the world, because we had someone identified as a

1 prospective adoptive parent.

2 Q. Okay. So [John] and [James] are  
3 eligible for adoption at this time?

4 A. Yes, they are free for adoption, yes.

5 Q. Okay. And was a home -- was an adoption  
6 home study completed on Mr. Gill and Mr. [Roe]?

7 A. Yes, an adoption home study was  
8 completed. I completed the adoption home study,  
9 I believe it was around November of 2006, I don't  
10 remember exactly, but I completed the adoption  
11 home study.

12 Q. And was it positive?

13 A. Yes, the home study was positive. The  
14 only issue was the fact that we could not make a  
15 recommendation because of the law.

16 Q. Okay. Were you personally involved in  
17 the home study?

18 A. Yes, I completed the home study.

19 Q. Okay. Did CFCE make any findings or  
20 recommendations in the home study regarding  
21 Mr. Gill's application to adopt [John] and  
22 [James]?

23 A. CFCE could not make a recommendation,  
24 because of the fact that the law prohibits from  
25 us making a recommendation, in the sense that the

1 statutes state that he cannot adopt. However,  
2 all aspects of the home study were positive.

3 Q. Okay. If Mr. Gill's petition to adopt  
4 is ultimately denied, what, if anything, is going  
5 to happen to [John] and [James]'s foster care  
6 placement with Mr. Gill and Mr. [Roe], in light  
7 of the fact that the permanency goal is adoption?

8 A. Well, we would not seek to remove them  
9 from the home, but we would continue to recruit  
10 prospective adoptive parents for them, because by  
11 law we are obligated to do so, because of their  
12 age and the parents' rights being terminated.  
13 However, all things being considered, it would be  
14 unlikely that we'll be able to identify a home  
15 for the children.

16 Q. What's the likelihood that the children  
17 will be separated?

18 A. If they had to be removed from the home,  
19 I would -- my experience has been that they, in  
20 all probability, would be separated.

21 Q. But isn't it DCF's policy to try to keep  
22 siblings together?

23 A. Yes, we would definitely, you know, do a  
24 very diligent effort at trying to identify a  
25 home, either another foster home or a guardian or

1 an adoptive home that would take them, but it's  
2 been my experience, when children, particularly  
3 African-American males, reach the age of eight  
4 years old and beyond, it's very difficult to  
5 place them together.

6 Q. Okay. Okay. Could you describe for me  
7 what exactly the Adoption Exchange is you spoke  
8 of?

9 A. The Adoption Exchange is basically an  
10 internal --

11 MS. MARTIN: Objection, exceeds the  
12 scope. He was here for the permanency plan.

13 THE COURT: I'll sustain it.

14 BY MS. ALLEN:

15 Q. Is long-term -- you stated long-term  
16 foster care is considered a permanent placement  
17 option, correct?

18 A. Yes.

19 Q. Are you aware of any negative outcomes  
20 for children who remain in long-term foster care?

21 A. Well, in my opinion, most of these  
22 children do not --

23 MS. MARTIN: Object -- object to the  
24 question. I mean, he's here on the  
25 permanency plan and what the permanency

1 plans are, and not on --

2 MS. ALLEN: Well, long-term foster care  
3 is a permanency plan.

4 THE COURT: I understand, but I have to  
5 be careful here, because of the way we've  
6 called him. I have to be careful.

7 MS. ALLEN: Okay.

8 THE COURT: There already is testimony  
9 from one or two of the researchers about the  
10 effects of that, so I'm going to sustain the  
11 objection.

12 MS. ALLEN: Okay. Okay. Well, then,  
13 Judge, I have no more questions for Mr.  
14 Francois.

15 MS. COOPER: No questions.

16 MS. BASS: No questions, thank you.

17 MS. MARTIN: No questions, either.

18 Thank you very much.

19 THE WITNESS: Thank you, Your  
20 Honor.

21 MS. ALLEN: And I think -- I'm going to  
22 go ahead and rest, Your Honor.

23 THE COURT: All right. We've all  
24 rested. And are we going to do closing  
25 arguments today?



1 MS. BASS: Your Honor, the question  
2 was, we assumed that you would want  
3 submissions of fact findings and  
4 conclusions of law --

5 THE COURT: Thank you so much.

6 MS. BASS: And so we all assumed  
7 that 30 days would probably be an  
8 adequate timeframe, and so the question  
9 was whether you would prefer to have  
10 closing argument after the submission or  
11 this afternoon?

12 THE COURT: I think now. Is that  
13 okay with everyone?

14 MS. MARTIN: Sure.

15 MS. COOPER: Sure.

16 MS. BASS: Fine with us, Your  
17 Honor.

18 THE COURT: So tell me how long you're  
19 going to take, because I have to be on a  
20 plane to Washington at 7:00, and what I can  
21 do is adjust Dr. Casanova's -- we're doing a  
22 special calendar, and I have my detention.

23 So how many hours altogether?

24 MS. BASS: I would not anticipate  
25 that I would need more than half an

1 hour, possibly less.

2 THE COURT: Okay. We're fine,  
3 then.

4 MS. MARTIN: Oh, I think we are.

5 MS. BASS: We should be fine.

6 THE COURT: Doctor, we're going to do  
7 our calendar at 12:00, and then I'll do my  
8 detention. Is an hour and a half enough for  
9 you? Dr. Casanova, we're okay with an hour  
10 and a half?

11 DR. CASANOVA: I couldn't hear you.

12 THE COURT: An hour and a half, is that  
13 enough for our meeting?

14 DR. CASANOVA: Okay.

15 MS. BASS: Your Honor, if you  
16 wanted to wait and do it at 2:30, that's  
17 fine, too, because we're clearly going  
18 to be able to finish comfortably by  
19 4:00, 4:30, I would think.

20 THE COURT: If I said two o'clock, we're  
21 okay?

22 MS. COOPER: May I clarify  
23 something real quick? Do I understand  
24 that Your Honor agrees that 30 days from  
25 today for submission?

1           THE COURT: I want to do whatever works  
2 for you.

3           MS. BASS: Is that okay, Valerie?

4           MS. MARTIN: Yeah, that's enough time  
5 for everyone.

6           THE COURT: Thirty days.

7           The other thing, we'll come back to  
8 get the ruling, the final judgment. So  
9 we'll come back, but I'm going to make  
10 that approximation. It depends on how  
11 everything else goes, okay?

12          MS. BASS: Your Honor, I assume you  
13 would like us to submit with the fact  
14 finding everything on disk or flash drive?

15          THE COURT: Disks would be great.

16          MS. MARTIN: I'm sorry. I'm sorry, I  
17 didn't understand what you just said about  
18 the time after that.

19          THE COURT: I assume that instead of  
20 getting a judgment in the mail, you would  
21 want to come back.

22          MS. BASS: I would suggest that  
23 that would be an appropriate --

24          THE COURT: So that's the issue,  
25 what that date would be.

1 MS. MARTIN: Oh, I understand now. It's  
2 a calendar issue.

3 MS. BASS: Yes.

4 MS. MARTIN: Okay. I'm sorry, I  
5 didn't understand you. Thank you.

6 MS. ALLEN: But that's the 10th, right?

7 MS. BASS: Well, no. Your Honor  
8 had suggested we would come back on the  
9 10th if we needed additional testimony.  
10 I don't know if that would be an  
11 acceptable timeframe.

12 THE COURT: No, I think we're fine.  
13 We'll work out all the details. Okay.  
14 Thank you. I will see you at 2:00.

15 (Thereupon, the lunch recess was taken.)

16 THE COURT: All right. So here we are.

17 MS. BASS: Thank you, Your Honor.

18 If I might start on behalf of the  
19 children.

20 Your Honor, as you have noted many times  
21 since the commencement of this proceeding,  
22 at its core, this case is about [John] and  
23 [James], about their future, about their  
24 welfare, and about their right to have a  
25 permanent home.

1           Through no fault of their own, [John]  
2           and [James] have been in what we've  
3           referred to as a statutory whipsaw, by  
4           virtue of Florida Statute 63.042(3), which  
5           categorically prohibits gay people from  
6           adopting.

7           This law violates [John] and [James]'s  
8           constitutional rights to equal protection  
9           and due process and eviscerates the core  
10          interests of the dependency law, by  
11          depriving them of the primary permanency  
12          option under Chapter 39 --

13                   (Plane roar)

14           THE COURT: Won't you all be glad to  
15           leave this place?

16           MS. BASS: -- that of adoption,  
17           among other rights and protections  
18           accorded to dependent children, without  
19           allowing this Court to determine what  
20           is, in fact, in their best interest.

21           Earlier today, you heard from the DCF  
22           representative, Christine Thorne, who  
23           affirmed that Chapter 39 of the Florida  
24           Statutes purports to give a number of rights  
25           and protections to children, such as

1 [James] and [John], who are in foster  
2 care, including equal treatment to all  
3 dependent children, and that there is  
4 nothing in that statute which would justify  
5 or condone the State treating them any  
6 differently than any other children who were  
7 put into the foster charge of heterosexual  
8 foster parents.

9 The law causes a divide among children,  
10 between those who through the luck of the  
11 draw are placed with heterosexual foster  
12 parents and those who are placed with  
13 homosexual foster parents.

14 You heard from Ms. Thorne that there's  
15 absolutely no restriction in the ability of  
16 the State to place children, such as  
17 [James] and [John], with homosexual foster  
18 parents, but by virtue of doing that, from  
19 that point forward, those children are  
20 deprived of the same rights and benefits  
21 afforded other children under that statute,  
22 among them, the ability to get future  
23 insurance benefits, the right to obtain  
24 support from a parent. It will affect their  
25 inheritance rights. And, of course, it will

1           affect their right to adoption assistance  
2           funding.

3           But more importantly, as the expert  
4           testimony you heard today from DCF, as well  
5           as the deposition testimony that was read  
6           into the record from Ada Gonzalez and  
7           others, it prevents them from having the  
8           security of being able to be adopted into a  
9           permanent home, without the risk of being  
10          taken away at some future date and suffer  
11          another traumatic, broken attachment, and it  
12          also subjects them to the critical  
13          psychological harm of knowing that they are  
14          full, equal and permanent members of a  
15          family for the rest of their life.

16          In contrast, children like [John] and  
17          [James], those who have been put in the  
18          care of gay foster parents or other gay  
19          non-parent givers -- caregivers, cannot be  
20          adopted, the way other children can.

21          As you heard from the CFCE social  
22          worker, Yves Francois, this condemns them to  
23          one of two possible futures: One, having a  
24          close family relationship broken while they  
25          are placed with another family who may have

1 the ability to adopt them; or, two,  
2 remaining with their gay foster parents or  
3 non-parent caregivers, but without any of  
4 the important benefits that a permanent  
5 adoption would provide.

6 Under this scenario, [John] and  
7 [James] face the risk of being removed  
8 from a family to which, it is uncontroverted  
9 in the testimony in this record, they have  
10 grown completely attached to, and instead,  
11 be placed with complete strangers for the  
12 purpose of adoption.

13 It's undisputed that DCF, through its  
14 agents, placed [John] and [James] in the  
15 foster care of Martin and [Tom, Sr.], that they  
16 knew at the time that they were gay, that  
17 nearly four years have transpired when these  
18 children have thrived in this environment,  
19 have done better in school, have done better  
20 physically, and have attached to a new  
21 sibling brother, [Tom], Jr.

22 DCF admits that placement with Martin  
23 and [Tom, Sr.] is in the children's best  
24 interest.

25 Now, we should, hopefully, be able to



1 stop there. Unfortunately, this statutory  
2 scheme does not allow us to do that, but DCF  
3 also admits that Martin and [Tom, Sr.] are  
4 providing a safe, healthy, stable and  
5 nurturing home for [John] and [James], and  
6 it is meeting their physical, emotional,  
7 social and educational needs.

8 There's no question that CFCE conducted  
9 an adoption home study and determined that  
10 Martin met all of the criteria to adopt  
11 [John] and [James] and that it would have  
12 approved Mr. Gill's request, but for the  
13 statutory categorical ban.

14 DCF further admits, in their responses  
15 to the Requests for Admissions in this case,  
16 that [John] and [James] are bonded to  
17 Martin and [Tom, Sr].

18 You heard the testimony from Mr. Gill  
19 about how [John] came into his home with  
20 ringworms, how [James] had a recurrent  
21 earache, how these children took months and  
22 months, particularly [John], more than a  
23 year, to attach to their new parents, how he  
24 explained to Mr. Gill that he didn't have a  
25 daddy, and that he would not be able to

1 connect in the same way that his younger  
2 brother did, how he didn't speak for the  
3 first month that he was there, how he came  
4 to school at a significant developmental  
5 delayed status, because he didn't know his  
6 colors, he didn't know his numbers, he  
7 didn't know his alphabet letters, and the  
8 progress that these children have made.

9 You saw the picture of what [John]  
10 looked like when he first came into the  
11 home, and the picture of what these two  
12 children look like today. It's undisputed,  
13 from any of the three witnesses who actually  
14 did an evaluation of these children, what is  
15 in their best interest.

16 You heard from the guardian ad litem  
17 this morning, who has visited more than 30  
18 times with the Gill family, who talked about  
19 how [John] and [James] are happy,  
20 well-adjusted children, who have thrived  
21 under the loving and nurturing care of  
22 Martin and [Tom, Sr].

23 You also heard Mr. Gilbert testify under  
24 oath that it would be a tragedy to prevent  
25 these children from being adopted by

1 Mr. Gill.

2 You heard from Mr. Brodzinsky, a  
3 nationally recognized expert in the fields  
4 of clinical and developmental psychology,  
5 and the psychology of adoption and foster  
6 care, who personally spent two days with  
7 these children, and who testified that in  
8 his expert opinion, [John] and [James] are  
9 very strongly and securely attached not only  
10 to Mr. Gill, but to his partner [Tom, Sr.], and  
11 not only to his partner [Tom, Sr.], but to their  
12 new sibling, [Tom], Jr.

13 He testified that in his opinion the  
14 best solution for [John] and [James] would  
15 be to allow Mr. Gill to adopt them.

16 He also testified about the severe  
17 emotional problems that potentially could be  
18 caused to these two children to take them  
19 away from the only family they've ever  
20 known, and most importantly, he also  
21 testified how permanent guardianship was not  
22 an adequate substitute, that psychologically  
23 it would not provide the children the same  
24 stability of knowing that they had parents,  
25 and, of course, you also recall Mr. Gill

1           testifying about [John] signing his new  
2           name, with his new last name, and how he  
3           indicated that to him that meant that they  
4           were truly a family.

5                     Now, the possibility of removal and  
6           separation is not an abstract risk. As you  
7           heard from the DCF case worker, if this  
8           adoption is not approved, DCF, pursuant to  
9           the permanency plan that adoption is in  
10          these children's best interest, has the  
11          obligation to look for adoption alternatives  
12          for these children, that given the fact that  
13          [John] is an eight-year-old African-American  
14          child, the likelihood of him being able to  
15          find an alternative adoption placement is  
16          not good. The possibility exists that that  
17          child is going to go from the happy,  
18          healthy, well-adjusted young man he is  
19          today, to someone who will live out the  
20          remaining years of his childhood in foster  
21          care, and worse yet, that the real  
22          possibility exists that these two siblings  
23          will be separated from each other, because  
24          [James] is potentially still likely to be  
25          adopted in another home.

1           The State did not, because it cannot,  
2           put in any evidence in the record to  
3           countermand or rebut what we know will be  
4           the tragic consequences of not allowing  
5           these children to be adopted into this home.

6           There's no question that Chapter 39 of  
7           the Florida Statutes recognizes that  
8           permanency is the paramount objective for  
9           these children, and the expert testimony  
10          showed why it is so important. They  
11          describe what can happen to a child who has  
12          to suffer loss yet again from multiple  
13          placements in foster care.

14          Particularly in [John]'s case, they  
15          described the real possibility that this  
16          child may never be able to attach in a  
17          meaningful way to another adult.

18          Specifically, Mr. Brodzinsky testified  
19          that [John] and [James] could suffer  
20          emotional and psychological harm if they  
21          cannot be adopted by and are removed from  
22          Martin's care, and that that harm could last  
23          a lifetime.

24          The other possible future for [John] and  
25          [James] and the other similarly situated

1 children is to stay with their foster  
2 parents, but not ever have permanency.

3 In addition to depriving them of the  
4 material benefits provided by the Florida  
5 Statute to foster parents who adopt out of  
6 foster care, this arrangement denies the  
7 children the critical psychological benefit  
8 of being adopted.

9 Expert witness and even DCF's own  
10 representatives testified about the  
11 importance to children emotionally of being  
12 adopted and why long-term foster care,  
13 provided by other statutes, such as  
14 guardianship, do not give them the same  
15 sense of permanency and membership in a  
16 family.

17 We heard testimony about children who  
18 age out of the foster care system having  
19 gone from one foster placement to another,  
20 and the real psychological damage that that  
21 does.

22 Everyone understands what adoption  
23 means, especially [John] and [James]. As  
24 eight-year-old [John] understood so clearly,  
25 being adopted would mean that he, his

1 brother and his Papi would all have the same  
2 last name and they would be a family.

3 Now, Mr. Auslander is going to address  
4 the specific legal arguments that we have  
5 raised in our trial briefs.

6 Let me just talk briefly about the fact  
7 that even under the lowest level of  
8 scrutiny, rational basis review, there is  
9 still no legitimate governmental interest  
10 that's furthered by barring gay people from  
11 adopting.

12 The State has asserted a number of  
13 supposed rationales for the statute, but  
14 there is no child welfare basis for the  
15 automatic disqualification of gay people  
16 from adopting. To the contrary, the  
17 evidence reflects that the exclusion  
18 undermines the interest of children, by  
19 denying them the benefits of adoption that  
20 would otherwise be available to them if they  
21 could be adopted by their foster parent, and  
22 arbitrarily reduces an already insufficient  
23 pool of qualified adoptive parents.

24 Even Dr. Schumm, this morning, suggested  
25 to this Court that in an ideal world, this

1 Court would have the discretion to decide,  
2 on a case-by-case basis, what is in the best  
3 interest of the child. We believe that is  
4 what Chapter 39 requires that you do, and  
5 that, in fact, in this case, it is  
6 undisputed that if you were to apply the  
7 test given to you under Chapter 39, these  
8 children would be allowed to be adopted by  
9 Mr. Gill.

10 You heard testimony from Dr. Lamb, that  
11 is uncontroverted, that gay parent families  
12 uniformly reflect that the children grow up  
13 in as positive, free of mental health  
14 problems as children adopted by  
15 heterosexuals.

16 The consensus is reflected in position  
17 papers from every major professional  
18 association that has considered this. You  
19 heard about the American Psychological  
20 Association, the American Academy of  
21 Pediatrics, the National Association of  
22 Social Workers and the Child Welfare League  
23 of America, all of which suggest that there  
24 is no scientific basis to show that  
25 homosexual parents do not do just as good a



1           job as heterosexual parents.

2           The State's experts pointed to no study,  
3           not one study, to show a scientific basis  
4           that reflects any differently. Rather, they  
5           limited their testimony to a criticism of  
6           the underlying methodology, a criticism that  
7           apparently has not been recognized or  
8           accepted by any other national psychological  
9           or child developmental association.

10          The State has asserted a number of  
11          claims as to the supposed child welfare  
12          rationale throughout the course of this  
13          litigation, that kids need a married mom and  
14          dad, that placement with gay parents will  
15          expose them to stigma, that gay people have  
16          elevated rates of child abuse, that gay  
17          people have elevated rates of unstable  
18          relationships. All of these were disavowed  
19          by the very DCF representatives in this case  
20          who were deposed, even though counsel for  
21          the Attorney General proposed that this  
22          Court consider those rationales today. Most  
23          of those rationales were abandoned in this  
24          trial, except for a claim that gay people  
25          have elevated rates of unstable

1 relationships, elevated rates of mental  
2 health problems, including drug abuse, and  
3 stigma.

4 Nevertheless, the expert testimony  
5 presented in support of this position  
6 addresses the full range of asserted  
7 rationales, that even under the rational  
8 basis test, none of these meet the test  
9 required.

10 The undisputed testimony of Dr. Lamb  
11 showed, again, no basis for the assertion  
12 that there is an optimal gender or even an  
13 optimal number of parents to be good  
14 adoptive parents, and recognized that this  
15 was a subject of consensus among experts in  
16 the field of child development.

17 The evidence showed that kids are  
18 equally likely to get teased or bullied  
19 because their parents are fat or because  
20 their parents are illiterate or because  
21 their parents are out of work or because  
22 their parents are homeless. Again,  
23 stigmatization of children because of their  
24 parents' position in our society is not a  
25 basis for preventing them from adopting.

1           And, of course, you heard from Dr.  
2           Berlin, one of the -- a recognized national  
3           expert, that undisputed evidence showed  
4           there is no basis for the ugly myth that gay  
5           people are prone to sexual abuse or any  
6           other violent or criminal behavior any more  
7           than heterosexuals.

8           Regarding their suggestion that somehow  
9           elevated risks of unstable relationships  
10          somehow justifies the statutory preclusion  
11          of adoption by gay parents, the evidence  
12          presented by Dr. Peplau and Dr. Cochran  
13          showed that there are many demographics.  
14          The one that kept coming up is that of  
15          American Indians, who have a low level of  
16          education, a low level of income, a higher  
17          rate of alcoholism, and no one would suggest  
18          that we should create categorical exclusions  
19          based on demographic similarities in  
20          particular groups, that would suggest that  
21          they should be, on a categorical basis,  
22          denied the right to adopt.

23          Everyone suggests that the only way to  
24          determine what's in the best interest of the  
25          children is to have a court, such as

1           yourself, make an individual determination,  
2           based on the facts of those particular  
3           adoptive parents and the foster care  
4           children that are being considered.

5           Your Honor, very simply, we would  
6           suggest that the record that this Court  
7           currently has before it is one which has  
8           uncontroverted evidence from every person  
9           who has met and considered the mental health  
10          of these children, that, number one, it is  
11          in their best interest to stay and be  
12          adopted by Mr. Gill, number two, that there  
13          would be traumatic and potentially extremely  
14          dangerous mental health problems to take  
15          these children away from this family's care,  
16          and, number three, that there is no  
17          scientific basis that justifies this  
18          categorical exclusion that prevents gay  
19          foster parents, such as Mr. Gill, who have  
20          nurtured and brought these children back to  
21          mental health, from being prevented from  
22          adopting, and on that basis, Your Honor, I  
23          would turn over to Mr. Auslander, to  
24          specifically address the equal protection  
25          and substantive due process arguments.

1                   MR. AUSLANDER: Thank you, Your Honor.  
2                   I find myself in a very challenging  
3                   position, of course, having to follow  
4                   Ms. Bass's eloquence, and I would like to  
5                   say, if the Court and no one minds, that in  
6                   listening to those flights, those over  
7                   flights, and seeing us in this very, very  
8                   challenging courthouse, in terms of what we  
9                   have, it often does make me think that I  
10                  hope that this case and so many others are  
11                  not -- are not a continuing allegory, where  
12                  the needs of the most innocent and the needs  
13                  of those who have so little is carried on in  
14                  that fashion, rather than, hopefully, this  
15                  case and so many others, where there's a  
16                  possibility of giving the innocent and those  
17                  who have so little more, is what we should  
18                  be considering first and foremost, and their  
19                  best interests, and I apologize for being  
20                  emotional about it, but having labored here  
21                  on some occasions, but not having labored  
22                  here as permanently as some of you have, I  
23                  could not help but remark about that, and so  
24                  I apologize if in any way I'm offending the  
25                  Court or anyone else.

1 THE COURT: No.

2 MR. AUSLANDER: Your Honor, as Ms. Bass  
3 explained, once a scheme is established by  
4 the State, it must be applied  
5 constitutionally, evenhandedly, and not by  
6 arbitrary classification.

7 There can be no dispute that a foster  
8 child placed with a caregiver that cannot  
9 adopt is treated disparagingly.

10 Your Honor, once the statutory scheme  
11 for adoption is established by the State, it  
12 must be applied for all children, in their  
13 best interests, because that is the nature  
14 of the statutory requirement, the  
15 fundamental rights the State has created for  
16 permanency through adoption for children,  
17 and, as I will argue to Your Honor, the  
18 inherent responsibility of the Court.

19 So it matters not that the adoption  
20 process is one that exists only by  
21 statute -- by virtue of the statute. You  
22 hear that old saw all the time.

23 Your Honor, once the State establishes a  
24 statutory regime, particularly one like  
25 adoption, that is so critical to the

1           fundamental interests of children, once it  
2           is established, it must be applied  
3           consistently and consonantly with  
4           constitutional principles.

5           If the State wants to repeal the  
6           adoption law for all children, then so be  
7           it. I don't think that's what the State  
8           wants to do, but once that statutory scheme  
9           is in place, it must be applied  
10          constitutionally.

11          Unfortunately, the statutory ban that  
12          has been the subject of this litigation  
13          causes this law not to be applied  
14          constitutionally to all. Your Honor, equal  
15          protection assures that no innocent children  
16          are arbitrarily classified in a manner that  
17          is unrelated to them and they are --and that  
18          they are harmed as a consequence.

19          The adoption ban, it bears repeating,  
20          treats children fostered by gay caregivers  
21          differently than their peers, who are being  
22          cared for by heterosexual caregivers who  
23          seek to adopt them, because they can be  
24          adopted by those caregivers.

25          The challenged statute makes these

1 benefits available to children in the care  
2 of heterosexuals, but as we know, not to  
3 children in the care of lesbians and gay  
4 men.

5 The harm is evident, as Ms. Bass has  
6 explained, both on the facts of this case  
7 and on the law.

8 Your Honor, the cases that we have cited  
9 to the Court so far, Gillespie and Burris,  
10 from the State Supreme Court, Warth v.  
11 Seldin, and other precedents from the United  
12 States Supreme Court, rest on the basic  
13 proposition that a legal disability based  
14 upon a status uncontrollable by the child  
15 cannot be the basis for State action  
16 discriminating against the child,  
17 absent a -- critically, absent a substantial  
18 sufficient rationale for so discriminating  
19 against the child.

20 Such harm-inducing laws must have  
21 substantial, not merely logical, not merely  
22 reasonable, relationships to their asserted  
23 goals under Florida Law.

24 We heard from Ms. Bass the litany of  
25 arguments that were made by the experts here



1           on behalf of the foster parent and the  
2           children, demonstrating that apart from the  
3           alleged moral obloquy of someone being gay  
4           and yet being the best caregiver for a  
5           child, that there is no -- there is simply  
6           no rationale here related to a genuine  
7           governmental interest or reasonable  
8           governmental interest.

9           So that equal protection, whether it be  
10          by the simplest of tests, as Ms. Bass has  
11          explained to you, the rational basis test,  
12          or, we would say, for the children, the  
13          requirement of an intermediate review of  
14          substantial and sufficient rationale, it is  
15          not simply here for the State to foist this  
16          ban upon innocent -- upon the innocent  
17          children.

18          Your Honor, here, Chapter 39 creates  
19          rights of safety, well-being and permanency  
20          in children. There has to be a  
21          constitutionally sufficient reason, a  
22          substantial and sufficient reason, for the  
23          State to abate those rights.

24          Your Honor, I said without any -- any  
25          challenge to the Court, when I first

1           appeared to argue to you, that Your Honor  
2           does have, as to the children, a blank slate  
3           before you. I can't explain why that is.  
4           My sense of it, perhaps, is that no other  
5           State statutory scheme has lasted this long  
6           or gone this far or disrupted innocent  
7           children in their -- in their needs, in  
8           their right to equal protection, quite so  
9           much as the statute that Your Honor has  
10          before you and is questioning the  
11          constitutionality of, but a blank slate also  
12          provides something of an opportunity.

13                 It doesn't provide an opportunity to be  
14                 rash or inconsiderate of what's gone before,  
15                 but it does provide an opportunity to take  
16                 and examine other precedents that have led  
17                 us to this point and would allow us to make  
18                 good equal protection law for innocent  
19                 children.

20                 So that I would suggest to Your Honor  
21                 that while the classification at issue here  
22                 is certainly not based on a child's  
23                 illegitimacy status, as the many cases that  
24                 we cited to Your Honor, it is based on  
25                 circumstances that the child is similarly

1           disempowered to influence. It is a  
2           classification of children based on the  
3           sexual orientation of their caregivers,  
4           denying children with gay caregivers the  
5           opportunity to be adopted, that is available  
6           for their peers who are being cared for by  
7           heterosexuals.

8           Your Honor, the core concept here to be  
9           derived from the illegitimacy cases is  
10          directly applicable. Legal burdens should  
11          bear some relationship to individual  
12          responsibility.

13          Your Honor, just as no newborn is  
14          responsible for the marital status of their  
15          natural parents, no foster child is  
16          responsible of the lifestyle of the child's  
17          caregiver. Indeed, with due respect to our  
18          opponents, it is the State -- the State that  
19          I used to represent -- it is the State that  
20          should bear the legal consequence of its  
21          placement actions, not the innocent child.

22          Your Honor, you know that I have a  
23          tendency sometimes to be somewhat facetious,  
24          and I apologize for that, yet I'm not being  
25          cavalier here. Your Honor, with respect to

1           these innocent children, this distinction  
2           would be no different, if the State came  
3           before the Court and said, "Those children  
4           who have blonde hair may be adopted and  
5           those children who have brunette hair may  
6           only receive the secondary status of  
7           permanency through an alleged -- alleged  
8           permanency through a permanent  
9           guardianship."

10           Your Honor, as to these children, there  
11           is as little distinction between blonde and  
12           brunette as there is between the lifestyle  
13           of their caregiver, whether it be gay or  
14           heterosexual, there is simply no difference  
15           at all, and the Constitution will not  
16           allow -- with due respect, the Constitution  
17           will not allow the State to impose that kind  
18           of invidious discrimination upon children  
19           without a substantial sufficient reason, and  
20           there simply is none, that you have heard on  
21           the face of this trial for the last several  
22           days.

23           Your Honor, I'd like to turn to  
24           substantive due process. As we put it to  
25           the Court, from the California Supreme

1 Court -- and, again, I say to Your Honor, we  
2 don't have a Florida case right on point.  
3 I'm not going to conjure one and say that  
4 there is one. I'm going to argue to you  
5 from other precedents, but we have one  
6 Florida case that has certainly looked at  
7 this.

8 The California Supreme Court  
9 acknowledged directly that children do have  
10 fundamental rights, including the  
11 fundamental right to be protected from  
12 neglect and to have a placement that is  
13 stable and permanent.

14 That was the Jasmine case, from  
15 California, in 1994. It's a Supreme Court.

16 Your Honor, the interest of every child  
17 in a true home, including a foster child's  
18 critical interest in a permanent adoptive  
19 home, is a fundamental right resting on the  
20 child's substantive and procedural due  
21 process, interest and liberty, without  
22 unnecessary confinement.

23 A Federal Court in an unreported Western  
24 District of Missouri case, the Sherman case,  
25 recognized that even a state funding

1 classification infringed, quote, unquote, on  
2 the fundamental right of foster children,  
3 their liberty interest in avoiding  
4 unnecessary government confinement, and so  
5 could therefore not survive strict scrutiny  
6 review.

7 Your Honor, that Sherman decision  
8 appropriately relies on United States  
9 Supreme Court precedent to the effect that  
10 the right to freedom from bodily restraint  
11 is a core liberty preserved by the due  
12 process clause. Any government action  
13 impairing that interest must be narrowly  
14 tailored to achieve a compelling state  
15 purpose. Liberty from bodily restrain  
16 always has been recognized as the core  
17 liberty protected from arbitrary  
18 governmental action.

19 Your Honor, the Florida Supreme Court,  
20 in a decision with which Your Honor is, of  
21 course, familiar, the MW versus Davis case,  
22 involving a placement of foster children in  
23 residential treatment, likewise cited to the  
24 Fourteenth Amendment and to Florida's  
25 constitutional requirement that no person be

1           deprived of life, liberty or property --  
2           property, without due process of law.

3           There, as we know, it involved the  
4           residential placement of a child, and the  
5           requirement that the Court consider, through  
6           notice and opportunity to be heard, the  
7           nature of the infringement on the child's  
8           liberty. Thus, Florida law, too, is  
9           familiar with a constitutional principle  
10          that children have a liberty interest in not  
11          being unnecessarily deprived or limited in  
12          their liberty while in custodial care.

13          Your Honor, I would say to the Court  
14          what I suspect is most obvious to the Court.  
15          Your Honor applies substantive due process,  
16          that constitutional principle, virtually  
17          every day in this courtroom. Perhaps you  
18          apply it outside the courtroom, too, I don't  
19          know, but in this courtroom, every day, in  
20          reviewing the nature of a foster care  
21          placement and the permanency goals attendant  
22          to it.

23          You look at that permanency goal in  
24          virtually every case, because you are  
25          governed by statute and by inherent --

1           inherently constitutional obligations, as a  
2           court, to oblige yourself to seek the  
3           primary -- the primary permanency  
4           opportunities for a child.

5           Your Honor, you also do it in lesser  
6           circumstances. Your Honor, you do it when  
7           you're determining that a child, who is in a  
8           licensed foster care placement -- who might  
9           not generally think of it as custody, but it  
10          is custody, Your Honor, it is a restraint on  
11          that child's liberty. It could have been  
12          for good reason, the neglect and abuse that  
13          brought the child into the system in the  
14          first place, but it is still a custodial  
15          relationship by the State. And Your Honor,  
16          when Your Honor is determining in a case  
17          whether a refrigerator is available to a  
18          child to access, that the child can come  
19          into and out of a foster child care home at  
20          reasonable hours, Your Honor is actually  
21          addressing substantive due process  
22          guarantees that that child has. The nature  
23          of that child's confinement must be as  
24          unabridging of that child's liberty as is  
25          possible, and any -- any stretch of that



1 confinement for no good reason, as the  
2 adoption ban would prescribe, Your Honor,  
3 with due respect, any such extension for no  
4 substantial sufficient reason, Your Honor,  
5 violates the fundamental liberty rights of  
6 that child.

7 Your Honor, I suggested, perhaps glibly,  
8 to you, the last time you heard argument on  
9 this particular issue, that you may have  
10 been -- you may be a kindly jailer, but a  
11 jailer nonetheless. It was not meant  
12 offensively. It was meant to make a point,  
13 but it was not meant offensively. I would  
14 say to Your Honor that if Your Honor  
15 considers this issue seriously and applies  
16 the precedents that are there -- and let me  
17 talk about one more, and I apologize for  
18 being disjointed.

19 The Simms case, of which Your Honor is  
20 also intimately familiar, decided way back  
21 in the 1980s, I'm afraid, or the 1990s, when  
22 you and I were a bit younger, or at least  
23 you were, that case also was about  
24 substantive due process, because, Your  
25 Honor, that case was about the State's

1 refusing to file a termination of parental  
2 rights petition for a child, and the  
3 Guardian Program, as an instrumentality then  
4 of the Court, was granted by this Court, and  
5 then by the Third District in affirming, en  
6 banc, as a matter of fact, the right to file  
7 a termination of parental rights petition.

8 A couple of lessons from Simms that I  
9 think we all learned, but they bear  
10 repeating. Not always, but sometimes, the  
11 State's interests diverge from those of the  
12 child in its confinement. I would submit to  
13 Your Honor that Simms was an example of  
14 that, a good example, and this case is a  
15 very good example, as well, because just as  
16 in Simms, when a TPR petition would not be  
17 filed by the State, there was an  
18 unnecessarily prolonged deprivation of  
19 liberty for that child. That child remained  
20 confined longer, as a consequence of that  
21 intermediate step not being taken to free  
22 that child from, with due respect, perhaps  
23 the beneficent, but nonetheless the  
24 confinement of the State dependency system.

25 This case is a greater confinement. In

1 fact, there's some irony here, because the  
2 State is quite -- has done quite well, as  
3 we've heard, in finding a wonderful  
4 caretaker for these children, a caretaker  
5 who has taken them, in pictures and in  
6 reality, from many challenges, to being  
7 well-cared for, to having bonded, attached.  
8 Clearly the children believe that their best  
9 interest lies in this placement, as a  
10 permanent adoptive placement, and clearly  
11 the caretakers do, as well, which is why, by  
12 the way, all of the equal protection  
13 arguments that have been made through all of  
14 the witnesses here, whether they were the  
15 witnesses from the caregiver or from the  
16 children, bear upon the issue.

17 Your Honor, on this issue, I'll close by  
18 saying that this ban on liberty and  
19 continued custodial confinement is an  
20 unnecessary burden on the child's  
21 fundamental right to achieve the permanency,  
22 let alone the well-being that is in the  
23 child's best interest. The ban cannot  
24 survive the scrutiny of substantive due  
25 process.

1           Let me touch on one last issue, very  
2           briefly, Your Honor, and thank you for your  
3           patience.

4           Separation of powers. Interestingly,  
5           today, under cross examination, stellar  
6           cross examination, we were able to enjoy an  
7           interesting moment from one of the State's  
8           experts, who, aside from his non-expertise  
9           with respect to judicial administration,  
10          stumbled perhaps upon the point that we  
11          probably do need more judges in dependency,  
12          but putting that non-expertise aside, which  
13          was entertaining but not within the scope of  
14          his expertise, what we learned from even  
15          that expert was that he would prefer a  
16          circumstance where the courts' imprimatur  
17          was on each and every case as it came  
18          through the system. Now, without a  
19          constitutional proscription -- though he  
20          somewhat cloudedly said, "I'd kind of like  
21          that proscription to be there, but I don't  
22          really want it to be there for the Judge to  
23          have to abide by."

24          Your Honor, would that it was that  
25          simple, but I do think that the expert

1           stumbled into a very interesting point, and  
2           the very interesting point that the expert  
3           pointed out was that there is a  
4           constitutional separation of powers right  
5           here, that is -- that is in question for the  
6           judiciary.

7           Your Honor, the statute in question  
8           encroaches on the inherent power and  
9           responsibility of the Court to protect and  
10          establish a permanency interests of  
11          dependent children who come before Your  
12          Honor in the custody of the State.

13          The ban does, by legislation, by  
14          legislative fiat, exercise Your Honor's  
15          jurisdictional authority to determine the  
16          best interest and welfare of State wards.

17          Your Honor, it is a constitutionally  
18          offending statute, as a consequence of that  
19          very fact, that it wrests -- that's wrests  
20          with a W. I speak somewhat archaically  
21          sometimes and I apologize -- it wrests from  
22          Your Honor the principal opportunity to rule  
23          on a case-by-case basis. So I do thank the  
24          expert for pointing that out so vividly  
25          today, before I had the opportunity to do

1 so.

2 Your Honor, the best interests of the  
3 child is the inherent responsibility of the  
4 Court. It is one of Your Honor's inherently  
5 provided constitutional and common law  
6 authorities.

7 Why do I say it's constitutional?  
8 Number one, because I would argue to Your  
9 Honor that there is a fundamental right that  
10 has been created by statute to safety,  
11 well-being and permanency for the child, and  
12 once that requirement is there, once the  
13 State has put it there, it has to treat each  
14 and every innocent child that comes before  
15 it with the same degree of evenhandedness  
16 and respect of those fundamental rights.

17 The ban stops Your Honor from the  
18 individualized determination of best  
19 interest that you need to make in each and  
20 every case.

21 Your Honor, it is perhaps a cold thing  
22 to say, but to the most critical measure  
23 plausible for these children, your judicial  
24 power has been extinguished by the  
25 proscription that this statute applies.

1           Your Honor, that is not consonant with  
2           the separation of powers, as we will submit  
3           to Your Honor in briefs to follow, as with  
4           the violation of equal protection, whether  
5           it be a rational basis, whether it be, as we  
6           hope for the children, that there is an  
7           intermediate degree of scrutiny to apply and  
8           seek for a substantial sufficient rationale,  
9           whether it be as well for a fundamental  
10          right in permanency and to be -- to avoid  
11          any untoward constraint on liberty that the  
12          due process clause requires here, and, as  
13          well, the separation of powers principle  
14          that requires Your Honor, on a case-by-case  
15          basis, to determine what is inherently the  
16          best interest of the child.

17                 Each of those constitutional principles  
18                 has been sadly violated by the statute,  
19                 which we would request that you put aside.

20                 Thank you.

21                 THE COURT: Thank you, Mr. Auslander.

22                 All right. What I'd like to do now is  
23                 finish that other case, because there must  
24                 be 20 people outside for it. So I don't  
25                 know how long it will take, but --

1                   (Thereupon, a brief recess was taken.)

2                   THE COURT:  Is everybody back?  All  
3                   right.  Closing arguments.

4                   MS. COOPER:  May it please the  
5                   Court.  I think, after the children's  
6                   counsel's presentation, I can be quite  
7                   brief.  I really wanted to just make a  
8                   couple of points in closing.

9                   This law, the statute, 63.042,  
10                  Subsection 3, classifies in two ways, as  
11                  children's counsel talked about.  It  
12                  classifies between two groups of  
13                  children, those in the care or being  
14                  raised by heterosexuals and those being  
15                  raised by gay people, who are not their  
16                  biological or adoptive parent.

17                  One group of children gets the benefits  
18                  of adoption; potentially, and the other  
19                  group is denied that.

20                  The law also classifies in another way.  
21                  It classifies between two groups of adults.  
22                  Heterosexual applicants, who apply to become  
23                  adoptive parents, are subjected to an  
24                  individual evaluation, to determine their  
25                  suitability to adopt children.  Gay people,



1 in contrast, automatically disqualified,  
2 regardless of what they have to offer,  
3 regardless of their circumstances,  
4 regardless of the needs of the children in  
5 each particular case.

6 So while the law classifies in two  
7 different ways, the legal question is  
8 absolutely insane, which is, is there a  
9 sufficient justification for depriving  
10 children of access to gay adoptive parents?

11 Now, the State's purported  
12 justifications are the same with respect to  
13 the children's position and our client  
14 Martin's position, and they're equally  
15 baseless.

16 For all the reasons argued by the  
17 children's counsel, the statute fails even  
18 the rational basis level of scrutiny, since  
19 the exclusion of gay people from adopting  
20 and denying children access to this group of  
21 people has no rational connection to any  
22 legitimate government interest.

23 We heard today -- well, not today so  
24 much, but we heard over the course of this  
25 trial, heaps and heaps of scientific

1 evidence about gay parents and gay people,  
2 more generally, demonstrating this fact,  
3 that there's absolutely no rational  
4 connection between this exclusion and any  
5 child welfare rationale.

6 Because of that, the statute violates  
7 both the children's and Martin's  
8 constitutional right to equal protection, as  
9 well as the other constitutional rights that  
10 the children have raised.

11 Now, I wanted to make one point about  
12 the evidence. This is not a battle of the  
13 experts that we have here. This is not a  
14 question about which reasonable minds can  
15 disagree. This is a subject of scientific  
16 consensus in all of the relevant scientific  
17 communities. There is absolutely no  
18 reasonable scientific dispute on the subject  
19 of whether children who are raised by gay  
20 parents are disadvantaged in any way. Every  
21 relevant scientific field, through the  
22 position statement of their professional  
23 association, recognizes that gay people make  
24 equally good parents and there is absolutely  
25 no basis to deny children access to such

1 care.

2 Now, indeed, the experts who were  
3 retained by the State in this case, even if  
4 the Court deemed it appropriate to credit  
5 their testimony in this case, offered  
6 absolutely no evidence to the contrary.  
7 They pointed only to statistical differences  
8 in rates of psychiatric disorders, drug  
9 abuse, breakup rates, problems that exist in  
10 various demographic groups, and in some --  
11 as the testimony showed, some groups have  
12 even higher rates of these problems as gay  
13 people have.

14 So there's absolutely no basis for that,  
15 and the experts presented by the State did  
16 not even suggest that gay people somehow  
17 have the highest rate of any of these  
18 problems, nor could they. There's no  
19 evidence that would support that.

20 And the other issue they pointed to is  
21 stigma, yet another issue faced by many  
22 Floridians who are not gay. Children are  
23 stigmatized for a range of reasons, any  
24 things about their family that may make them  
25 seem different to their peers.

1           Another issue that was raised by Dr.  
2           Schumm today was this assertion that gay  
3           parents will have children who are more  
4           likely to be gay themselves, yet even Dr.  
5           Schumm recognizes that the majority of  
6           children raised by gay parents are  
7           heterosexual, and if -- the notion that  
8           children raised by gay parents or other --  
9           or heterosexuals, who are accepting of gay  
10          people, that these children are going to be  
11          more comfortable acknowledging same-sex  
12          feelings, if they have them, is hardly  
13          surprising, and there was agreement among  
14          the experts on that question.

15          And, finally, the only other argument  
16          that I heard offered by the State's experts  
17          was to quarrel with the methodology used in  
18          the studies that show, one after another  
19          after another, that children who are raised  
20          by gay parents develop just as well as  
21          children with the heterosexual parents.

22          They may quarrel with the methodology,  
23          yet they didn't point to a single study  
24          showing some contrary finding.

25          So I think the evidence is absolutely

1 clear. These are not -- this is not an  
2 issue of any dispute, and because of that,  
3 even the rational basis has been not met,  
4 and the law is unconstitutional, both with  
5 respect to the children's claims, as well as  
6 our client, Martin.

7 One non-child welfare issue that was  
8 raised by the State in some of its briefings  
9 during the course of this litigation was  
10 public morality. That was asserted as an  
11 independent justification for the exclusion  
12 of gay people from adopting, and I think  
13 that can really be addressed by reference to  
14 one case in the Florida Supreme Court that  
15 has clearly addressed that question.

16 That was the Bar Examiner, in this  
17 N.R.S. case, where the Court clearly stated  
18 that moral disapproval of a group of people  
19 disconnected to any concrete legitimate  
20 government interest is nothing but  
21 disapproval of a group, and that's not what  
22 the equal protection permits with respect to  
23 government action. So that cannot be a  
24 justification for the exclusion, either.

25 The final point I'd like to make, or the

1 penultimate point that I'd like to make is  
2 that in addition to heightened scrutiny  
3 being appropriate in this case for the  
4 various reasons that Mr. Auslander raised on  
5 behalf of the children, the heightened  
6 scrutiny standard is appropriate for the  
7 petitioner's equal protection claim for a  
8 separate reason, and that reason was  
9 outlined more fully in our pretrial brief,  
10 but I'll say it briefly, that the basis --  
11 Martin's basis for heightened scrutiny,  
12 separate basis, is that this is a law that  
13 penalizes the exercise of a fundamental  
14 right to form an intimate relationship.

15 If Martin would just end his  
16 eight-plus-year-relationship with his  
17 closest family member, his partner [Tom, Sr.],  
18 and not have any other intimate family  
19 relationship with a partner, he would be  
20 eligible, according to Florida, to adopt  
21 children.

22 This law is penalizing the exercise of a  
23 fundamental constitutional right, and as  
24 such, the Florida Supreme Court has  
25 recognized laws that penalize fundamental

1 rights are subject to heightened scrutiny.

2 Now, my final point, I think, is that  
3 for the exact same reason that the law --  
4 the challenged statute fails equal  
5 protection rational basis review, it is also  
6 unconstitutional as an invalid special law,  
7 which also requires that if you're going to  
8 target a particular group of people for some  
9 kind of particular law -- this is a law that  
10 targets a group of people, of course. If  
11 you're going to do that, the government has  
12 to have, at minimum, a reasonable connection  
13 to a legitimate government need here.

14 For all the reasons that the statute  
15 fails equal protection, rational basis test  
16 is that to become a constitutional special  
17 law, and as recognized recently by a court  
18 in Key West, addressing similar issues.

19 Thank you.

20 THE COURT: Okay. Who's next?

21 MS. ALLEN: I can go, Judge.

22 THE COURT: Okay. Ms. Allen.

23 MS. ALLEN: Okay. Your Honor, Florida  
24 Statute 39.813 clearly states that the Court  
25 which terminates the parental rights of a

1 child who is the subject of a termination of  
2 parental rights proceedings, pursuant to  
3 Chapter 39, retains exclusive jurisdiction  
4 in all matters pertaining to the child's  
5 adoption, pursuant to Chapter 63.

6 In exercising that authority, this Court  
7 can consult Florida Statute 63.022,  
8 Subsection 2, which states, "It is the  
9 intent of the legislature that in every  
10 adoption, the best interest of the child  
11 should govern and be of foremost concern in  
12 the Court's determination."

13 Additionally, those adoptions arising  
14 from Chapter 39, dependency proceedings,  
15 entitle the guardian ad litem to be heard.

16 The guardian ad litem in this case,  
17 Mr. Ronald Gilbert, testified that the  
18 adoption by Mr. Gill would be in the  
19 children's best interest. Mr. Gill (sic)  
20 testified that he's been a guardian for over  
21 seven years and has been assigned to over  
22 100 children. He's been assigned to this  
23 case since June of 2005, and has visited the  
24 children and the custodians monthly since  
25 that time, including communicating with the



1           custodians in addition to those monthly  
2           visits.

3           He's attended approximately 50 court  
4           hearings concerning this matter in this  
5           dependency court.

6           Mr. Gilbert testified that the children  
7           have been free for adoption since August of  
8           '06, which has been over two years. He also  
9           testified that the children are doing fine  
10          medically, are extremely bonded to both  
11          parents, as well as Mr. [Roe]'s biological  
12          child, who also lives in the home.

13          He also testified that to remove these  
14          children from the home would cause  
15          substantial mental and emotional stress to  
16          these children. As the Court-appointed  
17          guardian ad litem, Mr. Gilbert testified  
18          that it would be in the best interest of  
19          these children to be adopted by Mr. Gill. A  
20          permanent guardianship would not be in the  
21          best interest of these children, and, in  
22          fact, could be harmful to these children,  
23          not only due to the stigma attached to a  
24          child who has no legal parents, and whose  
25          biological parents' rights are terminated,

1 but due to any legal benefits that the child  
2 will not be able to receive under a  
3 permanent guardianship.

4 Mr. Gill and Mr. [Roe], as well as  
5 Mr. [Roe]'s son, all share a strong family  
6 relationship with the children, which also  
7 includes extended family who are accepting  
8 of Mr. Gill and Mr. [Roe]'s relationship,  
9 and, in addition, love the children.

10 This case alone presents a perfect  
11 example that rejects the assumption that  
12 it's in a child's best interest to be  
13 adopted by a mother and a father.

14 The guardian, in fact, testified that it  
15 would be harmful to these children should  
16 they be removed from their current placement  
17 and that that adoption by the petitioner is,  
18 in fact, in their -- in the children's best  
19 interest.

20 [John] and [James] have a strong  
21 emotional bond with the petitioner and are,  
22 in fact, part of a family unit in the home.  
23 As a matter of fact, Mr. [Roe]'s  
24 biological son, who also could be harmed,  
25 should the adoption not be granted, due to

1 his strong bond to the other two children  
2 now in the home.

3           These children have done nothing but  
4 thrive in their placement, since the State  
5 of Florida placed them there in December of  
6 2004. These children have been free for  
7 adoption since their biological parents'  
8 rights were terminated in August of 2006.  
9 However, the children were not be -- were  
10 not able to be adopted because of the  
11 legislature's enactment of a law in the  
12 1970s, which makes homosexuals unable to  
13 adopt, and in this case, these children have  
14 been in their care and free for adoption for  
15 over two years, which is in clear violation  
16 of both the Federal Government's Adoption  
17 and Safe Families Act, as well as Chapter  
18 39, Florida Statutes, "Goal of permanency  
19 for children in our system."

20           Adoption is in the best interest of  
21 these children over a permanent  
22 guardianship, because the children are  
23 bonded to their current caretakers, a  
24 permanent guardianship would deprive the  
25 children of the optimal goal of adoption

1 post-termination of parental rights, and  
2 because permanent guardianship would deprive  
3 them of legal parents and the right to such  
4 benefits of inheritance that are derived  
5 from a legal parent.

6 This is why the Guardian Program is  
7 asking this Court to find that it's in the  
8 best interests of the children, [John] and  
9 [James], as wards of this Court, to be  
10 adopted by the petitioner.

11 THE COURT: Thank you, Ms. Allen.

12 And Ms. Martin?

13 MS. MARTIN: Your Honor, may it  
14 please the Court.

15 Your Honor, believe it or not,  
16 there are many things that the parties here  
17 agree to. As we all know, this is a facial  
18 challenge to a Florida Statute, and that  
19 statute is 63.042(3), which states that no  
20 person otherwise eligible to adopt may adopt  
21 if that person is a homosexual.

22 There is no dispute that in December  
23 2004, the two minor children in this case  
24 were placed in the foster home of Mr. Gill.  
25 There is no dispute that Mr. Gill,

1           who accepted these two children at a young  
2           age -- in December of 2004, who are now four  
3           and eight years old, have remained in  
4           Mr. Gill's house since that time.

5                     There is no dispute that Mr. Gill  
6           submitted an application to adopt, that a  
7           home study was conducted, that all the  
8           necessary background checks and  
9           investigations were submitted, and that the  
10          home study was recommended, but denied  
11          solely because of the statutory language.

12                    There is no dispute that DCF considers  
13          the household of Mr. Gill to be an  
14          appropriate location for these children.  
15          There's no dispute that the children are  
16          well cared for. There's no dispute (sic)  
17          that Mr. [Roe] does not care for the  
18          children adequately.

19                    However, this is a constitutional  
20          challenge, and the law to follow in a  
21          constitutional challenge is quite rigorous.

22                    If we're looking at the claims by the  
23          petitioner first, if I may, the petitioner  
24          argues that he -- that it is an equal  
25          protection claim and also a due process

1 claim.

2 In looking at a constitutional  
3 challenge, especially a facial challenge,  
4 the statutes are presumed by the courts to  
5 be constitutional, and the burden rests on  
6 the party claiming them to be invalid. In  
7 fact, the law is so strong, that if any  
8 doubt exists as to the validity of the law,  
9 it must be resolved in favor of the  
10 constitutionality, when reasonably possible.

11 In a facial challenge, there's an  
12 exceedingly high burden for the person  
13 moving to find it unconstitutional, and the  
14 challenger must establish that no set of  
15 circumstances exists under which the act  
16 would be valid. It's an exceedingly high  
17 burden.

18 In addressing whether or not there's an  
19 equal protection claim, there are two  
20 preliminary questions which must be  
21 addressed. One, is there a suspect class,  
22 and, two, is there a fundamental right.

23 Here, the case law is very clear, in the  
24 State of Florida, that homosexuality is not  
25 a suspect class. That has been held by

1 State of Florida versus Cox, which is a  
2 Second DCA opinion, also affirmed by the  
3 Florida Supreme Court on that issue. It's  
4 also affirmed by other district courts, but  
5 I think that the Florida DCA is binding.

6 Also, there's no fundamental right to  
7 adopt, that clearly adoption is not a right,  
8 but is a statutory privilege, created wholly  
9 by statute. There is no fundamental right  
10 to adopt.

11 Since there is no fundamental right to  
12 adopt, and there is no suspect class, the  
13 rational basis has to be an applicable one  
14 for the Court to use.

15 In using that, you must find that if  
16 there's no reasonable -- reasonably  
17 conceivable set of facts that could prove  
18 for a rational basis.

19 Here, the State has put on evidence that  
20 it is in the best interest of the children,  
21 which obviously is the standard that the  
22 Court's concerned with in a proceeding like  
23 this, but the State has put on evidence that  
24 the best interest of the child is to be  
25 placed in a home where these children, who

1           are already subject to a lot of stresses,  
2           because they've been removed from a  
3           dysfunctional family -- and one of the  
4           concerns the State has, in terms of a  
5           placement, is that you don't want to place a  
6           child in a more difficult position, and if  
7           the home that you're placing a child in has,  
8           as in homosexually-behaving individuals  
9           versus heterosexually-behaving individuals,  
10          a significant increase in the prevalence of  
11          psychiatric disorders, that's something that  
12          needs to be considered, and I'll address the  
13          facts as they came out a little bit later,  
14          but I'd like to address, moving on now,  
15          Mr. Gill's second claim, and that's due  
16          process.

17                 Mr. Gill originally filed a petition  
18                 that sought to create a right to privacy  
19                 under the Florida Constitution, and this  
20                 Court dismissed that claim.

21                 Now Mr. Gill attempts to back-door that  
22                 claim into this litigation and alleges that  
23                 he has a due process right to maintain an  
24                 intimate relationship with a partner. In  
25                 fact, the Courts of this State -- Lofton,



1           which is Federal Court, which is persuasive,  
2           and also the Second DCA, in Cox, which was  
3           affirmed by the Supreme Court on this  
4           issue -- have consistently held that there  
5           is no fundamental right to engage in  
6           homosexual activity.

7           Also, this, unfortunately, is not about  
8           Mr. Gill. It's not about Mr. Gill's ability  
9           to maintain a relationship with Mr. [Roe]  
10          or anybody else. The adoption statute is  
11          that you submit yourself to the State. Your  
12          relationships are not as paramount as those  
13          of the interests of the children.

14          So, if there's no fundamental right to  
15          engage in homosexual activity, Mr. Gill  
16          fails to state a cause of action for due  
17          process.

18          There is no fundamental right to adopt.  
19          There is no due process violation, with no  
20          fundamental right for Mr. Gill to maintain a  
21          relationship with his partner.

22          If you now turn to the children, the  
23          children, similarly, have two claims. They  
24          have an equal protection claim and also a  
25          due process claim, and a similar analysis is

1           utilized in looking at those claims, too.

2           In the children, you look to see whether  
3           there's a suspect class, and also whether  
4           there's a fundamental right.

5           The minor children would like this Court  
6           to carve out an exception that would  
7           identify as a suspect class all children who  
8           are placed in homosexually-behaving  
9           households. That constitutional carving has  
10          not been made by any court.

11          The minor children's counsel argue the  
12          illegitimacy statute -- or illegitimate  
13          cases. In those cases, though, what is  
14          important to remember is, those cases all  
15          derive from children who have a biological  
16          contact to that parent. Here, there's no  
17          biological contact, or connection, I guess,  
18          or path to the parent.

19          So to carve out such a statute or carve  
20          out such a constitutional claim, when  
21          there's no case law in Florida to  
22          substantiate that, is a pretty large request  
23          from the minor children.

24          There is no fundamental right to adopt.  
25          The case law is clear on that.

1           THE COURT: Is there a fundamental right  
2 to be adopted?

3           MS. MARTIN: No, ma'am, there is not,  
4 not in the State of Florida.

5           Yet, if you look at the suspect class,  
6 also, and you're not carving out the  
7 constitutional protection for those children  
8 who are placed in gay or lesbian households,  
9 the case law is clear, too, that age is not  
10 a suspect class, unfortunately -- as I age,  
11 I'd like it to be, but it is not -- and the  
12 case law on that is pretty clear.

13           There is a Florida Supreme Court  
14 decision, titled White Egret Condominium,  
15 Inc. vs Franklin, in 1979, and it said the  
16 law is clear that restrictions on  
17 individuals' rights on the basis of age did  
18 not pass scrutiny, and therefore age is not  
19 a suspect class.

20           Further, the Second District Court held  
21 that -- in a case styled Clayborne v.  
22 Califano -- "Unrelated adoptive children  
23 held not to be a suspect or suspicious  
24 class."

25           So, in the equal protection claim,

1           again, if you have no suspect class, and you  
2           have no fundamental right, the analysis you  
3           use is a rational basis, and then you get  
4           back to the same argument I made previously,  
5           that there is no rational basis.

6           If you next move to the minor children's  
7           equal protection claim, the equal protection  
8           claim for the children is a little bit  
9           different. Minor children are -- the  
10          petitioners are minor children, I should  
11          say, and they are trying to carve out a  
12          heightened scrutiny level, and they argue  
13          that that level is required, again, based on  
14          the illegitimacy statute or illegitimate  
15          cases. Sorry, I keep misspeaking.

16          They admit that there is no case law on  
17          point. They cite a California Supreme Court  
18          in Jasmine. They talk about a Florida  
19          Supreme Court, M.W. v. Davis, which is the  
20          residential placement of children, and they  
21          claim that as a liberty interest, and that  
22          was a custodial care, but here there is no  
23          fundamental right of the children to be  
24          adopted.

25          The children's due process was followed.

1           There's no due process claim for the  
2           children.  There's no fundamental right.

3           The separation of powers argument is a  
4           novel argument, relying heavily on our  
5           expert's opinion that this Court should have  
6           the power to make independent decisions, and  
7           I'll leave his testimony to how you would  
8           like to determine that, but it's clear to me  
9           that Mr. Schumm cannot address those issues.

10          So, in plain, you know, when you look at  
11          what this Court is required to do, in terms  
12          of the statutory analysis of this statute,  
13          if there's no fundamental right and no  
14          suspect class, it gets difficult, and the  
15          rational basis here, as held up by -- on the  
16          facts represented, and if I could address  
17          the facts in this case.

18          We've all heard testimony from various  
19          people, including Mr. Gill and Ron Gilbert,  
20          the guardian ad litem, and Mr. Francois, the  
21          case worker, and all of them agree, and  
22          there's no dispute, that the children are in  
23          a wonderful household, that they're well  
24          cared for, and that they're in a household  
25          that will care for them appropriately.



1 moving as society changes. He testified  
2 that foster children have heightened levels  
3 of stress, because of the dysfunctional  
4 families that they come from, and that was  
5 his concern, if they're subjected to a  
6 household with increased levels of  
7 psychiatric disorders. That was their own  
8 expert's testimony.

9 Dr. Brodzinsky was a child psychologist,  
10 and he testified that foster children also  
11 are at a higher risk factor, and, therefore,  
12 placing such children in an environment  
13 that -- with a substantial increase, with a  
14 prevalence of psychiatric disorders, would  
15 be a concern.

16 Now, Dr. Rekers was an expert for the  
17 Department of Children and Families. He's a  
18 psychologist. And as I alluded to earlier,  
19 he did a study or analyzed a study, and  
20 discussed it for the Court, comparing  
21 heterosexual-behaving individuals and  
22 homosexual-behaving individuals and the  
23 elevated probability of a lifetime  
24 prevalence of psychiatric disorders, and as  
25 I indicated, he used quite a few of the

1 studies that were provided by or were  
2 written and authored by the petitioner's and  
3 minor children's experts.

4 He indicated that there was a heightened  
5 level of depression, of suicide attempts, of  
6 drug dependence, alcohol dependence, anxiety  
7 and also partnership instability, and that  
8 with this increased probability and putting  
9 children who are already at risk into such a  
10 household, it would increase the stressors  
11 that these children already experience as a  
12 result of their placement in foster care,  
13 and would subject them to increased  
14 stressors.

15 Dr. Schumm, our infamous expert, who  
16 apparently is familiar with the judicial  
17 operations of this State, also discussed  
18 distressing conditions among gay or lesbians  
19 and heterosexuals and the prevalence of  
20 psychiatric disorders.

21 He also addressed, briefly, if I may  
22 say, the methodology flaws of the scientific  
23 data, and he purported to demonstrate that  
24 the studies showing no difference between  
25 homosexual (sic) and gay and lesbian



1 households was flawed, and that there is a  
2 significant statistical difference between  
3 the two.

4 But here there's no fundamental right to  
5 adopt, either on behalf of the petitioner or  
6 the minor children. There's no suspect  
7 class as to the minor children or the  
8 petitioner. And without such requirement,  
9 there is just the rational basis, and the  
10 State statute, when it was presented to the  
11 legislature, it's been enacted since 1977,  
12 the legislature has had 30 years, if they  
13 chose to change that statute, and they have  
14 not. For whatever reasons, it's not for us  
15 to say, but they have not, and it is not for  
16 this Court to act or sit as a super  
17 legislature and decide what is right for the  
18 legislature or not.

19 What -- this Court cannot act where  
20 legislative directives have failed. It's  
21 inappropriate. You need political consensus  
22 to change the law, and so DCF would submit  
23 to the Court, with all due respect, that the  
24 statute serves a legitimate State interest,  
25 and that is protecting the best interest of

1 the children, and that the Court should  
2 uphold the laws of the State of Florida and  
3 declare the statute constitutional.

4 MS. BASS: Might I briefly respond,  
5 Your Honor?

6 THE COURT: Yes.

7 MS. BASS: Firstly, we got to hear  
8 over the last few days the fact that the  
9 State had chosen to expend -- it appears  
10 to be almost a hundred thousand dollars,  
11 to have experts sit here, neither of  
12 which could point to any nationally  
13 recognized study reflecting any  
14 difference in the parenting skills  
15 between homosexual parents and  
16 heterosexual parents.

17 We spent a lot of time talking about  
18 whether depression rates were five percent  
19 more or seven percent less, whether they  
20 smoked too much, whether or not they have  
21 more sexual partners, but the one thing even  
22 these two supposedly psychologists, who  
23 openly admit that their perspective is to  
24 merge psychology and Scripture, even they,  
25 neither one of them suggested that it would

1           be appropriate for this Court or our State  
2           legislature to make categorical exclusions  
3           from the pool of potential adoptive parents  
4           based on these numbers.

5           You heard us ask them, "Well, okay,  
6           let's look at American Indians. Higher  
7           rates of depression, higher rates of  
8           alcoholism, higher rates of unemployment.  
9           Are you suggesting that it would be  
10          appropriate for the State Legislature to say  
11          demographically we're going to just wipe  
12          that whole group off the map, as far as  
13          potential adoptive parents?" Neither one of  
14          them would suggest that.

15          They both said women have an elevated  
16          rate of depression. Did anybody suggest  
17          that we should eliminate, from the pool of  
18          adoptive parents, women in general, or even  
19          women who've ever suffered lifetime  
20          prevalence of a depressive episode? Neither  
21          one of them could suggest that.

22          So for the State to sit here and say  
23          that the numbers, going in one direction or  
24          another, should be at all relevant to an  
25          appropriate analysis of what's in the best

1 interest of the children, I suggest is not  
2 supported by the testimony of these two  
3 experts.

4 The only category of people who they  
5 suggested should be impacted by these  
6 varying numbers, two percent greater, two  
7 percent less, were simply homosexual  
8 individuals, nobody else, and to suggest  
9 that there is a rational basis for saying,  
10 "We think the mental health of our children  
11 in this State are important, and, therefore,  
12 anybody with higher levels of life  
13 prevalence of depression should be  
14 eliminated from the pool" -- if they were  
15 saying that, one might consider it rational,  
16 but that's not what they're saying.

17 They're saying, "We're going to ignore  
18 every other category of people with  
19 heightened mental health issues, except for  
20 this one," which is the homosexual parents,  
21 or homosexuals who would like to adopt.

22 What -- They both admitted that the  
23 issue here is the best interest of the  
24 children, and I think it's a given, and  
25 certainly Dr. Schumm admitted that today,

1           that that is an analysis that has to be done  
2           on a case-by-case basis, because the issue  
3           is, what is in the best interest of  
4           [James] and [John], not what some study,  
5           done 20 years ago in San Francisco, talks  
6           about as far as number of sex partners.  
7           That has nothing to do with the lives of  
8           these children.

9                        Secondly, the suggestion that because  
10           there's increased stress from being in  
11           foster care, a fact that I believe everybody  
12           in the courtroom recognizes and accepts,  
13           that somehow that leads you to conclude,  
14           "Oh, okay, then let's pull children out of  
15           the only emotional attachment they've had,  
16           let's deprive these children of the only  
17           family they've ever had, because they've  
18           already suffered so much."

19                        Maybe I'm missing something. I don't  
20           understand how that equation connects with  
21           the suggestion that because these two  
22           children have suffered so much in their few  
23           short years, that the answer to that is to  
24           once again wrest them away from the only  
25           family they've had. I didn't hear any

1 explanation of that.

2 Third, the State would like to suggest  
3 that we are proposing that there's some  
4 constitutional right to be adopted. I don't  
5 think anyone around this table has made that  
6 suggestion, but what we are saying is, once  
7 the State imposes a scheme for how adoptions  
8 will be handled in this State, it is  
9 fundamentally unfair to suggest that because  
10 a case worker makes a decision that certain  
11 children are going to be placed with a  
12 foster parent that happens to be gay, that  
13 that somehow puts them on a path where they  
14 are not entitled, from that point forward,  
15 to get the benefit that the legislature has  
16 provided for children of foster care being  
17 adopted. There is no basis for doing that.

18 And, lastly, the suggestion that because  
19 this bad law has been on the books for these  
20 many years is somehow a basis for us to  
21 continue to ignore all the harm it is doing  
22 to the pool of potential adoptive parents is  
23 an argument that I suggest would not have  
24 been accepted or condoned if it were applied  
25 to our history of discrimination against

1 African-Americans or any other group. The  
2 fact that we put up with it these many years  
3 does not, in and of itself, constitute a  
4 justification for continuing it.

5 As Mr. Auslander told you, it has  
6 never been considered in terms of what are  
7 the rights of these children, and is it fair  
8 to take these kids, who have finally been  
9 able to attach themselves to loving and  
10 nurturing parents, to say to these children  
11 that because some case worker put you in  
12 through Door A, instead of Door B, you are,  
13 for the rest of your life, going to have to  
14 be dealing with the emotional turmoil of  
15 once again being wrested away from your  
16 loving family, and that's what we're  
17 suggesting, Your Honor, is the reason you  
18 have a blank slate, and you can make the  
19 determination that this statute certainly  
20 does not meet the heightened standard  
21 contemplated by Gillespie, which -- I don't  
22 know how you can suggest it's totally  
23 inapplicable, because what the Florida  
24 Supreme Court talked about was imposing a  
25 legal disability based upon a status

1 uncontrollable by the child. I think that's  
2 exactly what we have here, a status of this  
3 child being put in the foster care of a  
4 homosexual parent, where they had no basis  
5 for being involved in that determination,  
6 and the impact of it was that State action  
7 thereafter discriminates against the child.

8 And what the Florida Supreme Court said,  
9 in that instance, absent a substantial,  
10 sufficient rationale for so discriminating  
11 against the child, the statute must fall,  
12 and that's what we're asking you to do, Your  
13 Honor.

14 MS. COOPER: Your Honor, if I may  
15 respond briefly?

16 THE COURT: Go ahead.

17 MS. COOPER: Thank you. I just  
18 have a couple of points.

19 As we've all discussed, this  
20 statute fails even the rational basis  
21 test. The Cox court specifically makes  
22 clear that, in Florida, the rational  
23 basis test is an evidence based  
24 standard, so Ms. Martin's discussion  
25 about the high burden, absolutely, under



1           the rational basis, there's a high  
2           burden, but there has to be evidence to  
3           support the determination to single out  
4           one group, or, in this case, the two  
5           groups, children raised by gay parents  
6           and gay people, for unequal treatment.  
7           There has to be evidence to support  
8           that. Just saying it doesn't make it  
9           so.

10                 But I do want to make one small point  
11           about the due process argument. I agree  
12           that this notion that there's no fundamental  
13           right to be adopted is a red herring.  
14           Nobody's arguing that here.

15                 The fundamental right that the  
16           petitioner is arguing is based on an  
17           intimate relationship with his partner. By  
18           the way, a substantive due process argument  
19           that's been raised since the beginning of  
20           this litigation. The privacy was dismissed.  
21           The substantive due process claim was not.  
22           And the fact that the Second DCA rejected  
23           such a claim in Cox, I think, has no -- is  
24           not relevant here, given that that decision  
25           was based on Bowers v. Hardwick, which, of

1 course, was subsequently overruled by the  
2 United States Supreme Court, but my main  
3 point on the due process argument for  
4 heightened scrutiny for the petitioner's  
5 equal protection claim is the notion that,  
6 of course, when you apply to become an  
7 adoptive parent, you subject yourself to  
8 scrutiny. You have to be an open book. All  
9 kinds of questions are asked of you, and all  
10 kinds of requirements are made of you, and  
11 that's absolutely appropriate, but the  
12 notion that this statute doesn't penalize an  
13 individual for exercising a fundamental  
14 constitutional right is preposterous.

15 If the Court had -- if the law had said,  
16 "We're going to exclude Jews from becoming  
17 adoptive parents," is it an answer to say,  
18 "Oh, you can still be Jewish and practice  
19 your religion, you just can't adopt."  
20 Nobody would have any doubt that that was a  
21 burden on the fundamental right to exercise  
22 religion. The same is the case here. But,  
23 again, this case can be decided on the  
24 rational basis test equally, and so, for the  
25 Court, I did think it's worth clarifying,

1 with respect to the substantive due process  
2 argument.

3 And my final point is that the notion  
4 that it is somehow inappropriate for a court  
5 to consider the constitutionality of a  
6 statute is outrageous to me. The Court has  
7 a duty to consider constitutional arguments  
8 presented with respect to a law that's being  
9 challenged, and a duty to strike down that  
10 law if, in fact, the Court deems it, based  
11 on the evidence, unconstitutional.

12 So, absolutely, the Court has perfect  
13 authority and a duty to consider and address  
14 the constitutional claims raised by the  
15 parties.

16 THE COURT: Anyone else want to respond?

17 MS. MARTIN: No.

18 THE COURT: All right. Thank you,  
19 everyone. It was very interesting.

20 So I agree that the parties will have 30  
21 days to submit findings of fact and  
22 conclusions of law, which puts us at like  
23 November 6th.

24 What I'd like to do is announce my  
25 ruling like on the 25th or the 26th of

1 November. If anyone has a preference, tell  
2 Adriana. Okay. We'll do it in the morning  
3 and then I'll go on with the rest of my  
4 calendar.

5 MS. COOPER: And Your Honor, I have  
6 two administrative things to bring up,  
7 if I may.

8 On the first or second day of the  
9 trial, Your Honor raised a question  
10 about the number of waiting children.  
11 There was some disparity, and I talked  
12 with opposing counsel and I think we  
13 have an easy way to resolve that.

14 We talked with our expert, Pat Lager,  
15 about it. There are differences with  
16 respect to the way the numbers are  
17 generated, but we -- both parties here think  
18 the simplest solution is to stick with the  
19 stipulated facts that the parties have  
20 introduced to the Court, which has  
21 established a number that DCF still uses,  
22 the number of waiting children, so we're  
23 happy to do that, if that satisfies the  
24 Court.

25 THE COURT: I can take judicial notice.

1 I think she said 7,000, and then there was  
2 another category of four -- I believe, from  
3 what I -- I believe the number is 3,300.

4 So do you just want to agree on a  
5 number? I'll just say 4,000, if that --

6 MS. COOPER: Well, the number in  
7 our stipulated --

8 MS. MARTIN: The number is our  
9 stipulated --

10 MS. COOPER: Yeah, I don't remember. It  
11 was in the three or four thousand range, and  
12 I can tell you that in a moment, if you  
13 want, because --

14 Do you have that handy, Valerie?

15 MS. MARTIN: Yes, give me just one  
16 moment.

17 MS. COOPER: Sure.

18 THE CLERK: November 26th is a  
19 Wednesday.

20 MS. BASS: It's the Wednesday before  
21 Thanksgiving.

22 MS. MARTIN: Go ahead.

23 MS. COOPER: Go ahead, Valerie.

24 MS. MARTIN: Are you looking at 2006,  
25 there were 3,535 children in State custody

1 waiting to be adopted?

2 THE COURT: Yes, 3,000 -- No, she said  
3 4,000.

4 MS. MARTIN: 3,535.

5 THE COURT: Okay.

6 MS. MARTIN: That's, I think, much more  
7 accurate.

8 MS. COOPER: We stipulated to it,  
9 so we certainly have no objection.

10 THE COURT: And you had another  
11 issue?

12 MS. COOPER: I do. We had raised,  
13 at the beginning of trial, the issue of  
14 the court reporter's transcript becoming  
15 the official record, and I wanted to  
16 come back to that, to see if there's  
17 been a determination about whether that  
18 could be made.

19 THE COURT: You know, I've never  
20 been asked to do it before, and I don't  
21 know if we have an administrative rule  
22 in the Court designating -- I'm  
23 imagining that we do. That's my only  
24 reluctance.

25 MS. COOPER: Would it be

1           permissible to -- I can explore that  
2           after trial, but in the event that that  
3           is a bar to making this the official  
4           record, can we file the transcript to  
5           have that as part of the Court record?

6           THE COURT: Sure, that's fine.

7           MS. BASS: Well, I assume we're  
8           going to all be referring to it in the  
9           proposed fact findings and conclusions  
10          of law, so if we can all agree we'll  
11          utilize the court transcript that's been  
12          created privately.

13          THE COURT: Okay.

14          MS. BASS: That way we'll all be --

15          THE COURT: File them together --

16          MS. BASS: Yes.

17          THE COURT: -- so we don't have an  
18          issue.

19          MS. ALLEN: And, Judge, you want the  
20          findings of fact by November 6th, correct?

21          THE COURT: Yes.

22          MS. BASS: Yes.

23          MS. ALLEN: Okay, and I'm not going to  
24          be here that week, but I can just submit  
25          them or --

1 THE COURT: Yes, just file them.

2 MS. ALLEN: Okay.

3 THE COURT: Submit them on disk.

4 MS. ALLEN: Okay. Perfect. Thank you.

5 THE COURT: A disk.

6 MS. ALLEN: We're going to submit them  
7 with a disk, right.

8 THE COURT: Okay.

9 MS. ALLEN: Okay.

10 MS. COOPER: If I may, one last  
11 item. Generally, this has been a  
12 confidential proceeding, in light of the  
13 statute, but our view is, once this  
14 Court has determined the issue, given it  
15 is a matter of public importance, we  
16 would ask for permission for -- to be  
17 able to publicize a redacted version of  
18 the opinion and transcript of  
19 proceedings that removed the names of  
20 all three children, actually, in the  
21 household, and, then, because one child  
22 shares the name with his father,  
23 necessarily, the name of [Tom], Sr., as  
24 well as to the extent that [John] and  
25 [James]'s biological parents are named



1           anywhere, that that would need to be  
2           redacted, as well. Is that acceptable  
3           to Your Honor?

4           THE COURT: Uh-huh.

5           MS. COOPER: Okay.

6           THE COURT: Anything else?

7           MS. MARTIN: I do, Your Honor. At one  
8           point in time, I asked the Court for a  
9           ruling on whether or not the petitioner  
10          could add the claim of the special law as a  
11          claim, and the Court deferred ruling on it.

12          THE COURT: Right.

13          MS. MARTIN: Has the Court -- What is  
14          your ruling on that?

15          THE COURT: I think what I'd prefer to  
16          do, for appellate purposes, is just to grant  
17          your motion, and I will not consider the  
18          special law, in view of the fact that it was  
19          not part of the amended petition.

20          All right. Anything else? Thank you  
21          all very much.

22          MS. COOPER: Thank you.

23          MS. BASS: Thank you, Your Honor.

24          (Thereupon, the trial was concluded at  
25          3:50 p.m.)

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C E R T I F I C A T E

STATE OF FLORIDA:  
SS.  
COUNTY OF MIAMI-DADE:

I, NIEVES SANCHEZ, Court Reporter, and a  
Notary Public for the State of Florida at Large,  
do hereby certify that I was authorized to and  
did stenographically report the foregoing  
proceedings and that the transcript is a true and  
complete record of my stenographic notes.

DATED this 10th day of October, 2008.

\_\_\_\_\_  
NIEVES SANCHEZ