

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY,)
SANDRA B. STIER, PAUL T. KATAMI,)
and JEFFREY J. ZARRILLO,)
)
Plaintiffs,)

VS.) NO. C 09-2292-VRW

ARNOLD SCHWARZENEGGER, in his)
official capacity as Governor of)
California; EDMUND G. BROWN, JR.,)
in his official capacity as)
Attorney General of California;)
MARK B. HORTON, in his official)
capacity as Director of the)
California Department of Public)
Health and State Registrar of)
Vital Statistics; LINETTE SCOTT,)
in her official capacity as Deputy)
Director of Health Information &)
Strategic Planning for the)
California Department of Public)
Health; PATRICK O'CONNELL, in his)
official capacity as)
Clerk-Recorder for the County of)
Alameda; and DEAN C. LOGAN, in his)
official capacity as)
Registrar-Recorder/County Clerk)
for the County of Los Angeles,)

) San Francisco, California
Defendants.) Friday
) January 15, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR, 5812*
Debra L. Pas, CRR, CSR, 11916
Official Reporters - U.S. District Court

APPEARANCES:**For Plaintiffs:**

GIBSON, DUNN & CRUTCHER LLP
 1050 Connecticut Avenue, N.W.
 Washington, D.C. 20036-5306

**BY: THEODORE B. OLSON, ESQUIRE
 MATTHEW D. MCGILL, ESQUIRE**

GIBSON, DUNN & CRUTCHER LLP
 333 South Grand Avenue
 Los Angeles, California 90071-3197

**BY: THEODORE J. BOUTROUS, JR., ESQUIRE
 CHRISTOPHER D. DUSSEAULT, ESQUIRE
 SCOTT MALZAHN, ESQUIRE**

GIBSON, DUNN & CRUTCHER LLP
 555 Mission Street, Suite 3000
 San Francisco, California 94105-2933

**BY: ETHAN D. DETTMER, JR., ESQUIRE
 ENRIQUE A. MONAGAS, ESQUIRE**

BOIES, SCHILLER & FLEXNER LLP
 333 Main Street
 Armonk, New York 10504

**BY: DAVID BOIES, ESQUIRE
 ROSANNE C. BAXTER, ESQUIRE**

BOIES, SCHILLER & FLEXNER LLP
 575 Lexington Avenue, 7th Floor
 New York, New York 10022

BY: JOSHUA I. SCHILLER, ESQUIRE

BOIES, SCHILLER & FLEXNER LLP
 1999 Harrison Street, Suite 900
 Oakland, California 94612

**BY: JEREMY MICHAEL GOLDMAN, ESQUIRE
 STEVEN C. HOLTZMAN, ESQUIRE**

**For Plaintiff-
 Intervenor:**

CITY AND COUNTY OF SAN FRANCISCO
 OFFICE OF THE CITY ATTORNEY
 One Drive Carlton B. Goodlett Place
 San Francisco, California 94102-4682

**BY: THERESE STEWART, DEPUTY CITY ATTORNEY
 DANNY CHOU, DEPUTY CITY ATTORNEY
 RONALD P. FLYNN, DEPUTY CITY ATTORNEY
 ERIN BERNSTEIN, DEPUTY CITY ATTORNEY**

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

APPEARANCES (CONTINUED) :

For Defendant
Gov. Schwarzenegger: MENNEMEIER, GLASSMAN & STROUD
 980 9th Street, Suite 1700
 Sacramento, California 95814-2736
BY: ANDREW WALTER STROUD, ESQUIRE

For Defendant
Edmund G. Brown Jr.: STATE ATTORNEY GENERAL'S OFFICE
 455 Golden Gate Avenue, Suite 11000
 San Francisco, California 94102-7004
BY: TAMAR PACHTER, DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA
 Department of Justice
 Office of the Attorney General
 1300 I Street, 17th Floor
 Sacramento, California 95814
BY: GORDON BURNS, DEPUTY SOLICITOR GENERAL

For Defendant-
Intervenors: COOPER & KIRK
 1523 New Hampshire Avenue, N.W.
 Washington, D.C. 20036
BY: CHARLES J. COOPER, ESQUIRE
DAVID H. THOMPSON, ESQUIRE
HOWARD C. NIELSON, JR., ESQUIRE
NICOLE MOSS, ESQUIRE
PETER PATTERSON, ESQUIRE

ALLIANCE DEFENSE FUND
 15100 North 90th Street
 Scottsdale, Arizona 85260
BY: BRIAN W. RAUM, SENIOR COUNSEL
JAMES A. CAMPBELL, ESQUIRE
JORDAN LORENCE, ESQUIRE
DALE SCHOWENGERDT, ESQUIRE

For Defendant
Dean C. Logan: OFFICE OF LOS ANGELES COUNTY COUNSEL
 500 West Temple Street, Room 652
 Los Angeles, California 90012
BY: JUDY WHITEHURST, DEPUTY COUNTY COUNSEL

For Defendant
Patrick O'Connell: OFFICE OF ALAMEDA COUNTY COUNSEL
 1221 Oak Street, Suite 450
 Oakland, California 94612
BY: CLAUDE F. KOLM, DEPUTY COUNTY COUNSEL
MANUEL MARTINEZ, DEPUTY COUNTY COUNSEL

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

APPEARANCES (CONTINUED) :**For Defendant-
Intervenor Tam:**TERRY L. THOMPSON, ESQUIRE
P.O. Box 1346
Alamo, California 94507**For Mr. Garlow,
Mr. McPherson:**AMERICAN CENTER FOR LAW & JUSTICE
11 West Chestnut Hill Road
Litchfield, Connecticut 06759**BY: VINCENT P. MCCARTHY, ESQUIRE****For Dennis
Hollingsworth:****ANDREW PERRY PUGNO, ESQUIRE**
101 Parkshore Dr #100
Folsom, California 95630-4726**For Proposed
Intervenor Imperial
County, et al.:**ADVOCATES FOR FAITH AND FREEDOM
24910 Las Brisas Road, Suite 110
Murrieta, California 92562**BY: JENNIFER L. MONK, ESQUIRE**

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P R O C E E D I N G S1
2 **JANUARY 15, 2010**

8:42 a.m.

3
4 **THE COURT:** Very well. Good morning, counsel.5 I wanted to discuss with you the matter that Mr.
6 Boutrous raised at the close of proceedings yesterday and that
7 consists primarily of the three documents that were attached to
8 the plaintiffs' administrative motion for sealing, dated
9 January 12th. And I have reviewed those documents, have
10 reviewed the Ninth Circuit's order with respect to these
11 documents. So let's chat about these very briefly.12 Mr. Boutrous, can you tell me what these documents
13 are in your understanding?14 **MR. BOUTROUS:** Yes, your Honor. Thank you.15 Before I go into that, I did want to let the Court
16 know that I have talked to Mr. Cooper and I think we have, at
17 least, a proposal that might expedite things for the Court.18 **THE COURT:** Oh... Good.19 **MR. BOUTROUS:** I'm a bearer, I think, of good news.20 **THE COURT:** Bearer of good news, good tidings.21 **MR. BOUTROUS:** Yes. Maybe I will outline that and
22 then if you still want me to describe the documents --23 **THE COURT:** Maybe that's not necessary.24 **MR. BOUTROUS:** Mr. Cooper and I discussed an
25 arrangement where they -- the proponents would stipulate that

1 these documents could go into evidence, along with
2 Mr. Prentice's declaration. They would redact the names of
3 private individuals whose identities haven't been revealed
4 previously, and they would then keep their standing objections
5 on relevance and First Amendment grounds on the record. That
6 would deal with those three documents.

7 Then we today gave them, and I think we provided the
8 Court with a packet of another 150 documents -- this is why I
9 think you will like this proposal -- that we have culled out
10 from the productions that have been made. And we would go
11 through a similar process. They would look at them. We would
12 try to work this out over the weekend, along with the issues
13 concerning the two pastors' documents. And we will have
14 another bunch of documents that we have been all busily
15 reviewing.

16 So when we come back Tuesday we, hopefully, would say
17 to the Court, Here is the same arrangement with these
18 documents. They'd go into evidence. They can reserve their
19 objections and then we could use them with the remaining
20 witnesses.

21 **THE COURT:** I assume that's completely correct, is
22 it, Mr. Cooper?

23 **MR. COOPER:** It is correct. I would like to just
24 elaborate momentarily, if I may.

25 **MR. BOUTROUS:** I thought I said it so well.

1 **THE COURT:** You can never stop a lawyer from
2 elaborating, Mr. Boutrous.

3 **MR. COOPER:** Mr. Boutrous, has described the
4 agreement that we have tentatively reached and are presenting
5 to the Court.

6 I just want to emphasize that we do -- we do this
7 subject to our continuing and standing First Amendment
8 objection.

9 As the Court knows, we are quite emphatic about our
10 view on this, and while the documents that are -- that are
11 before the Court are not within the Ninth Circuit's grasp of
12 the core group of individuals who were involved in the
13 development of the messaging and advertising strategy and,
14 therefore, we concede are not within the First Amendment
15 privilege as the Ninth Circuit has defined it.

16 We do believe that these documents -- and in
17 particular document Exhibit A -- which, as the Court may
18 recall, was one in which Mr. Prentice and Mr. Schubert were
19 invited to participate in a conference call organized by a
20 pastor, Pastor Garlow, with a number of other pastors on it.
21 They were invited to participate on that to -- early on in
22 June, I think, of '08 to present their thoughts, and present
23 their thoughts to individuals with whom they were allied in a
24 common political associational purpose, which is to enact
25 Proposition 8.

1 So we believe that they are within the First
2 Amendment privilege, as we conceive of it, and that the kind of
3 information that was being provided there by Mr. Schubert and
4 Mr. Prentice really brings into sharp focus our concern about
5 this kind of document, because it was the -- it was a
6 discussion of the kinds of messaging in the upcoming campaign,
7 the campaign that was just then unfolding; that they were
8 considering likely messaging, not the messaging themselves.

9 So it -- it really is preliminary and we think -- we
10 think privileged and beyond that, obviously, irrelevant.

11 So I appreciate the opportunity to elaborate this
12 point, your Honor, but the arrangement we have reached, we are
13 fine with and will go forward with and try to work out the same
14 type of thing on a document-by-document basis as the these come
15 up.

16 **THE COURT:** Very well. Well, I appreciate that very
17 much, counsel, and commend you for your efforts and look
18 forward to more good news on Tuesday.

19 **MR. BOUTROUS:** And there are just two corollaries.
20 Dr. Tam has now got -- retained separate counsel from the
21 proponents. He has made a separate production of about 5,000
22 documents. We have busily reviewed those and culled out about
23 85 documents from that.

24 I don't know if his counsel is here today, but we
25 will try to work out something similar with Dr. Tam. We will

1 probably end up calling him as a witness Tuesday or Wednesday.

2 And I think what I will -- we'll try and do the same
3 thing with him. If he's here today, we will try and do it
4 today and try and come back and report later.

5 **THE COURT:** I believe counsel is here.

6 **MR. THOMPSON:** Yes, sir.

7 **MR. BOUTROUS:** Your Honor, may I just ask counsel if
8 he would be willing to enter into that same kind of arrange
9 through you?

10 **MR. THOMPSON:** Yes. Good morning, your Honor.

11 **THE COURT:** Refresh me as to your name, sir.

12 **MR. THOMPSON:** My name is Terry Thompson, another
13 Thompson.

14 **THE COURT:** Yes, Mr. Thompson.

15 **MR. THOMPSON:** I could work with you and we will see
16 if we can't come out with a similar arrangement, but I'd like
17 to see what these documents.

18 **THE COURT:** Very well. That's most satisfactory.

19 **MR. BOUTROUS:** My final point is, we will be working
20 with our experts who will had been testifying next week,
21 particularly Dr. Segura, who is our political power and
22 political vulnerability expert.

23 And with the Court's permission, I would like to have
24 him sign the language of the protective order so he can review
25 the documents that we have culled out subject to the protective

1 order and subject to whatever arrangements are made with the
2 Court so we have the ability to prepare him for his testimony
3 before we get final agreement on these documents. So he would
4 be part of the group that would be covered by the protective
5 order.

6 **THE COURT:** That would appear to make sense.

7 **MR. BOUTROUS:** Thank you, your Honor.

8 **MR. COOPER:** Your Honor, we tried to be careful not
9 to include experts on either side within the protective order
10 that we have worked out.

11 One of our very real concerns here is that the kinds
12 of information, as I have related just a moment ago, that are
13 in some of these documents really go to very sensitive, very
14 real strategy issues within a political campaign, among the
15 individuals who were involved together, allied, in a political
16 campaign.

17 And it seems very likely that similar campaigns are
18 going to take place in the future on this very issue, and this
19 kind of information could be valuable to those who are allied
20 on the other side of the campaign.

21 And for that reason, to the extent that many of the
22 experts -- experts really on, I guess, both sides of this
23 issue -- are also individuals who are involved in the political
24 sphere, as well, where we are concerned. And I would like an
25 opportunity to consider this, this limited request with respect

1 to Mr. Segura before the Court grants the request.

2 **THE COURT:** All right. Well, that's fine. Of
3 course, as I'm sure you well know, it's quite customary for
4 experts to be included within a protective order when there are
5 documents covered by a protective order.

6 **MR. COOPER:** I do know that, your Honor. This is a
7 very unusual situation.

8 **MR. BOUTROUS:** More good news.

9 **THE COURT:** All right.

10 **MR. BOUTROUS:** I have more good news, your Honor.

11 The protective order which Magistrate Judge Spero
12 signed does include experts, as long as they sign. So my
13 proposal has already been enshrined in law in the case.

14 So I think we resolved another issue quickly. So I
15 think we will have him sign that -- our expert sign that
16 attachment.

17 Thank you.

18 **THE COURT:** He should go ahead and sign that and then
19 if there are problems with the actual implementation of it
20 because of the identity of this particular expert or some other
21 circumstance, we can sort that out.

22 **MR. BOUTROUS:** Thank you, your Honor.

23 **MR. COOPER:** Thank you.

24 **THE COURT:** All right. I believe that concludes our
25 preliminary matters for this morning.

1 Is there anything else we need to raise before we
2 commence with the next witness?

3 **MR. OLSON:** Nothing on our side, your Honor.

4 **MR. COOPER:** I don't think there is, your Honor.

5 Thank you.

6 **THE COURT:** Very well. Well, let's bring in the
7 folks so that we can resume.

8 And let me direct the clerk to turn on the video and
9 audio feed to the ceremonial courtroom and the other remote
10 location.

11 (Brief pause.)

12 **THE COURT:** Counsel, one other question with respect
13 to the discussion we just had.

14 I believe that discussion involved following of a
15 proprietary or sealed matter and so that discussion, it seems
16 to me, should be part of the public record.

17 **MR. COOPER:** We are fine with that, your Honor.

18 **MR. BOUTROUS:** We are too, your Honor.

19 **THE COURT:** All right. Fine.

20 (Brief pause.)

21 **THE COURT:** Very well. Mr. Boutrous, are we ready
22 with the next witness?

23 **MR. BOUTROUS:** We are, your Honor. Mr. McGill will
24 be examining.

25 **THE COURT:** Very well, Mr. McGill. Call your next

1 witness.

2 **MR. MCGILL:** Thank you, your Honor. Matthew McGill
3 Gibson, Dunn and Crutcher for the plaintiffs.

4 The plaintiffs call Dr. Michael Lamb.

5 **MICHAEL LAMB,**

6 called as a witness for the Plaintiffs herein, having been
7 first duly sworn, was examined and testified as follows:

8 **THE WITNESS:** I do.

9 **THE CLERK:** Thank you. Please have a seat.

10 State your name, please.

11 **THE WITNESS:** My name is Michael Lamb, spelled
12 L-A-M-B.

13 **THE CLERK:** Thank you.

14 **DIRECT EXAMINATION**

15 **BY MR. MCGILL:**

16 **Q.** Good morning Dr. Lamb.

17 **A.** Good morning, Mr. McGill.

18 **Q.** Dr. Lamb, what is your current occupation?

19 **A.** I'm currently a professor and head of the Department of
20 Social and Developmental Psychology at the University of
21 Cambridge in England.

22 **Q.** And before you held your position at the University of
23 Cambridge, what position did you hold before that?

24 **A.** For 17 years before that I was head of the section on
25 social and emotional development at the National Institute of

1 Child Health and Human Development in Washington.

2 **Q.** And what did your duties as section head of the National
3 Institutes of Health entail.

4 **A.** My responsibilities were to conduct research and to direct
5 the team of researchers studying issues that had to do with
6 children's social and emotional development.

7 **Q.** How long have you have you studied developmental
8 psychology, Dr. Lamb?

9 **A.** I began studying developmental psychology in the 1970's,
10 early 1970's; so nearly 40 years.

11 **Q.** And what are your primary areas of study within the field?

12 **A.** There have been two broad areas of research on which I
13 focused.

14 The first, unrelated to the topic of this litigation,
15 has to do with the investigation of sex crimes involving
16 children and particularly in the development of appropriate
17 means of interviewing young children who were allegedly
18 victims.

19 The second line of research has to do with the
20 factors that affect children's development and adjustment.

21 **Q.** What do you mean by the term "adjustment?"

22 **A.** I use the term adjustment as a fairly broad term to refer
23 to those aspects of children's development that allow them to
24 function effectively in their current environment.

25 So, for example, a well-adjusted child would be one

1 who had no significant behavioral or psychological problems,
2 who was able to interact effectively and smoothly, not only
3 with adults, but also with other children. Somebody who is
4 able to perform well and achieve appropriately at school.

5 If one is thinking about older children, often one
6 side of maladjustment would be involvement in anti-social or
7 delinquent behavior.

8 Then as one goes into adulthood, adjustment would
9 refer to the ability to form successful intimate relationships
10 with other individuals and as well as perform effectively as a
11 member of society.

12 **Q.** Is there a body of literature that focuses specifically on
13 the adjustment of children parented by gay men and lesbians?

14 **A.** Yes, there is.

15 **Q.** Can you describe in general terms the breadth and depth of
16 that literature?

17 **A.** Well, it's a fairly substantial body of literature by this
18 point. This is a question that has been -- being researched
19 since the late 1970's and early 1980's and over the succeeding
20 decades there has accumulated a large number, maybe over 100
21 separate peer-reviewed professional articles, many other
22 reports in other fora. So that we now have, I think, a very
23 good understanding of the factors that effect the adjustment of
24 children being raised by gay and lesbian children -- excuse me,
25 parents.

1 Q. Would you say that you are familiar with that body of
2 research, Dr. Lamb?

3 A. Yes, I think I am.

4 Q. Did you provide peer review for any of the reports
5 included within that body of literature?

6 A. Yes, I have.

7 Q. And what is the purpose of peer review?

8 A. The purpose of peer review is a procedure that
9 professional journals and publications use to ensure that the
10 articles they publish, and report studies that have been
11 appropriately conducted, and that the results obtained have
12 been both appropriately analyzed and that they are not only
13 reported accurately and appropriately, but, also, that they are
14 integrated correctly into the wider body of literature on that
15 topic.

16 Q. Dr. Lamb, are you familiar with the various methodologies
17 used in the field of developmental psychology?

18 A. I am, yes.

19 Q. Have you taught students on the subject of research
20 methodologies?

21 A. Yes, I do.

22 Q. Have you --

23 A. And I have.

24 Q. Have you supervised other researchers in their own
25 research efforts in developmental psychology?

1 **A.** Yes, I have.

2 **Q.** Dr. Lamb, have you authored or educated any books in the
3 field of developmental psychology?

4 **A.** Yes, I have. I have also edited about 40 books.

5 **Q.** And in addition to the books you have written, have you
6 published any other writings relating to child development and
7 adjustment?

8 **A.** I have, yes.

9 **Q.** Approximately how many?

10 **A.** I must have published in total maybe 500 articles. Not
11 all of them would be about adjustment, of course, some of them
12 would be about interviewing.

13 **Q.** And where, for the most part, were those 500 articles
14 published?

15 **A.** They have been published for the most part in professional
16 peer-reviewed journals or in chapters written for other
17 professionals in professional books.

18 **Q.** Do you serve on the editorial board of any academic
19 journals?

20 **A.** I do serve on several editorial boards and I have served
21 on others in the past as well, yes.

22 **Q.** Can you name a couple of the journals on which you've
23 served on their editorial boards?

24 **A.** I have served on the editorial board of Child Development
25 and Developmental Psychology, although I'm not currently a

1 member of either of those boards.

2 I'm currently on the editorial board of Child Abuse
3 and Negligent, Developmental Review, Infant Behavior and
4 Development, some others as well.

5 **Q.** How often would you say that you provide peer review for
6 an academic article?

7 **A.** I would estimate that I review approximately two articles
8 a week, so maybe 100 articles a year.

9 **Q.** And over the course of your career, about how many would
10 that add up to?

11 **A.** Well, at the beginning of my career, happily, I wasn't
12 having to do as many as that, but I would say probably a good
13 two-and-a-half thousand to three thousand reviews in total.

14 **Q.** Dr. Lamb, have you received any honors recently from
15 professional associations?

16 **A.** Yes, I have. I received an award for Lifetime
17 Contributions to Psychology from the Association for
18 Psychological Science in 2003.

19 **Q.** Dr. Lamb, in front of you you have three books and then a
20 binder. Using the tabs at the bottom of the binder, please
21 turn to tab A. That document behind the tab there is Exhibit
22 PX-2327.

23 (Witness complied.)

24 **Q.** And, Dr. Lamb, is Exhibit PX-2327 a copy of your
25 curriculum vitae?

1 **A.** It is, yes.

2 **Q.** And does that document list your educational degrees and
3 publications?

4 **A.** Yes, it does, yes.

5 **MR. MCGILL:** Your Honor, at this time I would like to
6 offer Exhibit PX-2327 into evidence.

7 **MR. THOMPSON:** No objection, your Honor.

8 **THE COURT:** Very well. 2327 is admitted.

9 (Plaintiffs' Exhibit 2327 received in evidence.)

10 **MR. MCGILL:** Then, your Honor, we would like to
11 tender Professor Michael Lamb as an expert in the field of
12 developmental psychology of children, including the
13 developmental psychology of children raised by gay and lesbian
14 parents.

15 **MR. THOMPSON:** No objection, your Honor.

16 **THE COURT:** Very well. Proceed then, Mr. McGill.

17 **MR. MCGILL:** Thank you, your Honor.

18 **BY MR. MCGILL:**

19 **Q.** Dr. Lamb, are you going to offer any opinions in this
20 case?

21 **A.** I am, yes.

22 **Q.** What are they?

23 **A.** I'm going to offer two broad opinions. The first is that
24 we have a substantial body of evidence documenting that
25 children raised by gay and lesbian parents are just as likely

1 to be well adjusted as children raised by heterosexual parents.

2 And I'm going to offer the opinion that for a
3 significant number of these children, their adjustment would be
4 promoted were their parents able to get married.

5 **Q.** Dr. Lamb, is there a consensus within your field as to the
6 factors that most affect child adjustment?

7 **A.** There is, yes.

8 **Q.** At this time I would like to publish my first
9 demonstrative.

10 (Document displayed)

11 **Q.** Well, while that's getting up on the screen, Dr. Lamb, why
12 don't you tell us what the -- what those factors are?

13 **A.** Well, as I said, there was -- a substantial consensus has
14 developed over the last 30 or 40 years of research documenting
15 that the factors that affect children's development fall
16 broadly into these three broad categories of factors that are
17 summarized on your overhead.

18 The first of those is the quality of the
19 relationships that children have with their parents or the
20 people looking after them. There is a large body of evidence
21 showing that children are better adjusted when they have good,
22 warm, close relationships with parents who are committed to
23 caring for them and looking after them, and that children's
24 development is conversely hindered when they don't benefit from
25 such relationships with people offering such parental behavior.

1 The second set of factors have to do with the
2 relationships between the individuals who are raising the
3 child. And, again, here we have a large number of studies
4 showing that children's development is adversely affected when
5 there is conflict between those individuals. And, on the other
6 hand, that children benefit from being in a situation where
7 those adults have harmonious relationships with one another.

8 And the final set of factors have to do with the
9 circumstances in which those children are being raised.

10 Children, on average, do better when the -- they grow up in
11 circumstances where there are adequate economic resources and
12 where the children and the parents have adequate social and
13 emotional supports.

14 **Q.** So, Dr. Lamb, what makes a good parent?

15 **A.** A good parent is somebody is somebody who is committed to,
16 loves, is engaged with and focuses their attention on that
17 parent -- on that child.

18 A good parent is one who is effective at reading the
19 signals of that child, understanding what that child needs and
20 providing appropriate stimulation, guidance, and setting
21 appropriate limits for their children. And parents who provide
22 that kind of committed, loving care have children who are more
23 likely to be well adjusted.

24 **Q.** Is it the same criteria that applied to mothers and
25 fathers of children?

1 **A.** There is a substantial amount of evidence documenting
2 precisely that; namely, that what makes for an effective parent
3 is the same regardless of whether that parent is a mother or a
4 father.

5 **Q.** I would now like to publish a second demonstrative, and
6 this one is a quote from Mr. Cooper's opening statement. And
7 here he was quoting a speech of President Obama. And I will
8 just read the quotation:

9 "We know the statistics, that children who
10 grow up without a father are five times more
11 likely to live in poverty and commit crime,
12 nine times more likely to drop out of
13 schools, and 20 times more likely to end up
14 in prison."

15 Dr. Lamb, how does -- how do you square that
16 statement with your understanding of the field of developmental
17 psychology?

18 **A.** Well, I think, there are a couple of things one needs to
19 note about this quote, first of all.

20 The first is that, of course, while it talks about
21 some individuals being five, nine or 20 times more likely to
22 have some adverse outcomes, it doesn't say in comparison to
23 what, which, of course, makes it somewhat difficult to
24 understand exactly what is being said here.

25 Presumably, these statistics refer to comparisons

1 between children being raised by two heterosexual parents, as
2 opposed to those who are growing up and living with a single
3 heterosexual mother. That is to say, the statistics probably
4 are not drawn from studies that are focused on children being
5 raised by same-sex parents, either singly or in couples.

6 The third point to note is that this citation of
7 statistics doesn't address the important distinction between
8 correlation and causality. It provides these statistics and
9 perhaps implies to many listeners that it is the absence of a
10 father in and of itself that causes the adverse outcomes that
11 are described here.

12 Actually, the research, now quite voluminous, shows
13 that the absence of a father in and of itself isn't the crucial
14 factor. Rather, what's important in accounting for these
15 differences are the factors that you showed in the initial
16 overhead; and that children are moral likely to have some of
17 these problems when they have suffered the separation from one
18 of their parents, for example and, therefore, have had the --
19 been deprived of the benefits of that person's involvement in
20 their lives; when they have been exposed to significant degrees
21 of conflict between the parents; and when they have had to cope
22 with the significant degrees of economic deprivation that are
23 often associated with divorce or separation.

24 So those are the factors that better explain why you
25 might have some of these differences, and it's important for a

1 researcher to ask those questions about why these differences
2 exist, rather than simply to note the numbers themselves.

3 The final thing that's missing here, and that would
4 concern me as a summary of the evidence, is that it doesn't
5 acknowledge the fact that, notwithstanding these differences,
6 the majority of children growing up in families without their
7 father are perfectly well adjusted.

8 **Q.** Dr. Lamb, did you have hold the view that children need a
9 family structure with a male parent to adjust well?

10 **A.** You know, when I began my career in the early 1970's, that
11 was widely believed to be true. And so when I began my
12 research, it was with the presumption or prediction that this
13 was likely to be the case.

14 My first research was concerned with exploring the
15 attachments that young babies form to their mothers and
16 fathers. And I explored in that early research the differences
17 and the ways in which is mothers and fathers behaved and asked
18 whether those differences, in fact, were important, whether
19 they did show that children needed to be raised by a masculine
20 as well as by a feminine parent.

21 The results of both my research and, more
22 significantly, the larger body of research that developed since
23 the early 1970's has made clear that that initial prediction
24 was incorrect.

25 And we have now as a field come to the conclusion

1 that I stated earlier; that what makes for an effective parent
2 is the same whether or not you are talking about a mother or a
3 father, and that children do not need to have a
4 masculine-behaving parent figure, a father, in order to be well
5 adjusted.

6 **Q.** Is there any support for the view that children need to
7 have a female parent to adjust well?

8 **A.** No. The same is true with respect to that.

9 **Q.** How long has it been accepted as the consensus view within
10 your field that the three factors you described earlier, as
11 opposed to family structure, are the factors that most affect
12 child adjustment?

13 **A.** I think the fields began to coalesce around and to focus
14 on these issues from the early to mid-1980's. And I would say
15 that by the beginning of the 1990's, this would have been the
16 overwhelming consensus in the field.

17 **Q.** And if I could get into Cambridge and take a class in
18 developmental psychology, is this what I would be taught today?

19 **A.** It is.

20 **Q.** Do you have -- you should have in front of you a copy of
21 two books. One is your own book, the role of the father in
22 child development, and that has been marked as PX-2266.

23 And the other is a book by Susan Golombok entitled
24 "*Parenting, What Really Counts.*" And that is marked as
25 DIX-792.

1 Dr. Lamb, did these books inform your opinions in
2 this case?

3 **A.** Yes, they did.

4 **Q.** Are these books representative of the body of research on
5 the central factors that affect child adjustment?

6 **A.** Yes, they are.

7 **MR. MCGILL:** Your Honor, at this time I would like to
8 offer into evidence Exhibits PX-2266 and DIX-792.

9 **MR. THOMPSON:** No objection, your Honor.

10 **THE COURT:** Very well both are admitted.

11 (Plaintiffs' Exhibit 2266 received in evidence)

12 (Defendants' Exhibit 792 received in evidence)

13 **MR. MCGILL:** Thank you, your Honor.

14 **BY MR. MCGILL:**

15 **Q.** Dr. Lamb, have researchers within your field conducted any
16 studies of the adjustment of children raised by gay or lesbian
17 parents?

18 **A.** They have, yes.

19 **Q.** And these studies have appeared in peer-reviewed journals?

20 **A.** Yes, they have.

21 **Q.** And I believe you testified before it was approximately
22 100 journals -- 100 studies, is that correct?

23 **A.** There would be at least 100 peer-reviewed reports, yes.

24 **Q.** Who are the leading researchers in this field?

25 **A.** Well, there are a number of researchers, both here and in

1 Europe. I think Dr. Charlotte Patterson and Jennifer
2 Wainwright at the University of Virginia would be among those.
3 My colleague Susan Glombok at Cambridge, and researchers such
4 as Ann Beauvais and Henny Bos in the Netherlands would be among
5 some of the most significant contributors to the literature.

6 **Q.** What methodology did these researchers employ in their
7 studies?

8 **A.** Well, these researchers employ a wide variety of
9 methodologies. They use, first of all, different ways of
10 recruiting subjects for study, drawing upon both convenience
11 and representative samples in order to conduct their research.

12 And in the course of collecting data, they use
13 various techniques from survey responses, to the use of
14 standardized tests, to using systematic interviews of children,
15 of their parents, of their teachers, and, of course, doing
16 systematic observations of those individuals, both the parents
17 as well as the children.

18 So there's a wide a variety of techniques that have
19 been used in this field as in most other research on children's
20 adjustment.

21 **Q.** Are each of these methodologies you just described
22 accepted as reliable within your field?

23 **A.** Yes, they are.

24 **Q.** How would you say the researchers use of diverse
25 methodologies has affected the field?

1 **A.** Well, I think from my point of view, the broader the range
2 of methods employed, the more confident one can be about the
3 results in a body of research.

4 The more different sorts of techniques, the more
5 different types of research methods, of sampling, the more
6 different the groups and samples that have been studied, the
7 more confident one can be that -- that the results really are
8 painting a consistent body of literature and contributing to a
9 coherent understanding of the factors that affect children's
10 development.

11 **Q.** Dr. Lamb, what is a "representative sample," as that term
12 is used in your field?

13 **A.** Well, the term "representative sample" is one that is
14 employed particularly by sociologists and demographers, and
15 that involves trying to find a -- collect a sample of
16 individuals within some target population, say, the population
17 of the United States, and drawing a smaller number of people to
18 study more intensively who perfectly represent the
19 characteristics of the population as a whole.

20 **Q.** Dr. Lamb, please turn to tab D at the bottom of your
21 exhibit binder, and behind tab D you should find four exhibits
22 marked as PX-778, PX-1066, PX-1111, and PX-1116.

23 (Witness complied.)

24 **Q.** Dr. Lamb, did each of those studies employ a
25 representative sample in their research?

1 **A.** Yes. Each of these included representative samples.

2 **Q.** And did each of those studies study the adjustment of
3 children of gay or lesbian parents?

4 **A.** They do, yes.

5 **Q.** Did the studies inform your opinions in this case?

6 **A.** They did, yes.

7 **MR. MCGILL:** Your Honor, at this time I would like to
8 offer into evidence exhibits PX-778, PX-1066, PX-1111 and
9 PX-1116.

10 **MR. THOMPSON:** No objection, your Honor.

11 **THE COURT:** Very well. They will be admitted.
12 (Plaintiffs' Exhibits 778, 1066, 1111 and 1116
13 received in evidence.)

14 **MR. MCGILL:** Thank you, your Honor.

15 **BY MR. MCGILL:**

16 **Q.** Dr. Lamb, what is a convenience sample?

17 **A.** Well, a convenience sample is one that a researcher
18 studies and -- because there are a group of individuals of the
19 characteristics that you want to study who can conveniently be
20 obtained for study.

21 So, for example, for a researcher doing a study on
22 any topic, but let's say on children being raised by lesbian
23 parents living in the Bay Area, you would try and recruit
24 lesbian mothers with children of the age you wanted to study
25 who lived within easy access of the place where were doing the

1 research.

2 **Q.** And when do researchers in your field use convenience
3 samples?

4 **A.** They use them quite frequently. I would say that the
5 majority of the research done by developmental psychologists
6 actually use convenience samples.

7 **Q.** Is research using convenience samples generally accepted
8 as reliable within the field of developmental psychology?

9 **A.** Absolutely.

10 **Q.** Please, then, turn to tab E at the bottom of your binder.
11 There you will find three exhibits PX-1055, PX-1101, and
12 PX-1115. And, also, beside your binder you should find a book,
13 PX-1396.

14 (Witness complied.)

15 **Q.** Did each of those exhibits, Dr. Lamb, use a convenience
16 sample in the study of the adjustment of children raised by gay
17 or lesbian parents?

18 **A.** Yes, they did.

19 **Q.** Did those -- each of those studies inform your opinions in
20 this case?

21 **A.** Yes, they do.

22 **MR. MCGILL:** Your Honor, at this time I would like to
23 offer into evidence exhibits PX-1055, PX-1101, PX-1115, and
24 PX-1396.

25 **MR. THOMPSON:** No objection, your Honor.

1 **THE COURT:** Very well. They will be admitted.

2 (Plaintiffs' Exhibits 1055, 1101, 1115 and 1396
3 received in evidence.)

4 **MR. MCGILL:** Thank you, your Honor.

5 **BY MR. MCGILL:**

6 **Q.** Dr. Lamb, what makes a study longitudinal?

7 **A.** A longitudinal study is one in which the same individuals
8 are studied at several points over the course of their
9 development.

10 That's contrasted with a cross-sectional study, which
11 might involve choosing to study different people at chosen
12 ages.

13 **Q.** And when might it be appropriate to use a cross-sectional
14 design?

15 **A.** Well, it might be appropriate to use a cross sectional
16 design as -- of course, in all of these cases the design you
17 choose depends on the research question that you have.

18 But if, for example, your question was: Do the
19 events that happen shortly after children begin school affect
20 the adjustment of children? You might want to do a study
21 comparing five-year-olds and ten-year-olds and see whether
22 there were higher rates of maladjustment in the ten-year-olds
23 than the five-year-olds as one way of seeing whether this was a
24 significant period of time in which adjustment -- maladjustment
25 emerged.

1 Q. Have any of the studies of the adjustment of children of
2 gay or lesbian parents used a longitudinal design?

3 A. Yes, they have.

4 Q. Please turn to tab F at the bottom of your binder. There
5 you will find just one exhibit, PX-1088.

6 (Witness complied.)

7 Q. Dr. Lamb, is that study PX-1088, is that a longitudinal
8 study?

9 A. Yes, it is.

10 Q. And did that study inform your opinions in this case?

11 A. Yes, it did.

12 MR. MCGILL: Your Honor, at this time I would like to
13 offer into evidence exhibit PX-1088.

14 MR. THOMPSON: No objection, your Honor.

15 THE COURT: 1088 is in.

16 (Plaintiffs' Exhibit 1088 received in evidence.)

17 MR. MCGILL: Thank you, your Honor.

18 BY MR. MCGILL:

19 Q. And now, I just, Dr. Lamb, want to refer you back quickly
20 to tab E, which -- for two exhibits that have already been
21 admitted, PX-1101 and then the book, PX-1396. The book is the
22 book by Fiona Tasker and Susan Golombok "Growing Up in a
23 Lesbian Family."

24 Did both of those studies also usual a Longitudinal
25 design?

1 **A.** Yes, they did.

2 **Q.** Now, by contrast, have any of the studies of gay or
3 lesbian parents used cross-sectional designs?

4 **A.** Yes, they have.

5 **Q.** For that let's turn to tab G, and I will direct you to
6 exhibit PX-1072. This is a study by Chan and others.

7 (Witness complied.)

8 **Q.** Is this a cross-sectional study, Dr. Lamb?

9 **A.** Yes, it is.

10 **Q.** And did it inform your opinions in this case?

11 **A.** Yes, I did.

12 **MR. MCGILL:** At this time, your Honor, I would like
13 to offer into evidence Exhibit PX-1072.

14 **MR. THOMPSON:** No objection, your Honor.

15 **THE COURT:** Very well, 1072 is in.

16 (Plaintiffs' Exhibit 1072 received in evidence)

17 **MR. MCGILL:** Thank you.

18 **BY MR. MCGILL:**

19 **Q.** Now, referring back to tab D, just very quickly, PX-1066.
20 This is a study by Susan Golombok entitled "Children With
21 Lesbian Parents, A Community Study."

22 And then PX-1116. This is a study by Jennifer
23 Wainright entitled "Psychosocial Adjustment, School Outcomes
24 and Romantic Relationships of Adolescents With Same-Sex
25 Parents."

1 These have been previously admitted. Did those
2 studies also use a cross-sectional design?

3 **A.** Yes, they did.

4 **Q.** Now, Dr. Lamb, finally, what is a literature review?

5 **A.** Well, a literature review is a report, article, or chapter
6 written by a scholar attempting to synthesize the body of
7 literature with respect to some particular question or topic.

8 **Q.** And if you could, please, turn to tab H in your witness
9 binder there? There you should find three exhibits, DIX-2424,
10 PX-1384, and PX-1093.

11 (Witness complied.)

12 **Q.** Are these three exhibits literature reviews, Dr. Lamb?

13 **A.** Yes, they are.

14 **Q.** And did they inform your opinions in this case?

15 **A.** Yes, they did.

16 **MR. MCGILL:** Your Honor, at this time I would like to
17 offer those three exhibits, PX-1093, PX-1384 and DIX-2424 into
18 evidence.

19 **MR. THOMPSON:** No objection, your Honor.

20 **THE COURT:** Very well.

21 (Plaintiffs' Exhibits 1093, 1384 received in
22 evidence)

23 (Defendants' Exhibit 2424 received in evidence)

24 **BY MR. MCGILL:**

25 **Q.** So, Dr. Lamb, based on all of those studies we just

1 admitted into evidence, what conclusions have you drawn with
2 respect to the impact of gay or lesbian parenting on children's
3 and adolescent's adjustment?

4 **A.** Well, I think those articles are representative of a much
5 larger body of research focused on this question documenting
6 very conclusively that children who are raised by gay and
7 lesbian parents are just as likely to be well-adjusted as
8 children raised by heterosexual parents.

9 That's a conclusion that has been documented in
10 studies using, as I said, a variety of methods, a variety of
11 ways of obtaining samples, asking different sorts of questions
12 about various aspects of adjustment involving children and
13 adolescents of different ages.

14 And the conclusiveness of that evidence is, in my
15 mind, further supported by the fact that the results obtained
16 in the studies that involve gay and lesbian parents are
17 completely consistent with our broader understanding of the
18 factors that affect children's adjustment, as I explained at
19 the beginning of my testimony.

20 **Q.** Would you say that your conclusions, Dr. Lamb, are
21 reflective of a consensus within the field of developmental
22 psychology?

23 **A.** Yes, they are.

24 **Q.** Could you please turn to tap I in your binder? There you
25 will find PX-766.

1 (Witness complied.)

2 **Q.** And what is that document, Dr. Lamb?

3 **A.** This is a policy statement issued by the American
4 Psychological Association entitled "Sexual Orientation, Parents
5 and Children" issued in 2004.

6 **Q.** And at this time I would like to publish a demonstrative
7 with some of the text from that policy statement.

8 (Document displayed)

9 **Q.** Dr. Lamb, could you please read the text in the
10 highlighted box to the top?

11 **THE COURT:** This is 766?

12 **MR. MCGILL:** PX-766.

13 **THE COURT:** Has that been admitted?

14 **MR. MCGILL:** Not yet, your Honor.

15 **THE COURT:** Let's admit it before we read from it.

16 **MR. MCGILL:** Okay. Thank you, your Honor.

17 At this time, your Honor, I would ask that you take
18 judicial notice of the American Psychological Association's
19 policy statement concerning the "Sexual orientation, Parents
20 and Children."

21 **MR. THOMPSON:** No objection, your Honor.

22 **THE COURT:** Very well. 766 will be admitted.

23 (Plaintiffs' Exhibit 766 received in evidence)

24 **A.** Would you like me to read?
25

1 **BY MR. MCGILL:**

2 **Q.** Please now read from the top box.

3 **A.** The first box reads:

4 "There is no scientific basis for concluding
5 that lesbian mothers and gay fathers are
6 unfit parents on the basis of their sexual
7 orientation." Then they cite to three
8 reports. "On the contrary, results of
9 research suggest that lesbian and gay parents
10 are as likely as heterosexual parents to
11 provide supportive and healthy environments
12 for their children."

13 **Q.** Dr. Lamb, do you believe that this policy statement from
14 which you just read accurately summarizes the state of the
15 social science research on the effect of gay and lesbian
16 parenting on child adjustment?

17 **A.** Yes, I think it does.

18 **Q.** And could you now read the second box, please?

19 **A.** The second box reads:

20 "Overall, results of research suggest that
21 the development, adjustment and well-being of
22 children with lesbian and gay parents do not
23 differ markedly from that of children with
24 heterosexual parents."

25 **Q.** Dr. Lamb, do you believe that conclusion is adequately

1 supported by the research in your field?

2 **A.** I do, yes.

3 **Q.** Thank you.

4 Now, are you aware of any other professional
5 organizations that have issued policy statements on the subject
6 of gay and lesbian parenting?

7 **A.** There are a number of other professional organizations
8 that have issued those, yes.

9 **Q.** I would now like to publish a demonstrative with the lists
10 of the various associations.

11 (Document displayed)

12 **Q.** I will read those. That would be the American Academy of
13 Child and Adolescent Psychiatry, the American Academy of
14 Pediatrics, the American Psychiatric Association, the American
15 Psychoanalytic Association, the American Psychological
16 Association, which we just discussed, the Child Welfare League
17 of America, the National Association of Social Workers, and the
18 North American Council on Adoptable children.

19 Dr. Lamb, to your knowledge, have all of these
20 professional organizations issued policy statements on the
21 subject of gay and lesbian parenting?

22 **A.** Yes, all of them have.

23 **Q.** And could you please turn to tab J in your witness binder?
24 And there you will find seven exhibits marked as PX-753,
25 PX-757, PX-762, PX-763, PX-768, PX-1025, and PX-1032.

1 (Witness complied.)

2 **Q.** Are these exhibits the policy statements from the
3 organizations I just read into the record?

4 **A.** They appear to be, yes.

5 **Q.** And are these policy statements from these national
6 professional associations consistent with the opinions you have
7 developed in connection with this case?

8 **A.** They are, yes.

9 **MR. MCGILL:** Your Honor, at this time I would ask
10 that the Court take judicial notice of the eight policy
11 statements.

12 You have already admitted one, PX-766, but I would
13 ask that you now admit exhibits PX-753, PX-757, PX-762, PX-763,
14 PX-768, PX-1025 and PX-1032.

15 **MR. THOMPSON:** No objection, your Honor.

16 **THE COURT:** Very well. Those will be admitted.

17 (Plaintiffs' Exhibits 753, 757, 762, 763, 768, 1025
18 and 1032 received in evidence.)

19 **BY MR. MCGILL:**

20 **Q.** Dr. Lamb, have you ever heard the view that children
21 raised by gay or lesbian parents were at greater risk of
22 suffering gender identity disorder than children raised by
23 heterosexual parents?

24 **A.** Yes, I have heard that.

25 **Q.** Can you had explain what a gender identity disorder is?

1 **A.** Gender identity disorder is a psychiatric or psychological
2 problem which involves an individual feeling uncomfortable with
3 his or her gender.

4 **Q.** And have researchers in your field studied whether
5 children parented by gay men and lesbians suffer from gender
6 identity disorders more frequently than children raised by
7 heterosexual parents?

8 **A.** They have, yes. Gender identity disorders, I should point
9 out, are extremely rare. And there is no evidence that they
10 are more common when children are being raised by gay and
11 lesbian parents.

12 **Q.** Please turn to tab B in your witness binder, which is
13 marked as PX-2350. This is an email from Ron Prentice, which
14 attaches an article entitled "21 Reasons Why Gender Matters."

15 (Witness complied.)

16 **Q.** Did you review this document in connection with your work
17 in this case?

18 **A.** I did, yes.

19 **MR. MCGILL:** Your Honor, at this time I would ask
20 that we admit PX-2350.

21 **MR. THOMPSON:** No objection, your Honor.

22 **THE COURT:** PX-2530 is admitted.

23 **MR. MCGILL:** It's 2350.

24 **THE COURT:** I'm sorry. 23 --

25 **MR. MCGILL:** Yes. My mistake.

1 **THE COURT:** Did I transpose them? Is it 2350?

2 **MR. MCGILL:** Yes, it is, your Honor.

3 **THE COURT:** All right. I'm sorry.

4 (Plaintiffs' Exhibit 2350 received in evidence.)

5 **BY MR. MCGILL:**

6 **Q.** At this time I would like to publish a demonstrative from
7 2350.

8 (Document displayed)

9 **Q.** Dr. Lamb, could you please the highlighted section?

10 **A.** Yes. The text says:

11 "One of the main examples of gender confusion
12 is what some are calling gender
13 disorientation pathology. This is the term
14 used to describe homosexual, lesbian,
15 bisexual and transgender relationships. In
16 these and other cases, there was a major
17 distortion or disordering of the male or
18 female gender and a confusion of both gender
19 and sexuality."

20 **Q.** Dr. Lamb, are you familiar with the term "gender
21 disorientation pathology?"

22 **A.** I am afraid I'm not, no. I don't believe it's one that is
23 used in the psychiatric or psychological literature.

24 **Q.** As it's used in the field of developmental psychology,
25 what is a pathology?

1 **A.** A pathology is a psychological disturbance that makes it
2 difficult for a person to function appropriately. And when one
3 uses that term, it would signify that the disability is
4 sufficiently great; that some kind of therapeutic or treatment
5 is needed in order to deal with it.

6 **Q.** Dr. Lamb, does the field of developmental psychology
7 describe gay or lesbian sexual orientations as a pathology?

8 **A.** No, it does not.

9 **Q.** Why not?

10 **A.** Those are not categorized as pathologies. They are parts
11 as normal variation and are considered to be aspects of
12 well-adjusted behavior.

13 **Q.** Have studies in your field examined whether children
14 parented by gay men or lesbians are more likely to develop a
15 gay or lesbian sexual orientation themselves?

16 **A.** Yes, they have.

17 **Q.** What conclusions have those studies reached?

18 **A.** Those studies have shown that there is no significant
19 increase in the proportion of children who become gay or
20 lesbian themselves when they are raised by gay or lesbian
21 parents.

22 **Q.** I would now like to publish my next demonstrative from the
23 "Why Gender Matters" article.

24 (Document displayed)

25 **Q.** Dr. Lamb, could you please read the highlighted text?

1 **A.** Yes. The highlighted text says:

2 "While various studies indicate that around
3 two to three percent of persons have ever
4 practiced homosexual behaviors in their
5 lifetime, a study in developmental psychology
6 found that 12 percent of the children of
7 lesbians became active lesbians themselves."

8 **Q.** Dr. Lamb, does the text that you just read not call into
9 conclusion -- not call into question the conclusion you just
10 gave to the Court?

11 **A.** No, it doesn't, because the referenced study that is cited
12 here as footnote 84 reported that there was no significant
13 difference between the group of children being raised by
14 lesbian mothers and the groups of children being raised by
15 heterosexual mothers.

16 **Q.** You were familiar with the study cited in footnote 84?

17 **A.** I am, yes.

18 **Q.** Do you know who wrote that study?

19 **A.** It was a study conducted by Susan Golombok and her
20 colleagues.

21 **Q.** How do you know Susan Golombok, Professor Lamb?

22 **A.** Well, I have known of her research for many years. She is
23 now a colleague of mine at the University of Cambridge.

24 **Q.** Does the research in your field establish ways in which
25 children raised by gay men and lesbians might differ from

1 children raised by heterosexuals?

2 **A.** It does, yes. There have been a number of studies that
3 have, for example, shown that in some cases children raised by
4 gay and lesbian parents have less sex stereotyped attitudes
5 than those being raised by heterosexual parents.

6 **Q.** Can you give me an example of a sex stereotyped attitude?

7 **A.** Well, the most obvious ones would have to do with
8 children's understanding or aspirations for themselves.
9 Children who are more sex stereotyped might think, for example,
10 that girls should aspire to be nurses while boys aspire to be
11 doctors; that there are certain behaviors that are more
12 appropriate for boys than for girls.

13 **Q.** Within your field is a child's failure to adopt sex
14 stereotype attitudes viewed as a maladjustment?

15 **A.** No, it's not. It's viewed as an aspect of normal
16 variation.

17 **Q.** Thank you.

18 I would now like to turn to my next demonstrative
19 from "21 Reasons Why Gender Matter" article.

20 (Document displayed)

21 **Q.** Could you read the two highlighted boxes, please,
22 Dr. Lamb?

23 **A.** (As read)

24 "The sad truth is homosexual abuse of
25 children is proportionally higher than

1 heterosexual abuse of children. It must be
2 stressed that most homosexuals do not abuse
3 children, and most are not pedophiles, but it
4 seems a significant number do and are.

5 "It is the right of the child to know and
6 have a relationship with their biological
7 mother and father. It is the right of the
8 child to be protected from sexual
9 exploitation. Gender disorientation
10 pathology greatly increases the risk that
11 children will suffer sexual exploitation. It
12 is our duty to protect them."

13 **Q.** Dr. Lamb, do you agree with the statement that
14 homosexual -- homosexual orientations, quote, greatly increases
15 the risk that children will suffer sexual exploitation?

16 **A.** Absolutely not. It is clearly established that children
17 are at no greater risk of abuse when being raised by gay and
18 lesbian parents.

19 **Q.** Do you agree with the statement that it is the right of
20 the child to be protected from sexual exploitation?

21 **A.** Absolutely.

22 **Q.** Then why do you not agree with the statement that being
23 raised by gay or lesbian parents increases the risk that
24 sexual -- that -- increases the risk that children will suffer
25 sexual exploitation?

1 **A.** Because there is no evidence that gays or lesbians are
2 more likely to sexually abuse children.

3 **Q.** Has that hypothesis been disproven by researchers in your
4 field?

5 **A.** It has, yes.

6 **Q.** When was the first time you can recall it was disproven?

7 **A.** Well, this is one of those fairly old canards. So the
8 very earliest report that I'm familiar with was published in
9 the lately 70's. Then there have been parties published in the
10 70's, 80's and 90's documenting in various ways that this is
11 simply not true.

12 **Q.** Is one of the articles to which you are referring an
13 article by Carole Jenny entitled "Are Children At Risk For
14 Sexual Abuse By Homosexuals?" published in *Pediatrics* in 1994?

15 **A.** Yes, that would be one of them.

16 **Q.** Is there any social science in your field or any of which
17 you are aware that supports the notion that children need to be
18 protected from gay men or lesbians?

19 **A.** No, there is not.

20 **Q.** Is it true, Dr. Lamb, that children and adolescents raised
21 by gay and lesbian parents sometimes are teased or bullied by
22 their peers?

23 **A.** Yes, it is.

24 **Q.** Have researchers in your field studied whether children of
25 gay or lesbian parents have more difficulty forming healthy

1 relationships with peers than children raised by heterosexual
2 persons?

3 **A.** Yes, they have.

4 **Q.** What do those studies conclude?

5 **A.** Well, the studies conclude that whether or not children
6 are raised by heterosexual or same-sex parents, there were no
7 differences in their ability to establish appropriate social
8 relationships with peers, either as children or as adolescents.

9 **Q.** So what inference can be drawn from the fact that children
10 and adolescents raised by gay and lesbian parents are sometimes
11 bullied by their peers?

12 **A.** Well, the studies that have explored this in more detail
13 show that while children with gay or lesbian parents are more
14 likely to be teased about their family configuration, they
15 aren't more likely to be teased in general.

16 Children tease one another for a variety of reasons.
17 Children get teased because their ethnic group is different,
18 because they have curly hair, because they are fat, because
19 they have a funny accent. Children can be very cruel to one
20 another.

21 And when it's possible to tease somebody about the
22 sexual orientation of their parents, they may be teased for
23 that but that doesn't mean that they are more likely to be
24 teased overall.

25 **Q.** I would like to publish my next demonstrative from the "21

1 Reasons Why Gender Matters" article circulated by Ron Prentice
2 for use in sermons.

3 (Document displayed)

4 **Q.** Could you read the highlighted box?

5 **A.** (As read)

6 "There was also the question of how children
7 fare when raised in same-sex families. One
8 person who has spent a lot of time looking
9 into this question is psychologist
10 Dr. Nicolosi. He argues that kids raised by
11 homosexuals are traumatized emotionally and
12 socially."

13 **Q.** Dr. Lamb, is there any social science in your field or any
14 of which you are aware that supports the notion that, quote,
15 Kids raised by homosexuals are traumatized emotionally and
16 socially?

17 **A.** No, there is not.

18 **Q.** Dr. Lamb, who is Dr. Joe Nicolosi?

19 **A.** Well, I have to confess, I didn't know who he was when I
20 saw this document, so I searched for him on the internet and
21 discovered that he is a psychologist who practices conversion
22 therapy for homosexual individuals.

23 **Q.** Dr. Lamb, are you familiar with the notion of the
24 necessity of gender differentiated parenting?

25 **A.** Yes, I am.

1 **Q.** Could you please describe what the concept of gender
2 differentiated parenting entails?

3 **A.** Well, this is a concept that we talked about briefly
4 earlier on, holding that in order to be well-adjusted, children
5 need to be raised by a male parent as well as by a female
6 parent.

7 And as I said earlier on in responding to you, there
8 is now a significant body of evidence documenting that that's
9 really not true; that what's important for children's
10 development and adjustment is the quality of the parenting that
11 they obtained from the people who are raising them, and that
12 the gender is not one of those important dimensions.

13 **Q.** I would like to publish my next demonstrative from the "21
14 Reasons Why Gender Matters" article circulated by Ron Prentice.

15 (Document displayed)

16 **Q.** Dr. Lamb, could you read the highlighted box, please?

17 **A.** (As read)

18 "We should disavow the notion that mummies
19 could make good daddies, just as we should
20 disavow the notion of radical feminists that
21 daddies can make good mummies. The two sexes
22 are different to the core and each is
23 necessary, culturally and biologically, for
24 the optimal development of a medium being."

25 **Q.** Dr. Lamb, in the quote you just read, to whom is it

1 attributed?

2 **A.** It's attributed to David Popenoe, who is a sociologist
3 recently retired from Rutgers University.

4 **Q.** Is Dr. Popenoe a leading proponent of the notion of the
5 necessity of gender differentiated parenting?

6 **A.** Yes, he is.

7 **Q.** Is there anyone else you can think of who is a proponent
8 of the theory of gender differentiated parenting?

9 **A.** The other person who comes to mind is David Blankenhorn.

10 **Q.** And do you believe that the notion is adequately supported
11 by the social science in your field?

12 **A.** No, I believe it's not supported by the social science
13 research.

14 **Q.** Is there any social science in your field or any of which
15 you are aware that supports the conclusion that a parent's
16 failure to observe traditional gender roles will harm a child?

17 **A.** There is not.

18 **Q.** Dr. Lamb, are you aware of the notion that the ideal
19 family structure for children requires a child to be raised by
20 the mother and father who are the child's genetic parents?

21 **A.** Yes, I am.

22 **Q.** Is there any basis in the social science research in your
23 field for the conclusion that the absence of a genetic
24 relationship between parent and child will increase the
25 likelihood of poor adjustment outcomes for that child?

1 **A.** Can you repeat the question? I'm sorry.

2 **Q.** Is there any basis for the conclusion that the absence of
3 a genetic relationship between parent and child increases the
4 likelihood of poor adjustment outcomes for the child?

5 **A.** There is no support for that.

6 **Q.** Is there any social science of which you are aware that
7 tends to contradict it?

8 **A.** There is. There have been a number of studies that
9 address that issue, including many studies that focus on
10 children who have been adopted, as well as a number of studies
11 focused on children who have been conceived through a variety
12 of reproductive technologies, which lead to them being raised
13 by parents who are not their biological parents.

14 **Q.** And what did those studies conclude?

15 **A.** Those studies showed that children are just as likely to
16 be well adjusted as children who are being raised by their
17 biological parents.

18 **Q.** If you would, please, turn to tab M in your witness
19 binder, Dr. Lamb? And there you should find three exhibits,
20 PX-779, PX-1100 and PX-1108.

21 (Witness complied.)

22 **Q.** Dr. Lamb, do these articles exemplify the research you
23 just described demonstrating that children without a genetic
24 relationship to parents are just as likely to adjust well as
25 children who are genetically related to their parents?

1 **A.** They do, yes.

2 **Q.** Do these articles inform your opinion in this case?

3 **A.** Yes, they do.

4 **MR. MCGILL:** Your Honor, at this time I would like to
5 move into evidence Exhibits PX-779, PX-1100 and PX-1108.

6 **MR. THOMPSON:** No objection, your Honor.

7 **THE COURT:** Very well. They are admitted.

8 (Plaintiffs' Exhibits 779, 1100 and 1108 received in
9 evidence.)

10 **MR. MCGILL:** Thank you, your Honor.

11 **BY MR. MCGILL:**

12 **Q.** Dr. Lamb, in your expert opinion is there any way that
13 prohibiting same-sex couples from marrying could be expected to
14 improve the adjustment outcomes of their children?

15 **A.** No, there is not.

16 **Q.** Is there any way that prohibiting same-sex couples from
17 marrying could reasonably be expected to improve the adjustment
18 outcomes of any child?

19 **A.** I don't think so.

20 **Q.** When an unmarried cohabitating couple marries, does that
21 improve the likelihood that their child will achieve a good
22 adjustment outcome?

23 **A.** Yes, it definitely can.

24 **Q.** Why?

25 **A.** Because it allows those children to benefit from some of

1 the advantages that accrue to marriage, including the fact that
2 it's a recognized social institution. And so being able to
3 consider themselves part of a well-recognized institution, can
4 be beneficial for some students -- some children.

5 **Q.** And is that study supported by social science in your
6 field? Is that conclusion supported by social science studies
7 in your field?

8 **A.** Yes.

9 **Q.** Is there any reason that conclusion would not hold true if
10 the unmarried cohabitating couple were gay or lesbian?

11 **A.** No, it is not.

12 **Q.** In the thousands of books and publications you have
13 written and reviewed in your career, have you ever encountered
14 a sound rationale for purposefully denying a child the
15 opportunity to achieve the best possible adjustment outcome?

16 **A.** No, I have not.

17 **MR. MCGILL:** I have no more questions, your Honor.

18 **THE COURT:** Very well. Thank you, Mr. McGill.

19 You may cross examine, Mr. Thompson.

20 **MR. THOMPSON:** Thank you, your Honor.

21 We have the first of several installments of binders.
22 We would like to hand out our first two sets of binders, if we
23 may.

24 May I approach, your Honor?

25 **THE COURT:** You may.

1 (Whereupon, binders were tendered
2 to the Court, the witness and counsel.)

3 **CROSS EXAMINATION**

4 **BY MR. THOMPSON:**

5 **Q.** Good morning, Dr. Lamb.

6 **A.** Good morning.

7 **Q.** You have been a member of the American Civil Liberties
8 Union, is that correct?

9 **A.** That is correct.

10 **Q.** And a member of the National Organization of Women, is
11 that correct?

12 **A.** Yes, it is.

13 **Q.** And a member of the NAACP, is that correct?

14 **A.** Yes, it is.

15 **Q.** And a member of Amnesty International, is that correct?

16 **A.** Yes.

17 **Q.** And the Nature Conservancy, is that correct?

18 **A.** Yes.

19 **Q.** And you have even given money to PBS, is that correct?

20 (Laughter.)

21 **Q.** So we can agree you are a committed liberal, is that
22 right?

23 **A.** I wouldn't say I'm necessarily a committed liberal.

24 **Q.** You believe that gays and lesbians should have the right
25 to marry, correct?

1 **A.** That's what I testified, yes.

2 **Q.** Okay. And you personally approve of same-sex marriage, is
3 that right?

4 **A.** I do.

5 **Q.** You are not a clinical psychologist, correct?

6 **A.** That's correct.

7 **Q.** You have never treated patients, correct?

8 **A.** That's correct.

9 **Q.** The last time you actually interviewed a child as part of
10 a study was over 20 years ago, correct?

11 **A.** Yes, that's correct.

12 **Q.** You have never interviewed --

13 **A.** May I just interrupt. That was my best guess at the time
14 of the interview -- of the deposition. It's still my best
15 guess now.

16 **Q.** Okay. You can't remember the last time you interviewed a
17 child in a study, is that your testimony?

18 **A.** I can't remember the date of the last time I did it,
19 that's correct.

20 **Q.** But you think it was more than two decades ago?

21 **A.** I think it was around two decades ago, I think.

22 **Q.** You have never interviewed the child of a gay male couple
23 in any professional capacity, correct?

24 **A.** That's correct.

25 **Q.** You have never interviewed the child of a lesbian couple

1 in any professional capacity, is that correct?

2 **A.** Correct.

3 **Q.** You have never completed a study of children raised by gay
4 and lesbian parents, correct?

5 **A.** That's correct.

6 **Q.** You would doubt that the members of the American
7 Psychological Association would unanimously endorse the
8 positions you have taken in this case, correct?

9 **A.** Unanimously? No, probably not.

10 **Q.** And you don't have any idea as to what percentage would
11 agree with you, correct?

12 **A.** No.

13 **Q.** Okay. I would like to ask you a few questions about the
14 role of politics in modern day science.

15 You would agree that social sciences, like
16 psychology, are not hermetically sealed from political
17 influence, correct?

18 **A.** Well, I think none of us are hermetically sealed from the
19 world around us, if that's what you mean.

20 **Q.** Well, you would agree that governments in the United
21 States and Great Britain are not immune from the influence of
22 politics and ideology, correct?

23 **A.** Umm...

24 (Laughter.)

25 **Q.** That may be the second thing we can agree on today.

1 And universities are not free from the influence of
2 politics, correct?

3 **A.** Well, they are rife with politics with a small "p." How
4 much they are influenced by politics with a big "P," I'm not
5 sure.

6 **Q.** Universities are not free from the influences of
7 ideological forces, correct?

8 **A.** I'm not quite sure I know what you mean.

9 **Q.** Well, in other words, if there's a prevailing ideology
10 within a society, that often manifests itself at universities,
11 correct?

12 **A.** Well, yeah. There would probably be some people who have
13 a variety of ideological views, yes.

14 **Q.** And think tanks often reflect a particular ideological
15 view, correct?

16 **A.** I think that's correct, yes.

17 **Q.** And some major charitable organizations often reflect a
18 particular ideological point of view, correct?

19 **A.** I'm not sure about that, but perhaps. I can't think of
20 any as we talk.

21 **Q.** Funding for sophisticated high-quality psychological
22 research is often provided by governments, universities, think
23 tanks and major charitable organizations, correct?

24 **MR. MCGILL:** Objection. Compound question.

25 **THE COURT:** Sustained.

1 **BY MR. THOMPSON:**

2 **Q.** Funding for sophisticated high-quality psychological
3 research is often provided by governments, correct?

4 **A.** Yes. It's usually provided by government research
5 agencies.

6 **Q.** Okay. And the funding that is available for studies
7 dictates to a large extent the type of studies that are
8 conducted, correct?

9 **A.** Can I just suggest, I think your question presumes that
10 the decisions are being made by governments about what sorts of
11 topics should be studied.

12 In fact, certainly in this country, agencies like the
13 National Science Foundation and the National Institutes of
14 Health pride themselves on having peer reviewers evaluate the
15 scientific quality and integrity and importance of the
16 research, and I think they would vociferously object to the
17 implication that it is a government ideological identification
18 of the importance of a problem that determines what gets
19 funded.

20 **Q.** You've mentioned peer review here and in your direct
21 testimony. Have you read any of the emails about the East
22 Anglia Climate Gate?

23 **A.** I haven't read any of the emails. I've certainly heard
24 about them.

25 **Q.** Okay. And isn't it possible that even in the

1 peer-reviewing process, politics can seep into that process?

2 **A.** Well, I have to say, based on my experience doing it, that
3 that's not seen to be a factor.

4 **Q.** Now, let's talk about consensus and the importance of
5 consensus within the scientific community.

6 You would agree that history is littered with
7 scientific theories that were widely accepted within a
8 scientific community and that have proven to be wrong, correct?

9 **A.** Well, I'm not sure about that.

10 **Q.** Well, let's take phrenology. Phrenology was widely
11 accepted within the scientific community, correct?

12 **A.** I think -- and I'm not an expert on the history of science
13 or on the history of phrenology, but I think it's more accurate
14 to say that at a time there were several people who believed
15 strongly in it. Whether it represented all the knowledgeable
16 individuals who might have constituted the field of
17 psychologists or neurologists at that time, it would be more
18 debatable.

19 **Q.** But all the scientists who believed it were wrong,
20 correct?

21 **A.** Yes.

22 **Q.** And Freud's theory --

23 **A.** May we just point out that many of them weren't
24 scientists.

25 (Laughter.)

1 Q. Some of them were. The founder of it was Franz Gall, is
2 that right? Do you know?

3 A. I don't know.

4 Q. But there was a time when Freud's theory of psychoanalysis
5 was widely accepted by many psychologists, correct?

6 A. Particularly by psychiatrists and treating clinical
7 psychologists, that's correct.

8 Q. But today most contemporary psychology bears little
9 resemblance to and makes little more than passing references to
10 psychoanalysis, correct?

11 MR. MCGILL: Objection, compound.

12 THE COURT: Do you understand the question?

13 THE WITNESS: Yeah, I do.

14 THE COURT: All right. Objection overruled.

15 A. I think that that's probably true if you are referring to
16 the body of scientific psychology and research.

17 I think that that wouldn't necessarily be as true if
18 you were talking about, you know, therapeutic, clinical
19 contexts.

20 There are certainly pockets of places where
21 psychoanalysis holds, but, certainly, it's my view that it's
22 beyond some rather broad contributions it made to the field and
23 that it's not a major intellectual player today.

24 Q. I would like to direct your attention to tab one of binder
25 one, which is your deposition in this case, and to page 191,

1 line 9. And please let me know when you are there.

2 **A.** I'm there.

3 **Q.** And you gave the testimony:

4 **"ANSWER:** So that I think it's not unfair to
5 say that most contemporary psychology bears
6 little resemblance to and makes little more
7 than passing references to psychoanalysis."

8 And you gave that testimony, correct?

9 **A.** That's correct.

10 **Q.** All right. With respect to homosexuality, at the
11 beginning of the twentieth century, there was widespread
12 consensus within the psychological community that homosexuality
13 was a pathological condition, correct?

14 **A.** I'm not a clinical psychologist, but I think that that's
15 correct.

16 **Q.** And the psychological community was entirely wrong, wasn't
17 it?

18 **A.** Well, that portion of the scientific -- of the
19 psychological community that held that belief was wrong, yes.

20 **Q.** Now, I would like to direct your attention to your -- to
21 tab seven, which is in your second binder.

22 The way these binders are organized is tab one has
23 your testimony in this and many other cases, and then the
24 second binder has some --

25 **A.** I don't have it yet.

1 Q. I apologize.

2 (Whereupon, the binder was tendered
3 to the Court, the witness and counsel.)

4 **THE COURT:** These documents are upside down -- yes,
5 okay.

6 **MR. THOMPSON:** Oh, I apologize about that, your
7 Honor.

8 **THE COURT:** Oh, I see.

9 **THE WITNESS:** We have the same problem.

10 **THE COURT:** All right.

11 **MR. THOMPSON:** Sorry about that, your Honor.

12 **THE COURT:** Okay.

13 **MR. THOMPSON:** Okay.

14 **BY MR. THOMPSON:**

15 Q. All right. Dr. Lamb, I would like to refer your attention
16 to tab seven, and this is PX-1026. And it's a policy statement
17 of the American Academy of Child and Adolescent Psychiatry.

18 **MR. THOMPSON:** And I'm afraid I didn't memorize, your
19 Honor, every PX-that was being moved in; but in an abundance of
20 caution, I'd would like to ask the Court to take judicial
21 notice of PX-1026.

22 **THE COURT:** I assume there is no objection to
23 admitting 1026?

24 **MR. MCGILL:** No objection, your Honor.

25 **THE COURT:** Very well.

1 **MR. MCGILL:** I don't believe it was previously
2 admitted.

3 **THE COURT:** Okay.

4 (Plaintiffs' Exhibit 1026 received in evidence.)

5 **BY MR. THOMPSON:**

6 **Q.** Dr. Lamb, referring your attention to the second paragraph
7 it says:

8 "Lesbian, gay, bisexual or transgender
9 individuals historically have faced more
10 rigorous scrutiny than heterosexual people
11 regarding their rights to be or become
12 parents. The American Academy of Child and
13 Adolescent Psychiatry opposes any
14 discrimination based on sexual orientation or
15 gender identity against individuals in regard
16 to their rights as custodial, foster or
17 adoptive parents."

18 Dr. Lamb, there is not a rich empirical literature
19 relating to child outcomes of transgender individuals, is that
20 right?

21 **A.** I'm not familiar with it, no.

22 **Q.** And there is not a rich literature on the child outcomes
23 of the children of bisexuals, correct?

24 **A.** That's correct.

25 **Q.** So this statement is not based on empirics, but, rather,

1 in politics, correct?

2 **A.** Well, I can't speak to the basis. That would be my
3 understanding, yes.

4 **Q.** Okay. As for the American Psychological Association, you
5 simply don't know whether any non-scientific considerations
6 play a role in the APA's treatment of same gender issues,
7 correct?

8 **A.** I'm not a member of the APA. I wasn't involved in its
9 discussion, so I have no idea.

10 **Q.** During your -- I would like to ask you some definitional
11 matters so that during our time today we are on the same page
12 in terms of the terms we are using.

13 You referred to "gays and lesbians" and my first
14 question is: Is the accepted conclusion that there are
15 probably somewhere around two percent of the adult population
16 that is gay or lesbian?

17 **A.** I think that's the consensus. I think most people often
18 express that as a range; but it would be a range around that,
19 yes.

20 **Q.** And -- but for you, your belief is that the accepted
21 conclusion is that there are probably somewhere around
22 two percent of the adult population that is gay or lesbian,
23 correct?

24 **A.** Yes. I'm not a demographer, but that sounds like about
25 the right figure that I hear people talk about.

1 Q. There are some individuals who might consider themselves
2 to have a same-sex orientation, but do not have the erotic
3 component as part of that identity, correct?

4 A. Again, that's moving outside the area of my expertise, but
5 that's probably true.

6 Q. And for the purposes of most of the research you rely
7 upon, you are talking about individuals who define themselves
8 as having a sexual orientation towards members of the same sex
9 and would self identify as lesbian, gay or heterosexual,
10 correct?

11 A. That's correct.

12 Q. And you use the term "gender orientation" and "sexual
13 orientation" interchangeably, correct?

14 A. I confess that I do. I'm trying to be better behaved and
15 to talk about it more particularly.

16 (Laughter.)

17 Q. In the past, you have used the term "gender orientation"
18 as the sexual object focus of sexual romantic interest,
19 correct?

20 A. I may have done it. It doesn't sound like a word that I
21 would normally use, but I may well have done so.

22 Q. Well, let me just refresh your recollection. Let's turn
23 back to binder one and to your deposition testimony in the
24 Howard case. That was a case -- was it in Arkansas, Dr. Lamb?

25 A. Yes.

1 Q. And that would be behind tab four, and I would like to
2 direct your attention to page 18.

3 A. Uh-huh.

4 Q. And lines 11 through 15. And let me know, are you there,
5 Doctor?

6 A. Which line? Sorry.

7 Q. Lines 11 through 15. You were asked:

8 "QUESTION: You say gender orientation. How
9 would you to define that?

10 "ANSWER: Gender orientation as defining
11 one's sexual -- the sexual object focus of
12 sexual romantic interest" --

13 MR. MCGILL: Objection.

14 BY MR. THOMPSON:

15 Q. (Continuing)

16 "ANSWER: -- "whether that is focused on male
17 or female."

18 Did you give that testimony?

19 THE COURT: Is there an objection?

20 MR. MCGILL: Objection.

21 THE COURT: What is the objection?

22 MR. MCGILL: I'm sorry, your Honor. There is nothing
23 to impeach.

24 MR. THOMPSON: Your Honor, the witness said he
25 wasn't -- he couldn't recall whether he had used it or not and

1 I wanted to refresh his recollection.

2 **THE COURT:** For that purpose, you may.

3 **BY MR. THOMPSON:**

4 **Q.** Does this refresh your recollection that you've defined it
5 during your Howard deposition in the way that's reflected here?

6 **A.** Yeah. I suspect that the word "object" is a
7 mistranscription of something that I said. But the focus of
8 sexual romantic interest is what I was trying to say.

9 So I'm not trying to dispute it. I suspect that the
10 word "object" wasn't used, but I don't have a great problem
11 with that.

12 **Q.** You also refer to the term "well-being" and "psychological
13 adjustment" and you use those as synonyms, correct?

14 **A.** Yes.

15 **Q.** And you use both terms as fairly broad terms to comprise a
16 variety of possible ways of assessing how well children are
17 doing psychologically as individuals, correct?

18 **A.** That's correct.

19 **Q.** And you are not explicitly trying to exclude any index of
20 mental health when you use the term "well-being," correct?

21 **A.** I think that's correct, yes.

22 **Q.** You would concede that there are still many differences
23 between men and women in our society, correct?

24 **A.** Yes.

25 **Q.** Men are much more likely to be incarcerated for committing

1 a crime than women, correct?

2 **A.** That's correct.

3 **Q.** There is evidence that men are more likely to be engaged
4 in violent altercations, correct?

5 **A.** Yes.

6 **Q.** Men are more likely to be aggressive, correct?

7 **A.** Yes.

8 **Q.** Men are more likely to be alcoholics than women, correct?

9 **A.** I think so.

10 **Q.** And having an alcoholic parent can affect a child's
11 psychological well-being, correct?

12 **A.** Yes.

13 **Q.** Women live longer than men, correct?

14 **A.** On average, yes.

15 **Q.** The death of a parent is a traumatic event for a child,
16 correct?

17 **A.** It can be, yes.

18 **Q.** Men and women get different types of diseases at different
19 rates, correct?

20 **A.** Yes.

21 **Q.** And the health of parents can have an effect on the
22 psychological well-being of children, correct?

23 **A.** Yes.

24 **Q.** The intelligence of parents can have an effect on the
25 psychological well-being of children, correct?

1 **A.** That's a trickier one. I'm not sure that the intelligence
2 of parents directly affects the well-being of their children.

3 I --

4 **Q.** It's certainly possible that if someone -- if someone were
5 able to get into Cambridge than come -- learn about your
6 processes, they'd be in a better position to be a good parent
7 than if they were illiterate and never heard of them, right?

8 **A.** Well, I'm not sure that that's true. I'm not sure that
9 better-educated people are necessarily always better parents.

10 I suppose that you could make the case that people
11 who had extremely low levels of intelligence might make it
12 difficult for them to perform some of the functions of
13 parenting. It could -- it could indirectly affect children's
14 adjustment.

15 **Q.** All right. Well, let's look and see if there are any
16 differences in the Bell curve between men and women. And I
17 direct your attention to tab eight of your binder.

18 **A.** Back to the other binder?

19 **Q.** Yes.

20 **A.** Okay.

21 **Q.** And, in particular, I'd like to direct your attention to
22 page 7 of 19, as reflected in the bottom right-hand corner.

23 **A.** Uh-huh.

24 **Q.** And it says, in the second to last sentence -- and this
25 is -- I should say for the record, is a document written by a

1 Diane Halpern, who's a professor at Claremont McKenna, and she
2 writes:

3 "There are also disproportionately more males
4 at the low end of cognitive abilities
5 distribution, with males overrepresented in
6 some categories of learning disabilities and
7 retardation. The low end of verbal abilities
8 provides a very clear example of this."

9 Isn't it true that men -- if you look at the Homer
10 Simpsons of the world, there are a lot more men than women?

11 (Laughter)

12 **A.** I suspect that she's talking of people who are performing
13 much less well than Homer Simpson, but, yes.

14 (Laughter)

15 **Q.** I didn't know that was possible, but all right.

16 Now, men drop out from high school at greater rates
17 than women; isn't that right?

18 **A.** Currently, I believe that's true, yes.

19 **Q.** And men graduate from college at lower rates than women,
20 correct?

21 **A.** I'm not sure about that. I know those statistics have
22 been changing, and probably are different in different
23 contexts, so I'm not sure.

24 **Q.** Educational attainment of the parents is a predictor of
25 psychological well-being and adjustment, correct?

1 **A.** It can be associated with some of the processes we talked
2 about, yes.

3 **Q.** And we can also agree that men can't breastfeed, correct?

4 **A.** That's correct.

5 **Q.** And breastfeeding clearly has benefits for children
6 insofar as it helps to provide sources of immunity to children
7 that are beneficial to them, correct?

8 **A.** That's correct.

9 **Q.** Economic resources are quite reliably a predictor of
10 differences in children's adjustment, correct?

11 **A.** That's correct.

12 **Q.** And it's a regrettable fact that women in the
13 United States continue to earn less than men, correct?

14 **A.** Yes, I think that's true.

15 **Q.** And do you know whether lesbians on average have higher or
16 lower household income than heterosexual couples?

17 **A.** I'm not sure.

18 **Q.** There are differences between the earning power of gay men
19 and lesbians, correct?

20 **A.** I'm not sure. That's --

21 **Q.** Well, let's just look and see whether you have a reaction
22 to the -- what's behind tab 9, which is DIX96. And this is the
23 expert declaration of Lee Badgett -- of Lee Badgett, submitted
24 in the In Re Marriage Cases in California.

25 And she says, on page 5 of this document, in

1 paragraph 13:

2 "Contrary to a popular stereotype, same-sex
3 couples in California have household incomes
4 that are comparable to their married
5 counterparts. After controlling for
6 educational attainment, race, and age, male
7 couples' average household income is
8 approximately 4 percent higher than married
9 couples' average household income, while
10 female couples' average household income is
11 approximately 7 percent lower than married
12 couples' household income."

13 And that would be -- it'd be important to hold
14 constant for the level of resources available to a family, in
15 terms of doing the types of studies you rely on; is that fair
16 to say?

17 **A.** That would be fair to say. And I'm sure that
18 Professor Badgett knows what she's talking about.

19 I do want to draw your attention to the fact, though,
20 this is talking about same-sex couples in general, not
21 necessarily those who are raising children. And one would want
22 to be focused on the particular group that you're talking
23 about.

24 **Q.** Now, are you familiar with evidence that wives spend money
25 differently -- or, I should say, that women spend money

1 differently than men in terms of as it relates to children?

2 **A.** I'm not familiar with research on that.

3 **Q.** Gender is also related to certain occupations, correct?

4 **A.** There are certain occupations where some genders are more
5 prominent than others, yes, although this has actually changed
6 pretty dramatically over time.

7 **Q.** Gender is associated with educational opportunities,
8 correct?

9 **A.** Uhm, I'm not sure it's associated with opportunities. It
10 may be associated in some context with whether or not people
11 take advantage of opportunities.

12 **Q.** Men are more likely to perpetrate sexual abuse than women
13 are, as a general characteristic, correct?

14 **A.** That's correct.

15 **Q.** As a result, stepfathers are much more likely to be
16 perpetrators of sexual abuse than stepmothers, correct?

17 **A.** That's correct.

18 **Q.** And stepfathers are more likely than biological fathers to
19 abuse their children, correct?

20 **A.** I think that's correct, too, yes.

21 **Q.** And stepfathers molest children at a higher rate than
22 stepmothers, correct?

23 **A.** Yes, correct.

24 **Q.** And molestation of a child negatively impacts the child's
25 development, correct?

1 **A.** It certainly can, yes.

2 **Q.** And there is evidence that men who are married to women,
3 however, are less likely to drink heavily and less likely to
4 gamble, correct?

5 **A.** I've heard of that research. It's obviously outside of my
6 expertise -- range of expertise, yes.

7 **Q.** When it comes to parenting skills and abilities, you're
8 not saying that men and women are completely interchangeable,
9 correct?

10 **A.** What I'm saying is that where it comes to the aspects of
11 parenting that affect children's adjustment, it's the same
12 features of the parents' behavior that are important for their
13 children's adjustment.

14 **Q.** I would like to direct your attention to page 225 of your
15 deposition in this case, lines 9 through 14.

16 **A.** That's back to --

17 **Q.** Binder 1, the testimony binder.

18 **A.** Okay. Number 1. And what pages was that?

19 **Q.** 225.

20 **A.** Okay.

21 **Q.** And line 9, it says -- let me make sure I'm in the right
22 place here. All right. Line 9 through 14. Line 9 starts with
23 my question:

24 "Is it your opinion that men and women are
25 completely interchangeable in terms of

1 parenting skills and ability?

2 "ANSWER: Well, I'm not saying they are
3 completely interchangeable with respect to
4 skills and abilities."

5 And you gave that testimony, right?

6 A. I did. I continued for several paragraphs explaining what
7 I meant.

8 (Laughter)

9 Q. And we'll explore that in great detail today. You --

10 A. I just don't want you to lose sight of the fact that there
11 is more.

12 Q. You would concede that gender is a complicated variable,
13 and that it has ramifications for an individual's experiences
14 from the beginning of their life, correct?

15 A. That's correct.

16 Q. So gender likely would be related to some of the processes
17 related to raising a child, but not necessarily in a
18 straightforward way, correct?

19 A. Correct.

20 Q. And so you think gender is one of those variables that can
21 have ripple effects in a variety of different ways on the way
22 in which people behave, and can in a variety of ways affect the
23 way they behave with their children, correct?

24 A. It can, yes.

25 Q. Gender is something that actually has a wide range of

1 effects on a variety of different levels of our behavior,
2 correct?

3 **A.** That's correct.

4 **Q.** Fathers' biological and socially-reinforced masculine
5 qualities predispose them to treat their children differently
6 than do mothers, correct?

7 **A.** I'm not sure about that.

8 **Q.** Well, let's look at tab 9 of your binder, your second
9 binder. And this would be 9A, actually.

10 **A.** Uh-huh.

11 **Q.** And turning your attention -- this is called -- this is
12 from 2000. It's "Fatherhood in the 21st Century." And this is
13 something you were a coauthor of, correct?

14 **A.** That's correct.

15 And I'd like to direct your attention to page 130.
16 And in particular, to the right-hand column, the second full
17 paragraph. And it's the third sentence, that says:

18 "Fathers' biological and socially-reinforced
19 masculine qualities predispose them to treat
20 their children differently than do mothers."

21 **A.** And I'm still not sure where you are. Sorry. Oh, okay,
22 the second column. I have you now.

23 **Q.** Okay. And when you signed on to this paper as a coauthor,
24 you believed that to be true, correct?

25 **A.** Well, I think this is referring to David Popenoe, and

1 describing his position here.

2 (Laughter)

3 **Q.** Yes. And it -- well, and you believed it to be true,
4 didn't you?

5 **A.** I don't -- I don't read it that way. I read it as a
6 review which was trying to describe this position.

7 We were supposed to be reviewing the contributions to
8 the field over the previous decade. This was a *Millennial*
9 *Review* article. And, as you see, David Popenoe's name is
10 mentioned right at the end of this sentence preceding the one
11 that you just discussed.

12 **Q.** And you thought Mr. Popenoe's contribution was significant
13 enough to be noted in your review; is that your point?

14 **A.** He had made this point during the '90s and -- yeah.

15 **Q.** Well, let's --

16 **A.** Scholars like to be sure that they don't leave out things.

17 **Q.** Let me ask you this question. There is evidence that
18 father absence has its greatest and most predictable effects
19 when the father leaves earlier in the child's life, correct?

20 **A.** Sorry, can you repeat the question?

21 **Q.** Sure. There is evidence that father absence has its
22 greatest and most predictable effects when the father leaves
23 earlier in the child's life, correct?

24 **A.** Well, again, with the provisos around the term "effect" in
25 that context. Certainly, you have a very different set of

1 processes involved when you have something occurring very early
2 in the child's life. You have longer periods of time involved.
3 That's correct.

4 **Q.** The attachment between -- excuse me.

5 There are studies that show that the attachment
6 between babies and fathers is also strong, and that it might
7 serve needs that are not met in the infant-mother relationship,
8 correct?

9 **A.** I'm -- well, certainly, I conducted a lot of that area of
10 research on babies' attachments to mothers and fathers. And if
11 you're talking about babies being raised in families with two
12 parents, there's a significant amount of evidence that both of
13 those relationships have an important impact on those
14 children's development.

15 **Q.** And there is data that suggests that the differences
16 between maternal and paternal behavior are more strongly
17 related to either the parents' biological gender or sex roles,
18 than to either of their degree of involvement in infant care or
19 their attitudes regarding the desirability of paternal
20 involvement in infant care, correct?

21 **A.** I think that's generally not the case.

22 **Q.** Well, let's look at tab 12. And this is, "Attachment and
23 Affiliative Systems." And I'd like to direct your attention to
24 page 117. This is a -- do you recall writing chapter 10 of
25 this book, "Effect of Gender and Caretaking Role on

1 Parent/Infant Interaction"?

2 **A.** Believe it or not, I do, even though it was written in the
3 late 1970s, and published in 1982.

4 **Q.** Okay. And let's turn to page 117.

5 **A.** Uh-huh.

6 **Q.** And here, you, as an author wrote:

7 "The data suggests that the differences
8 between maternal and paternal behavior are
9 more strongly related to either the parents'
10 biological gender or sex roles, than to
11 either their degree of involvement in infant
12 care or their attitudes regarding the
13 desirability of paternal involvement in
14 infant care."

15 You believed that at the time you wrote this,
16 correct?

17 **A.** I wrote this chapter describing a particular study that
18 was conducted, as I said, in the late 1970s. And the sentence
19 that you just read was our summary of the results of that study
20 conducted in the late 1970s.

21 As I testified earlier, I certainly believed, at that
22 point, that these issues might be really important. And that's
23 why we did studies like this. As I also testified earlier,
24 that is a finding that has not held up in subsequent research.

25 **Q.** Well, so science was wrong?

1 (Laughter)

2 **A.** Science, as I understand it, is a cumulative process, in
3 which many individuals conduct many studies, asking lots of
4 related and unrelated studies.

5 And in that vast body of literature, you will
6 certainly find cases where a finding is not replicated by other
7 researchers. You will find cases where researchers find that
8 one of their conclusions was distorted because of a particular
9 measure they used and a particular procedure that they adopted.

10 And that's why it's important to view it as a
11 cumulative process, one where you look at the big picture and
12 the way in which multiple studies give insight into the
13 conclusions that you want to reach.

14 It's absolutely not the case that any particular
15 study, in and of itself, is going to establish an important
16 association.

17 **Q.** Both mothers and fathers play crucial and qualitatively
18 different roles in the socialization of the child, correct?

19 **A.** Well, both mothers and fathers can play importantly
20 different roles when children are being raised by two
21 heterosexual parents, where both of those parents have
22 significant roles in raising those children.

23 **Q.** And, indeed, there are qualitative differences between the
24 mother-infant and father-infant relationship, correct?

25 **A.** Well, there are often qualitative differences between the

1 ways in which mothers and fathers behave in interaction with
2 their children, as I've testified earlier.

3 Those differences don't always exist. There are many
4 studies that don't show them. And it's now quite clear that
5 those differences in and of themselves don't significantly
6 affect the children's adjustment.

7 **Q.** It is disturbing that there appears to have been a
8 devaluation of the father's role in western society such that
9 many children may suffer affective paternal deprivation,
10 correct?

11 **A.** That would depend on the context in which you are talking
12 about. But, certainly, there are many situations in which
13 children who do have a father and don't benefit from the
14 committed involvement of that person in their lives.

15 **Q.** Well, let's turn to tab 13. This is an article that you
16 wrote while you were at Yale, entitled, "Fathers, Forgotten
17 Contributors to Child Development."

18 And I'd like to direct your attention to the
19 conclusion on page 260, and, in particular, to the first full
20 paragraph, the third sentence, which reads, in part:

21 "It is disturbing that there appears to have
22 been a devaluation of the father's role in
23 western society such that many children may
24 suffer affective paternal deprivation."

25 What was the context in which you believed that

1 statement to be true?

2 **A.** Well, as you pointed out, I wrote this when I was a
3 graduate student beginning my career, studying the
4 relationships between infants and fathers and infants and
5 mothers.

6 And in that context, in the context of a field where
7 there was a tremendous focus on the relationships between
8 children and their heterosexual mothers, and complete
9 inattention to the possibility that children might have other
10 significant relationships, I wrote this article, drawing
11 attention to the fact that for those many children who grew up
12 with two heterosexual parents it was important to study the
13 role of those other individuals in the child's life.

14 I wrote another article in the same -- in the same
15 journal, a few years later -- and perhaps you have this under
16 one of these other tabs, too, -- in which I pointed out --
17 you've done a great job for me, in bringing back these great
18 old memories --

19 (Laughter)

20 **Q.** There'll be more.

21 **A.** I'm sure.

22 -- where I focused on the fact that children actually
23 grow up in more complicated social environments. Not only do
24 many of them have significant relationships with fathers, many
25 also have a significant relationship with a brother, a sister,

1 a grandmother, and that we needed to look more broadly at the
2 environment in which children were raised.

3 And I absolutely still believe that that's the case.
4 And I think that's entirely consistent, with what I've been
5 saying.

6 **Q.** The increase in father's absence is particularly troubling
7 because it is consistently associated with poor school
8 achievement, diminished involvement in the labor force, early
9 child bearing, and heightened levels of risk-taking behavior,
10 correct?

11 **A.** Again, this is something that we talked about earlier.
12 That is correct. There are those associations.

13 The interesting question is: Why do those
14 associations come about and how can we understand those
15 associations?

16 **Q.** And boys growing up without fathers seem especially prone
17 to exhibit problems in the areas of sex role and gender
18 identity development, school performance, psychosocial
19 adjustment, and self-control, correct?

20 **A.** And I think some of those findings have held up, and some
21 of those conclusions have not been substantiated by a lot of
22 the recent research.

23 **Q.** Well, let's look at -- just to make sure we're getting on
24 the right page on the time frame, if you look at tab 15 in your
25 binder, this is an article from 2000.

1 **A.** Uh-huh.

2 **Q.** It's entitled "Fatherhood in the 21st Century." And you
3 were a coauthor of it; is that right?

4 **A.** That's right, yeah.

5 **Q.** Okay. And if we turn to the second page, which is page
6 128, in the left-hand column, second full paragraph, the second
7 sentence says, "Boys growing up with [sic] fathers seem
8 especially prone to exhibit problems in the areas of sex role
9 and gender identity development."

10 Has that finding that was in your article held up?

11 **A.** Uhm, that finding is not as clear in the larger sample
12 studies that have been conducted. The quotation there was
13 citation to a study done by a psychologist, Mavis Hetherington.

14 And most of the research on the effects of father
15 absence, as we've discussed it here, doesn't show those
16 differences in sex role and gender identity development.

17 **Q.** All right. Now, how about the finding that you reference
18 in your 2000 paper, about boys without fathers being prone to
19 poor school performance. Has that held up?

20 **A.** Yes.

21 **Q.** And what about psychosocial adjustment, has that finding
22 with respect to that held up?

23 **A.** Yeah, we talked about that on -- in the direct
24 examination. There are those correlations.

25 **Q.** And is there -- what about self-control?

1 **A.** Uhm, there certainly are differences associated with
2 self-control; particularly manifest, say, in difficulties with
3 delinquent behavior in adolescence.

4 **Q.** Is there a causal connection between father absence and
5 these problems?

6 **A.** No. As I tried to explain earlier, the literature
7 suggests that the processes that I talked about, the quality of
8 the relationships with the parents, the quality of the
9 relationships between the parents, and the social, emotional
10 and economic resources available to the family, are the most
11 important factors in directly explaining those differences.

12 **Q.** All right. Now, you would agree that nurturant fathers
13 may contribute greatly to the psychological adjustment of their
14 daughters, correct?

15 **A.** Yeah.

16 **Q.** And they may facilitate their happiness in subsequent
17 heterosexual relationships?

18 **A.** Yes.

19 **Q.** All right. And there is evidence suggesting that
20 disturbed father-child relationships and the failure to achieve
21 same-sex identification may be pathogenic; is that correct?

22 **A.** Can we take those two things apart?

23 **Q.** Sure.

24 **A.** Just repeat them again for me. The first, in terms of the
25 importance of a satisfying relationship with a parent, that's

1 absolutely what I've been testifying, yes.

2 I lost the second part of your --

3 **Q.** Yeah. The failure to achieve same-sex identification may
4 be pathogenic. Are there some studies that suggest that?

5 **A.** Hmm.

6 **Q.** Well, I'm happy to refresh your recollection.

7 **A.** Please.

8 **Q.** Let's look at tab 17. This is a book you edited, entitled
9 "The Role of the Father in Child Development."

10 This is the 1976 version. And page 21, the first
11 full paragraph, it's the second to last sentence, which reads:

12 "On the other hand, both disturbed
13 father-child relationships and the failure to
14 achieve same-sex identification may be
15 pathogenic."

16 **A.** I see that sentence, yeah.

17 **Q.** And there are studies that support that, right?

18 **A.** Well, again, as you pointed out, this is a chapter
19 published in 1976, written, again, when I was a student. And
20 the citations here are to one paper from 1961, two from the
21 '50s, and one from 1965. And we've had a lot of research
22 since, that was written.

23 **Q.** And so those --

24 **A.** As you pointed out, there have been subsequent editions of
25 this book, reflective of the fact that we've learned more and

1 our understanding of these phenomena has improved.

2 **Q.** Would you agree that the importance of fathers in
3 fostering academic success, particularly in their sons, is
4 clearly relevant to intervention programs aimed at improving
5 the intellectual performance of deprived children?

6 **A.** There is a substantial amount of evidence, which I think I
7 referred to, already showing that when children are living with
8 or have two parents, it's important to get as much involvement
9 by both of those parents.

10 Children clearly benefit when they have two parents,
11 both of whom are actively involved. And that's certainly true
12 around school issues, as well.

13 **Q.** Several studies have shown that fathers are more concerned
14 than mothers about the adoption of cultural values and
15 traditionally-defined sex roles; is that right?

16 **A.** That was certainly true of a lot of the earlier research.
17 I'm not sure about that today. And when I say I'm not sure
18 about it, I can't think of much research on that, as I sit
19 here.

20 **Q.** Moral development also appears to be affected by father
21 absence, correct?

22 **A.** There was talk about that in the earlier literature. It's
23 not something that has been explored as much more recently.
24 But I suspect it's because researchers have shifted from
25 focusing on some -- you know, a broad term like "moral

1 development" to focusing more narrowly on something like
2 encounters with the police or delinquent behavior, say.

3 **Q.** Studies of father absence confirm that fathers influence
4 sex roles, morality, achievement, and psychological adjustment,
5 correct?

6 **A.** Again, I think that that's a -- it sounds like a
7 relatively older conclusion about the initial work on this
8 topic.

9 **Q.** Well, and --

10 **A.** But, you know, it's consistent with the overall notion
11 that children who don't benefit from good relationships with
12 parents, who don't benefit from harmonious relationships with
13 their parents, can have difficulties in their psychological
14 development.

15 **THE COURT:** Mr. Thompson, when would be a convenient
16 time to take a morning break?

17 **MR. THOMPSON:** This would be a delightful time to
18 take a break, Your Honor.

19 **THE COURT:** Very well. Why don't we take until five
20 minutes of the hour.

21 (Recess taken from 10:40 to 11:01 a.m.)

22 **THE COURT:** Mr. Thompson, you may continue your
23 cross-examination of the witness.

24 **MR. THOMPSON:** Thank you, Your Honor.

25

1 **BY MR. THOMPSON:**

2 **Q.** Dr. Lamb, there is evidence showing that boys growing up
3 without fathers seem to have problems in the areas of role --
4 in the areas of sex role and gender identity; and there's
5 evidence that comes from the 1990s on that issue, correct?

6 **A.** Uhm, I'm not familiar with research on gender identity
7 issues from the 1990s.

8 **Q.** Let's look at tab 19 --

9 **A.** Uh-huh.

10 **Q.** -- of your book. This is *The Role of the Father in Child*
11 *Development*. And this is your 1997 edition, right?

12 **A.** That's right.

13 **Q.** And if we turn to page 10, and we see in the second full
14 paragraph, you talk with -- and this is the second to last
15 sentence in that paragraph. It's describing Chapter 11 of the
16 volume. You talk about:

17 "Boys growing up without fathers seem to have
18 problems in the area of sex role and gender
19 identity development, school performance,
20 psychosocial adjustment, and perhaps in the
21 control of aggression."

22 And when you wrote this introduction to your 1997
23 book, you were describing the state-of-the-art literature,
24 correct?

25 **A.** Actually, if you look at this paragraph in context, it

1 specifically refers to the early studies and cites, then, a
2 number of studies, the latest of which were the Whitehead and
3 Blankenhorn reviews that we talked about earlier. But it's a
4 reference to the earlier studies. It's tried to put into
5 context the research. And, absolutely, these topics are
6 discussed by Hetherington and her coauthor.

7 **Q.** And discussed -- you intended your 1997 book to be
8 up-to-date and current, correct?

9 **A.** I intended it to be up-to-date and current, and to put the
10 results in context. And this paragraph clearly tries to put
11 into context the early father absence studies. That's --
12 that's the -- to quote from the previous sentence.

13 **Q.** Now, there is increasing evidence that the relationship
14 with the father may have an especially long-term impact on the
15 child's adjustment, particularly as he or she starts to
16 establish mature romantic relationships in adolescence,
17 correct?

18 **A.** It is correct that children who grow up in heterosexual
19 families do benefit in those regards when they have a good --
20 good relationship with their fathers. And, contrarily, that
21 there may be difficulties when they don't have a good
22 relationship. That's absolutely correct.

23 **Q.** And they have some fairly long-term associations between
24 the quality of the relationship that young children have with
25 their fathers and the way that they interact as young adults

1 with their own peers, correct?

2 **A.** That's correct. If you look at children being raised in
3 those sorts of families, the equality of the relationships that
4 children have with their parents have short- and long-term
5 influences on their development.

6 **Q.** Now, our expert in this case, David Blankenhorn, wrote a
7 book *Fatherless in America*, correct?

8 **A.** That's correct.

9 **Q.** And you've read that book, yes?

10 **A.** A very long time ago, but I have read it, yes.

11 **Q.** And you wrote a review of it, correct?

12 **A.** I did.

13 **Q.** And you thought it was easily the most interesting,
14 provocative, and eloquent piece of social commentary published
15 in 1995, correct?

16 **A.** Uhm, okay. I'm glad that I did say that, because I recall
17 it being a -- and he certainly perceived it to be a rather
18 negative review of his book. I'm glad that I couched my
19 comments politely.

20 (Laughter)

21 **Q.** Let's see how you concluded your review, which is behind
22 tab 21. And you concluded by saying, "It" -- meaning the
23 book -- "deserves to be widely read and thoughtfully
24 discussed."

25 Do you recall saying that?

1 **A.** Well, I can see it here, yes.

2 **MR. THOMPSON:** Your Honor, we move the admission and
3 we ask the Court to take judicial notice of DIX103.

4 **THE COURT:** I assume no objection, Mr. McGill.

5 **MR. MCGILL:** No objection.

6 (Defendants' Exhibit 103 received in evidence.)

7 **THE COURT:** Very well.

8 **BY MR. THOMPSON:**

9 **Q.** And you would concede -- in terms of your current view,
10 you would concede for children who have two parents, those two
11 parents are often quite different in a number of different
12 ways, correct?

13 **A.** Yes.

14 **Q.** And some of those differences between the parents may be
15 related to their gender, correct?

16 **A.** Some of them certainly may be, yes.

17 **Q.** And the point you would want to emphasize is, it's
18 probably beneficial for children to have relationships with
19 people who are different, correct?

20 **A.** Yes. The point that I've made repeatedly, over time, is
21 that children benefit from having good-quality relationships.
22 But the more people you have deep, intimate relationships with
23 the better, the broader the range of important experiences you
24 can learn. That's certainly true.

25 **Q.** You would concede that it's not irrelevant for a boy to

1 have a role model insofar as his development is concerned,
2 correct?

3 **A.** You said irrelevant? Sorry.

4 **Q.** Sorry. Maybe I misspoke.

5 You would concede that it's -- well, it's relevant
6 for a boy to have a male role model, correct?

7 **A.** Both boys and girls do copy other people in a variety of
8 ways. And to the extent that that's what you mean by having
9 role models, yes, that's one way in which children learn about
10 different ways of behaving.

11 **Q.** But just so the record is clear, it's not irrelevant for a
12 boy to have a male role model insofar as his development is
13 concerned, yes or no?

14 **A.** Well, of course, I think I just said children do benefit
15 from and use role models. And society is replete with role
16 models.

17 **Q.** So that's a yes?

18 (Laughter)

19 **A.** Yeah.

20 **Q.** And there is certainly research that talks about the
21 influence on children's gender roles, as it relates to the
22 availability of role models outside the home and in society at
23 large, correct?

24 **A.** Yes, there is. The evidence more specifically is on the
25 extent to which children do seem to make a great deal of use of

1 role models both inside and outside the home.

2 **Q.** And, in your opinion, there isn't any evidence that
3 suggests that it's really important for children to see
4 traditional role modeling between a man and a woman in the home
5 in which they are living, correct?

6 **A.** Whenever I hear the word "any" my antenna usually start to
7 wiggle.

8 **Q.** Well, let me refresh your recollection. If you turn to
9 your Howard deposition, which is in your testimony binder, and
10 that's behind tab 4. And I'd like to direct your attention to
11 the deposition at page 50. And let me know when you're there.

12 **A.** Uh-huh, I'm there.

13 **Q.** And you were -- you said -- well, you were asked on line
14 19:

15 "Do you think it is important for children
16 who are brought into foster care to see
17 traditional role-modeling between a man and a
18 woman?

19 **"ANSWER:** There isn't any evidence that
20 suggests that it's really important to see
21 that in the home in which you're living. And
22 in part that may be because kids are exposed
23 to so many examples of different forms of --
24 of roles and role models outside the family
25 as well."

1 Did you give that testimony?

2 **A.** Yeah, it looks like it.

3 **Q.** And when you talk about role models outside the home, you
4 would include in that group people on TV to be a role model for
5 a boy without a father, right?

6 **A.** Yes, I think that that's often what people mean. But I
7 think in most real-world situations it's often other people
8 that the child comes in contact with: teachers, relatives,
9 friends.

10 **Q.** And assuming all other things being equal, children who
11 have a good relationship with a committed, involved, caring
12 father would do better than those who didn't have that
13 relationship, correct?

14 **A.** Yeah, when children do have a father, having that father
15 involved in their life is very important to their development,
16 for the reasons that I explained earlier.

17 **Q.** Having a mother is also important for child development,
18 isn't it?

19 **A.** Having a -- having an important supportive relationship
20 with the people who are taking care of you is really important,
21 that's correct.

22 **Q.** Do you think having a mother is important to a child's
23 development; yes or no?

24 **A.** To a child's -- I would have to say it depends.

25 **Q.** So there are some circumstances in which it would be

1 absolutely irrelevant to a child whether they were -- they were
2 not with their mother?

3 **A.** There are certainly some circumstances in which children
4 do perfectly well when they are raised by somebody other than
5 their biological mother.

6 **Q.** And is there a rich empirical literature in your field
7 demonstrating that mothers are irrelevant to the psychological
8 well-being of their children?

9 **A.** I think you've misstated what I said.

10 **Q.** I'm asking a question. So -- and my question is -- I'm
11 not misstating, I'm just asking a question -- is there a rich
12 empirical literature in your field showing that mothers are
13 irrelevant to the psychological well-being of their children?

14 **A.** I think one would have to ask what is meant by the terms
15 "mothers" in that context. It's obviously a term used to mean
16 a number of different things. And it's important to determine
17 whether you're talking about the person who's biologically
18 conceived, bore, and delivered the child, or whether you're
19 talking about the person who is playing a key role in the
20 raising of that child and forming a social role as a parent.

21 I've testified not only here but in everything that
22 I've written, about the importance of the relationships that
23 children have with the people who are taking care of them.
24 And, certainly, when that person is a woman and is identified
25 as a mother, that relationship is a supremely important element

1 in shaping their child's development.

2 By the same token, we know that the gender of that
3 person is not the important factor that makes that person an
4 important contributor to that child's development.

5 **Q.** Now, in your report in this case you made reference to a
6 traditional family. Do you recall that?

7 **A.** Yes, I did.

8 **Q.** And a traditional family, as you were using that term, was
9 a family with a married biological mother and father; is that
10 right?

11 **A.** Well, I think I usually mean broadly -- broader than that,
12 cases where there's not only a married family with a biological
13 mother and father, but the term usually refers also to the ways
14 in which children are reared; with a stay-at-home mother and a
15 bread-winning father, with the early childcare predominantly
16 provided within the home. And anything that would involve a
17 deviation in some respect from those would be seen as a
18 nontraditional family.

19 **Q.** And there are some elements of society broadly defined
20 that still assume that a traditional family is best for
21 children, correct?

22 **A.** I think that there are probably elements in society who
23 might believe that, yes.

24 **Q.** And even among social scientists there is a diversity of
25 opinion about those factors, correct?

1 **A.** Well, I think that the -- the consensus among -- in the
2 field is that family structure variables like those are not
3 causally important in identifying or affecting children's
4 adjustment.

5 **Q.** I'd like to ask you a few questions about the importance
6 between the genetic link between parent and child.

7 Certainly, we know that personality or temperament is
8 something that is under genetic influence; yes or no?

9 **A.** Yes.

10 **Q.** And there are similarities between genetic parents and
11 their offspring with respect to some of those factors, correct?

12 **A.** There can be similarities. Of course, since people have
13 two biological parents who may be different on a
14 characteristic, it's quite common for the offspring's
15 characteristics to be like those of neither of the parents;
16 that it blends. It is also quite common for a child to be like
17 one parent and unlike the other.

18 So it's certainly not the case that children are
19 always similar to their biological parents with respect to
20 temperament or personality; although, that's certainly one of
21 the factors that influence those things.

22 **Q.** And those similarities between genetic parents and their
23 offspring would influence children's adjustment, correct?

24 **A.** If there were similarities between parents and children,
25 it might influence the child's adjustment in a variety of ways.

1 Usually, those differences themselves wouldn't represent
2 differences in adjustment. Those would be normal variations in
3 temperament or personality.

4 But you could conceive of a situation where
5 somebody's temperament, something that makes them irritable,
6 makes them impatient, that that might affect their parenting.
7 So in that way it might affect the child's adjustment.

8 **Q.** Well, now, you said it might affect the adjustment, just
9 now. Let's look at what you said during your deposition. I'd
10 like to direct your attention to binder 1, your deposition in
11 this case, which is behind tab 1.

12 **A.** Uh-huh.

13 **Q.** And it's page 257. And let me know when you're there,
14 sir.

15 **A.** Okay.

16 **Q.** All right. And line 7:

17 "Certainly, we know that personality or
18 temperament is something that is under
19 genetic influence. And there are
20 similarities between genetic parents and
21 their offspring with respect to some of those
22 sorts of factors, and those would influence
23 children's adjustment. So genetic factors in
24 that sense are significant issues to take
25 into account when trying to understand

1 children's adjustment."

2 You gave that testimony?

3 **A.** Yeah.

4 **Q.** All right. Now, I'd like to ask you some questions about
5 the importance of family structure.

6 You would agree that marriage is correlated with some
7 of the child outcomes described in your report, correct?

8 **A.** Yes. It's certainly correlated with them.

9 **Q.** And the ways in which marriage is associated with those
10 outcomes are complicated, vary both in -- varied in both direct
11 and indirect pathways of influence, correct?

12 **A.** Yes. Yes, I'm sorry.

13 **Q.** And let's look at another type of family structure, a
14 reconstituted family.

15 Would you agree that there's a fairly substantial
16 body of evidence suggesting that the addition of a stepfather
17 into the home is often not a positive event for children, and
18 that it affects the dynamics within the home in negative ways?

19 **A.** That's certainly true, yes.

20 **Q.** But you don't think family structure affects family
21 processes, correct?

22 **A.** Well, in that particular example, the difference in the
23 family structure would be associated with the process. That
24 is, the entry of the stepfather in trying to establish
25 relationships with the children would set in various kinds of

1 important relationships that may have both positive or negative
2 influences on children.

3 It changes the dynamics of the relationships between
4 the resident mother and the child, as she tries to change the
5 dynamics within that family. So in that situation, there
6 clearly would be a correlation between the structure and those
7 important processes.

8 **Q.** Do you think there's a -- that family structure matters,
9 as between a married biological family and a cohabiting family,
10 those two structures would have any impact on the process of
11 raising --

12 **A.** Well, you'd have to look at the processes and have to
13 understand what is happening in those different families. And,
14 you know, the evidence shows that it's those within the family
15 processes that are ultimately important in shaping those
16 children's adjustment.

17 **Q.** So as between a married biological family and a cohabiting
18 family, you don't think family structure affects family
19 processes, correct?

20 **A.** Well, it may be correlated with family processes. And I
21 just tried to explain what I meant by that, in my response to
22 your previous question.

23 **Q.** Well, just to refresh your recollection, I'd like to turn
24 your attention to your deposition in the Cole case. This is a
25 deposition you gave about five weeks ago. Is that right?

1 **A.** Or four weeks, yeah.

2 **Q.** Yeah.

3 **A.** Recent.

4 **Q.** Okay. This is behind tab 3, page 93.

5 And tell me when you're there, Dr. Lamb.

6 **A.** I'm there.

7 **Q.** Okay. It says:

8 "How does the married biological family
9 structure affect family processes?"

10 This is line 15. Sorry.

11 "How does the married biological family structure
12 affect family processes in a way different from cohabiting
13 couple where only" --

14 **A.** I'm sorry, I can't find the cite. Page 93?

15 **Q.** Yes. Line 15. Of the Cole deposition.

16 **A.** Yeah, I have line 15 as in the middle of an answer by me,
17 so maybe I've got something wrong. Page 93?

18 **Q.** Yes.

19 **A.** Which is on transcript page 24?

20 **Q.** Yes, sir. Well, we can return to that. Maybe at the
21 break I'll check and make sure our binders are all on the same
22 page.

23 But it was a question that actually started on line
24 18 -- 13.

25 **A.** Okay. Now, I have it now. Okay.

1 Q. Oh, you have it now?

2 A. Yes. Sorry.

3 Q. All right. So, as I was saying, line 15:

4 "How does the married biological family
5 structure affect family processes in a way
6 different from cohabiting couple where only
7 one parent is related to the child affect
8 family processes?

9 "Objection. Form.

10 "ANSWER: I don't think family structure
11 affects family processes."

12 You gave that testimony, right?

13 A. Yes.

14 Q. Okay. Now, if we were to randomly look at a thousand
15 married heterosexual couples, and then compare them with a
16 random selection of a thousand cohabiting couples, you would
17 find a difference if we didn't hold constant for other factors
18 that are related to relationship quality, correct?

19 A. You said if we did not control for those?

20 Q. Yes.

21 A. Yes, you probably would.

22 Q. I'd like to direct your attention to binder 2, tab 22.
23 This is a report by the Child Trends research group. And it's
24 written by Kristin Anderson Moore. And she is a -- she works
25 at Child Trends and a has -- were you aware that she's won the

1 American Psychological Association's Distinguished Contribution
2 Award?

3 **A.** I wasn't aware of that, but I'm pleased. She certainly
4 deserves it.

5 **MR. THOMPSON:** Your Honor, we'd ask the Court to take
6 judicial notice of DIX26.

7 **MR. MCGILL:** We object, Your Honor.

8 This is an article that was relied upon by their
9 expert, Dr. Loren Marks, who they have withdrawn as a witness.
10 And it seems to me improper for them to try to get the
11 materials their other expert relied upon through my expert,
12 through some kind of judicial notice.

13 **THE COURT:** Well, I think the witness can be asked
14 about the article. Whether it will be admitted into evidence
15 may be another matter.

16 **MR. THOMPSON:** Well, your Honor, if I just may
17 respond to that with two points.

18 First of all, we withdrew Dr. Marks and the other
19 experts because of the concerns about the video recording. As
20 the Court will note, they were withdrawn on the eve of trial,
21 before we had the stay from the Supreme Court. They were
22 extremely concerned about their personal safety, and did not
23 want to appear with any recording of any sort, whatsoever. And
24 so that's one issue.

25 But second and apart from that is, there's no

1 limitation on the Court's ability to take judicial notice of
2 this sort of material. It's precisely the sort of thing that
3 the Supreme Court, in Brown, and Roe, and Grutter, and Lawrence
4 took judicial notice of.

5 **THE COURT:** Well, and there's nothing that prevents
6 you from putting this document before the witness and getting
7 his reaction to it. That's what I'm suggesting that you do.

8 **MR. THOMPSON:** Yes, Your Honor. Okay. Very well.

9 **BY MR. THOMPSON:**

10 **Q.** All right. So, now, turning to page -- let's see. It's
11 the second page of this document, what we've -- and it's at the
12 last carryover sentence.

13 She talks about -- the author states:

14 "It is not simply the presence of two
15 parents, as some have assumed, but the
16 presence of *two biological parents*" -- and
17 they've italicized "*two biological*
18 *parents*" -- "that seems to support children's
19 development."

20 You didn't even consider this document when you put
21 together your first report, did you?

22 **A.** I don't know whether I considered it or not. I've
23 certainly seen it. It's a research review put together by
24 these very well-respected people as a public education
25 document. It's not a scholarly publication; although, it does

1 review such scholarly work. It's primarily designed to
2 contribute to the -- to the popular understanding of these
3 issues.

4 If you -- and so I'm not -- I want to make clear that
5 while I may not have cited it, it's certainly not something
6 that I would want to distance myself from.

7 It's also clear that what it provides is a review of
8 the research on the adjustment of children being raised by
9 heterosexual parents.

10 And its focus is on reviews, and summarizes research
11 that concerns the adjustment of children to have been born to
12 heterosexual parents and grow up in either two-parent families
13 with those biological parents or in families where they are
14 only with one of those biological parents.

15 And I believe -- and I haven't had a chance to reread
16 it -- it probably also talks about the effects of
17 step-parenthood. So one has to put that in context. And in
18 that context, I think that that particular summary statement
19 that you read seems to be a reasonable summary of it.

20 And I would say that this article uses causal
21 language probably more often than I think is warranted. And I
22 suspect that that's because it was written not for an academic
23 audience but primarily as a public education document.

24 **MR. THOMPSON:** Your Honor, we would renew our request
25 that the Court take judicial notice.

1 And I would add that this is a material that
2 Mr. Blankenhorn considered and will testify to. Mr. McGill and
3 his colleagues will be able to cross-examine Mr. Blankenhorn
4 about this. So we'd renew our request.

5 **THE COURT:** Very well.

6 **MR. THOMPSON:** Thank you, Your Honor.

7 **BY MR. THOMPSON:**

8 **Q.** Now, Dr. Lamb, I'd like to turn your attention to the next
9 tab in binder 2, tab 23. This is an article entitled "The
10 Impact of Family Formation Change on the Cognitive, Social, and
11 Emotional Well-Being of the Next Generation," by Paul Amato.

12 And Professor Amato is well-respected, is he not?

13 **A.** He absolutely is, yes.

14 **MR. THOMPSON:** This is DIX2, Your Honor. We'd
15 request that judicial notice be taken of DIX2.

16 **THE COURT:** Very well.

17 **BY MR. THOMPSON:**

18 **Q.** And Professor -- Dr. Lamb, turning your attention to page
19 89 of this document, and to the bottom of the left-hand column,
20 where it says -- and let me know when you're there.

21 **A.** Yes, since I'm having trouble. It's 89, bottom of the
22 left-hand column?

23 **Q.** Yes, sir.

24 **A.** The general conclusion?

25 **Q.** Yes, sir.

1 **A.** Yeah.

2 **Q.** It says:

3 "Research clearly demonstrates that children
4 growing up with two continuously married
5 parents are less likely than other children
6 to experience a wide range of cognitive,
7 emotional, and social problems not only
8 during childhood but also in adulthood."

9 Do you agree with that statement?

10 **A.** That is a summary of the research that he has reviewed
11 here. And, again, the important thing to remember is that he's
12 reviewing large-scale studies of children being raised by
13 heterosexual parents in various family configurations.

14 **Q.** And he concludes that paragraph by saying, "This
15 distinction is even stronger if we focus on children growing up
16 with two happily married biological parents."

17 And has he accurately summarized literature, in your
18 opinion?

19 **A.** Well, I think that's entirely consistent with what I
20 testified about the importance of the relationships between the
21 individuals raising the child.

22 **Q.** So that would be a yes, he accurately summarized the
23 literature?

24 **A.** Yes. Sorry.

25 **Q.** Turning your attention to tab 4, this is a document by the

1 Institute for American Values entitled "The Consequences of
2 Marriage for African Americans, a Comprehensive Literature
3 Review."

4 **MR. THOMPSON:** And it's DIX107. Your Honor, we'd ask
5 the Court to take judicial notice of this document.

6 **MR. MCGILL:** Your Honor, we object. This, again,
7 like the Child Trends Kristin Moore document, is a document
8 that was relied upon by Professor Marks, and we object to its
9 being admitted as substantive evidence.

10 If the Court wishes to take judicial notice of its
11 existence, it can, of course, do that. But we do object to its
12 admission of substantive evidence for the truth of the matter
13 asserted in the document.

14 **MR. THOMPSON:** Well, Your Honor, we would say as,
15 we've said before, that the judicial notice provisions permit
16 the Court to take cognizance of these documents for the truth
17 of the matter asserted, which is what the Supreme Court has
18 done many times.

19 **THE COURT:** Well, I'll take judicial notice of the
20 document, and you can inquire of the witness with respect to
21 whatever portion of it you wish to do so.

22 **MR. THOMPSON:** I appreciate that, Your Honor.

23 **BY MR. THOMPSON:**

24 **Q.** Okay. Turning your attention to page 54, Dr. Lamb. Let
25 me know when you're there.

1 **A.** Okay. 154.

2 **Q.** And in the sixth paragraph, it reads:

3 "For African American children, parental
4 marriage produces important benefits. Black
5 children of married parents typically enjoy
6 better infant health, receive better
7 parenting, are less delinquent, have fewer
8 behavior problems, have higher self-esteem,
9 are more likely to delay sexual activity, and
10 have moderately better educational outcomes.
11 These findings almost certainly reflect more
12 than correlations. Marriage itself appears
13 to be contributing strongly to better
14 outcomes for black children."

15 Does this statement accurately summarize the state of
16 the literature on African American families?

17 **A.** Uhm, I wouldn't want to say that I'm familiar with all the
18 research on African American families. And I'm not familiar
19 with this particular report, so I don't know what research that
20 it summarized.

21 Again, I would suggest that it is on rather shaky
22 grounds when it proposes the fact that this likely reflects
23 more than mere correlations.

24 **Q.** I'd like to turn your attention to your next tab in your
25 binder, which is DIX113. This is an article by William Doherty

1 and others entitled "Responsible Fathering, an Overview and
2 Conceptual Framework."

3 And Professor Doherty is well-respected, is he not?

4 **A.** Yes.

5 **MR. THOMPSON:** Your Honor, we'd ask the Court to take
6 judicial notice of DIX113.

7 **THE COURT:** Very well.

8 **BY MR. THOMPSON:**

9 **Q.** All right. And turning your attention, Dr. Lamb, to page
10 286, and the right-hand column.

11 The authors conclude in the last sentence in that
12 second full paragraph on the right-hand column:

13 "We conclude that, in practice, the kind of
14 mother-father relation--"

15 **A.** Sorry. I don't know what's the matter with me today, but
16 I keep not finding your things. We're in the right-hand column
17 on 285?

18 **Q.** 286.

19 **A.** Okay.

20 **Q.** And second full paragraph.

21 **A.** Yes.

22 **Q.** And then the last sentence -- or last two sentences. Are
23 you there, sir?

24 **A.** Okay. Yes, I'm sorry.

25 **Q.** No problem.

1 "We conclude that in practice the kind of
2 mother-father relationship most conducive to
3 responsible fathering in contemporary U.S.
4 society is a caring, committed, collaborative
5 marriage. Outside of this arrangement,
6 substantial barriers stand in the way of
7 active, involved fathering."

8 Does this statement accurately summarize the
9 literature?

10 **A.** It accurately summarizes the literature that they're
11 talking about, which is studies of heterosexual parents raising
12 children, yes.

13 **Q.** All right. And let's turn to the next tab in your binder,
14 tab 26. This is another report by the Institute for American
15 Values. It's DIX38.

16 **MR. THOMPSON:** And we'd ask the Court to take
17 judicial notice of DIX38.

18 **THE COURT:** Very well.

19 **BY MR. THOMPSON:**

20 **Q.** And turning your attention, Dr. Lamb, to page 32 of this
21 report, under the conclusion. Are you there?

22 **A.** Yeah.

23 **Q.** Okay. It says, in the second paragraph, under conclusion:
24 "But marriage matters. Children in average
25 intact married families do better than

1 children in average single and stepparent
2 families."

3 Do you agree with that statement?

4 **A.** On average, yes, I think that's -- that's true.

5 **Q.** Okay.

6 **A.** As I've testified earlier.

7 **Q.** I'd like to direct your attention to the next tab in your
8 binder, 27, which is DIX121. This is a document from the
9 Progressive Policy Institute entitled, "Putting Children
10 First" --

11 **THE COURT:** Before you go on to that --

12 **MR. THOMPSON:** Yes.

13 **THE COURT:** -- let me ask the witness: With
14 reference to the statement that counsel has referred you to in
15 DIX38, is that statement based upon evidence drawn from
16 opposite-sex couples?

17 **THE WITNESS:** Not to my knowledge.

18 **THE COURT:** So this would include same-sex couples?

19 **THE WITNESS:** I believe it does not.

20 **THE COURT:** Does not?

21 **THE WITNESS:** Correct. I'm sorry.

22 **THE COURT:** So it would be based solely upon evidence
23 drawn from studies of opposite-sex couples; is that correct?

24 **THE WITNESS:** I believe that's true, yes. I'm not
25 familiar with this document. But the -- you know, it's -- the

1 Institute for American Values is a lobbying group that promotes
2 a particular view of marriage. And most of their focus has
3 been on promoting marriage among heterosexual couples. And I
4 believe that the research that they reviewed, as I quickly spin
5 through it, seems to involve studies of such families.

6 **BY MR. THOMPSON:**

7 **Q.** Well, now, just -- you say this is a lobbying group. I'd
8 like to direct your attention to the second page of this
9 document. It says:

10 "This statement comes from a team of family
11 scholars, chaired by Brad Wilcox of the
12 University of Virginia."

13 And the University of Virginia is a distinguished
14 university, is it not?

15 **A.** Yes, it is.

16 **Q.** And William Doherty, who you just said is well-respected,
17 also was a coauthor, correct?

18 **A.** Was he? If you say so.

19 **Q.** And it also lists Norval Glenn of the University of Texas.
20 He's highly regarded in his field, is he not?

21 **A.** I think he's regarded highly in his field, yes. He is
22 quite ideologically committed.

23 **Q.** But he's highly regarded as a talented sociologist; is
24 that correct?

25 **A.** I'm not a sociologist. I've certainly heard his name.

1 Q. Okay. Are you familiar with the sociological literature
2 on parenting, or are you focused only on the psychological
3 literature?

4 A. No, I've tried to cover the sociological and demographic
5 literature as well, as you know from our previous discussions
6 and from my report.

7 Q. Let's turn to -- back to DIX121, which was behind tab 27.
8 It's "Putting Children First: A Progressive Family Policy for
9 the 1990s." And it's DIX121.

10 MR. THOMPSON: And we'd ask the Court to take
11 judicial notice of this document.

12 THE COURT: Very well.

13 BY MR. THOMPSON:

14 Q. And turning to page 2, Dr. Lamb, in the second full
15 paragraph, second sentence from the bottom, it says:

16 "As we will see, a large body of evidence
17 supports the conclusion that, in the
18 aggregate, the intact two-parent family is
19 best suited to the task of" -- it is "as to
20 this task," but it's raising children.

21 Would you agree that the intact two-parent family is
22 best suited to the task of raising children?

23 A. Well, I think it depends. If you're talking about the --
24 you know, again, this is making reference to the research we've
25 talked about a lot today, showing that, on average, children

1 being raised by two, married heterosexual parents do better
2 than children being raised by single or divorced heterosexual
3 parents.

4 **Q.** And I'd like to direct your attention to tab 28, which is
5 *Growing Up With a Single Parent: What Hurts, What Helps*, by
6 Sara McLanahan and Gary Sandefur.

7 Sara McLanahan is a professor at Princeton
8 University; is that right?

9 **A.** Yes. She wrote this when she was in Wisconsin, but she's
10 at Princeton now.

11 **Q.** And she's very highly respected in her field; is that
12 right?

13 **A.** Yes.

14 **MR. THOMPSON:** And this is DIX124. And we'd ask the
15 Court to take judicial notice of DIX124.

16 **THE COURT:** Very well.

17 **BY MR. THOMPSON:**

18 **Q.** And direct -- this -- are you familiar with this study,
19 Dr. Lamb?

20 **A.** Yes, I am.

21 **Q.** And this was based on a very large set of data; is that
22 correct?

23 **A.** That's correct.

24 **Q.** And turning your attention to page 1, the italicized
25 portion.

1 **A.** Yeah.

2 **Q.** Okay. In the second paragraph the italics start:

3 "Children who grow up in a household with
4 only one biological parent are worse off, on
5 average, than children who grow up in a
6 household with both of their biological
7 parents, regardless of the parents' race or
8 educational background, regardless of whether
9 the parents are married when the child is
10 born, and regardless of whether the resident
11 parent remarries."

12 And is that an accurate statement of the literature?

13 **A.** That's an accurate summary of the studies that they did
14 here, which involved comparing children being raised by
15 heterosexual parents in different family configurations.

16 **Q.** Do you know of any study of comparable size that reaches a
17 contrary conclusion?

18 **A.** No.

19 **Q.** And I'd like to direct your attention to tab 30 in your
20 binder. And this is entitled "Adolescent Well-Being in
21 Cohabiting, Married, and Single-Parent Families." It's DIX21.
22 And it's produced by Wendy Manning and Kathleen Lamb. I take
23 it that's no relation?

24 **A.** No relation.

25 **Q.** Okay.

1 **MR. THOMPSON:** And, Your Honor, we'd ask the Court to
2 take judicial notice of DIX21.

3 **THE COURT:** Very well.

4 **BY MR. THOMPSON:**

5 **Q.** And this was -- you can see in the second sentence,
6 Dr. Lamb, this had a sample size of 13,231 families. Is that
7 right?

8 **A.** Well, that was the sample size for the whole of the --
9 that health sample.

10 **Q.** Okay.

11 **A.** There weren't that many being raised by cohabiting or in
12 stepfamilies.

13 **Q.** And turning your attention to page 890 of this document,
14 under "Discussion," it states, in the second sentence:

15 "Adolescents in married,
16 two-biological-parent families generally fare
17 better than children in any of the family
18 types examined here, including single mother,
19 cohabiting stepfather, and married stepfather
20 families. The advantage of marriage appears
21 to exist primarily when the child is the
22 biological offspring of both parents."

23 Do you know of any study of comparable size that
24 reaches a different conclusion?

25 **A.** Now, all of the literature using these sorts --

1 Q. Well, give me a yes or no, please, and then you can go on.

2 A. No, there -- all of the research on -- I was trying to
3 give you a broader answer, that all of the research that
4 involves focusing on children raised by heterosexual parents in
5 different family configurations gives you essentially the same
6 conclusion.

7 Q. Now I'd like to direct your attention to tab 31. And this
8 is a document coauthored by Sara McLanahan of Princeton
9 University, and Cynthia Harper. It's called, "Father Absence
10 and Youth Incarceration." And it's DIX116.

11 MR. THOMPSON: And, Your Honor, we would ask the
12 Court to take judicial notice of DIX116.

13 THE COURT: Very well.

14 BY MR. THOMPSON:

15 Q. And turning your attention, Dr. Lamb, to the first page,
16 page 369, says in the fourth -- starting in the fourth
17 sentence:

18 "Results from longitudinal event history
19 analysis show that although a sizable portion
20 of the risk that appeared to be due to father
21 absence could actually be attributed to other
22 factors, such as teen motherhood, low parent
23 education, racial inequalities, and poverty,
24 adolescents in father-absent households still
25 faced elevated incarceration risk. The

1 adolescents who faced the highest
2 incarceration risk, however, were those in
3 stepparent families, including
4 father-stepmother families."

5 Do you know of any study of equal size to this one,
6 that reached a contrary conclusion?

7 **A.** No.

8 **Q.** All right.

9 **A.** With the same qualifications.

10 **Q.** I'd like to direct your attention to tab 32 in your
11 binder. This is a study by Susan Brown entitled "Family
12 Structure and Child Well-Being: The Significance of Parental
13 Cohabitation." DIX8.

14 **MR. THOMPSON:** And, Your Honor, we'd ask the Court to
15 take judicial notice of DIX8.

16 **THE COURT:** Very well.

17 **BY MR. THOMPSON:**

18 **Q.** And turning your attention, Dr. Lamb, to page 364.

19 And I should first ask, this was a very large sample
20 size; is that right?

21 **A.** Well, it was drawn from a large national sample, but I
22 think the actual study focuses on a relatively small number of
23 individuals.

24 **Q.** Is that a potential problem?

25 **A.** No, it's not a potential problem. I'm just clarifying in

1 response to your question.

2 **Q.** Okay. Now, under "Discussion," the left-hand column --
3 this is a very long paragraph.

4 **A.** Wait.

5 **THE COURT:** What page?

6 **MR. THOMPSON:** Oh, sorry, Your Honor. Page 364.

7 Left-hand column.

8 **BY MR. THOMPSON:**

9 **Q.** Let's do it from the back. One, two -- the third sentence
10 from the bottom. It reads:

11 "Adolescents living in cohabiting
12 stepfamilies have significantly higher levels
13 of behavioral and emotional problems and
14 lower levels of school engagement, on
15 average, than those in two-biological-parent
16 married families."

17 And you don't know of any study of comparable size
18 that reaches a different conclusion, correct?

19 **A.** Not involving adolescents, no.

20 **Q.** All right. I'd like to direct your attention to tab 33.
21 And this is a study by Paul Amato, entitled "Parental Absence
22 During Childhood and Depression in Later Life."

23 **MR. THOMPSON:** And, Your Honor, we would ask the
24 Court to take judicial notice of DIX103.

25 **THE COURT:** Very well.

1 **BY MR. THOMPSON:**

2 **Q.** And, Dr. Lamb, turning your attention to the summary at
3 the beginning of this document, it's the second page of the
4 exhibit. Professor Amato states in the second sentence:

5 "Whites and African Americans, male and
6 female, separated from the parent score
7 higher on a measure of depression than those
8 raised in continuously intact families."

9 And is that consistent with your understanding of the
10 findings of the social literature?

11 **A.** That is, yes.

12 **Q.** Okay.

13 **THE COURT:** Give me the page reference again, please.

14 **MR. THOMPSON:** Yes, Your Honor. That is the -- it's
15 page 543.

16 **THE COURT:** Thank you.

17 **MR. THOMPSON:** Yes, certainly.

18 **BY MR. THOMPSON:**

19 **Q.** And, Professor, turning your attention to tab 34, which is
20 a document authored by Bruce Ellis. It's called "Does Father
21 Absence Place Daughters at Special Risk for Early Sexual
22 Activity and Teenage Pregnancy?" And this is DIX114.

23 **MR. THOMPSON:** And, Your Honor, we would ask the
24 Court to take judicial notice of DIX114.

25 **THE COURT:** Very well.

1 **BY MR. THOMPSON:**

2 **Q.** And if we look at the first sentence of the summary, on
3 the next page, which is page 801, do you see, Dr. Lamb, that it
4 says:

5 "The impact of father absence on early sexual
6 activity and teenage pregnancy was
7 investigated in longitudinal studies in the
8 United States and New Zealand."

9 And those N numbers of 242 and 520, that represent
10 the sample size; is that right?

11 **A.** That's correct.

12 **Q.** All right. And then I'd like to direct your attention to
13 page 818. 818. It's the very last paragraph of the report.
14 And it says -- tell me when you're there, sir.

15 **A.** I'm there.

16 **Q.** It says:

17 "In conclusion, father absence was an
18 overriding risk factor for early sexual
19 activity and adolescence pregnancy."

20 Do you know of any study of comparable size that
21 reaches a different conclusion?

22 **A.** Well, actually, this is an interesting one for you to
23 raise, because in the most recent issue of *Child Development*
24 there's another paper focused on precisely this question, and
25 designed to address the one weakness that these authors

1 themselves acknowledge in their discussion here, which is the
2 fact that they weren't able to control for the possibility that
3 there were genetic differences, ones that we talked about
4 earlier in this discussion.

5 That analysis by Mendel and his colleagues makes
6 clear that this conclusion was incorrect, and that those
7 differences had to do not with father absence but with the
8 differences in the inherited dispositions of the individuals in
9 the study.

10 **Q.** And was that study of comparable size, the one -- do you
11 know what the sample size was?

12 **A.** I don't remember the sample size, no.

13 **Q.** All right. I'd like to direct your attention to the next
14 tab, which is tab 35. This is a document entitled "The
15 Prevalence and Seriousness of Incestuous Abuse, Stepfathers
16 Versus Biological Fathers." DIX133. And it's authored by
17 Diana Russell.

18 **MR. THOMPSON:** Your Honor, we'd ask the Court to take
19 judicial notice of DIX133.

20 **THE COURT:** Very well.

21 **BY MR. THOMPSON:**

22 **Q.** And turning your attention, Dr. Lamb, to the first page of
23 the report, in the abstract it states, "An analysis of
24 interviews obtained from a random sample of 930 adult women in
25 San Francisco revealed that 17 percent, or one out of every

1 six, women who had a stepfather as a principal figure in her
2 childhood years was sexually abused by him. The comparable
3 figures for biological fathers were 2 percent."

4 Do you know of any study of comparable size that has
5 reached a contrary conclusion to this one?

6 **A.** Well, there's been much more work on the incidence of
7 sexual abuse. This was an early study. And none of it
8 contradicts the conclusion that girls are at greater risk of
9 abuse by stepfathers. But I think the specific figures have
10 been put into question.

11 **Q.** All right.

12 **MR. THOMPSON:** And with the Court's permission, we'd
13 like to pass out volume 3 of our binders.

14 **THE WITNESS:** Can I put away the previous one?

15 **MR. THOMPSON:** Well, not 1, not your prior testimony.
16 But you may put away 2.

17 **THE COURT:** Very well. How many more binders do we
18 have with this witness?

19 **MR. THOMPSON:** We're halfway home, Your Honor.

20 **BY MR. THOMPSON:**

21 **Q.** Dr. Lamb, I'd like to change topics now, from the
22 biological parenting, to talk for a moment about divorce.

23 And divorce typically has painful adverse effects on
24 mothers, fathers, and their children, correct?

25 **A.** That's correct as a summary, yes.

1 Q. Isn't it true there is substantial evidence that children
2 with divorced parents score more poorly than do children with
3 married parents, with respect to many aspects of psychological
4 adjustment and well-being?

5 A. On average, yes, that's what I testified earlier.

6 Q. And, unfortunately, stepfathers typically do not develop
7 authoritative relationships with their children either, so most
8 of these children are doubly disadvantaged, correct?

9 A. That's often the case, yes.

10 Q. On average, children whose parents were divorced are more
11 likely to be maladjusted than children whose parents have not
12 divorced, correct?

13 A. That's correct.

14 Q. Many gay fathers have children in the context of
15 heterosexual relationships, before coming out, correct?

16 A. That was certainly true. I'm unclear to what extent that
17 that's the case today.

18 Q. Difficulties faced by their children involve coming to
19 terms with the sexual orientation of their fathers, correct?

20 A. That's certainly reported in some cases, yes.

21 Q. And the majority of lesbian couples who have children have
22 them as a result of heterosexual relationships, correct?

23 A. Again, I think that used to be true. I'm not in
24 possession of the data to suggest whether that's still the
25 case.

1 Q. For those whom it is true for, those children would have
2 suffered the trauma of divorce or the death of a parent,
3 correct?

4 A. Presumably so, yes.

5 Q. Now, I'd like to switch gears again. You've talked about
6 the rich literature of same-sex parenting, and I want to delve
7 into exactly how rich this literature is, and start with some
8 general questions.

9 It's sort of standard practice within a study to look
10 closely at the sample and closely at the methods, correct?

11 A. Yes.

12 Q. Any individual, small study is always potentially suspect,
13 correct?

14 A. I would say that any individual study is always
15 potentially suspect, yes.

16 Q. And if a study takes who's ever available, you would call
17 that a nonrandom sample, correct?

18 A. That's right.

19 Q. None of the studies on gay parenting rely on a random
20 sample of the gay and lesbian population in the United States,
21 correct?

22 A. Well, that's not entirely true, no.

23 Q. Which study draws on a random sample of gay and lesbian
24 individuals in the United States?

25 A. Well, I'm only interested, of course, in those who are

1 raising children. So I presume that that's what you meant in
2 your question.

3 **Q.** Well, let's start with a first proposition. There's no
4 study that can speak to the parenting abilities of gays and
5 lesbians who don't have children, correct?

6 **A.** In the entire United States?

7 **Q.** Right.

8 **A.** Not that I can think of, no.

9 **Q.** Okay. And with respect to those same-sex couples who do
10 have children, is there any study that purports to be a random
11 sample, nationally, of opposite sex -- excuse me, same-sex
12 couples in the United States?

13 **A.** Well, the closest that would come would not be a random
14 sample. It would be an analysis of the U.S. Census data. That
15 doesn't have to be a sample. It includes the entire
16 population. And there are now data drawn from the U.S. Census
17 with respect to children's adjustment in the care of gay and
18 lesbian parents.

19 **Q.** Yes, but they don't purport to be a random sample of the
20 entire U.S. population of same-sex couples, correct?

21 **A.** No, you don't have a random sample when you sample the
22 entire population. You have the population.

23 (Laughter)

24 **Q.** Right. A random sample of that population, none of them
25 purport to be that, do they?

1 **A.** I think most of us would consider this to be better.

2 (Laughter)

3 **Q.** Which study purports to be a random sample of the entire
4 population of same-sex couples in the United States, with
5 children?

6 **A.** I said, I don't know that there is one that is a random
7 sample of all gays and lesbians in the United States.

8 **Q.** Well, my question just now was gays and lesbians with
9 children.

10 **A.** Correct.

11 **Q.** Okay. Do you know of any study that purports to be --
12 reflect a random sample of all gay and lesbian couples in the
13 United States who are raising children? Yes or no?

14 **A.** Uhm, we may be getting confused, and I don't -- and I
15 don't want to be argumentative.

16 We have one study that involves looking at all gays
17 and lesbian couples in the United States raising children. So
18 it's not a sample. It's a population analysis.

19 And we have another series of studies conducted by
20 Wainwright and Patterson that involve a focus on children being
21 raised by lesbian mothers, drawn from a nationally
22 representative sample of teenagers, 12- to 18-year-olds, in the
23 United States. So it's not representative of all gays and
24 lesbians raising children. It's representative of that
25 population with children in that particular age range.

1 Q. And which is the study that is drawn from the U.S. Census
2 data?

3 A. It's a study by Rosenfeld, which is to appear in a journal
4 called *Demography*.

5 Q. Which is to appear in a journal called *Demography*?

6 A. That's correct.

7 Q. So that's not something you've disclosed in your expert
8 materials in this case, correct?

9 A. I don't think so, no.

10 Q. Now, do you know what percentage of male same-sex couples
11 in the United States have a child?

12 A. Well, there are varied estimates out there. And I'm
13 not -- the figure that comes to mind is somewhere around
14 20 percent. But I'm not sure of that particular figure.

15 Q. Okay. Well, let's look at tab 38 of your binder. This is
16 PX1030. It's a APA policy statement on sexual orientation,
17 parents and children.

18 And it says, in the first sentence:

19 "Many lesbians and gay men are parents. In
20 the 2000 U.S. Census, 33 percent of female
21 same-sex couple households and 22 percent of
22 male same-sex couple households reported at
23 least one child under the age of 18."

24 So that's consistent with your understanding?

25 A. Yes. Sorry.

1 Q. And there's -- most of the studies listed in your
2 materials considered -- addressed lesbians, is that correct, as
3 opposed to gay men?

4 A. Most of the studies do, that's correct.

5 Q. And there's much less research on gay fathers, primarily
6 because there are many few -- fewer gay fathers than there are
7 lesbian mothers who are living with and raising their children,
8 correct?

9 A. I think that was certainly true initially. And, also, gay
10 fathers were much more difficult to locate.

11 Q. And the lesbians that have been studied tend to be better
12 off than average, correct?

13 THE COURT: Better off financially?

14 MR. THOMPSON: Yes. Yes, Your Honor. Thank you.

15 THE WITNESS: I don't know about that.

16 BY MR. THOMPSON:

17 Q. Well, all right. We'll explore that later.

18 I'd like to direct your attention to tab 39, which is
19 a document called "Whose Gay Community? Social Class, Sexual
20 Self-Expression, and Gay Community Involvement, from the
21 *Sociological Quarterly*.

22 And I'd like to direct your attention to page 454. I
23 apologize. I'm just looking for the place.

24 Let me ask you it this way, Professor: Would you
25 admit that one obvious concern brought up by trying to research

1 gays and lesbians is that you're confined to a sample of those
2 who in some ways identify themselves as gay and lesbian?

3 **A.** Yes.

4 **Q.** And will you agree that there's some suggestion that the
5 samples that are drawn tend to be from the experiences of
6 middle-class gay and lesbian individuals, and don't reflect the
7 full totality of the gay and lesbian community?

8 **A.** No, that wouldn't be true.

9 **Q.** All right. Well, let's look at 39A, which is the next tab
10 in your binder. And I'd like to -- this is a document called,
11 "Appearances Can Be Deceptive, Self-Selection, Social Group
12 Identification, and Political Mobilization." And it's authored
13 by Scott Gartner and Gary Segura.

14 Professor Segura will be testifying next week on
15 behalf of the plaintiffs.

16 **MR. THOMPSON:** This is DIX1100, and we would ask the
17 Court to take judicial notice of this document.

18 **THE COURT:** Very well.

19 **MR. THOMPSON:** All right.

20 **BY MR. THOMPSON:**

21 **Q.** And turning to page 133. And let me know when you're
22 there.

23 **A.** Yes.

24 **Q.** Okay. And specifically looking at the second to last
25 paragraph, where it says -- full paragraph. And this is in the

1 third full sentence. It says:

2 "If the ability to mobilize is one of the
3 incentives for identification, then the
4 individuals" --

5 **A.** Yes, okay.

6 **Q.** (As read)

7 "If the ability to mobilize is one of the
8 incentives for identification, then the
9 individuals we observe from invisible groups
10 are likely to be more politically active than
11 visible groups; that is, there is a selection
12 effect. Those repressed invisible minorities
13 who allow us to see them do so for a reason,
14 and this reason tells us something about
15 their likely behavior."

16 Isn't there -- isn't Professor Segura right about
17 this point, that the sorts of individuals who are willing to
18 step forward and volunteer to be in these studies are not
19 necessarily representative of the overall gay and lesbian
20 community?

21 **A.** Well, I obviously don't know this literature that's being
22 discussed here. I'm here to talk about child adjustment. And,
23 as far as I can tell, this paper has nothing to do with
24 parents.

25 Certainly, gays and lesbians who are raising children

1 are already visible, and those groups tend to be of the ones
2 that I've been concerned with.

3 **Q.** Yes. All right. Now, let's turn to tab 41 of your
4 binder.

5 **MR. THOMPSON:** And, Your Honor, we are at a logical
6 breaking point, but I'm happy to continue on, whatever the
7 Court's pleasure is.

8 **THE COURT:** A logical breaking point is as good as
9 any.

10 (Laughter)

11 Why don't we then, logically, break for lunch, and
12 I'll see you at 1 o'clock.

13 **MR. THOMPSON:** Thank you.

14 (Noon recess taken from 12:07 to 1:03 p.m.)
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P R O C E E D I N G S1
2 **JANUARY 15, 2010**

1:03 P.M.

3
4 (Whereupon, proceedings were resumed
5 after noon recess.)

6 **THE COURT:** Very well. I understand from the clerk,
7 Mr. Boutrous, that you have a scheduling matter to take up.

8 **MR. BOUTROUS:** Your Honor, actually, it was an issue
9 concerning something that Mr. Thompson said, and I wanted to
10 just make sure that the record was clear on an issue concerning
11 the withdrawal of the expert witnesses by the proponents.

12 Mr. Thompson had said that they withdrew their expert
13 witnesses because of the witnesses's concerns about the
14 cameras.

15 I just wanted to make it very clear on the record
16 that not one time did the proponents suggest that in anything
17 that they filed in the court, that the withdrawal of those of
18 witnesses was because of the cameras. They -- in fact, they
19 withdrew them after the Supreme Court had granted the temporary
20 stay, which I think undermines the credibility of that
21 statement.

22 And we had predicted back at the pretrial that they
23 would be seeking to withdraw their expert witnesses because of
24 the cross-examination that had occurred and that would occur.
25 And I wanted to make that clear on the record.

1 And, also, we will be playing some clips later today,
2 time permitting, of two of those experts.

3 **THE COURT:** Very well.

4 Now, is there a scheduling matter that you want to
5 take up?

6 **MR. BOUTROUS:** I don't think we have a scheduling
7 matter, but let me make sure with my colleagues.

8 (Discussion held off the record
9 amongst plaintiffs' counsel.)

10 **MR. BOUTROUS:** I think we're okay. We had a
11 potential issue, but I think we have got it resolved.

12 Thank you.

13 **THE COURT:** All right.

14 **MR. THOMPSON:** And, your Honor, I would like to
15 respond for the completeness of the record to what Mr. Boutrous
16 said.

17 We, in our papers, advised that our witnesses had
18 these significant concerns about the televising and we only had
19 a temporary stay when trial commenced. And Mr. Boutrous and
20 the plaintiffs exacerbated our concerns when they asked that
21 the recording continue on Monday morning.

22 So I think the record is quite clear as to the chain
23 of events.

24 **THE COURT:** Well, wait a minute. Before you start,
25 let me ask a couple of questions.

1 **MR. THOMPSON:** Yes, your Honor.

2 **THE COURT:** And if you want to follow up, Mr.
3 Thompson, you can.

4 Dr. Lamb, you said, if I understood your testimony
5 correctly, that there is not a basis that the absence of a
6 genetic relationship increases the likelihood of adverse
7 outcomes for children; that is, the absence of a genetic
8 relationship between the child and the parent.

9 Was that your testimony?

10 **THE WITNESS:** That was, yes.

11 **THE COURT:** All right. Will, purely a layperson's
12 question: Why, then, is it common or, at least, said to be
13 common that adopted children often seek out their biological
14 parents?

15 **THE WITNESS:** I think that that's because many of
16 them, of course, know that they are adopted and feel that there
17 is something important about their origins that might be
18 revealed by finding their biological parents.

19 That wouldn't be viewed as an index of maladjustment,
20 but would be viewed as something that reflected an
21 individual's, you know, trying to understand literally where
22 they came from in the same way that, for example, many people
23 are interested in genealogy and want to know a little bit more
24 about their family histories.

25 **THE COURT:** But that phenomenon, you say, would not

1 have any relationship to any social behavior on the part of
2 those children, is that correct?

3 **THE WITNESS:** That's what the data suggest, yes.

4 **THE COURT:** You also testified, if I understood your
5 testimony correctly, to say there is no reason to protect
6 children from lesbians and gays.

7 We have all read about the reports of widespread
8 priestly abuse in the Roman Catholic Church and the litigation
9 that has been spawned by those reports.

10 How do you square your statement with that
11 phenomenon?

12 **THE WITNESS:** Well, the data with respect to sexual
13 abuse -- and I assume that's what you mean, your focus here is
14 on that protection there -- shows that the individuals who have
15 a same-sex orientation are no more likely to abuse other
16 children. That doesn't mean that they don't sometimes abuse
17 other children -- sorry, abuse children, just as heterosexuals
18 do abuse children. And I'm not familiar with all the details
19 of the abuses conducted within religious orders.

20 I do know, for example, that many of the cases in
21 Ireland that have recently been disclosed in a huge
22 multi-volume report involve heterosexual abuse by religious
23 individuals.

24 And I assume -- again, I'm assuming because I don't
25 know the details here that -- that the abuse that you are

1 talking about involves both heterosexual and homosexual abuse.

2 And I don't want to convey the fact that homosexual
3 people never abuse children, simply that they are no more
4 likely to do that than are heterosexual individuals.

5 **THE COURT:** Have you studied that subject?

6 **THE WITNESS:** I have studied it in terms of trying to
7 know what is in that literature. My own work on child abuse is
8 mostly about the effects of abuse and the interviewing of the
9 victims.

10 **THE COURT:** So you focused on the children more than
11 the individuals who were thought to be the abusers, is that
12 correct?

13 **THE WITNESS:** In terms of my own research on child
14 abuse, yes.

15 **THE COURT:** All right. Very well. You may continue,
16 Mr. Thompson.

17 **MR. THOMPSON:** Thank you, your Honor.

18 **CROSS EXAMINATION RESUMED**

19 **BY MR. THOMPSON:**

20 **Q.** And I would like to follow up one of those lines of
21 questions.

22 Dr. Lamb, why is it if the genetic connection is
23 absolutely irrelevant for childhood outcomes, that so many
24 couples pay the money, the considerable expense to go through
25 in vitro fertilization rather than adopt one of the many

1 children that needs to be adopted?

2 **A.** Well, it certainly can be important to individuals. The
3 fact that somebody would seek to engage in IVF using their own
4 sperm and eggs would be an indication that it's important to
5 them.

6 Again, the systematic research that we have on the
7 adjustment of the children shows that children raised --
8 conceived using IVF technologies are just as likely to be
9 well-adjusted as those conceived through natural conception, as
10 those conceived with egg donation, as those conceived with
11 donor insemination. So the data are what they are.

12 **Q.** Well, now, let's return to the subjects we were discussing
13 before lunch.

14 Let me ask you: Is it true that despite the
15 diversity of gay fatherhood, research to date has, with some
16 exceptions, been conducted with relatively homogeneous groups
17 of participants?

18 **A.** The research on gay fathers?

19 **Q.** Yes, sir.

20 **A.** I think the research on gay fathers, which is certainly
21 less extensive than that on lesbian mothers, has -- you know,
22 does include the population study that I mentioned to you
23 earlier. It does include recent studies of adoption by gays.

24 So I'm not sure about the -- the term "homogeneous"
25 in this context.

1 Q. Well, let's look at your fourth edition of the "Role of
2 the Father in Child Development." This is 2004. It's behind
3 tab 40 in your binder. And I would like to will direct your
4 attention to page 402.

5 And this is a chapter written by Charlotte Patterson
6 called "Gay Fathers" and you have a high regard for Charlotte
7 Patterson, correct?

8 A. Yes.

9 Q. And turning to page 402, the last full paragraph, it
10 starts by saying:

11 "Despite the diversity of gay fatherhood,
12 research to date has, with some exceptions,
13 been conducted with relatively homogeneous
14 groups of participants."

15 When Professor Patterson wrote that, that was an
16 accurate statement, correct?

17 A. I believe so, yes.

18 Q. She continues:

19 "Samples of gay fathers have been mainly
20 Caucasian, well educated, affluent and living
21 in major urban centers."

22 And that's an accurate statement, too, correct?

23 A. That was, I believe, an accurate statement at the time,
24 yes.

25 Q. (As read)

1 "Although the available evidence suggests
2 that self-identified gay men are much more
3 likely to live in large cities than
4 elsewhere, the representativeness of the
5 samples of gay fathers studied to date cannot
6 be established."

7 That's an accurate statement, true, correct?

8 **A.** That was true then, yes.

9 **Q.** Most research has been cross-sectional in nature and has
10 involved information provided through interviews and
11 questionnaires by gay fathers themselves, correct?

12 **A.** Yes.

13 **Q.** And her conclusion:

14 "Caution in the interpretation of findings
15 from research in this new area of work is
16 thus required."

17 And when you edited this book, you agreed with that
18 statement, correct?

19 **A.** It was an accurate statement in 1996, yes.

20 **Q.** No, this was 2004.

21 **A.** Okay. In 2002.

22 **Q.** So this was a new area of research when you edited this
23 book?

24 **A.** That's correct.

25 **Q.** Okay. All right. Now, let us turn to some of those

1 specifics of these studies.

2 In fact, the literature on gay males and their
3 parenting skills is so sparse that you are starting a study of
4 your own in the United Kingdom, correct?

5 **A.** Well, I am starting a study of my own in the United
6 Kingdom, that part is correct.

7 **Q.** And you are hoping to do a similar study in the United
8 States, correct?

9 **A.** Correct.

10 **Q.** And in your study you are going to try to match the nature
11 of the parent's prior relationships, correct?

12 **A.** Well, you want to match as many issues as you can in order
13 to refine the value of informativeness of your study, that's
14 correct.

15 **Q.** So one of the factors you are going to focus on is the
16 nature of the parent's prior relationships, correct?

17 **A.** That's right.

18 **Q.** But many of the studies you have relied on in your expert
19 report in this case don't attempt to match the prior
20 relationships of parents, correct?

21 **A.** Some do and some don't, that's correct.

22 **Q.** We know that economic resources are an important factor in
23 the psychological well-adjustment of children, correct?

24 **A.** Yes, I testified, correct.

25 **Q.** And you would agree that if you had two households and in

1 the first household it had a combined income of \$100,000, but
2 only one child, and you had a second household that had a
3 combined income of \$100,000, but had 10 children, that the
4 resources available to those children would be quite different,
5 correct?

6 **A.** That's correct.

7 **Q.** And in your study that you are doing in Great Britain, you
8 are going to try to hold -- to control for that in your study,
9 correct.

10 **A.** That's correct.

11 **Q.** But many of the studies you rely on for your opinions in
12 this case don't control for that factor, correct?

13 **A.** I think that's not correct.

14 **Q.** Some of them don't, isn't that correct?

15 **A.** Some of them may not.

16 **Q.** Some of them don't even compare the parenting outcomes to
17 any control group, isn't that right?

18 **A.** Not the status that I would rely on to be informing and
19 understanding of the comparative differences.

20 **Q.** The studies that are listed in your "Materials
21 Considered," some of them don't have any control group
22 whatsoever, is that right?

23 **A.** That is right, yes.

24 **Q.** All right. Now, many of those studies -- you would agree
25 that taking into account age gives you another proxy index of

1 the degree to which an individual is ready to function as a
2 parent, correct?

3 **A.** Age of a parent can make a difference to parenting, yes.

4 **Q.** But many of the studies you rely on don't hold constant
5 for age, correct?

6 **A.** I'm not sure that's true, but maybe there are some that
7 do.

8 **Q.** And some don't though. You are just not sure of the state
9 of the literature, whether they --

10 **A.** Well, I'm trying to really understand your question,
11 because there is quite a large literature on the effects of
12 parental age and it identifies certain groups as problematic.
13 And there is fairly large portions of the lifespan where you
14 don't see differences associated with age.

15 So what would be important in a situation is not to
16 be mixing teen parents with mature parents and, likewise, not
17 to focus on some of the difficulties that may occur when older
18 people have children.

19 So this is not something which is just linearly
20 related to the ability to parent.

21 **Q.** In your study in Great Britain you are going to be asking
22 whether the parents are sexually exclusive, correct?

23 **A.** I told you that we might do that, yes. Again, as I told
24 you, we are about to begin the study.

25 **Q.** And that becomes especially important because it's one of

1 the issues that is sometimes raised in discussing children's
2 adjustment, correct?

3 **A.** Well, the nature of the relationship between the parents
4 is certainly one of the important issues, yes. And to the
5 extent that sexual exclusivity was important to those parents
6 and affected the quality of therefore relationship, then that
7 could be an important issue.

8 **Q.** And that's why you are going to try to hold constant for
9 it in the study you are conducting, correct?

10 **A.** As I just said, I'm not sure that we will, but I think
11 when we discussed this at deposition, I said that that seemed
12 like a reasonable issue to consider.

13 **Q.** But many of the studies you rely on have not held constant
14 for the prior relationships of the parents who are studied,
15 correct?

16 **A.** It's true in studies of both heterosexual and homosexual
17 parents, that's right.

18 **Q.** And your study that you are launching is probably going to
19 be extended in the future so that you can look at developmental
20 trajectories as the children pass through other portions of
21 their lifespan, correct?

22 **A.** Yes, it might be.

23 **Q.** But many of the studies you rely on are single time
24 snapshots and don't follow developmental trajectories, correct?

25 **A.** Some of them are, yes.

1 Q. The study you are designing for the United Kingdom focuses
2 on children who have been adopted at birth, correct?

3 A. It will, yes.

4 Q. But many of the studies you look at, the children are the
5 products of heterosexual unions, the children of the gay and
6 lesbian couples, correct?

7 A. Correct. And that's why you want to have different sorts
8 of circumstances studied.

9 Q. And educational background, occupational choices, income
10 available, these factors relate to aspects of parenting, so
11 they are important ones to consider, correct?

12 A. To consider, yes.

13 Q. And most of the studies listed in your materials address
14 white, middle-class lesbians, correct?

15 A. I think many of them do, that's correct.

16 Q. Several of the studies listed in your materials considered
17 don't have a control group against which the parenting skills
18 of gays and lesbians can be measured, correct?

19 A. Some of the studies don't have a comparison group of
20 heterosexual parents, because for the purpose of those studies
21 those weren't necessary.

22 Q. We know that the child outcomes are better on average for
23 children raised by two parents rather than one, correct?

24 A. On average that's correct, yes.

25 Q. But many of the studies you rely on in forming your

1 opinions in this case compare the children of lesbians to
2 single mothers, correct?

3 **A.** Some of them compare them to single mothers, some to
4 two-parent families.

5 **Q.** And some of them show that the children of the lesbian
6 couples are only doing as well as the children of the single
7 mothers, correct?

8 **A.** Some of them show that they are doing as well as the
9 children of the lesbian -- sorry, that the children being
10 raised by lesbians and singles are similar, that's right.

11 **Q.** We also know from the literature that the presence of a
12 stepfather can increase the likelihood of negative childhood
13 outcomes, correct?

14 **A.** Yes. The entry of any additional person into a child's
15 rearing environment can have an influence.

16 **Q.** Many of the studies you rely on are not a comparison
17 between married biological parents as compared to gay or
18 lesbian parents, correct?

19 **A.** I would hope so. What I tried to do is summarize a large
20 body of research that studies lots of different types of
21 families.

22 **Q.** In terms of outcomes, many studies look at educational
23 attainment as a measure of childhood well-adjustment, correct?

24 **A.** To some extent, yes. In particular, with the level of
25 things like completion of schooling, adequate schooling.

1 Q. And many of the studies are of young children, so there is
2 no meaningful track record of educational achievement, correct?

3 A. Yeah. A variety of ages have been studied.

4 Q. And some of the studies that do attempt to measure
5 educational attainment look to grade point averages, correct?

6 A. Some do, yes.

7 Q. But none of the studies try to compare the difficulty of
8 the subject matters that the children are taking or the
9 difficulty of their schools, correct?

10 A. I think that's correct, yes.

11 Q. If you wanted to measure whether a child had reached his
12 or her intellectual potential, you would want to compare their
13 native intelligence, perhaps measured by IQ, and compare that
14 to their grade point average or some other metric of
15 educational attainment, correct?

16 A. That would be nice. That tends not to be the case in most
17 of the research that people do on educational attainment,
18 regardless of the gender orientation of the parents.

19 Q. Right. In fact, there is not one single one of the
20 studies you rely on in this case which has tried to measure the
21 educational attainment of these children as compared to their
22 potential, correct?

23 A. Probably correct.

24 Q. And there is fairly reliable association between family
25 size and IQ, correct?

1 **A.** It's not a very sizeable correlation. There is a reliable
2 correlation.

3 **Q.** And having one sibling turns out to be quite positive,
4 correct?

5 **A.** It seems to have positive benefits. Relatively small, but
6 reliable.

7 **Q.** But many of the studies listed in your expert report do
8 not hold constant for the number of siblings, correct?

9 **A.** They may not hold it constant -- yes, that's correct, some
10 of them don't.

11 **Q.** And for those that look at educational attainment of
12 children and they look at college -- there are some that look
13 at college matriculation, is that right?

14 **A.** I think that's correct, yes.

15 **Q.** But they -- those studies don't try to measure the caliber
16 of the university; they treat a degree from your university the
17 same as a degree from a community college, correct?

18 **A.** Umm, I think a degree from a community college is usually
19 distinguished; but, yes, going to some further education is
20 usually the marker.

21 **Q.** But they don't try to distinguish between, let's say, a
22 four-year degree at Cambridge University and a four-year degree
23 at a far less prestigious university, correct?

24 **A.** That's correct.

25 **Q.** And it's important to be as precise as possible in making

1 comparisons, correct?

2 **A.** As a general rule, yes, of course.

3 **Q.** The resources available to a child are an important
4 variable in predicting childhood outcomes, correct?

5 **A.** Yes, absolutely.

6 **Q.** But not one of the studies you have looked at considers
7 the resources that grandparents make available to children,
8 correct?

9 **A.** I think that's not correct.

10 **Q.** Some of them look at the financial resources that
11 grandparents make available?

12 **A.** You said "resources." You didn't say "financial
13 resources."

14 Certainly, there have been studies about the extent
15 of involvement with grandparent generations, that's correct.

16 **Q.** And that's because grandparents can be important to a
17 child's psychological adjustment, correct?

18 **A.** That's correct.

19 **Q.** But none of the studies you rely on take into account the
20 financial resources that grandparents might make available to a
21 child, correct?

22 **A.** Can I just -- when you talk about "none of the studies,"
23 we're talking about the thousands of studies of children's
24 adjustment?

25 **Q.** We are talking about the hundred or so studies about

1 same-sex parenting.

2 **A.** Okay. I'm not sure that any of them have looked at
3 financial transfers specifically.

4 **Q.** You can't identify a single one, correct?

5 **A.** Not as I sit here today, no.

6 **Q.** And none of the studies look at the educational attainment
7 of grandparents either, correct?

8 **A.** Many of them do as part of the process of describing the
9 backgrounds or origins of those individuals.

10 **Q.** They look at the educational attainment of the
11 grandparents?

12 **A.** Or something that would be related to that, some measures
13 of social class backgrounds.

14 **Q.** Clearly, we know that the psychological well-being of
15 parents affects their ability to parent and affects the quality
16 of the relationships they have with their children, correct?

17 **A.** I said so, yes.

18 **Q.** But when it comes to minority stress syndrome that
19 Dr. Meyer testified to, you're not familiar with that
20 literature, correct?

21 **A.** No. I'm not an expert on that literature.

22 **Q.** You would agree that lots of researchers have shown that
23 being a depressed parent changes the way you behave and
24 interact with your child, and that can indirectly affect the
25 child's adjustment as well, correct?

1 **A.** Yes, that's correct.

2 **Q.** I would like you to turn to tab 41 in your binder, which
3 is DIX-131. This is the affidavit of Steven Nock that was
4 submitted to the Superior Court of Justice in Ontario as part
5 of the Canadian same-sex marriage legal battle.

6 And Professor Nock was a professor of sociology at
7 the University of Virginia, is that right?

8 **A.** I understand so, yes.

9 **Q.** And he was a well-known family sociologist, is that
10 correct?

11 **A.** I know he was a family sociologist.

12 **Q.** Well, let's look at what you said during your deposition,
13 page 243. You said at line 11:

14 **"ANSWER:** I know that he was a well-known
15 family sociologist."

16 **A.** Okay.

17 **Q.** Does that refresh your recollection?

18 **A.** Yes.

19 **Q.** Okay. And he is, unfortunately, deceased at the present,
20 correct?

21 **A.** I believe so, yes. I think you told me so at the
22 deposition.

23 **Q.** Yes, that's right.

24 I would like to direct your attention to page seven
25 of this document. In particular, to paragraph 20. And it says

1 in the last sentence of that paragraph:

2 "If a valid and scientifically adequate study
3 were to show that there is no correlation
4 between having gay or lesbian parents and a
5 child's well-being, based on a comparison of
6 representative groups of each type of parent
7 and differing only on sexual orientation,
8 then most scientists would accept that there
9 is no causal link between the two."

10 Would you agree with that statement?

11 **A.** Yes, I think so.

12 **Q.** And turning your attention to the next paragraph. In
13 particular -- sorry -- to Paragraph 22 under "Sampling," where
14 he says:

15 "First and foremost, the ability of any
16 social science evidence to apply to a larger
17 group depends on the way the sample of cases
18 was obtained."

19 Would you agree with that statement?

20 **A.** No, I wouldn't. I would agree that it is related to
21 understanding and specifying how you obtained your sample.

22 **Q.** In the second sentence he says:

23 "A probability sample is one in which every
24 member of a definable population has a known
25 probability of being included in the study."

1 Do you agree with that?

2 **A.** Yes. That's what I was talking about and I called that a
3 representative sample.

4 **Q.** All right. And then turning to Paragraph 23, he states in
5 the first sentence:

6 "A probability sample is required whenever a
7 researcher wishes to make claims about the
8 larger population from which the sample was
9 drawn."

10 Do you agree with that statement?

11 **A.** Well, that's a sociologist's version. Psychologists don't
12 usually do studies that way.

13 **Q.** Okay.

14 "And if the goal is to make general claims
15 about same-sex parental relationships and the
16 children who might be affected by them, then
17 we must have a probability sample drawn from
18 the larger population of homosexual parents
19 and children."

20 Do you agree with respect Professor Nock's statement?

21 **A.** Well, I would expand on his statement and say that we need
22 many studies using a variety of different sampling procedures,
23 and that's what I testified to this morning.

24 **Q.** Now, I would like to turn your attention to Paragraph 29,
25 and in particular to the last full sentence on page 10. It

1 says -- Professor Nock says:

2 "Moreover, we do not have an agreed-upon
3 definition of homosexuality. Is a homosexual
4 a person whose erotic interests are focused
5 on those of the same sex? Is a homosexual a
6 person who sometimes engages in sexual acts
7 with a member of the same sex? Is a
8 homosexual a person who thinks of him or
9 herself as a homosexual? Does a single
10 sexual act with a person of the same sex
11 define a person as a homosexual? Also
12 important in the case is how to define
13 bisexual. Are bisexuals to be treated as
14 homosexuals? Heterosexuals? Or both? And
15 how does one decide? Is homosexuality
16 learned, i.e., socially constructed, or is it
17 transmitted genetically? Finally, is male
18 homosexuality the same phenomenon as female
19 homosexuality? Answers to such questions
20 have direct and important consequences for
21 one how investigates the topics in this
22 case."

23 Would you agree that coming to a settled definition
24 of homosexuality so that you can at least define the relevant
25 population is important for social science looking into these

1 sorts of issues?

2 **A.** I think neither Steve Nock nor myself are experts on
3 homosexuality. Certainly, in the literature that explores the
4 effects of parenting, the issues are focused on self-definition
5 of individuals as either same-sex oriented or opposite-sex
6 oriented.

7 **Q.** Now, I would like to direct your attention to the -- let
8 me ask you this: In order to determine that specific
9 characteristics of the father/child relationship affect certain
10 aspects of the child's personality, it is necessary to use
11 those correlational strategies that permit causal inferences,
12 such as cross-lagged panel correlations, to supplement
13 experimental and quasi-experimental studies.

14 Would you agree with that statement?

15 **A.** Yes. I think that's another statement of my belief, that
16 you need to use multiple techniques and multiple approaches in
17 order to understand a phenomenon.

18 **Q.** All right. Now, I would like to direct your attention to
19 page 18 of the Nock affidavit. Please let me know when you're
20 there.

21 **A.** Yes, I'm there.

22 **Q.** In addition to identifying and obtaining a sample, a
23 researcher must identify --

24 **A.** Can you tell me where this is?

25 **Q.** Well, let me just ask a question and we can see if we need

1 to get into the details of this in a moment.

2 Would you agree that in addition to identifying and
3 obtaining a sample, a researcher must determine how information
4 is to be obtained from the sample; is that right?

5 **A.** Yes.

6 **Q.** All right. And when Professor Nock says in the first
7 sentence of Paragraph 49:

8 "Before gathering a single datum from a
9 sample, one must first translate the concepts
10 of interest into indicators that can be
11 measured."

12 Would you agree with that?

13 **A.** Yes.

14 **Q.** And when he goes on to say:

15 "This is a central part of the entire process
16 of designing the data-gathering procedure."

17 Would you agreed?

18 **A.** Yes.

19 **Q.** Sometimes the project calls for a questionnaire survey;
20 would you agree?

21 **A.** I believe so, yes.

22 **Q.** Typically in such cases the concepts to be investigated
23 are translated into specific questions on a questionnaire;
24 would you agree?

25 **A.** If you were going to use a questionnaire, you have would

1 certainly with have to write it, that's correct.

2 **Q.** And these are important parts of determining the
3 reliability and validity of a study, is that right?

4 **A.** I'm not sure that that follows from what you said, but it
5 is certainly important to establish the reliability and
6 validity of whatever measures you use, that is correct.

7 **MR. THOMPSON:** Your Honor, at this point we would ask
8 the Court to take judicial notice of DIX-131.

9 **THE COURT:** Very well.

10 **BY MR. THOMPSON:**

11 **Q.** And, Professor, I would like to direct your attention to
12 tab 44. This is a document entitled "No Basis, What the
13 Studies Don't Tell Us About Same-Sex Parenting" by Robert
14 Lerner and Althea Nagai.

15 And have you had reviewed -- did you review this
16 document in connection with your testimony in this case?

17 **A.** I have read this document in the past. I don't think I
18 have read it in connection with this case, no.

19 **Q.** But you have read it in the past?

20 **A.** Uh-huh.

21 **MR. THOMPSON:** Okay. Your Honor, we would move
22 the -- we would ask the Court to take judicial notice of
23 DIX-734.

24 **THE COURT:** Well, I will do that if you ask him a
25 question about it, since we are proceeding under 803(18), I

1 believe it is.

2 **MR. THOMPSON:** Okay.

3 **BY MR. THOMPSON:**

4 **Q.** And, Professor, the conclusion that Dr. Lerner reached is
5 that the same-sex parenting literature was not sufficiently
6 reliable to draw conclusions one way or the other about the
7 parenting skills and abilities of same-sex couples, is that
8 right?

9 **A.** That was the conclusion he reached then, and this is about
10 a 10-year old document; but that's correct.

11 **Q.** Yes, yes.

12 **MR. THOMPSON:** Now, your Honor, we would request the
13 Court to take judicial notice.

14 **THE COURT:** That will be fine.

15 **MR. THOMPSON:** Thank you, your Honor.

16 **THE CLERK:** I'm sorry. Can I get the number?

17 **MR. THOMPSON:** DIX-734.

18 **THE CLERK:** Thank you.

19 **BY MR. THOMPSON:**

20 **Q.** Dr. Lamb, turning to the next tab in your binder, 45, this
21 is an article by Walter Schumm of Kansas State University.
22 "What Was Really Learned From Tasker and Golombok's Study of
23 Lesbian and Single-Parent Mothers."

24 Have you reviewed this article ever?

25 **A.** Yes, I have. I have seen this before. It's published in

1 a journal where one has to pay to have articles published, so
2 it's not usually considered part of the scientific literature;
3 but since he was involved in previous cases I saw it in that
4 context.

5 **Q.** You have squared off against Professor Schumm in some
6 other cases, is that right?

7 **A.** I have seen him there, yes.

8 **Q.** And he says -- at the end of them document, he says:

9 "Policymakers should interpret research on
10 gays and family life or on any very small
11 subset of any population with extreme
12 caution."

13 And would you agree, at least, that when you are
14 talking about a very small subset of any population, a
15 researcher should proceed with caution?

16 **A.** Could you repeat the question?

17 **Q.** Yes. Would you --

18 **A.** I think researchers should always proceed with caution and
19 make sure that there was adequate basis for whatever
20 conclusions that they draw.

21 **MR. THOMPSON:** Your Honor, we would request that the
22 Court take judicial notice of DIX-779.

23 **THE COURT:** Very well.

24 **BY MR. THOMPSON:**

25 **Q.** Then turning to the next tab in your binder, 46, this is

1 "Families With Young Children - A Review of Research in the
2 1990's."

3 And have you reviewed this document in connection
4 with the case?

5 **A.** No, I have not.

6 **Q.** All right. I would like to ask you to turn to page 889.
7 Let my know when you are there.

8 **A.** I'm there.

9 **Q.** And looking at the right-hand column, the last paragraph,
10 second sentence says:

11 "One relatively new line of inquiry is the
12 development and adjustment of children living
13 in families headed by lesbian, gay or
14 bisexual parents."

15 And then if we skip down --

16 **THE COURT:** Let's see. Where are you reading from?

17 **MR. THOMPSON:** Yes, your Honor. It's the --

18 **THE COURT:** 889?

19 **MR. THOMPSON:** It's the last paragraph on the page,
20 the second sentence.

21 **THE COURT:** Yes. Thank you.

22 **MR. THOMPSON:** Certainly.

23 **BY MR. THOMPSON:**

24 **Q.** And then turning to the -- skipping down to the last --
25 excuse me, the second to the last sentence on the page, it

1 says:

2 "A persistent limitation of these studies,
3 however, is that most rely on small samples
4 of white, middle class, previously married
5 lesbians and their children."

6 And at least at the time this was written, that was a
7 true statement, wasn't it?

8 **A.** I think that that's a true statement as a description of
9 the majority of the studies at that time, that's true.

10 **Q.** They conclude:

11 "As a result, we cannot be confident
12 concerning the generalizability of many of
13 the findings."

14 And that's a fair point, isn't it?

15 **A.** Well, it continues to talk about a more broad question
16 there.

17 **Q.** Let me just ask it as concern.

18 Based on the concern, the persistent limitation they
19 have just identified, would you agree that we cannot be
20 confident concerning the generalizability of many of the
21 findings?

22 **A.** If you are -- you would have to be careful about that if
23 you are relying on a relatively small body of research that
24 involved only a small group of individuals -- homogeneous,
25 sorry, a more homogeneous set of individuals.

1 **MR. THOMPSON:** And, your Honor, we would ask the
2 Court to take judicial notice of DIX-749.

3 **THE COURT:** Very well.

4 **BY MR. THOMPSON:**

5 **Q.** Turning to tab 47 in your binder, Dr. Lamb, this is an
6 article "Does the Sexual Orientation of Parents Matter?" And
7 it's by Judith Stacey of the University of Southern California
8 and a colleague of hers.

9 Are you familiar with Professor Stacey's work at all?

10 **A.** Yes.

11 **Q.** And she is an advocate for the rights of gays and
12 lesbians, correct?

13 **A.** I don't know about that, but...

14 **Q.** All right. Let's turn to page 168 of this document and,
15 in particular, footnote nine.

16 And she has just -- in the text she has talked about
17 that there are studies showing greater gender conformity --
18 well, I will read the sentence to which footnote nine is
19 appended.

20 "However, on other measures such as
21 occupational goals and sartorial styles,
22 they" -- and this means, I believe, the
23 children -- "of lesbians also exhibit greater
24 gender conformity" -- I'm sorry. Let's see.

25 **THE COURT:** I don't find that in paragraph nine. Am

1 I missing something?

2 **MR. THOMPSON:** Your Honor, let me try this again.

3 **BY MR. THOMPSON:**

4 **Q.** Page 168. It is the last paragraph on the page, and I --
5 the point I want to focus on is footnote nine and --

6 **THE COURT:** You were reading from the text?

7 **MR. THOMPSON:** I was reading from the text just to
8 try to give the context and I think I didn't back up far
9 enough.

10 **THE COURT:** All right.

11 **BY MR. THOMPSON:**

12 **Q.** Dr. Lamb, why don't you read the text to which footnote
13 nine is appended and then I will ask you a question about
14 footnote nine.

15 **A.** (As read)

16 "Sons appear to respond in more complex ways
17 to parental sexual orientations. On some
18 measures, like aggressiveness and play
19 preferences, the sons of lesbian mothers
20 behave in less traditionally masculine ways
21 than those raised by heterosexual single
22 mothers. However, in other measures, such as
23 occupational goals and sartorial styles, they
24 also exhibit greater gender conformity than
25 do daughters with lesbian mothers, but they

1 are not more conforming than sons with
2 heterosexual mothers."

3 And there is a citations to two studies, one by
4 Richard Green and the other by Ann Steckel.

5 **Q.** And then in the footnote it says:

6 "Many of these studies use conventional
7 levels of significance on miniscule samples,
8 substantially increasing their likelihood of
9 failing to reject the null hypothesis."

10 Is professor Stacey right, that if you use a
11 miniscule sample, you substantially increase the likelihood of
12 failing to reject the null hypothesis?

13 **A.** Yes.

14 **Q.** And she concludes this footnote by saying:

15 "For very small samples, conventional levels
16 of" -- statistical significance she is
17 referring to -- "can actually be too
18 restrictive."

19 Would you agree with that statement?

20 **A.** Yes.

21 **MR. THOMPSON:** Your Honor, we would ask the Court to
22 take judicial notice of PX 1394.

23 **THE COURT:** Very well.

24 **BY MR. THOMPSON:**

25 **Q.** Turning to tab 48 in your binder, Dr. Lamb, this is

1 DIX-782. It's entitled "Science and Advocacy Issues in
2 Research on Children of Gay and Lesbian Parents," and it's
3 written by Virginia Schiller of Yale University.

4 She writes in the very last sentence on the page, the
5 first page:

6 "Given that opponents make egregious
7 statements about the unfitness of gay and
8 lesbian parents and the pathology of their
9 children, are we justified in lowering our
10 standards about how scientific research is
11 described and reported?"

12 And would you agree with the proposition that
13 scientific standards have been lowered in this area precisely
14 because of the need to combat prior bias in the medical
15 community against gays and lesbians?

16 **A.** I don't know anything about the medical community, but I
17 don't think it's true of the research that I'm familiar with.

18 **Q.** You don't think that there was bias previously in the
19 psychological community against gays and lesbians?

20 **A.** I understood you to be asking me to comment on a
21 specific -- well, maybe you want to ask the question again.

22 **Q.** That's all right. We can move on.

23 I would like to turn your attention to the next tab,
24 which is 49. This is a document entitled "Children In Three
25 Contexts: Family, Education and Social Development." And this

1 is a document that concludes that the children of gays and
2 lesbians do less well, have worse outcomes than the children of
3 heterosexuals, is that correct?

4 **A.** It is, yes.

5 **Q.** But you ignored this study in your opening report in this
6 case, correct? It wasn't something you even considered, was
7 it?

8 **A.** Well, I didn't list it. As I think I pointed out in my
9 report, I tried to consider thousands of contributions to the
10 literature. I certainly didn't list all the things that I was
11 taking into account.

12 This study is a complete outlier from the rest of the
13 research and by the author's own admission, it contains
14 problems in the design and interpretation that make it very
15 hard to justify the conclusion that the author reaches.

16 **Q.** It has a larger sample size than any of the gay parenting
17 literature that you cite to, isn't that right?

18 **A.** Absolutely not.

19 **Q.** Which of your articles in your materials considered has a
20 larger sample size than -- with respect to -- that compares the
21 childhood outcomes of the children of gays and lesbians as
22 compared to heterosexuals?

23 **A.** Well, the larger sample, of course, is the Rosenfeld one,
24 which is the national sample, and that one was not in my
25 initial report because I wasn't aware of it at that time.

1 This one doesn't -- includes a total of 58 children
2 being raised by lesbians and gay parents.

3 **Q.** Yes. And then it has a control group, correct?

4 **A.** And it has two comparison groups, in fact, one of married
5 heterosexuals and one of cohabiting heterosexuals.

6 **MR. THOMPSON:** Your Honor, we would ask the Court to
7 take judicial notice of DIX-775.

8 **THE COURT:** Very well.

9 **BY MR. THOMPSON:**

10 **Q.** All right. Turning to tab 50, this is entitled "Parenting
11 and Planned Lesbian Families" and this was one of the studies
12 you considered in forming your opinions in this case, is that
13 right?

14 **A.** That's right.

15 **Q.** If we look to page 68, I would ask you to look at.

16 **A.** I notice this is incomplete. Is that intentional?

17 **Q.** Yes. We just wanted to -- notwithstanding the heft of
18 these binders, we wanted to kill one less tree.

19 But let's see. So turning to page 68, it concludes
20 under "Differences and Parental Behavior" the last sentence on
21 that page:

22 "These differences indicate that lesbian
23 biological mothers scored lower on structure
24 and limit setting than did the heterosexual
25 mothers."

1 And you would agree that setting limits is an
2 important parenting skill, correct?

3 **A.** I agree, yes.

4 **THE COURT:** Perhaps this is not the only area in
5 which setting limits would be helpful.

6 **MR. THOMPSON:** I appreciate that, your Honor.

7 (Laughter.)

8 **MR. THOMPSON:** It's unfortunately an extensive
9 literature, as the doctor says.

10 **BY MR. THOMPSON:**

11 **Q.** Turning to tab 51, this is another one of the studies you
12 relied on, is that correct?

13 **A.** I think this is a report drawn from the one that we just
14 talked about.

15 **Q.** Okay. And it does not explicitly say that it's comparing
16 the childhood outcomes of same-sex couples with married
17 biological parents, correct?

18 **A.** This one does not, no.

19 **Q.** And let's --

20 **MR. THOMPSON:** Your Honor, we would ask the Court to
21 take judicial notice of PX-1055.

22 **THE COURT:** Very well.

23 **BY MR. THOMPSON:**

24 **Q.** Then turning to tab 52 in your binder. This is PX-1075,
25 and this is another document that you relied upon, is that

1 right?

2 **A.** I believe so, yes.

3 **Q.** Okay. And this one looked at only young children, is that
4 correct?

5 **A.** At this point, yes.

6 **Q.** And, again, this study did not compare childhood outcomes
7 of the children of same-sex couples with the children of
8 married biological parents, correct?

9 **A.** I think that's correct, yes.

10 **Q.** Let's turn to --

11 **MR. THOMPSON:** Your Honor, we would ask the Court to
12 take judicial notice of PX 1075.

13 **THE COURT:** Why don't you ask him a question about
14 the exhibit? That's the precondition for -- condition notice
15 803(18).

16 **MR. THOMPSON:** Yes, your Honor.

17 Well, this study -- I guess the question, your Honor,
18 I had -- I'm trying to ask is that it doesn't compare with
19 these -- to try to speed things up, my main question to him is
20 going to be that these studies don't actually compare the
21 children of married biological parents to same-sex couples, and
22 so that's really the question.

23 I'm getting him to prove a negative in the sense
24 of --

25 **THE COURT:** Ask the witness.

1 **MR. THOMPSON:** I apologize, your Honor.

2 **BY MR. THOMPSON:**

3 **Q.** Okay. So, Dr. Lamb, just to be clear, the comparison
4 group here is not of married biological parents. There's
5 nothing in this study you can point to that would establish
6 that comparison group, correct?

7 **A.** I'm sure that neither you nor the judge wants me to read
8 it through to check.

9 My understanding is that they didn't exclude people
10 depending on whether or not they were married.

11 **Q.** Okay.

12 **MR. THOMPSON:** And I would --

13 **THE COURT:** All right --

14 **MR. THOMPSON:** Thank you, your Honor.

15 **THE COURT:** Judicial notice will be taken of 1075.

16 You may move on.

17 **MR. THOMPSON:** Okay.

18 **BY MR. THOMPSON:**

19 **Q.** Tab 53, PX-1115. Again, this one did not have a control
20 group of married biological parents, correct?

21 **A.** It had a comparison group of heterosexual parents. My
22 understanding was, they didn't exclude people who were not
23 married in the heterosexual group.

24 **MR. THOMPSON:** Your Honor, we would ask the Court to
25 take judicial notice of 1115.

1 **THE COURT:** Very well.

2 **BY MR. THOMPSON:**

3 **Q.** Turning to tab 54, Dr. Lamb. This is one of the studies
4 you relied on in this case, is that right, PX-1072?

5 **A.** Yes.

6 **Q.** Okay. And it, too, did not have a control group of
7 married biological parents, correct?

8 **A.** Well, it had a comparison group of heterosexuals again. I
9 don't know, as I'm trying to respond to you quickly here,
10 whether they excluded people in the heterosexual group who were
11 not married.

12 **Q.** So you just don't know how many of these studies compared
13 married biological -- the children of married biological
14 parents to the children of same-sex couples?

15 **A.** It would -- comparing people being raised by their
16 heterosexual parents with individuals being raised by lesbian
17 couples, that was the focus on these studies as I recall.

18 **MR. THOMPSON:** Your Honor, we would ask the Court to
19 take judicial notice of PX-1072.

20 **THE COURT:** Very well.

21 **BY MR. THOMPSON:**

22 **Q.** Turning to tab 55, Dr. Lamb. This is PX-1049. And this
23 is another study that you considered in forming your opinions
24 in this case, correct?

25 **A.** This is -- sorry, which one? This is under tab 55, the

1 adoption study? This is one, yes.

2 **Q.** And it, too, does not have a control group of married
3 biological parents, correct?

4 **A.** Again, I believe that it compared -- it did not exclude
5 people who were not married from the heterosexual group --

6 **Q.** Okay.

7 **A.** -- to the best of my recollection.

8 **Q.** And turning --

9 **MR. THOMPSON:** Your Honor, we would ask the Court to
10 take judicial notice of PX-1049.

11 **THE COURT:** Very well.

12 **BY MR. THOMPSON:**

13 **Q.** Turning to tab 56, Dr. Lamb, this is PX-1088. This is a
14 document you considered in connection with this case, correct?

15 **A.** Correct.

16 **Q.** And it, too, does not have a control group of married
17 biological parents, correct?

18 **A.** I believe that's correct, that they did not exclude people
19 who were not married.

20 **MR. THOMPSON:** Your Honor, we would ask the Court to
21 take judicial notice of PX-1088.

22 **THE COURT:** Very well.

23 **BY MR. THOMPSON:**

24 **Q.** Turning to tab 57, Dr. Lamb, this is PX-1066. This is
25 another document you considered in connection with this case,

1 is that right?

2 **A.** That's right.

3 **Q.** And it does not have a control group of married biological
4 parents, correct?

5 **A.** Like the others, it did not exclude people in the
6 heterosexual group who were not married.

7 **Q.** All right. And I would like to direct your attention to
8 page 27 of this document, the second column. And tell me when
9 you are there.

10 **A.** Page 27, second column? Yes, I'm there.

11 **Q.** Okay. So it says in the first sentence of the second
12 column:

13 "Five of the 38 rated children in lesbian
14 mother families, 13 percent, were classified
15 as showing psychiatric disorder; one with
16 conduct disorder, one with conduct and
17 emotional disorder, two with attention
18 deficit hyperactivity disorder, and one with
19 developmental disorder, compared with 12 of
20 the 134 children in heterosexual families,
21 nine percent."

22 So this is a study that you relied on that -- on this
23 metric of psychiatric disorders shows that children of gays and
24 lesbians at almost a 50 percent greater risk, is that right?

25 **A.** No. Actually, if you read the preceding sentence, it says

1 there were no differences between the children in those two
2 groups. That difference that you just referred to is not
3 statistically significant.

4 **Q.** Oh, 50 percent isn't statistically significant because
5 it's such a tiny sample size, is that it?

6 **A.** No, it's not statistically significant.

7 **Q.** Because it's a small sample size, right?

8 **A.** Because the difference isn't large enough to be
9 statistically significant. Sample size is one of the factors
10 that determines statistical significance. The second is the
11 magnitude of the difference.

12 **Q.** Right. And here it was 50 percent, but that's not enough
13 because the sample is so small, right?

14 **A.** It's not statistically significant. It's not a
15 difference.

16 **Q.** It's not a statistically significant difference?

17 **A.** That's correct.

18 **Q.** Yes.

19 **A.** Therefore, it's not reliable. It's not a difference in
20 terms of the literature.

21 **MR. THOMPSON:** Your Honor, we would ask the Court to
22 take judicial notice of PX-1066.

23 **THE COURT:** Very well.

24 **BY MR. THOMPSON:**

25 **Q.** Turning to tab 58 in your binder. This is a PX-1061.

1 It's a document you relied upon in reaching your conclusions in
2 this case, is that right?

3 **A.** That's right.

4 **Q.** And it doesn't compare the outcomes of married biological
5 parents to the outcomes of the children of same-sex couples,
6 correct?

7 **A.** Again, to the best of my knowledge, they did not exclude
8 people who were not married from the heterosexual comparison
9 group.

10 **MR. THOMPSON:** Your Honor, we would ask the Court to
11 take judicial notice of PX-1061.

12 **THE COURT:** Very well.

13 **BY MR. THOMPSON:**

14 **Q.** Turning to tab 59, this is PX-1073. And it's a document
15 that you considered in reaching your conclusions in this case,
16 is that correct?

17 **A.** That's correct.

18 **Q.** And it did not control for married biological parents,
19 correct?

20 **A.** It did not exclude unmarried biological parents from the
21 heterosexual group, is that --

22 **MR. THOMPSON:** Your Honor, we would ask the Court to
23 take judicial notice --

24 **THE COURT:** Wait a minute. I think the witness was
25 asking for a clarification of the question.

1 **MR. THOMPSON:** I'm sorry. I'm sorry.

2 **A.** What was the question?

3 **BY MR. THOMPSON:**

4 **Q.** My question is: Is the control group married biological
5 parents, their children?

6 And I understood you to say that, no, it's not
7 because it was all heterosexuals and unmarried hadn't been
8 excluded.

9 **A.** To the best of my knowledge, and you are not -- I don't
10 have time to read through them, I think that's correct.

11 **Q.** So yes.

12 **A.** So that in all of these cases, certainly from the early
13 eras, the majority of them would have been married. But the
14 unmarried ones were, so as far as I recall, not excluded from
15 those.

16 **Q.** Very well.

17 **MR. THOMPSON:** Your Honor, we would ask the Court to
18 take judicial notice of PX-1073.

19 **THE COURT:** Very well.

20 **BY MR. THOMPSON:**

21 **Q.** Turning to tab 60, this is PX 1160. And this is a
22 document you considered in connection with this case, is that
23 right?

24 **A.** That's right.

25 **Q.** And it does not have a control group of married biological

1 parents, correct?

2 **A.** It, again, did not exclude people who were not married,
3 so as far as I recall.

4 **Q.** All right. And I'd like to turn your attention to the --
5 well, it's page 787, which appears in small font in the upper
6 right-hand corner of these pages. It's about the fifth page of
7 the exhibit.

8 **A.** Okay.

9 **Q.** Sorry, sixth page of the exhibit.

10 And do you see the chart that says "Table 2, Group
11 Comparisons on Measures of Children's Emotions, Behavior and
12 Relationships"?

13 **A.** Uh-huh.

14 **Q.** And --

15 **A.** I do.

16 **Q.** In the fourth row down it says "Cognitive Competence," can
17 you see that?

18 **A.** On the second table, yes.

19 **Q.** Yes. And can you help us out, what the vertical column
20 that means x, what that stands for?

21 **A.** So --

22 **Q.** There is an "N," an "X" and an "SE." And is the "N" the
23 number of people in the sample?

24 **A.** Yes. The "N" should be the number of people. The "X"
25 should be the main score. And the "SE" would be the standard

1 error of the measure.

2 **Q.** And so we see for the heterosexual two parents, the
3 cognitive competence of their children was higher than the
4 cognitive competence of the children of the single heterosexual
5 mothers, is that right?

6 **A.** That appears to be true in the sample, yes.

7 **Q.** And that the -- and it's also higher than the children of
8 the lesbian mother families, correct?

9 **A.** Well, you have got the comparisons at the end, and one of
10 those differences seems not to be significant and the other is.

11 **Q.** And the one for the lesbian families is statistically
12 significant, correct?

13 **A.** Well, that's what I'm trying to understand what the --
14 what the --

15 **Q.** Well, it's certainly a worse outcome, isn't it?

16 **A.** In this case it seems to be, yes.

17 **Q.** All right.

18 **MR. THOMPSON:** Your Honor, we would ask the Court to
19 take judicial notice of PX-1160.

20 **THE COURT:** 1160 or 50? 60, very well.

21 **MR. THOMPSON:** Thank you, your Honor.

22 **BY MR. THOMPSON:**

23 **Q.** Turning to tab 61. This is PX-1065. And this is a
24 document you considered in connection with this case, is that
25 right?

1 **A.** That's right.

2 **Q.** And this document does not have a control group of married
3 biological parents, correct?

4 **A.** It's a follow-up of one of the other studies you
5 already -- groups you already asked me about, so I think the
6 answer is the same here.

7 **Q.** All right. Very well.

8 **MR. THOMPSON:** Your Honor, we ask the Court to take
9 judicial notice of PX-1065.

10 **THE COURT:** Very well.

11 **BY MR. THOMPSON:**

12 **Q.** Turning to tab 62. This is PX-1081. And this is a study
13 that you relied upon, correct?

14 **A.** Sorry, got to catch up. 1081?

15 **Q.** Yes, sir.

16 **A.** Yes.

17 **Q.** All right. And it does not have a control group of
18 married biological parents, correct?

19 **A.** That's correct.

20 **Q.** All right.

21 **MR. THOMPSON:** And, your Honor, we would ask the
22 Court to take judicial notice of PX-1081.

23 **THE COURT:** Very well.

24 **BY MR. THOMPSON:**

25 **Q.** Turning to tab 63. This is another study that you relied

1 on in connection with this case. It's PX-1092, is that
2 correct?

3 **A.** Yes.

4 **Q.** And it does not have as a control group married biological
5 parents, correct?

6 **A.** I think that's correct. Again, the same point I made
7 earlier, yes. I think that's correct.

8 **MR. THOMPSON:** Your Honor, we would ask the Court to
9 take judicial notice of PX-1092.

10 **THE COURT:** Very well.

11 **BY MR. THOMPSON:**

12 **Q.** Turning to tab 64. This is PX-1428. And this is one of
13 the studies you relied upon in this case, is that right?

14 **A.** I'm certainly familiar with it. I don't remember, as I
15 sit here, whether I listed it, but yes.

16 **Q.** All right. And it doesn't have as a control group married
17 biological parents, correct?

18 **A.** That may be correct. Again -- yes, that's correct.

19 **MR. THOMPSON:** Your Honor, we would ask the Court to
20 take judicial notice of PX-1428.

21 **THE COURT:** Very well.

22 **BY MR. THOMPSON:**

23 **Q.** Turning to tab 65. This is PX-1427. And it doesn't --
24 you considered this document in connection with your opinions
25 in this case, right, Dr. Lamb?

1 **A.** That's correct.

2 **Q.** And it does not have as a control group married biological
3 parents, correct?

4 **A.** As far as I can tell, this is a literature review rather
5 than a study, but maybe it does -- it focuses on the results of
6 one of the studies that I think we have already talked about.
7 And, again, it's probably the case that they did not exclude
8 from the heterosexual group people who were not married.

9 **Q.** All right. And turning to tab 66. This is another one of
10 the studies that you relied upon in this case, correct?

11 **A.** Yes.

12 **MR. THOMPSON:** Oh, and I believe my haste I forgot to
13 ask the Court, your Honor, please, to take judicial notice of
14 PX-1427.

15 **THE COURT:** Very well.

16 **BY MR. THOMPSON:**

17 **Q.** Turning to tab 66, Dr. Lamb. This is PX-1079. And this
18 is a document you considered, correct?

19 **A.** That's correct.

20 **Q.** And it doesn't have as a control group married biological
21 parents, correct?

22 **A.** That's correct.

23 **MR. THOMPSON:** Your Honor, we would ask the Court to
24 take judicial notice of PX-1079.

25 **THE COURT:** Very well.

1 **BY MR. THOMPSON:**

2 **Q.** Turning to tab 67. This is another study that you relied
3 upon in this case, is that right, Dr. Lamb?

4 **A.** That's correct.

5 **Q.** And it doesn't have as a control group married biological
6 parents, correct?

7 **A.** Again, they did not exclude people who were not married.
8 I think that almost all of the people in the comparison group
9 were married.

10 **MR. THOMPSON:** Your Honor, this is PX-1125, and we
11 would request that judicial notice be taken of it.

12 **THE COURT:** If that same question applies to all of
13 these, perhaps you can summarize them in some fashion?

14 **MR. THOMPSON:** Well, the only point, your Honor, is
15 that Dr. Lamb likes to talk about this rich, deep literature.
16 And we want to show that he doesn't have any studies that are
17 married biological parents, which is our core position in this
18 case, that that's the optimum environment for raising
19 children --

20 **THE COURT:** Counsel, counsel, counsel.

21 **MR. THOMPSON:** I apologize.

22 **THE COURT:** Counsel, we are trying a case.

23 **MR. THOMPSON:** Yes.

24 **THE COURT:** Is there a way to shorten the
25 presentation of the point that you are trying to make with

1 these documents by putting them all in together? One question
2 with respect to a whole group?

3 **MR. THOMPSON:** Well, maybe we could just -- I could
4 get him to confirm that each one of these he looked and then
5 ask him one question at the end and get them all in. Would
6 that be all right?

7 **THE COURT:** Same question with respect to each?

8 **MR. THOMPSON:** Yes, yes.

9 **THE COURT:** Maybe that would be helpful.

10 **MR. THOMPSON:** Yes, yes. Okay. And maybe one or two
11 variance in the middle.

12 **THE COURT:** Okay.

13 **MR. THOMPSON:** Thank you, your Honor. That's a very
14 good suggestion.

15 **BY MR. THOMPSON:**

16 **Q.** So, Professor Lamb, PX-1133 is a document you considered,
17 is that right -- sorry, PX-1131 behind tab 68.

18 **A.** Yes.

19 **Q.** All right.

20 **MR. THOMPSON:** And, your Honor, may I ask that
21 judicial notice be taken along the way?

22 **THE COURT:** Why don't you ask that at the end.

23 **MR. THOMPSON:** Okay, I will make a list.

24 **THE COURT:** And PX-1083 was a document relied upon in
25 connection with the witness's testimony?

1 **MR. THOMPSON:** With the witness's testimony.

2 **BY MR. THOMPSON:**

3 **Q.** Is that right, Dr. Lamb? It's behind tab 69.

4 **A.** This is 1131 that we're talking about? No. You want to
5 go to the next one.

6 **BY MR. THOMPSON:**

7 **Q.** We are asking you with respect to each whether this is
8 something you considered in connection with the case?

9 **A.** I'm familiar with these studies, yes.

10 **Q.** And let's go to tab 70, which is PX-1116.

11 **A.** Uh-huh.

12 **Q.** And you considered this in connection with this case, is
13 that right?

14 **A.** Yes.

15 **Q.** And let's go to tab 71, which is PX-778. And it does not
16 have a -- you considered this document, correct?

17 **A.** Yes.

18 **Q.** And let's go to tab 72. It's PX-1111. And you considered
19 this document in this case, correct?

20 **A.** Yes.

21 **Q.** And let's go to tab 113. It's PX-1049. And you relied
22 upon this document in this case, correct?

23 **A.** Yes.

24 **Q.** And let's go to tab 74. And -- well, I think these next
25 tabs we can actually probably just skip.

1 So let me ask you, Dr. Lamb, with respect to all the
2 studies we just looked at, isn't it true that none of them had
3 as a control group married biological parents?

4 **A.** I think most of them had as a control group married
5 biological parents, but for -- for the most part, but they, so
6 as far as I remember not having a chance to review these
7 papers, that they did not exclude people on the grounds that
8 they were not married.

9 **Q.** Right. So if you don't exclude someone who is not
10 married, that means the control group could have unmarried
11 people in it?

12 **A.** That's what I'm saying, yes.

13 **Q.** Okay.

14 **MR. THOMPSON:** Your Honor, we will skip many of these
15 tabs.

16 With the Court's permission, we have one last binder,
17 which will not take long, I think with this new procedure we
18 have in place to work through it expeditiously.

19 May we pass that out?

20 (Whereupon, binders were tendered
21 to the Court, the witness and counsel.)

22 **THE WITNESS:** I can put away this one, counsel?

23 **MR. THOMPSON:** Yes, sir.

24 (Brief pause.)

25

1 **BY MR. THOMPSON:**

2 **Q.** Now, we have been looking at a lot of individual studies,
3 but you also relied on some so-called meta-analyses, is that
4 right?

5 **A.** I think there was only one meta-analysis, but maybe there
6 were more than that. There have been several meta-analyses,
7 especially in the research of adopted children.

8 **Q.** And can you explain what a meta-analysis is?

9 **A.** A meta-analysis is a procedure to combine the results of
10 multiple studies in order to assess the reliability of
11 findings, recognizing the fact that from one study to another
12 you often have minor variations in results.

13 You will sometimes have a result in one study that is
14 not repeated in others. And it's important to get a sense of
15 the whole rather than to over emphasize those local variations.

16 **Q.** All right. And tab 83, which is the first tab in this
17 binder, is PX-1090. Do you see that, sir?

18 **A.** Yes.

19 **Q.** And this is a document you considered in connection with
20 this case, is that right?

21 **A.** Probably. I don't specifically remember this one, but I
22 probably did.

23 **Q.** It was listed in your "Materials Considered," I will
24 represent to you.

25 And isn't it true that this meta-analysis, none of

1 the studies that it surveys have married biological parents as
2 the control group. And we have attached all of them to this,
3 all that we haven't already looked at.

4 We have looked at most -- since these are summaries
5 and surveys, we have looked at most of the literature already,
6 but any that we haven't already covered, we attached to this.

7 And isn't the point that there isn't a single study
8 referenced in this survey that has as its control group married
9 biological parents?

10 **A.** I'm a little confused, and maybe I've got the wrong
11 binder. I don't have a meta-analysis as the paper that you are
12 talking about.

13 This is a short literature review. It's not a
14 meta-analysis. So we are talking about the same piece.

15 **Q.** Okay. But it's a literature review?

16 **A.** Okay.

17 **Q.** And that's what I meant, so maybe we will just say
18 "review" rather than "meta-analysis."

19 This review, none of the studies that it reviews have
20 married biological parents as the control group, isn't that
21 right?

22 **A.** Again, I don't -- I don't want to attest to that
23 affirmatively. It's my understanding that the researchers
24 listed in this reference list probably did not exclude from the
25 comparison group people who were not married.

1 Q. All right. And let's look at the next tab, which is tab
2 84. And this is another summary, is that right?

3 A. It's another review, as it says at the top, yes.

4 Q. Yes. And none of the articles that are reviewed in this
5 document had married biological parents as the control group,
6 correct?

7 A. That's probably true, with the same qualifications I just
8 gave you.

9 Q. All right. And just so the record is clear, we are
10 talking about PX-1091.

11 And then turning to tab 85. This is PX-1123. This
12 is another material you considered in connection with the case,
13 correct?

14 A. That's correct. This is another literature review.

15 Q. Right. And none of the studies in this review had married
16 biological parents as the control group, correct?

17 A. That's probably correct.

18 Q. All right. Let's turn to -- and so the record is
19 complete, that was PX-1123.

20 Let's turn to tab 86. That's PX-1089. This is
21 another document you considered in connection with this case,
22 is that right?

23 A. It's another literature review, yes.

24 Q. And there is not one of the studies that was reviewed in
25 this survey that had a control group that was married

1 biological parents, correct?

2 **A.** Wait. I'm sorry. There's two under this tab. Let's see.
3 You have got other things attached.

4 **Q.** What we did was -- most of the things that are surveyed,
5 we have already talked about, but there were a couple that
6 weren't.

7 So we are not trying to give you memory test, but we
8 just want to make sure the record is complete, that none of the
9 articles surveyed in this piece had married biological parents
10 as the control group, correct?

11 **A.** Again, as I -- I suspect that they did not exclude people
12 on that basis.

13 **Q.** Okay. And turning to tab 87, which is PX-1064, they did
14 not exclude unmarried people from their control group, correct?

15 **A.** That is probably true. I mean, again, I don't know. You
16 are asking me in very rapid frame to talk about a large number
17 of studies.

18 I would suspect that most of these individuals didn't
19 exclude individuals for that reason.

20 **Q.** And let's turn to tab 89, which is PX-1384. This is
21 another literature review you relied upon?

22 **A.** Yeah.

23 **Q.** It, too, did not have a control group of married
24 biological parents, correct?

25 **A.** Well, this is a very long literature review, which also

1 includes some studies by Kurdek, who certainly did, and some of
2 the titles here specifically refer to "Heterosexual," "Married"
3 and "Not."

4 So in this case I feel comfortable saying that what
5 you said is not true.

6 **Q.** Well, and this is -- Kurdek, though, isn't he studying the
7 parents?

8 **A.** He's studying couples, but that's --

9 **Q.** He's studying the couples, but he is not looking at
10 childhood outcomes, is he?

11 **A.** That's correct. This is a review article about family
12 relationships you just gave me.

13 **Q.** Right. I just want the record to be clear that you are
14 not identifying a study that measures childhood outcomes of
15 same-sex couples as opposed to married biological in connection
16 with this document, correct?

17 **A.** Yes, that's right.

18 **Q.** All right. And let's turn to tab 90. This is "Parenting
19 and Child Development," PX-810, is that correct?

20 **A.** Well, I have -- I'm sorry. 89 we are on?

21 **Q.** No. 90, sorry.

22 **A.** Yes. Okay.

23 **Q.** All right. And the literature that's reviewed in this
24 document doesn't have married biological parents as the control
25 group, correct?

1 **A.** Again, yes. It was reviewing most of the same studies
2 and, as I said before, I suspect that most people did not
3 exclude individuals for that reason.

4 **Q.** All right. And turning to tab 91, PX-1093. Again, none
5 of the articles that are surveyed in this survey had married
6 biological parents as the control group, correct?

7 **A.** I think that's correct.

8 **Q.** And turning to tab 92, PX-1130. Same answer? None of the
9 materials or articles surveyed in this document you considered
10 had married biological as a control group?

11 **A.** I'm sorry. We are talking about the Kurdek article? This
12 is about gay and lesbian couples. It's not about parents at
13 all.

14 **Q.** Okay. Well, I just want to make clear that this is not --
15 you are not relying on this article for your same-sex -- for
16 the motion that the childhood outcomes of gays and lesbians,
17 their children, would be the same as for married biological
18 parents, correct?

19 **A.** Well, this is a review, a very short review of the
20 literature on the dynamics of relationships between gays and
21 lesbians and heterosexuals and different sorts of family
22 structures.

23 The relevance of this is that it shows that the
24 dynamics of those different families are very similar,
25 regardless of whether the individuals are same sex or

1 heterosexual.

2 But none of the studies that are reviewed here are
3 themselves studies that focus on adjustment of children. I
4 think that's the case. Yes.

5 **Q.** You are not aware of any study that looks at the specific
6 benefits flowing to children whose parents are together under
7 domestic partnership law in California, correct?

8 **A.** I'm not aware of any study of that, no.

9 **Q.** And we don't have any studies that look at the behavioral
10 outcomes for children with married same-sex parents, correct?

11 **A.** That's correct.

12 **Q.** And on aggregate, the children being raised by gays and
13 lesbians are comparable in their outcomes to those being raised
14 by heterosexual parents, correct?

15 **A.** Sorry. Could you repeat that?

16 **Q.** On aggregate, the children being raised by gays and
17 lesbians are comparable in their outcomes to those being raised
18 by heterosexual parents, correct?

19 **A.** That's correct.

20 **Q.** And that's true even though none of those gay and lesbian
21 couples were married, correct?

22 **A.** That's correct.

23 **Q.** Thank you.

24 **MR. THOMPSON:** No further questions, your Honor.

25 **THE COURT:** Very well. Mr. McGill, redirect?

1 **MR. MCGILL:** Thank you, your Honor.

2 **REDIRECT EXAMINATION**

3 **BY MR. MCGILL:**

4 **Q.** Dr. Lamb, do you need a break? Are you all right?

5 **A.** Well, I see the end in sight.

6 (Laughter.)

7 **A.** I'm looking at that door.

8 **Q.** It is.

9 Let's warm up our time machine and go way back in
10 time before that cross-examination began and all the way back
11 to 1975, when you held the view that the presence of a father
12 itself could be a determinative factor in adjustment outcomes.

13 Was that a fair characterization of your views as you
14 held it in 1975?

15 **A.** Well, I think that the issue had to do with the specific
16 characteristics of the father and whether it was -- there was
17 something specifically important about the maleness of the
18 parent that was important.

19 I still think that fathers are important figures in
20 children's development and that when children do have father
21 figures, that those relationships are very significant ones.

22 **Q.** And why is it that your views between -- from before I was
23 born to now --

24 (Laughter.)

25 **THE COURT:** This is your witness, Mr. McGill.

1 **Q.** (Continuing) -- have changed? What has changed your views
2 in the intervening 35 years?

3 **A.** Well, the body of evidence has been what's changed it.
4 The original view, as I said, was a hypothesis that came
5 from -- largely from theory at the time. And since then we
6 have had hundreds, thousands of articles that have explored the
7 implications of that belief and found it to be wanting.

8 **Q.** Now, when the literature in your field speaks of
9 fatherless families or father absence, what family structures
10 is the literature describing when it uses those terms?

11 **A.** Well, overwhelmingly, that term is used to describe
12 heterosexual families in which single heterosexual women are
13 raising their children, either by choice or as a result of a
14 family dissolution.

15 **Q.** In your experience in the field does the -- when a study
16 identifies a group of fatherless families, does that group ever
17 include families headed by lesbian mothers?

18 **A.** That term has been used in some of the studies in the
19 field, yes.

20 **Q.** And how frequently?

21 **A.** There are a small number of studies that use that term,
22 particularly because some of them were designed to explore this
23 issue about the importance of having a male parent present in
24 the lives of those children. And so to underscore that
25 question, that term is used.

1 But in the main, in the vast majority of the studies
2 when people talk about the literature on father absence, they
3 are talking about the literature of children being raised by
4 heterosexual women, not -- without a partner in the home.

5 **Q.** What conclusions, then, can one draw about the adjustment
6 of children with lesbian parents from a body of literature that
7 studies fatherless families?

8 **A.** Well, the studies of children being raised by lesbians,
9 children who are growing up without having a father figure in
10 the home, provide one way of determining whether children
11 develop well adjusted when they don't have a male parent
12 figure.

13 **Q.** Can the -- does the fatherless family's research allow us
14 to draw any conclusion about the adjustment of children raised
15 by lesbian parents?

16 **A.** No. No, it does not.

17 **Q.** Does the research on fatherless families tell us anything
18 about the adjustment of children with gay parents?

19 **A.** Not directly, no.

20 **Q.** Now, how about the literature concerning divorced
21 families? In your experience in the field, can we extrapolate
22 any conclusions from the literature on divorce about the
23 adjustment of children of -- with gay or lesbian parents?

24 **A.** No, not directly.

25 **Q.** Why not?

1 **A.** Well, because they are not -- they are not exploring the
2 influence of the sexual orientation of the parent.

3 **Q.** And what about the research, the body of research
4 concerning step families? Can the research about step families
5 tell us anything about the adjustment of children with gay or
6 lesbian parents?

7 **A.** No.

8 **Q.** Who, Dr. Lamb, is Loren Marks?

9 **A.** Loren Marks was one of the experts that has been
10 identified on the other side in this litigation.

11 **Q.** And in connection with your work on this case, did you --
12 did you review Dr. Marks' report in this litigation?

13 **A.** Yes, I did.

14 **Q.** And did you review the deposition I took of him?

15 **A.** Yes, I did.

16 **Q.** And at this time of, with your Honor's permission, I would
17 like to play a clip of Dr. Marks' deposition. This clip is 40
18 seconds in length.

19 **THE COURT:** Very well.

20 **DEFENDANT'S ATTORNEY:**

21 **MR. THOMPSON:** Your Honor, we would certainly object
22 to it being in evidence. We don't object to it being played.

23 **THE COURT:** Very well.

24 (Videotape played in open court.)
25

1 **BY MR. MCGILL:**

2 **Q.** Dr. Lamb, do you agree with Dr. Marks' view that gay and
3 lesbian parents should be viewed as a, quote, discrete category
4 with -- when studying the adjustment of children?

5 **A.** Well, in order to understand the influence on children's
6 adjustment, yes.

7 **Q.** Now, in the course of Mr. Thompson's examination -- or
8 cross-examination of you, you mentioned a new study by Michael
9 Rosenfeld based on the census data.

10 That study has now been marked -- or it was marked as
11 Plaintiffs' Exhibit 2299.

12 Can you tell us, Dr. Lamb, why that study is
13 important?

14 **A.** Well, I think it's very important because it is the only
15 study that we have -- it's a very rare study actually -- which
16 compares all the children in the country with respect to the
17 family environments in which they are reared.

18 And that study shows by looking at the couple of
19 thousand children in the country being raised by lesbian
20 couples, a couple of thousand children in the country being
21 raised by gay couples, and compares them with children being
22 raised by heterosexual couples with respect to one important
23 index, which is the extent to which children are withheld or
24 held back at school, and shows that when you use the
25 appropriate controls, there were no differences in this index

1 of adjustment between children who have been raised by gay,
2 lesbian or heterosexual parents.

3 **Q.** And would -- in your experience in the field of
4 developmental psychology, is a sample based on the United
5 States census of adequate size to be reliable?

6 **A.** Yes, I think so.

7 **Q.** And I want to return briefly to Mr. Thompson's -- I guess,
8 his main point was that the Rosenfeld study compared
9 heterosexual couples and not married heterosexual couples.

10 Why would it make sense in your field of
11 developmental psychology to maintain as a control group for
12 unmarried gay and lesbian parents a -- the control group of
13 heterosexual couples raising children?

14 **A.** Well, that seems the most appropriate comparison in this
15 case.

16 **Q.** And why would it be the most appropriate comparison?

17 **A.** Because you have unmarried parents in all of those groups.

18 **Q.** Now, in your field of developmental psychology, how is the
19 term "biological parent" or "biological father" or "biological
20 mother," how is that used in the literature of child
21 adjustment; specifically the adjective "biological"?

22 **A.** Well, it's used in a multiple -- a number of ways. It's
23 sometimes used in the -- to refer specifically to the
24 biological genetic DNA sharing link between individuals.

25 But in many studies, actually, the term is used more

1 inclusively to include individuals being raised in intact
2 families. And so children, for example, who have been adopted
3 into a two-parent family would often be included with the
4 biological, the children who are being considered to be in a
5 biological family.

6 **Q.** So it would include within the term "biological parent "a
7 child that had -- or a parent that had no genetic relationship
8 to the child?

9 **A.** That's correct, yes.

10 **Q.** And I would like to at this point publish a demonstrative
11 of PX-1040.

12 All right. I will just read from this. This is from
13 Robert Johnson's study entitled "The Relationship Between
14 Family Structure and Adolescent Substance Abuse."

15 Thus, the first relation, quote, mother might be
16 either a biological or an adoptive mother.

17 Similarly, the third relation, quote, father might be
18 either abiological or an adoptive father.

19 Is that consistent with your views of how the term
20 "biological" is used in the field of developmental psychology?

21 **A.** That's the frequent way in which it's used in the survey
22 literature, yes.

23 **Q.** And I would like to publish another demonstrative from
24 that same study.

25 My screen is not working.

1 **A.** Neither are ours --

2 **Q.** Oh, there we go.

3 Can you, Dr. Lamb, please read the bottom -- the
4 footnote -- the highlighted text from the footnote there?

5 **A.** It says:

6 "Most studies do not distinguish biological
7 parents from adoptive parents, since the
8 latter is a rare family form in virtually all
9 studies. Presumably, though, families in
10 which both parents have adopted the child are
11 considered to be intact."

12 **Q.** Is that footnote, again, consistent with your view of how
13 the term "biological" is used in the field of developmental
14 psychology?

15 **A.** It is, yes.

16 **MR. MCGILL:** Your Honor, at this time I would offer
17 into evidence Plaintiffs' Exhibit PX-1040, which is the
18 aforementioned study, and, also, the exhibit I mentioned
19 before, Plaintiffs' Exhibit 2299, which is the Rosenfeld study.

20 **MR. THOMPSON:** No objection, your Honor.

21 **THE COURT:** Very well. They were admitted.

22 (Plaintiffs' Exhibits 1040 and 2299 received in
23 evidence.)

24 **MR. MCGILL:** Thank you.

25

1 **BY MR. MCGILL:**

2 **Q.** Now, you were shown a number, a great number of documents
3 by Mr. Thompson, and one of them was a literature review by
4 Brad Wilcox, which is located in binder two.

5 Do you still have binder two?

6 **A.** Yes. Just one minute.

7 (Brief pause.)

8 **Q.** And it's at tab 26 of binder two.

9 **A.** Counsel, which tab?

10 **Q.** Tab 26 of 113. And if you would turn to page 24, I will
11 just read for you. It starts at the bottom of page 24 and then
12 it carries over on to page 25.

13 It says:

14 "Data from the National Household Survey on
15 Drug Abuse show that even after controlling
16 for age, race, gender and family income,
17 teens living with both biological parents are
18 significantly less likely to use illicit
19 drugs, alcohol and tobacco."

20 How do you suspect Mr. Wilcox was using the term
21 "biological" in this sentence?

22 **A.** I assume that he was using it to include adopted children,
23 since the reference, I believe, is to the same SOMSA that you
24 just gave us.

25 **Q.** Would you be referring to the study of --

1 **A.** The Johnson report.

2 **Q.** -- the Johnson study that has just been admitted into
3 evidence as PX-1040?

4 **A.** That's correct.

5 **Q.** And it would normally be the case within your field of
6 developmental psychology that when you cite to a source, you
7 use the terms in the same manner in which the source does?

8 **A.** Unless you clarify that you are not doing so.

9 **Q.** So now I would like to play a second clip from the
10 deposition of -- of Dr. Marks concerning the Wilcox study and
11 the Johnson study. This one is somewhat longer.

12 (Videotape played in open court.)

13 **BY MR. MCGILL:**

14 **Q.** Dr. Lamb, do you think Dr. Marks was correct based on his
15 reading of the research that he cited to at his deposition,
16 withdraw his emphasis on the word "biological"?

17 **A.** Certainly, his use of this document, yes.

18 **Q.** Do you think he was wrong to even offer that he should
19 delete the word "biological"?

20 **A.** I don't have his statement in front of me. But, yes, the
21 word "biological" clearly is not supported in this context.

22 **MR. MCGILL:** Your Honor, I would ask the Court take
23 judicial notice of the two deposition clips of Dr. Marks.

24 **THE COURT:** Very well. You will have to supply the
25 specific page and line reference to the written transcript of

1 the deposition, as we discussed this morning.

2 **MR. MCGILL:** Of course, your Honor.

3 **MR. THOMPSON:** Your Honor, we would object to
4 judicial notice being taken of, you know, a snippet of the
5 deposition without the report and context coming in.

6 If they want to -- first of all, we don't think it's
7 appropriate; but even if it were, we would then say Dr. Marks'
8 report should come in so the record is complete and it can be
9 seen in its totality.

10 **THE COURT:** Let's take that up at the time we begin
11 to sort out some of these evidentiary issues, but what I'm
12 interested in right now is the page and line references so that
13 we know precisely what testimony you are talking about.

14 **MR. MCGILL:** Do you want that right now?

15 **THE COURT:** Oh, of course not.

16 **MR. MCGILL:** Okay. I will be happy to provide that
17 at the appropriate time, your Honor.

18 **THE COURT:** Fine.

19 **BY MR. MCGILL:**

20 **Q.** Now, I would now quickly like to turn to
21 Defendant-Intervenors' Exhibit 108. This is the book
22 "Fatherless America."

23 You don't have a copy of it, but it was one of the
24 many documents you were asked to opine on. And you mentioned
25 that you wrote a book -- you wrote a book review concerning

1 "Fatherless America," is that right?

2 **A.** Yes, that's right.

3 **Q.** And can you just -- do you recall what you wrote about,
4 about Mr. Blankenhorn's book?

5 **A.** Well, I was concerned that Mr. Blankenhorn had
6 misrepresented much of the research, particularly the research
7 on what I think you've called today "gender differentiated
8 parenting."

9 **Q.** And do you recall if your review was otherwise a favorable
10 review of his book?

11 **A.** Well, there was a second concern, which was the fact that
12 Blankenhorn's book a -- confused the issues of correlation and
13 causality, shall we say and, really, I think, misrepresented
14 the state of knowledge at that point regarding the ways in
15 which children's adjustment might be affected by their
16 experiences. And we went through some of the reasons for that
17 earlier on today.

18 **Q.** I would now like to publish a demonstrative of page 527 of
19 that, of that book review.

20 (Document displayed)

21 **Q.** Would read it Dr. Lamb?

22 **A.** (As read)

23 "Blankenhorn's tendency to paint alternative
24 visions in absurd or ridiculous terms in
25 order to facilitate his dismissal of them

1 leads him in at least one important case to
2 undercut his own thesis.

3 **Q.** Would you characterize that as a favorable review of any
4 book?

5 **A.** No.

6 **Q.** All right.

7 **MR. MCGILL:** Your Honor, we have marked Dr. Lamb's --
8 the totality of Dr. Lamb's review as Plaintiffs' Exhibit 2548,
9 and we ask that it would be admitted into evidence.

10 **MR. THOMPSON:** No objection, Your Honor.

11 **THE COURT:** 258 is admitted.

12 (Plaintiffs' Exhibits 2548 received in evidence.)

13 **BY MR. MCGILL:**

14 **Q.** Do you recall among the documents you reviewed, Mr. Lamb,
15 Dr. Lamb, the Sarantakos --

16 **THE COURT:** I think I misspoke. It's 2548, isn't it?

17 **MR. MCGILL:** Yes, Your Honor. It's Exhibit 2548.
18 That is Dr. Lamb's book review of *Fatherless America*.

19 **THE COURT:** Beg your pardon. Sorry for the
20 interruption.

21 **MR. MCGILL:** Not at all.

22 **BY MR. MCGILL:**

23 **Q.** Dr. Lamb, do you remember your brief review of the
24 Sarantakos study with Mr. Thompson?

25 **A.** Yes, I did.

1 Q. And that appeared at tab 49, I believe, which would now be
2 binder three.

3 A. Do I need to get that out?

4 Q. You needn't bring it out. I just wanted to ask you if
5 there was anything else you wanted to say about the Sarantakos
6 study.

7 A. Well, the key thing about the Sarantakos study are
8 actually some problems that Sarantakos himself acknowledges in
9 this report.

10 And most importantly is the fact that while it's a
11 study that ostensibly compares the adjustment of children being
12 raised by two parent married -- two heterosexual parent
13 married, two heterosexual parent cohabiting, and gay and
14 lesbian families, the groups are clearly not comparable in very
15 important ways.

16 Notably the fact that the children in the cohabiting
17 and the same-sex parents groups had frequently experienced the
18 separation and divorce of their parents, in many cases not long
19 before the data about them were gathered.

20 And, as we have talked about today, there's a
21 substantial body of evidence showing that the experience of the
22 parents' divorce, the conflict around that and, as Sarantakos
23 noted, the fact that many of these children frequently moved
24 home are all factors that would have affected their adjustment,
25 as well, and that that would clearly be needed to be taken into

1 account in trying to interpret the results.

2 In many ways, this is more illustrative of the
3 effects of divorce than it is a study that really illustrates
4 much about the effects of same-sex parenting.

5 A second problem, again, as Sarantakos does
6 acknowledge later in his article, is the fact that all of the
7 data were gathered by interviewing the teachers. And he
8 recognizes this as a particular problem in this case because
9 many of the teachers acknowledged having homophobic attitudes;
10 and the fact that that may have biased their reports is clearly
11 something that one would need to take into account.

12 Finally, they used very different ways of selecting
13 the samples for this study; which, again, compromises the
14 ability to use that in the body of literature.

15 And so while the results themselves are out of step
16 with the results of the rest of the research, understanding
17 those deficiencies of the study makes it clearer to understand
18 exactly why those results are so far out of step with the rest
19 of the literature.

20 **Q.** Have the findings of the Sarantakos study ever been
21 corroborated or duplicated in another study?

22 **A.** They have not.

23 **Q.** Are you aware of any other study that finds children who
24 are parented by gays or lesbians to be less well-adjusted than
25 children who are parented by heterosexual parents?

1 **A.** No, there's no other study that finds that as the major
2 report. There are a couple of studies that we talked about
3 over the course of the day, in which there would be one measure
4 showing a difference one way or another.

5 And, clearly, you expect to find those kinds of local
6 variations when you are talking about a large body of
7 literature. But there is no other study that shows, in this
8 way, major problems on the part of children being raised by gay
9 and lesbian parents.

10 **Q.** Do you recall where the Sarantakos study was published?

11 **A.** It was published in an Australian magazine called *Children*
12 *Australia*.

13 **Q.** Is that a peer-reviewed journal, to your knowledge?

14 **A.** I don't think so, but I don't know.

15 **Q.** Does it appear on any of the electronic databases that are
16 used in your field?

17 **A.** No, it does not.

18 **Q.** Has it ever been relied upon in -- by one of your
19 colleagues, or someone else who's viewed as an authority in the
20 field of developmental psychology?

21 **A.** I think most people in the field of studying children's
22 adjustment have the same concerns about this study that I do.

23 **Q.** Why do the hundred or so studies on which you rely provide
24 a reliable basis for your opinion in this case?

25 **A.** Well, I think they provide a reliable basis because,

1 firstly, they provide a very consistent account of the healthy
2 adjustment of most children being raised by gay and lesbian
3 parents.

4 But, secondly, I think what makes that literature
5 persuasive is the fact that the patterns of results are very
6 similar to the patterns of results that have been obtained in
7 the wider body of research on factors that affect children's
8 adjustment.

9 For example, children whose lesbian parents have a
10 conflictual relationship are less well-adjusted than children
11 with lesbian parents who have a more harmonious relationship,
12 just as you find in the literature on heterosexual families.

13 So with respect to all of the broad factors that we
14 spoke about first thing this morning, we see that it's the same
15 factors that predict the adjustment of children in gay and
16 lesbian families as they do in when children have heterosexual
17 parents. And that, as I said before, the evidence makes clear
18 that having a gay or lesbian parent does not make children more
19 likely to be maladjusted than if those children were raised by
20 heterosexual parents.

21 **Q.** You testified that there were fewer studies of gay parents
22 than lesbian parents and the adjustment of their respective
23 children. Is that correct?

24 **A.** That is correct, yes.

25 **Q.** Why, in the absence of an equal number of studies of gay

1 male parents and the adjustment of their children, are you
2 comfortable opining that their children are no less likely to
3 be well-adjusted than children of heterosexual parents?

4 **A.** Well, I think that I feel comfortable doing that because
5 one has to look at the totality of the evidence base, and start
6 off from the fact that we do have a good understanding of what
7 it is that affects the adjustment of children.

8 And in the context of understanding that, it's also
9 very clear, from lots of research, that the gender and the
10 sexual orientation of the parent is not one of those factors
11 that's important.

12 Secondly, we have the evidence that shows that it is
13 the same factors that affect children's adjustment, regardless
14 of the sexual orientation of their parents.

15 Third, we do have a growing number, much smaller
16 number, but a growing number of studies that look directly at
17 the adjustment of children being raised by gay parents.

18 And the combination of these different bodies of
19 literature, I think, makes me confident that the outcomes for
20 children raised by gay fathers are the same as those for
21 children raised by lesbian mothers and the same as those for
22 children being raised by heterosexual parents, taking into
23 account all the other factors that we have spoken about.

24 **Q.** At the start of Mr. Thompson's cross-examination, you
25 confessed membership in the ACLU, the NAACP, the Nature

1 Conservancy, Amnesty International. And Mr. Thompson even
2 identified you as a supporter of Public Broadcasting.

3 (Laughter)

4 Did the Corporation for Public Broadcasting influence
5 your opinion in this case?

6 **A.** No, it did not.

7 **Q.** Did anything other than the social science research in
8 your field influence your opinion in this case?

9 **A.** No, it did not.

10 **MR. MCGILL:** Thank you, Dr. Lamb.

11 **THE COURT:** Very well, Dr. Lamb. Thank you for your
12 testimony, sir. You may step down.

13 And can we call the next witness?

14 **MR. BOIES:** Your Honor, the next witness will be
15 Helen Zia.

16 **THE COURT:** Thank you.

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

18 **HELEN ZIA,**

19 called as a witness for the Plaintiffs herein, having been
20 first duly sworn, was examined and testified as follows:

21 **THE WITNESS:** I do.

22 **THE CLERK:** Thank you.

23 **MR. RAUM:** Excuse me, Your Honor. Before we proceed
24 with Ms. Zia's testimony, it appears that she is being offered
25 to give testimony regarding her sexual orientation, her

1 experiences with discrimination, the effects of being denied
2 the right to marry, and the importance to her and her family of
3 ultimately being able to marry.

4 The relevance of this testimony is very unclear in
5 that she's not a plaintiff in this case; she's not an expert in
6 this case. And her particular experiences as one person
7 certainly is not, as we've been talking about, a reliable
8 sample of these issues.

9 So her testimony, as described here, has no probative
10 value to the facts at issue in this case. If Counsel would
11 like to clarify, that would be fine.

12 Also, on top of that, they have identified a host of
13 documents that will be used in connection with Ms. Zia, that
14 are of the same nature as we saw with Dr. Chauncey, some
15 involving Dr. Tam, and otherwise appearing to be directed to
16 the Chinese American community. None of that was disclosed.
17 And we have been given no indication of what the relevance of
18 that is in this case.

19 **MR. CHOU:** Your Honor --

20 **THE COURT:** Who's going address that?

21 **MR. CHOU:** I will address that, Your Honor.

22 **THE COURT:** And you are?

23 **MR. CHOU:** Danny Chou from the San Francisco City
24 Attorney's Office.

25 **THE COURT:** Very well.

1 **MR. CHOU:** Her testimony is highly relevant. It is
2 illustrative of much of the expert testimony that has come out.

3 She also exemplifies some of the City's harm, showing
4 the differences between how domestic partnership is treated
5 versus marriage, and how marriage would generate far more
6 revenue than domestic partnerships.

7 With respect to the descriptions of her testimony,
8 first of all, with respect to the documents on the messaging,
9 these are all messages that she saw during the campaign for
10 Proposition 8. These are all examples of incidents of
11 discrimination that she experienced as a lesbian in California.
12 And those are all clearly covered by the description of her
13 testimony that we presented to the defendant-intervenors.

14 **MR. RAUM:** Your Honor, I would take issue with that
15 description being consistent with what was just represented.

16 But to the extent that this testimony is consistent
17 with the expert testimony and the prior testimony, it would
18 certainly be needlessly cumulative. We've had four experts
19 testify as to the history of discrimination, the distinction
20 between domestic partnership and civil marriage, including the
21 four plaintiffs.

22 For one person, taken in what is in reality off the
23 street, to testify in this case as to her particular experience
24 with those things, it's not relevant because she can't speak as
25 an expert. She hasn't been designated as such.

1 Her opinion in regard to those things is also not
2 probative of the fact in this case. And that's the standard
3 for her testimony, has to make a fact in this case either more
4 likely or less likely. Her experience with discrimination or
5 same-sex marriage is not probative of any fact in this case.

6 **MR. CHOU:** Your Honor, if I could address that, in
7 addition, the other important aspect of Ms. Zia's testimony is,
8 she has actually gotten married.

9 And this whole case is about how marriage is going to
10 change things for same-sex couples, and enhance their
11 relationships, and enhance their relationships with their
12 families. Here, she's a real-life example of that.

13 And everything is sort of in theory. And what she
14 is, is she demonstrates in fact that marriage does change
15 things for people, and it's very important to same-sex couples,
16 and it does indeed have a transformative effect.

17 And there is nothing about that else in this case.
18 And this bookends the plaintiffs who are telling you that they
19 want to get married, and these are the reasons why. Well,
20 she's an exact example of what they are looking for. And, in
21 that respect, she adds an incredible amount of probative value
22 to this case.

23 **MR. RAUM:** Your Honor, not to belabor the point, that
24 kind of evidence is the kind of evidence that is demonstrated
25 through scientific and expert testimony.

1 If the City would like to demonstrate that, then they
2 should present a study with a reliable sample size of
3 individuals that have experienced the things that Ms. Zia has
4 experienced.

5 One single, solitary individual to get up on the
6 stand and to testify to her experiences can't possibly
7 demonstrate what the experience of all same-sex couples has
8 been. It's not scientifically reliable. It's completely
9 inappropriate in this context.

10 **THE COURT:** Submitted?

11 **MR. CHOU:** If I could just add one thing.

12 **MR. BOIES:** No. Submitted.

13 **MR. CHOU:** Submitted. Sorry, Your Honor.

14 (Laughter)

15 Little too anxious. I apologize.

16 **THE COURT:** Experience counts.

17 **MR. CHOU:** Thank you, David.

18 **THE COURT:** One of the advantages of a bench trial is
19 that evidence can be heard, its relevance and its weight can be
20 considered and determined as the evidence is presented.

21 And counsel for the defendant-intervenors has made
22 arguments that the evidence that the witness is going to
23 present is not relevant or of little weight. That is certainly
24 something that can be considered after the Court has heard the
25 evidence and evaluated it.

1 It does appear, from plaintiffs' counsel's
2 representation, that the witness is going to speak to issues
3 that have been raised in the case and which are important for
4 the ultimate resolution of the issues here.

5 So I will permit the witness to testify, and make a
6 final evaluation with respect to how much weight to give to
7 that testimony and how to weigh it in the entire case, as we go
8 along. But it does appear that she is being offered on
9 subjects that are pertinent to the overall issues in the
10 litigation.

11 All right. Thank you.

12 **MR. CHOU:** Thank you, Your Honor.

13 **DIRECT EXAMINATION**

14 **BY MR. CHOU:**

15 **Q.** Good afternoon, Ms. Zia.

16 Let's begin by having you tell the Court a little bit
17 about yourself.

18 How old are you, Ms. Zia?

19 **A.** I'm 57 years old.

20 **Q.** Where did you grow up?

21 **A.** In New Jersey.

22 **Q.** How long have you lived in California?

23 **THE COURT:** Be sure, Counsel, you keep your voice up,
24 and the witness.

25 **MR. CHOU:** Sure.

1 **BY MR. CHOU:**

2 **Q.** How long have you lived in California?

3 **A.** For about 18 years.

4 **Q.** How many siblings do you have?

5 **A.** I have five siblings.

6 **Q.** Are any of them married?

7 **A.** Four of them are.

8 **Q.** Are your parents still alive?

9 **A.** My mother is still living.

10 **Q.** And where does your mom live?

11 **A.** My mom lives in the Bay Area.

12 **Q.** Where did you go to school?

13 **A.** Went to high school at John F. Kennedy High School in
14 New Jersey. And I went to college at Princeton University.

15 **Q.** Did you graduate?

16 **A.** Yes, I did.

17 **Q.** And what degree did you earn?

18 **A.** A bachelor's of arts degree.

19 **Q.** And do you have any other degrees?

20 **A.** I have an honorary doctor of law degree.

21 **Q.** From where?

22 **A.** From the City University of New York School of Law.

23 **Q.** And what do you do?

24 **A.** I'm a writer.

25 **Q.** Have you written any books?

1 **A.** I have written two and -- two books, and I've edited a
2 number of publications.

3 **Q.** Can you briefly tell us a little bit about the two books
4 that you've have written.

5 **A.** My first book is called *Asian American Dreams: The*
6 *Emergence of an American People*. And it's a book about the
7 contemporary history of Asian -- Asian Americans, particularly
8 around civil rights matters and struggles, trials and
9 tribulations over the last, I'd say, 40 years.

10 **Q.** And your second book?

11 **A.** My second book was about -- was entitled *My Country Versus*
12 *Me*, and was the story of the Chinese American scientist at Los
13 Alamos National Labs, whose name is Wen Ho Lee, who was falsely
14 accused of being a spy for the People's Republic of China. And
15 I co-authored that with him, to tell his story.

16 **Q.** Have you ever worked for any publications?

17 **A.** I've worked for a number of publications.

18 **Q.** What was the last publication that you worked for?

19 **A.** The last one was *Ms. Magazine*.

20 **Q.** And what was your position?

21 **A.** When I left, I was executive editor.

22 **Q.** Ms. Zia, are you a lesbian?

23 **A.** I am.

24 **Q.** How long have you been a lesbian?

25 **A.** I think I've been a lesbian all my life.

1 **Q.** And when did you come out?

2 **A.** Coming out is a process. And so there are a lot of ways
3 to describe what coming out is.

4 I think I first became aware that I was a lesbian
5 when I was -- or that I might be a lesbian when I was in
6 college, when I first learned the word "lesbian."

7 But there were a lot of experiences I had when I was
8 younger, starting when I was even about six or seven years old,
9 that I -- I look back now and realize that they were clear
10 signs of that I -- what team I was on.

11 (Laughter)

12 **Q.** Can you give an example -- can you give an example of one
13 of those experiences when you were very young?

14 **A.** Well, when I was about six or seven or eight, I was just a
15 school kid. You know, maybe I was in school. And there was a
16 neighbor lady or a couple of adults around who typically asked
17 kids, you know, What do you want to be when you grow up?

18 And she asked me, "So, do you want to get married
19 when you grow up?" in the kind of tone that I would -- that the
20 expectation was the answer should be "yes."

21 And I was just a kid, but I immediately said, "No, I
22 don't want to get married." And I remember this because she
23 was really surprised that, you know, here I was a little girl
24 and I, you know, was so definite and emphatic that I didn't
25 want to get married.

1 And it was very clear to me, even at that time, that
2 I really couldn't imagine getting married, married to a man.
3 It just was not in my -- in my world view or imagination.

4 **Q.** And you mentioned that you were first aware that you might
5 be a lesbian when you were in college. When did you actually
6 come out?

7 **A.** Well, I guess the clearest way to say that is I had my
8 first relationship with a woman in the mid 1980s, when I was in
9 my 30s.

10 **Q.** And how much after that was when you were in college?

11 **A.** That would have been about 12 years, 10, 12 years after
12 college.

13 **Q.** Why did it take so long between college and your first
14 relationship with a woman?

15 **A.** There were many, I guess I would say, social pressures
16 to -- to -- to steer me away from the person I really was,
17 to -- for me not to be a lesbian.

18 **Q.** Can you give me an example?

19 **A.** Well, I actually had an incident that I think of as a
20 lesbian trial, where after I had left college I had for a time
21 attended medical school. And I quit medical school and
22 realized that I wanted to spend more of my time doing community
23 organizing, like our president.

24 And so I was involved in my neighborhood in Boston,
25 doing a lot of community work, community organizing work, in

1 this particular time, around ending discrimination in the
2 construction trades for federally-funded projects, which, at
3 that time, didn't hire women. They didn't hire people of color
4 at all. They were very restrictive but very high-paying jobs.

5 So I was involved with a lot of people in my
6 neighborhood, community groups, especially in an Asian -- an
7 Asian community organization and an African American community
8 organization. We were working together to do this kind of
9 antidiscrimination work.

10 And one day I was called to a meeting. And I didn't
11 know the purpose of the meeting except that there was a
12 meeting. And when I got to the meeting, there was a group of
13 people, all my friends, all these people in these community
14 groups that I looked at as my family, my community. We worked
15 hard together with each other for these causes. And they
16 told -- they were sitting in a semicircle, and they asked me to
17 sit down in the middle of the circle.

18 And at the time when I was doing this community work,
19 I was also involved in a lot of women's organizing. There was
20 a very active women's movement in Boston, as well. And I was
21 involved in that.

22 And so they called me to the meeting, knowing that I
23 did this work in the women's movement, you know, and they said:

24 So, sit here. We want to ask you some questions.
25 We've noticed that you seem to be working with a lot of women,

1 and you seem to be working with a lot of lesbians. And, you
2 know, in our communities of color, the Asian American
3 community, there -- we don't have homosexuals in our community.
4 And it would be really terrible to have somebody who was a
5 homosexual, a lesbian, working with us, because it would --
6 because homosexuality is a symptom of white -- of white petty
7 bushwa -- petty bushwa decadence. And, so, we really wouldn't
8 want to have you with us, working with us on these causes, if
9 you are a lesbian.

10 And the leader of the African American group said
11 very similar things; that homosexuality is not something they
12 could accept in the African American community.

13 And after they laid out these things, as I sat in
14 front of my friends, my community, people I considered my
15 extended family, they laid that out and then they said, "So,
16 Helen, tell us, are you a lesbian?"

17 And I was about 23 then. And I sat there looking at
18 the people that I trusted in this world, asking me that. And I
19 had friends who were, indeed, lesbians. And I didn't know at
20 first how to answer that question. It was, "Are you a
21 lesbian?" What would make me a lesbian?

22 I knew that I had had lesbian thoughts, whatever
23 those are, that I had had attractions to women. But I didn't
24 have a girlfriend. I didn't have a membership card that said I
25 was a lesbian. I didn't get a toaster oven or a congratulatory

1 message saying, Welcome to lesbian-hood.

2 (Laughter)

3 And so -- but there they were, all staring at me,
4 these people I trusted. And, "Helen, are you a lesbian?" So I
5 said, "No, I'm not."

6 And that made them happy. And for me it was -- it
7 was -- that was the end for them. The meeting disbanded; the
8 trial was over. And for me it was that I had stepped into the
9 closet and slammed the door shut.

10 **Q.** Did you do anything else in response to the lesbian trial?

11 **A.** I'm sorry?

12 **Q.** I'm sorry. Did you do anything else in response to the
13 lesbian trial? You mentioned you stepped in the closet and
14 slammed the door. Is there anything specific that you did?

15 **A.** Well, I got the message very clearly that the thought I
16 might be a lesbian and that doing work with other women in the
17 women's movement and having friends who were lesbians was
18 something that was unacceptable.

19 And, so, having said that I was not a lesbian and
20 stepping right into the closet, I stopped seeing my friends. I
21 cut off my ties with my dear friends in the women's movement
22 there in Boston. I stopped going to meetings.

23 I had been involved in a leadership capacity. I
24 stopped completely. I really did shut the door.

25 **Q.** Did you also used to have diaries?

1 **A.** Yes.

2 **Q.** Did you do anything to those diaries after the lesbian
3 trial?

4 **A.** I am a writer today, but I think I started that a long
5 time ago, even before I realized I would become a writer. And
6 I was an avid journal keeper. I wrote diaries from the time
7 that I was quite young.

8 And after my lesbian trial, I knew that I had
9 explored the thought -- I had written down thoughts that, Maybe
10 I'm a lesbian. I find so and so to be very attractive. I have
11 these feelings.

12 And so shortly after the -- this trial, I was going
13 to move. I was going to move from Boston to Detroit. And I
14 was going to pack up my little car with all my small number of
15 worldly possessions. And then there came a question of, What
16 do I do with these diaries? And I was -- I became so concerned
17 that what if I was driving on the highway and I got into a car
18 accident and was killed, and there are my diaries that say I
19 think I might be a lesbian.

20 I took my diaries, which at that time was probably
21 more than ten years worth of diaries, and I went out to a field
22 nearby, a construction site where there was a barrel. I put
23 them in and I lit them up, and I burned my diaries.

24 **Q.** Ms. Zia, have you ever experienced any discrimination
25 relating to your work due to your sexual orientation?

1 **A.** Related to my work?

2 **Q.** Yes.

3 **A.** Yes, on a few occasions.

4 **Q.** Can you provide an example?

5 **A.** Well, there was a time when I was invited to give a
6 speech. I do some lecturing, and I was invited to give a
7 speech to Notre Dame University. And it was in the 1990s,
8 early 1990s, when there was a lot of anti-gay campaigns going
9 on.

10 And the person who invited me was aware that I was a
11 lesbian. So one day, after I got the invitation that she had
12 extended to me, she asked me, "By the way, are you going to say
13 anything about sexual orientation or about being a lesbian?"

14 And I hadn't really thought much about what I was
15 going to say yet, but I said, "Well, I'm not sure, but now that
16 you've asked me, I might." And she said, "Well, in that case,
17 I don't think you should come." And she rescinded the
18 invitation. So that was one incident.

19 **Q.** Have you ever experienced any discrimination from family
20 members due to your sexual orientation?

21 **A.** Yes, I have. When -- when I came out to -- well, when I
22 was delivering a lecture in the New York area, I have a cousin
23 out there. And he was very interested in the books I had
24 written. He was very interested in hearing my lecture. He
25 came to my lecture.

1 And in my lecture I talked about being lesbian. I
2 talked about the discrimination that's faced by people of
3 color, by lesbians, and the fact that I -- that I was a
4 lesbian. And it was a very small part of my -- my lecture, but
5 after that he completely cut off all ties.

6 I had even made attempts to contact him when I was
7 going to be visiting New York, but he never -- has never
8 returned a single phone call or message since then.

9 **Q.** Ms. Zia, do you ever feel physically threatened because of
10 your sexual orientation?

11 **A.** I feel constantly aware that my sexual orientation could,
12 for whatever reason, provoke violence toward me or toward my
13 loved ones.

14 And so I do feel that I -- as I walk through life, as
15 I go through the streets of San Francisco or anywhere else,
16 especially when I am with my -- my wife, that we -- I feel very
17 aware of whether we express our affection toward each other
18 publicly, have any public displays of affection, whether we
19 hold hands in public, where we -- where that might be.

20 And my spouse is very affectionate. There are
21 oftentimes if we go to the movies or go have dinner, like any
22 other committed married couple, there might be a time where you
23 would want to put your arm around the other and just hold each
24 other, hug each other. And Lia is very inclined to do that.
25 And I feel there are a lot of times when I have to -- I do

1 actually push her away and say, "Look where we are. We have to
2 be careful."

3 And even within our own neighborhood I feel alert.
4 And I feel -- and I feel bad about that, but I feel very
5 conscious that there are people who hate us, and just for who
6 we are, and that we have to be careful about that.

7 **Q.** Ms. Zia, do you remember the Proposition 8 campaign?

8 **A.** Yes, I do.

9 **Q.** Did you encounter any discrimination during that campaign?

10 **A.** Yes, I did.

11 **Q.** Can you describe some?

12 **A.** Well, I guess I would just begin with the very notion of a
13 campaign that would degrade and devalue the marriage that I
14 have with my wife, the most important person in my life.

15 And to see the -- the ads and the misinformation and
16 the deceptive kind of things that are said about us, I -- I
17 would say that I -- I feel that that's highly discriminatory.

18 To have to read or experience people saying to me,
19 coming up to me and making slurs, calling me names, telling me
20 that I'm an abomination, that my marriage to Lia and other
21 people like us -- people have said, when we were working on the
22 Prop 8 campaign, the effort to -- we had worked on the campaign
23 to -- to try to get people to vote no on Proposition 8.

24 And when we would be out on the streets of
25 San Francisco or in Oakland, handing out fliers, people would

1 just come up to us and say, you know, "You dike." And excuse
2 my language, Your Honor, but, "You fucking dike." Or, "You're
3 going to die and burn in hell. You're an abomination."

4 And to read the materials and to see the kind of
5 things that have been put out there about us, like our
6 marriage, our existence, my marriage to Lia is going to cause
7 people to have sex with animals, to contribute to bestiality in
8 society, or that my marriage to Lia is going to, I guess, cause
9 them to marry other people so that there will be more polygamy
10 in society, or that my marriage to Lia is going to cause great
11 harm to their children and lead to the molestation of children,
12 and that my marriage to Lia is going to cause the end of the
13 human race.

14 And while we were handing out fliers, dozens of
15 people, separate people in separate locations, separate times
16 in different cities, would look at the flier, laugh, or just
17 look at us, or say something with a -- the most derisive kind
18 of expression, and say, "No more people. With this, no more
19 people. No more human race." That we, such abominations,
20 would be the cause of the end of the human race.

21 And, to me, these were all highly discriminatory
22 because, in essence, they're saying that we are so offensive
23 that we are so not worthy of being human beings, of having the
24 full rights and equality that every other human being,
25 heterosexual human being, can enjoy to just be married to each

1 other, that we would cause the end of the human race.

2 And if we were to cause all of these things, then we
3 would be -- what do you do when somebody is going to end the
4 human race and cause great harm to your children and cause all
5 of this terrible stuff? Well, you are going to want to stamp
6 them out.

7 And, to me, that was a highly painful and
8 discriminatory and hurtful message, that I -- I also felt
9 endangered us, as well.

10 **Q.** Ms. Zia, if you could turn to the binder in front of you.
11 And it's PX2119. Can you take a quick look at it?

12 **A.** Yes.

13 **MR. RAUM:** Your Honor, object. This was not one of
14 the documents that was identified as an exhibit that was used
15 in connection with Ms. Zia.

16 **MR. CHOU:** Your Honor, we disclosed this exhibit on
17 Wednesday, and we alerted them. It's now Friday. They have
18 had it for 48 hours.

19 I don't see any prejudice to this. They have had
20 plenty of time to take a look at it and observe it.

21 **THE COURT:** All right. As long as it was disclosed
22 prior to the witness's testimony and in accordance with the
23 standing order that we have in the case, this will be fine.

24 You may present the exhibit to the witness.

25 **MR. CHOU:** Thank you, Your Honor.

1 **BY MR. CHOU:**

2 **Q.** Do you recognize this exhibit?

3 **A.** Yes, I do.

4 **Q.** Can you tell me what it is?

5 **A.** It is one of the pages from a website called, "One Man,
6 One Woman."

7 **Q.** When did you first see this page?

8 **A.** I saw this website and this page during the Yes On 8
9 campaign.

10 **MR. RAUM:** Objection, Your Honor. The document does
11 not appear to be a document that was put out by
12 ProtectMarriage.com. And, as we've indicated earlier, those
13 documents have been excluded already as not indicative of what
14 was conveyed to the public from --

15 **THE COURT:** You can take that up on
16 cross-examination, Counsel.

17 **MR. RAUM:** Thank you, Your Honor.

18 **BY MR. CHOU:**

19 **Q.** Can you read the, I guess, the first sentence in red.

20 **A.** Homosexuality is -- "Homosexuality linked to pedophilia."

21 **Q.** Then can you read the next sentence below that.

22 **A.** "Studies show that homosexuality is linked to pedophilia."
23 And then there is a dot dot dot "and more," a link to "more of
24 that."

25 **Q.** And you recently -- just a few minutes ago you described,

1 basically, these types of messages that you found offensive and
2 hurtful. Is this an example of one of those?

3 **A.** Yes, this is an example of one of those.

4 **MR. CHOU:** Your Honor, I would like to move this into
5 evidence.

6 **MR. RAUM:** Objection, Your Honor.

7 **THE COURT:** I'm sorry, I missed the -- the number of
8 this document is?

9 **MR. CHOU:** Is PX2199.

10 **MR. RAUM:** There's no indication that this -- there's
11 any foundation for this document. As I've indicated a moment
12 ago, it's not an official campaign document from
13 ProtectMarriage.com. It's highly prejudicial if it's
14 associated with the campaign as an official document, and it
15 should be excluded.

16 **THE COURT:** All right. You made a 403 objection.
17 I'll reserve until your cross.

18 **MR. CHOU:** Thank you, Your Honor.

19 **BY MR. CHOU:**

20 **Q.** Ms. Zia, you've mentioned that you're married. What's
21 your wife's name?

22 **A.** Her name is Lia Shigemura.

23 **Q.** And before you married -- I'm going to call her Lia -- had
24 you been married before?

25 **A.** No.

1 Q. Can you tell me a little bit about how you feel about Lia?

2 A. I feel that Lia is my soulmate in life. I love her. I --
3 she's the person I want to spend the rest of my life with.
4 She's the most important person to me.

5 Q. When did you first meet Lia?

6 A. I first met Lia in 1983, here in San Francisco. I was
7 living in Detroit at the time. And we were both involved in a
8 civil rights campaign that revolved around the hate crime
9 against a Chinese American man in Detroit, named Vincent Chen.
10 And I was in Detroit, part of that campaign. And we came to
11 San Francisco as part of the educational piece of that
12 campaign. And Lia was on the organizing committee here in
13 San Francisco.

14 Q. When did you and Lia start dating?

15 A. We didn't start dating until many years after that, about
16 1992.

17 Q. And when you started dating, where were the two of you
18 living?

19 A. Lia was still here in San Francisco, and I was in New York
20 at that time.

21 Q. And did you eventually decide to get together in the same
22 area?

23 A. Yes.

24 Q. And I assume one of you moved?

25 A. Yes. I moved out here.

1 Q. And when you moved, did you give anything up when you
2 moved to San Francisco from New York?

3 A. Uhm, well, I had been born and raised in New Jersey. I
4 was an East Coast person. So I left the East Coast.

5 But I was well-entrenched, I guess I'd say, in my
6 journalism career. I was at *Ms. Magazine*. I was executive
7 editor. And I was in the succession to be the editor-in-chief
8 of *Ms. Magazine*, at that time.

9 And then I met Lia. And *Ms. magazine*, the job I had,
10 was really the job I had always wanted. It was -- it was where
11 I wanted to be. But when I met Lia, I knew that this was the
12 woman I wanted to be with. This was the person I wanted to be
13 with for all my life. And -- and so there was no real decision
14 to make. I -- I left New York, the East Coast, the home I had.
15 But I left the job that I had always wanted.

16 Q. Have you and Lia ever registered as domestic partners?

17 A. Yes.

18 Q. When did you first register as a domestic partner?

19 A. Uhm, we registered as domestic partners, first, in the
20 city of San Francisco in 1993, shortly after I moved here to be
21 with Lia.

22 Q. Can you describe the process of registering for a domestic
23 partner at that time?

24 A. Yes. It was actually a little anticlimactic. We were
25 excited about being able to register as domestic partners.

1 We came to City Hall. We went to a window that I
2 would describe as a -- it's kind of all purpose postal window
3 kind of thing, where I think they issued dog licenses as well
4 as domestic partner licenses.

5 (Laughter)

6 **Q.** And how did that process make you feel?

7 **A.** I left feeling a little like, So this is -- this is
8 domestic partnership?

9 We walked away with a little certificate, the kind
10 that a kid gets for perfect attendance that week. And so it
11 was just a little certificate that, you know, we still valued
12 and we put in a frame. But it didn't feel like -- it didn't
13 feel like much at all. It wasn't the kind of thing we sent
14 notice out to friends about, or sent invitations to a party or
15 anything.

16 **Q.** You didn't have any celebration?

17 **A.** No. Not at all.

18 **Q.** Did you ever -- did you later register as a domestic
19 partner with the State of California?

20 **A.** Yes, we did. When state domestic partnerships became
21 available in, I guess, 2003, we filed for domestic partnership
22 again, with the state.

23 **Q.** Can you describe that process, please.

24 **A.** Well, there was no dog license window this time. Instead,
25 we downloaded the form from the Internet, filled it out, got it

1 notarized and mailed it in. And that was it.

2 **Q.** And did you get something back in the mail?

3 **A.** We got another form back in the mail. And it said, "You
4 are now domestic partners in the State of California."

5 **Q.** And did you hold a celebration?

6 **A.** No, not at all. It was -- getting that form in the mail
7 was not -- not an occasion to write home about.

8 **Q.** So you mentioned that you were married. When did you
9 first get married to Lia?

10 **A.** We got married in 2004, during the Presidents
11 Day/Valentine's Day weekend, the first moment that we could,
12 when marriages became available to same-sex couples.

13 **Q.** Can you describe how you decided to get married?

14 **A.** Well, at first, we weren't sure that what we were seeing
15 in the news was real. And we talked to each other. We said,
16 What? Look at this. Is this real?

17 And we thought about it, about, okay, should we get
18 married? But we would want our family around with us, if we
19 were going to get married. Your dad is in Honolulu. He's
20 pretty elderly. My mother is also quite elderly. And thought,
21 well, all those people have to stand for eight hours in the
22 rain. I don't think we can subject our parents to this.

23 And then I got a phone call from my mother, who said,
24 "Helen, I saw on the news couples can get married. You and Lia
25 can get married now. Why don't you get married?" And that was

1 mom. And so that was like, oh, okay.

2 (Laughter)

3 And then there was just the logistical question about
4 everything was happening so quickly, how would we -- how would
5 we manage this?

6 We had friends who were working in the city -- the
7 San Francisco City Assessor-Recorder's Office, who were
8 actually in charge of getting the marriage licenses done,
9 getting the process done. And they were looking for
10 volunteers. They were looking for people to help process these
11 thousands of couples who were applying to get married. And
12 they asked us if we could volunteer.

13 Lia and I both know how to type and file and do those
14 kind of things. So we said, Sure, we'll come in. We'll come
15 in and help.

16 So we came in on -- on, I believe it was the Monday,
17 Presidents Day. And it was a -- you know, a government
18 holiday, but the office was kept open through the volunteers.
19 And we went there and typed and filed for about, I think, about
20 eight hours. The line was all the way around the block.

21 And at the end of the day, after we had typed all
22 these people -- and I was in the process before Lia, so I was
23 typing people's applications as they were coming in, and she
24 was later on doing something else. And I was done.

25 They had closed the line. It was almost, you know,

1 5 o'clock, or whatever the time they were going to close. And
2 so I looked at Lia and I said, "Should I type out an
3 application for us? Would you marry me?"

4 (Laughter)

5 And Lia said, "I can't talk now. I'm busy."

6 (Laughter)

7 "I'm still filing these people's things."

8 **Q.** Very responsible of her.

9 **A.** Yes. She took her responsibilities very seriously.

10 And so while she was still processing other couples
11 to get married, I was there with the -- you know, the
12 wordprocessor, and I filled out the form for us.

13 I put in her name and put in all the information, and
14 put in my name and all of the information. And then I had the
15 form, and I took it over to her, and I said, "Here's the
16 marriage license. Would you marry me?" And she said, "Okay."

17 And so there we were, probably one of the last
18 couples of the whole day, after everybody else had been
19 processed. The people who had waited in line for eight hours
20 were done. And then -- then we went ahead and had witnesses,
21 and had a -- had a justice of the peace marriage ceremony.

22 **Q.** Did you celebrate, at some point?

23 **A.** We did. It was -- then after we had our marriage licenses
24 and it was, We're married. Well, okay. Then we started
25 talking about, like any other couple, what kind of -- how are

1 we going to celebrate this?

2 And we decided we wanted to have a big wedding
3 reception. A wedding reception like every other couple would
4 have, with a wedding banquet.

5 We issued wedding invitations. Had them printed up,
6 you know, with all the little envelopes and things like that.
7 Drew up a list.

8 Had all of the kind of discussions, and even a few
9 arguments, about: What music are we going to play? You know,
10 where will we go? How much are we going to spend? What date?
11 We picked a date in August, for our wedding party, August 20th,
12 and sent the invitations out to 150, 200 people. And did all
13 the kind of things to prepare for a big wedding party.

14 **Q.** How many people attended your wedding?

15 **A.** About 150.

16 **Q.** And did your families attend?

17 **A.** Our -- our families, our wonderful, loving and supportive
18 families, came from all over the United States.

19 Lia grew up in -- in Hawaii and Honolulu. I grew up
20 in the East Coast. So we actually had friends and family
21 coming from the entire span of America, from all the way from
22 the East Coast to Hawaii, flew in to come to our -- our -- our
23 marriage, our wedding party, our wedding celebration.

24 And we planned, also, to have an affirmation ceremony
25 there. Lia's dad, who at that time was -- at that time, was 86

1 years old, Lia's dad was a retired judge in the state of
2 Hawaii. So he came. He brought his judge's robes. And he was
3 going to officiate with an affirmation ceremony at our wedding
4 banquet.

5 **Q.** Can you turn to your exhibit binder, PX600. Do you
6 recognize that picture?

7 **A.** Yes, I do.

8 **Q.** What is the picture of?

9 **A.** It's a picture of one of our family groupings at our --
10 our wedding reception, wedding banquet. And this is a picture
11 of my mother, my siblings, and some of their children.

12 **MR. CHOU:** Your Honor, I would like to move this into
13 evidence.

14 **THE COURT:** Very well. 600 is admitted.

15 (Plaintiffs' Exhibit 600 received in evidence.)

16 **BY MR. CHOU:**

17 **Q.** Did your marriage later get invalidated?

18 **A.** My marriage --

19 **Q.** The first one?

20 **A.** My marriage was not later -- my marriage was invalidated
21 about a week before our wedding reception.

22 **Q.** And how did that make you feel?

23 **A.** Lia and I felt devastated. We felt sad. We felt -- we
24 grieved. We felt pretty horrible that our -- our marriage that
25 made us so happy and brought us so much joy and made such

1 happiness within our families was suddenly rendered invalid.

2 And we felt that it wasn't just a statement that our
3 marriages were invalidated. We felt that our relationship was
4 invalidated. We felt that we, as human beings, had suddenly
5 become invalidated. And we felt pretty awful.

6 **Q.** Did you and Lia later get married, again?

7 **A.** We did.

8 **Q.** And when was that?

9 **A.** In June of 2008, as soon as that opportunity became
10 available.

11 **Q.** Now, Ms. Zia, how has getting married changed things for
12 you?

13 **A.** Getting married has made changes in so many multitude of
14 ways, tangible and intangible, in our lives, that we are even
15 discovering new ways every day. But, in the most immediate
16 sense, it was in how our families related to us.

17 And so when we first got married in 2004, and had our
18 wedding party, we have -- we have a niece who was two years old
19 when Lia and I got together. She's my brother's daughter. And
20 she has only known Lia and me as Auntie Helen and Auntie Lia.
21 She has only known us as together.

22 And she was about 15 or 16 when we had the wedding
23 party. And in this exhibit she's standing here. She came to
24 celebrate with us.

25 And when she got off the plane and came and saw Lia

1 and me, it was the first time she really saw us after our
2 wedding vows at City Hall. She came over, gave us a big hug,
3 gave Lia a hug and said, "Auntie Lia, now you're really my
4 auntie."

5 And here, we were -- I was a little surprised at that
6 because I thought, well, you've only known her as your auntie;
7 she's always been your auntie. But then I could see from her
8 little child and teenager point of view that somehow us being
9 officially married made a difference to her, and that Lia was
10 now really her auntie.

11 It made a difference to our parents, to how our
12 parents related to us. It made a difference to how we related
13 to people. Because when you say you're a domestic partner,
14 people -- you know, Lia and I spend a lot of time with each
15 other. We go to social engagements with each other. We go to
16 work engagements in the world. And people say, "Well, who's
17 this person who seems to be hanging on to you awfully close?"
18 And if I say, "Oh, she's my partner," I can't count the number
19 of times people say, "Oh, partner. Partner in what business?"

20 And Lia and I got used to having to have an answer to
21 that, to say, "Well, we're partners in life." And then we'd
22 just get used to watching the look on their faces, to see
23 whether they got it. And often it would just be this look of
24 bewilderment: Oh, what business is life? Do you mean life
25 insurance?

1 (Laughter)

2 And for our parents and for our families, you know,
3 marriage is not just about us and our relationship. It's a
4 matter of how our families also relate to people.

5 You know, for me to show up at every family event in
6 Lia's family, every kind of social engagement in her family,
7 people ask, "Well, who's she?" You know, "Who's this?"

8 And for her parents or for her 94-year-old auntie to
9 say, "Well, this is Helen's friend," well, she must be a really
10 good friend because she's been coming to these events for the
11 last 17 years. She's a really good friend. But "friend"
12 didn't quite capture it. "Partner" they never got. They never
13 said, "Oh, Helen is Lia's partner." And suddenly they were
14 able to say, "Helen is my daughter-in-law."

15 My mother, I would watch -- my mother is an immigrant
16 from China. English is her second language. She really
17 doesn't get what partner is.

18 I would be around her and her friends who -- who
19 would look at Lia. And I could hear them say, sometimes in
20 English and sometimes in Chinese, "Who's she?" You know, and
21 my mother, before we would marry, would struggle and just say,
22 "She's Helen's friend."

23 And then it changed. And she would say, "This is
24 Helen's" -- "This is my daughter-in-law." And they would get
25 it. And whether they approved or disapproved, it didn't

1 matter. They got it. It's like you don't insult somebody's
2 wife. You don't insult somebody's mother.

3 She is clearly saying this is my wife. That's it.

4 End of story. There's no questions: Wife in what? Spouses in
5 what? We are not partners in life or in some business. And so
6 it changed things on a very huge level like that.

7 And beyond that, I would say marriage in how it
8 affected our families was not just about us and how people
9 related to us. Our families related to each other differently
10 because marriage is -- and I'm beginning to understand what
11 I've always read -- marriage is the joining of two families.
12 So my family and Lia's family now relate to each other
13 differently.

14 My mother is the in-law to Lia's side of the family.
15 Lia's father became an in-law to my brother, who lived about
16 five minutes away from Lia's father while he was still alive.

17 And in those 15 years before we were married, that my
18 brother lived near my -- my father-in-law, they didn't really
19 make an effort to see each other. After we were married, my
20 father-in-law, Lia's father, actually would stop by my
21 brother's house, stop by and drop things off. You know, fruit
22 that was growing in his yard, things like that.

23 My brother is quite active in Hawaii. Lia's -- and
24 so please bear with me as I describe the relationship. Lia's
25 brother's wife, my sister-in-law, has a sister who runs in the

1 same circles as my brother. Okay. Extended family. They see
2 each other as in-laws now.

3 When they are at a public event, they will go and my
4 brother will say, "This is my in-law." You know. "This is
5 Candy. She's related to me." And people will say, "How?" And
6 then he will explain, she's -- you know, "My sister and her
7 sister-in-law are married to each other."

8 And then they wait to look and see, you know, whether
9 people understand that. But the message is they're family.

10 And so our families related differently to each
11 other.

12 Lia's dad had a terminal illness. He was in hospice
13 not long ago. He just passed away not even two months ago.
14 When he was in the hospital, in hospice care, Lia and I went to
15 the hospital and were at his side quite a lot.

16 And, of course, the other hospital workers, it's like
17 who -- who comes to hospice care? It's the closest, immediate
18 family members. They're the ones who are there around the
19 clock.

20 And they would say to Lia's dad, who was not doing
21 well, "Who are these? Are these your daughters?" And Lia's
22 dad said, from his -- his -- his hospital bed, "This is my
23 daughter, and this is my favorite daughter-in-law."

24 And so it was like, Lia said, "He said
25 'daughter-in-law.'" I said, "He said 'favorite.'"

1 (Laughter)

2 But it was a way that even in being so ill he could
3 describe who we were. And so that was a difference it made.

4 And -- and in the important events in life, which I
5 guess if we summarize our lives and we say birth, our lifetime
6 partner, creating our own family, and death, when it was time
7 for Lia's dad's funeral that's when the family comes together.
8 That's when you put out an obituary and you say who was in the
9 family.

10 When you lay out the memorial service hall and you
11 say who sits here and who sits there, and who has what role,
12 and the members of the immediate family are there in the
13 closest circle, and there was no question that I was Lia's wife
14 and I was a member of the family, and there was no ambiguity
15 about it. I wasn't some partner in business or partner in
16 life. I was her spouse.

17 And I was right there, with the first row in the
18 family. And I had my responsibilities, as well as being a
19 member of the family.

20 And so in those most important moments in our lives,
21 marriage made it very clear that I was family, that we are
22 family, and where we stand.

23 **MR. CHOU:** Thank you, Ms. Zia. I have nothing
24 further.

25 **THE COURT:** Very well. Mr. Raum, you may

1 cross-examine.

2 **MR. RAUM:** Thank you, Your Honor.

3 **CROSS EXAMINATION**

4 **BY MR. RAUM:**

5 **Q.** Good afternoon, Ms. Zia.

6 I'd like to draw your attention back to the binder
7 that you have there, and number PX2198.

8 Do you have it in front of you?

9 **A.** Yes, I do.

10 **Q.** Ms. Zia, do you remember when the first time you saw that
11 document was?

12 **A.** It would have been sometime in 2008. I don't remember
13 exactly -- exactly when I saw it.

14 **Q.** Is that before the election --

15 **A.** Yes --

16 **Q.** -- on Prop 8?

17 **A.** -- before the election.

18 **Q.** Do you recall where you were when you saw it?

19 **A.** I was at home.

20 **Q.** I'd like to draw your attention to the document, where it
21 begins, "Californians have said twice ..." Do you see this?

22 **A.** Yes.

23 **Q.** Can you read that entire part.

24 **A.** "Californians have said twice to keep marriage between one
25 man and one woman."

1 Q. Based on that indication on the document, how did you see
2 it before the election of Prop 8 in November of 2008?

3 A. I'm sorry, I don't understand your question.

4 Q. Well, the document says, "Californians have said twice to
5 keep marriage between one man and one woman."

6 One time they voted in connection with Proposition
7 22. Do you recall that?

8 A. Actually, I don't.

9 Q. Do you recall being involved in a case challenging the
10 marriage laws in California?

11 A. I was, yes.

12 Q. Okay. I'll represent to you that was challenging
13 Proposition 22, which was an initiative where the people of
14 California voted to keep the definition of marriage as one man
15 and one woman.

16 The second time they did that was in connection with
17 Proposition 8. Would you agree with me on that?

18 A. Well, I am fully aware of Proposition 8.

19 Q. Would you agree that the people of California voted to
20 define marriage as one man and one woman, in November of 2008,
21 when they passed Proposition 28? I'm sorry, when they passed
22 Proposition 8?

23 A. I would say people voted for Proposition 8.

24 Q. And this document indicates that the people of California
25 said twice to keep marriage between one man and one woman?

1 **A.** Well, I'm not sure everybody knew what they were voting
2 for, so I'm not sure that everybody who voted for Proposition 8
3 were voting for this.

4 **Q.** But my question is that this document, the one that you're
5 testifying to, indicates on its face that Californians have
6 said twice to keep marriage between one man and one woman.
7 That's what the document says, correct?

8 **A.** That is what the document says.

9 **Q.** And you're testifying that you saw this document prior to
10 the people voting twice. Can you explain that?

11 **MR. CHOU:** Objection, Your Honor. This is a document
12 we haven't moved into evidence and we haven't questioned her
13 about. It's beyond the scope of direct examination.

14 **MR. RAUM:** I'm referring to PX2198. I believe that
15 you questioned her on this.

16 **MR. CHOU:** I introduced PX2199.

17 **THE COURT:** Counsel asked about 2199.

18 **MR. CHOU:** I didn't ask about 2198.

19 **MR. RAUM:** Nonetheless --

20 (Laughter)

21 **THE COURT:** All right. You can pursue the subject.

22 **MR. RAUM:** Nonetheless, I've asked her today on the
23 stand whether she has seen this document before.

24 **BY MR. RAUM:**

25 **Q.** And you testified just a moment ago that you saw this

1 document prior to the election. Isn't that a fact?

2 **A.** I said that, but I realize that I saw this website before.
3 It's possible that the website changed.

4 **Q.** I see.

5 **THE COURT:** Are you moving in 2198?

6 **MR. RAUM:** No, I'm not, Your Honor.

7 **BY MR. RAUM:**

8 **Q.** I would like to move on to PX2199.

9 Do you see that, Ms. Zia?

10 **A.** Yes.

11 **Q.** Do you recall when you first saw that document?

12 **A.** I saw this website at the same time I saw the other one.

13 **Q.** But this particular document, that's been marked as 2199,
14 do you recall when you first saw that document?

15 **A.** When you say "document" you mean this actual piece of
16 paper?

17 **Q.** Well, this particular exhibit that's been marked as 2199,
18 that you've testified to here today, that I'm referring to as a
19 document, a piece of paper that's been marked today, when was
20 the first time you saw that?

21 **A.** I have seen this on a website prior to -- prior to the
22 election in 2008. I've seen this document as something printed
23 out on a piece of paper this week.

24 **Q.** And there's nothing in this document that indicates that
25 it's in support of Proposition 8, is there?

1 **A.** This document is all about the -- the point of
2 Proposition 8.

3 **Q.** My question is, Ms. Zia, there's nothing in the document
4 that refers to Proposition 8; isn't that correct?

5 **A.** There's nothing on this document that says "Proposition 8"
6 on it.

7 **Q.** And there's nothing in this document that indicates that
8 it was put out by ProtectMarriage.com; isn't that true?

9 **A.** As far as I can tell, there's nothing that says that.

10 **Q.** And there's nothing in this document that indicates how
11 widely it was distributed. Isn't that a fact?

12 **A.** Well, this document was on the Internet. This is a copy
13 of something that was on the Internet. So it was available to
14 everybody in cyberspace.

15 **Q.** There's nothing that indicates how many people actually
16 viewed it, though?

17 **A.** Uhm, not on this piece of paper. Though, if you went to
18 the website you could find, you know, page views, I'm sure.

19 **Q.** Thank you, Ms. Zia.

20 And you don't know who actually wrote this document,
21 do you?

22 **A.** Uhm, no, I don't actually know.

23 **MR. RAUM:** Your Honor, based on all of that, I would
24 renew our objection to admitting this particular document into
25 evidence.

1 **THE COURT:** Well, the witness said that she saw a
2 posting from this website prior to the election. And I gather
3 her testimony is that the content of this particular posting
4 was one that you believe you saw prior to the November 2008
5 election; is that correct?

6 **THE WITNESS:** Yes, that's correct.

7 **THE COURT:** Very well. 2199 will be admitted.

8 (Plaintiffs' Exhibit 2199 received in evidence.)

9 **BY MR. RAUM:**

10 **Q.** Ms. Zia, you've written materials that have been
11 published, that focus on issues addressing matters that are
12 important to the homosexual community; is that right?

13 **A.** I've written on matters related to the gay and lesbian
14 community, that's right.

15 **Q.** One of the things that you've written about is, and
16 advocated for, are harsher penalties for crimes motivated by
17 sexual orientation?

18 **A.** Harsher penalties for crimes motivated by hatred of --
19 around sexual orientation, yes.

20 **Q.** And you've also advocated for harsher punishment for
21 crimes motivated by perceived gender and perceived sexual
22 orientation, as well; isn't that right?

23 **A.** Yes.

24 **Q.** You are currently a member of the Asian Pacific Islander
25 Equality organization; is that correct?

1 **A.** Yes, I am.

2 **Q.** And the purpose of that organization is to promote the
3 visibility of Asian American, Asian Pacific Islander lesbian,
4 gay, bi, and transgendered people; is that right?

5 **A.** Yes, that's right.

6 **Q.** And prior to November of 2008, prior to the election of
7 November of 2008, that organization held a press conference
8 opposing Proposition 8; isn't that right?

9 **A.** Yes, that's right.

10 **Q.** And that organization printed and distributed fliers, also
11 opposing Proposition 8, correct?

12 **A.** That's correct.

13 **Q.** And the members of that organization, including you,
14 attended rallies opposing Proposition 8?

15 **A.** Yes, that's correct.

16 **Q.** Now, you're also an advisor for the Horizons Foundation;
17 is that correct?

18 **A.** Yes.

19 **Q.** And that organization grants money to gay, lesbian, bi,
20 and transgender nonprofit organizations?

21 **A.** That's correct.

22 **Q.** And you've attended events put on by Equality California;
23 is that right?

24 **A.** At least one event.

25 **Q.** You've also attended events put on by the Lambda Legal

1 Defense and Education Fund?

2 **A.** Yes.

3 **Q.** You also donate money to Lamda Legal Defense and Education
4 Fund?

5 **A.** Yes.

6 **Q.** You've attended events put on by the National Center for
7 Lesbian Rights?

8 **A.** Yes.

9 **Q.** And donated money to the National Center for Lesbian
10 Rights?

11 **A.** Yes.

12 **Q.** You've attended events put on by the Human Rights
13 Campaign; is that correct?

14 **A.** I believe I've attended an event that was -- featured the
15 Human Rights Campaign, once. I don't know if it was put on by
16 the Human Rights Campaign.

17 **Q.** You attended events put on by the ACLU, as well; is that
18 correct?

19 **A.** That's correct.

20 **Q.** You've also donated money to the ACLU?

21 **A.** Yes.

22 **Q.** Which would make you a member of the ACLU.

23 **A.** Yes, but I am not currently a member. I am lax in my
24 donations.

25 **Q.** Are you affiliated with the Courage Campaign, in any

1 respect?

2 **A.** I don't -- no, I don't believe so.

3 **Q.** Back in 2004, you and your mother submitted sworn
4 declarations on behalf of the City of San Francisco, in support
5 of their legal challenge to the California marriage laws that
6 existed at that time; is that right?

7 **A.** Yes.

8 **Q.** And the particular purpose of that litigation was to
9 strike down California's law which, at that time, limited
10 marriage to a man and a woman; is that right?

11 **A.** I believe so.

12 **Q.** Now, did you write that:

13 "Asian American Queer activists do not all
14 agree on what political stand to take towards
15 same-sex marriage"?

16 **A.** I believe I wrote something like that.

17 **Q.** And in the same article, which is Where the Queer Zone
18 Meets the Asian Zone, you said:

19 "To some gay rights activists, fighting for
20 same-sex marriage is too petty bushwa, too
21 much about the nuclear family, cocooning,
22 property rights, and all the bad patriarchal
23 things that marriage stands for."

24 You wrote that as well, did you not?

25 **A.** I believe so.

1 Q. Now, you've testified today regarding some of the benefits
2 that you've experienced as a result of being permitted to marry
3 in California, correct?

4 A. That's right.

5 Q. But you've also written that your civil marriage did not
6 affect your critical view of marriage as a patriarchal
7 institution. Do you recall that?

8 A. Uhm, yes, something to that effect.

9 Q. And you also wrote that one of the reasons of why you
10 married Ms. Shigemura was to express your "defiance against the
11 warmongering fundamentalist regime in Washington." Did you
12 write that?

13 A. That sounds like something I wrote.

14 (Laughter)

15 Q. You've testified today that you first received a marriage
16 license and certificate in February of 2004, when Mayor Newsom
17 began to issue marriage licenses to same-sex couples?

18 A. Yes.

19 Q. And you began to prepare for a marriage celebration and
20 reception after that particular event; is that true?

21 A. That's right.

22 Q. And you indicated that this particular reception took
23 place on August 20th, I believe?

24 A. Yes.

25 Q. But on August -- earlier in August, that particular

1 marriage license and certificate was invalidated by the
2 California Supreme Court. Do you recall that?

3 **A.** Yes, I do.

4 **Q.** But you went forward with the celebration, nonetheless,
5 correct?

6 **A.** Correct.

7 **Q.** And the celebration was officiated by Ms. Shigemura's
8 father, right?

9 **A.** That's right.

10 **Q.** And her nieces and nephews also attended the ceremony?

11 **A.** Her nephew did. She only has one nephew.

12 **Q.** I see. And your brother and your mother attended?

13 **A.** My four brothers and my mother attended, as well as my
14 sister.

15 **Q.** And five of your siblings gave a toast welcoming Lia into
16 the family at that time; did they not?

17 **A.** Yes.

18 **Q.** And you had a traditional Japanese, is it, bonsai toast?

19 **A.** Yes, we did.

20 **Q.** And you also had a Chinese wedding banquet, where you had
21 traditional foods that would traditionally be served at a
22 wedding, correct?

23 **A.** Yes.

24 **Q.** And you stated that this particular wedding party that you
25 had, even though it wasn't officially recognized by the

1 state -- your wedding was not at that time -- brought about the
2 melding of your and Ms. Shigemura's extended family and
3 friends, correct?

4 **A.** Yes.

5 **Q.** In fact, in *Where the Queer Zone Meets the Asian Zone*, you
6 stated, quote:

7 "It was a wedding party that far exceeded our
8 wildest imaginations. It seems to serve
9 another purpose, too, the melding of our
10 extended family and friends. Our respective
11 families, already so supportive of us,
12 suddenly transformed their relationships to
13 each other to reflect the more intimate
14 relative status."

15 So the fact is, even though your particular marriage
16 certificate that you received from Mayor Newsom was
17 invalidated, that celebration still served the very purpose
18 that you stated in this quote I just read; is that correct?

19 **A.** Well, our families saw us as married. But there was a
20 cloud over it. One week earlier we had learned in the news --
21 it was national news -- that our marriage was no longer really
22 a marriage anymore.

23 And so we went ahead with our party. But everybody
24 there knew that, you know, it had been invalidated, as well.
25 And, in fact, Lia's father, Judge Shigemura, said in his -- in

1 his affirmation vows, for us to repeat, that he recognized
2 that, but that he said, "Courts sometimes make mistakes." And
3 he said that as a retired judge.

4 And so within the whole ceremony there was definitely
5 a recognition -- the ceremony and the celebration, there was a
6 recognition that there was a bittersweet element to it, as
7 well.

8 **Q.** But none of that kept you from saying that it was a
9 wedding party that far exceeded your wildest imagination?

10 **A.** Yes, right. That's right. And may I also say --

11 **Q.** Well, if you would like --

12 **A.** Okay.

13 **Q.** -- your attorney can simply ask you questions, to help you
14 elaborate, if you like.

15 **A.** Okay.

16 **Q.** I should say, if he likes.

17 **A.** Okay.

18 **Q.** And you stated, quote, that the wedding ceremony and
19 banquet represented the union of your and Ms. Shigemura's
20 family; is that correct?

21 **A.** Yes, symbolically, it did.

22 **MR. RAUM:** I don't have any further questions, Your
23 Honor.

24 **THE COURT:** Very well. Any redirect, Mr. Chou?

25 **MR. CHOU:** Very briefly.

DIRECT EXAMINATION

1
2 **BY MR. CHOU:**

3 **Q.** Just two questions. When Mr. Raum interrupted you, you
4 were going to continue saying something. Do you want to
5 finish?

6 **A.** Yes. I'd like to say, in talking about the fact that our
7 families came together even though our marriage had been
8 invalidated, it was really the difference, night and day,
9 between being domestic partners and being married. Even
10 symbolically married, even though it had been overturned.

11 It was as though we had tasted -- that we had been
12 prisoners in a closet; that we had been deprived of something;
13 that we had been told to sit in the back of the bus and accept
14 this kind of lesser status of domestic partners.

15 And, suddenly, within those four months, four months,
16 February to -- six months between the time we were married to
17 the time that we had -- our marriage was invalidated, that we
18 had a taste that we were married.

19 And that during that six months, our families really
20 had a transformational moment that I think did transcend the
21 sadness that we felt. But it didn't take away from the loss.
22 We still recognized we lost something very important. But in
23 terms of their relating to each other, it was quite a different
24 way from when we had domestic partnership.

25 You know, the idea that we would be families, that

1 we -- for a brief moment in time we experienced a feeling of --
2 of -- of what equality is, what -- instead of having to go to
3 the fountain that is just for gay and lesbian people, here we
4 could go to the fountain that formerly said heterosexuals only.
5 And we tasted the water that was sweeter there. And our
6 families experienced that.

7 And so, yes, the -- our -- at the time of our wedding
8 celebration, our marriages were legally invalidated. But we
9 had already begun a process of our families coming together in
10 a way that did not happen in the prior 11 years that we had
11 been domestic partners.

12 **MR. CHOU:** Thank you. Nothing further, Your Honor.

13 **THE COURT:** Very well, Ms. Zia. Thank you for your
14 testimony. You may step down.

15 I believe that should conclude our testimony today,
16 Counsel. And we're on the eve of the 3-day weekend, which I
17 trust you all will enjoy.

18 Are there any matters that we want to or need to take
19 up before we adjourn?

20 Mr. Boutrous.

21 **MR. BOUTROUS:** No, Your Honor.

22 **THE COURT:** Mr. Thompson.

23 **MR. THOMPSON:** Yes, Your Honor. One thing.

24 I may be ill-advised in the premises, but I think the
25 courts' ECF system may be going down for the weekend. And your

1 deputy is indicating yes.

2 We just didn't know if the Court would like us to
3 send -- obviously, we'll serve any filings that may come up
4 over the weekend, on plaintiffs.

5 But is there an e-mail address for the Court that we
6 should copy, to keep --

7 **THE COURT:** Can you hand deliver -- let me ask the
8 clerk how we're going to deal with this.

9 **THE CLERK:** E-mail will also be down, so we need to
10 get personal e-mails from them.

11 **THE COURT:** Well, I would suggest you spend a restful
12 weekend, Mr. Thompson.

13 (Laughter)

14 **MR. THOMPSON:** Submitted. Thank you, Your Honor.

15 **THE COURT:** Anything further? Very well. 8:30 a.m.
16 on Tuesday morning, Counsel.

17 **MR. BOUTROUS:** Thank you.

18 **MR. THOMPSON:** Thank you.

19 (Counsel thank the Court.)

20 (At 4:18 p.m. the proceedings were adjourned until
21 Tuesday, January 19, 2010, at 8:30 a.m.)

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I N D E XPLAINTIFFS' WITNESSESPAGEVOL.**LAMB, MICHAEL**

(SWORN)

1003

5

Direct Examination by Mr. McGill

1003

5

Cross Examination by Mr. Thompson

1044

5

Cross Examination Resumed by Mr. Thompson

1129

5

Redirect Examination by Mr. McGill

1185

5

ZIA, HELEN

(SWORN)

1203

5

Direct Examination by Mr. Chou

1208

5

Cross Examination by Mr. Raum

1238

5

Direct Examination by Mr. Chou

1251

5

I N D E X

	<u>PLAINTIFFS' EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
3	600			1231	5
	753, 757, 762, 763, 768, 1025, 1032			1029	5
4	766			1027	5
	778, 1066, 1111, 1116			1019	5
5	1026			1053	5
	1040, 2299			1192	5
6	1055, 1101, 1115, 1396			1021	5
	1072			1023	5
7	1088			1022	5
	1093, 1384			1024	5
8	2199			1243	5
	2266			1016	5
9	2327			1009	5
	2350			1031	5
10	2548			1197	5

	<u>DEFENDANTS' EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
13	103			1082	5
	792			1016	5
14	2424			1024	5

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CERTIFICATE OF REPORTERS

We, KATHERINE POWELL SULLIVAN and DEBRA L. PAS,
Official Reporters for the United States Court, Northern
District of California, hereby certify that the foregoing
proceedings in C 09-2292 VRW, **Kristin M. Perry, et al. vs.
Arnold Schwarzenegger, in his official capacity as Governor of
California, et al.**, were reported by us, certified shorthand
reporters, and were thereafter transcribed under our direction
into typewriting; that the foregoing is a full, complete and
true record of said proceedings at the time of filing.

_____/s/ Katherine Powell Sullivan

Katherine Powell Sullivan, CSR #5812, RPR, CRR
U.S. Court Reporter

_____/s/ Debra L. Pas

Debra L. Pas, CSR #11916, RMR CRR
U.S. Court Reporter

Saturday, January 16, 2010