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Adoptive Families Headed by Gay or Lesbian Parents: A Threat . . . Or Hidden Resource?

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ADOPTIVE FAMILIES HEADED BY GAY OR LESBIAN
PARENTS: A THREAT . . . OR HIDDEN RESOURCE?

Scott D. Ryan and Scottye Cash***

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I. INTRODUCTION

Adoption is the social and legal process whereby a permanent parent-child relationship is established between persons not typically related by birth as a result of the inability or unwillingness of the birth parents to care

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for the child.¹ Since the first enactment of adoption laws in the United States, practice has evolved to meet the changing demands of both the children waiting for adoption and the potential adoptive families. Until the 1960s, adoptions were predominantly engaged in by infertile, Caucasian couples wishing to anonymously and confidentially assume parental responsibilities for healthy infants.² However, by the 1970s and 1980s, these adoption types were no longer the norm because the proportion of racial/ethnic minority children and children possessing significant emotional, physical, or mental impairments had grown dramatically.³ By 1994, approximately 50,000 children with special needs were available for adoption in the United States, with estimates for the future growing to more than 85,000 children.⁴ Since then, the Child Welfare League of America has increased the estimate to more than 130,000 children — exceeding their own dire predictions.⁵ Currently, there are tens of thousands more children available for adoption than there are families who are willing to adopt.⁶

Family constellations are changing, and adoption experts have been asking for a more flexible interpretation of the word “family.”⁷ However, given the symbolism in which the word “family” is embedded, it is not surprising that such a request has encountered heavy resistance.⁸ In fact, Emile Durkheim⁹ argued that the societal majority responds to deviance

1. *See generally* SUSAN WHITELAW DOWNS ET AL., *CHILD WELFARE AND FAMILY SERVICES: POLICIES AND PRACTICE* (6th ed. 2000) (providing comprehensive introduction to child and family welfare policies and practices in the United States).

2. *Id.*

3. *Id.*; *see generally* JAMES A. ROSENTHAL & VICTOR K. GROZE, *SPECIAL-NEEDS ADOPTION: A STUDY OF INTACT FAMILIES* (1992) (reporting results of a large-scale survey of families who adopt children with “special needs,” such as older children, minority children, handicapped children, or multiple siblings).

4. CHILD WELFARE LEAGUE OF AMERICA, *CHILDREN’S LEGISLATIVE AGENDA* (1994).

5. Child Welfare League of America, National Data Analysis System, at <http://ndas.cwla.org> (last visited July 21, 2004).

6. *Id.*

7. *See* DEVON BROOKS ET AL., *CONSIDERATIONS RELATING TO THE PLACEMENT OF CHILDREN IN GAY/LESBIAN FOSTER AND ADOPTIVE HOMES* (1996); Gerald P. Mallon, *Gay Men and Lesbian Parents*, 11 *J. GAY & LESBIAN SOC. SERVICES* 1, 1-22 (2000); Scott D. Ryan, *Examining Social Workers’ Placement Recommendations of Children with Gay and Lesbian Adoptive Parents*, 81 *FAMILIES IN SOC’Y* 517, 517-28 (2000); Scott D. Ryan et al., *Coming Out of the Closet: Opening Agencies to Gay and Lesbian Adoptive Parents*, 49 *SOC. WORK* 85, 85-96 (2004).

8. ROBERT H. KNIGHT & DANIEL S. GARCIA, *HOMOSEXUAL PARENTING: BAD FOR CHILDREN*, *BAD FOR SOCIETY* (1994).

9. Emile Durkheim (1858-1917) is seen as “the model for the modern scientifically oriented sociologist.” GEORGE RITZER, *SOCIOLOGICAL BEGINNINGS: ON THE ORIGINS OF KEY IDEAS IN SOCIOLOGY* 40-41 (1994) (emphasis in original). Durkheim argued that there are social forces that

from the “norm”¹⁰ in a way that ensures that the “sacredness and uncontested nature”¹¹ not be “permanently unsettled.”¹² Therefore, “they [the majority] must reinforce themselves by mutual assistance that they are always agreed.”¹³ Unfortunately, the casualties of maintaining the status quo are the children who can ill afford to remain in unchanging situations.

By failing to expand the definition of family, state agencies will be unable to meet the demand for adoptive homes, thereby forcing the state to bear the costs of maintaining children in foster care. However, the most unfortunate effect of excluding viable placement resources is that children will languish longer in foster care. David Fanshel and Eugene Shinn concluded that it is not enough that the child be placed in a foster home that offers the child family-like care; nor is it sufficient that a child be afforded a placement situation in which only the child’s basic needs are being fulfilled.¹⁴ Instead, they posit the creation of new criterion that would be utilized to assess the adequacy of the foster situation: namely, whether a child can be assured permanency in his living arrangements and continuity of relationship.¹⁵ As the evidence illustrates, gay men and lesbians can meet this challenge. Only three states — Florida, Mississippi, and Utah — explicitly prohibit gay men and lesbians from becoming adoptive parents.¹⁶ All other states rely on statutes to make case-by-case determinations regarding eligibility to adopt. Therefore, gay men and lesbians seeking to adopt children need not actively misrepresent their sexual orientation in most states,¹⁷ which assists them in becoming adoptive single parents. However, gay and lesbian couples continue to face barriers to adoptive family formation because only nine states and the District of Columbia permit adoptions by same-sex couples.¹⁸ This discrimination allows society to continue its biased practices and attitudes

are “external to” and “coercive over” the individual. As such, deviance could be controlled. However, he also posited the functionality of such deviance in a society; deviance played a role in clarifying rules, uniting groups, promoting social change, and acting as a safety valve.

10. JOSEPH R. GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* (1963).

11. *Id.* at 112.

12. *Id.* at 112-13.

13. *Id.*

14. See DAVID FANSHIEL & EUGENE B. SHINN, *CHILDREN IN FOSTER CARE: A LONGITUDINAL INVESTIGATION* (1978).

15. See generally *id.*

16. FLA. STAT. ch. 63.042 (3) (2004); MISS. CODE ANN. § 93-17-3 (2004); *Bowen v. Bowen*, 688 So. 2d 1374 (Miss. 1997); UTAH CODE ANN. § 78-30-1 (2004).

17. HUMAN RIGHTS CAMPAIGN, *THE STATE OF THE FAMILY: LAWS AND LEGISLATION AFFECTING GAY, LESBIAN, BISEXUAL AND TRANSGENDER FAMILIES* (2002).

18. *Id.*

against those who do not remain silent. Those who desire to adopt as a couple rather than as an individual are faced with obstacles that heterosexuals do not encounter.¹⁹ Bias persists despite evidence that demonstrates success in adoption is not related to family form. Rather, success in adoption depends on the balance of resources and stressors assisting or affecting the family.²⁰

Although some of the legal and social barriers prohibiting gay men and lesbians from adopting children are receding, numerous hurdles still obstruct the way. This Article critically examines the theoretical framework used in the placement process — the “best-interest-of-the-child” decision-making model. In addition, this Article presents and discusses findings from a recently completed study of homosexual adoptive parents.

II. BACKGROUND ON CHILD WELFARE

Since the inception of child welfare, society has struggled with issues such as single parents (particularly men) inter/trans-racial families, and now adoptions by gay men and lesbians.²¹ The practice of child welfare agencies has been slow to change over time, often maintaining the status quo. As a result, minorities, including gay men and lesbians, have often met various barriers to becoming foster and adoptive parents.²² These barriers stem from the view that homosexuality is a disease or a sin that undermines “the state’s legitimate interest in the promotion of marriage.”²³

Prejudicial behavior against gay men and lesbians has been socially sanctioned for thousands of years and, arguably, continues today.²⁴ However, prior to the 1970s there appears to be an almost total absence of

19. See generally WENDELL RICKETTS, *LESBIANS AND GAY MEN AS FOSTER PARENTS* (1991).

20. VICTOR K. GROZE, *SUCCESSFUL ADOPTIVE FAMILIES: A LONGITUDINAL STUDY OF SPECIAL NEEDS ADOPTION* (1996).

21. BROOKS ET AL., *supra* note 7; KNIGHT & GARCIA, *supra* note 8; Creasie Finney Hairston & Vicki Gardine Williams, *Black Adoptive Parents: How They View Agency Adoption Practices*, 70 J. CONTEMP. SOC. WORK 534, 534-38 (1989); Susan B. Murray, “We All Love Charles”: *Men in Child Care and the Social Construction of Gender*, 10 GENDER & SOC. 368, 368-85 (1996); Pereta Rodriguez & Alan S. Meyer, *Minority Adoptions and Agency Practices*, 35 SOC. WORK 528, 528-31 (1990).

22. Hairston & Williams, *supra* note 21, at 534-38; Rodriguez & Meyer, *supra* note 21, at 528-31.

23. BROOKS ET AL., *supra* note 7, at 25; see also VERN L. BULLOUGH & BONNIE BULLOUGH, *SIN, SICKNESS AND SANITY: A HISTORY OF SEXUAL ATTITUDES* (1977).

24. H. MONTGOMERY HYDE, *THE LOVE THAT DARED NOT SPEAK ITS NAME: A CANDID HISTORY OF HOMOSEXUALITY IN BRITAIN* (1977).

empirical research specifically addressing this phenomenon. This may be due to the American Psychological Association's previous classification of homosexuality as a mental disorder.²⁵ Since the nineteenth century, many psychiatrists, psychologists, social workers, and other allied health professionals have historically viewed homosexuality as a neurotic disorder that could be treated with therapy.²⁶ In late 1973, this position changed when the American Psychological Association removed homosexuality from its list of mental disorders and issued policy statements indicating that homosexuality should not be the sole variable considered in adoption placement.²⁷ The American Psychiatric Association, the National Association of Social Workers, and the American Academy of Pediatrics have all adopted similar positions regarding the mental status of homosexuals and child placement.²⁸

Economists, sociologists, psychologists, and other scholars have developed numerous theories exploring the bias against homosexual adoption. This research addresses all levels (i.e., macro, mezzo, and micro), and includes psychodynamic/personality theory, exploitation theory, scapegoat theory, and critical theories.²⁹ However, when considering the placement of children in a specific family, the field of child welfare has traditionally employed the "best-interest-of-the-child" decision-making model. This model, within the context of placement with gay or lesbian adoptive parents, is discussed below.

With the exception of Florida, Mississippi, and Utah, all other states allow social workers, judges, and other involved parties to apply the "best-interest-of-the-child" standard in adoption proceedings.³⁰ Child welfare agencies must make choices between families when considering the

25. American Psychological Association, Policy Statements on Lesbian, Gay, and Bisexual Concerns: Discrimination Against Homosexuals, available at <http://www.apa.org/pi/lgbpolicy/against.html> (last visited Mar. 10, 2004).

26. Jeannine Gramick, *Homophobia: A New Challenge*, 28 SOC. WORK 137, 137-41 (1983).

27. American Psychological Association, *supra* note 25.

28. American Psychiatric Association, *Position Statement on Discrimination in Selection of Foster Parents*, 143 AM. J. PSYCHIATRY 1506 (1986); National Association of Social Workers, Code of Ethics of the National Association of Social Workers § 4.02, available at <http://www.socialworkers.org/pubs/code/code.asp> (last visited Mar. 10, 2004); American Academy of Pediatrics, Coparent or Second-Parent Adoption by Same-Sex Parents, available at <http://www.lmnetwork.org/images/pdfs/2pa.pdf> (last visited Mar. 10, 2004).

29. GORDON W. ALLPORT, THE NATURE OF PREJUDICE (1954).

30. RICKETTS, *supra* note 19.

placement of a child.³¹ To that end, Trudy Bradley³² contends that research suggests that through “practice wisdom,”³³ a subjective model of “goodness” is employed.³⁴ When employing the “best interest” decision-making model to the placement process, research suggests that considerations surrounding the suitability of gay men and lesbians as adoptive parents focus on two central issues. The first consideration examines the mental health, parenting skills, and relationship quality/stability of the prospective adoptive parents. The second issue focuses on the impact to the adopted child, including psychological/psycho-sexual development, threat of sexual molestation, and social stigma and peer relationships. These research findings are combined with studies examining permutations of the various factors and considerations listed.³⁵

Under the “best interests” model, the decision-making process consists of three steps. First, it involves assessing each gay or lesbian prospective

31. The authors of this Article more accurately mean a “child-placing agency,” which is a public or private placing of children for adoption from any source (domestic private, domestic public, or international) with waiting families. Child welfare is more oriented to public foster care.

32. Trudy Bradley is an early authority on this topic; however, the findings cited are consistent with other, more recent articles. See, e.g., Stacey Platt & Anita Weinberg, *The Question of Best Interest of the Child in Failed Adoptions: A Case Study*, 4 ADOPTION Q. 57, 57-68 (2001). For example, Stacey Platt and Anita Weinberg write that, “In its worst light, the best-interest custody law is nothing more than an attempt to protect the interests of would-be adoptive parents.” *Id.* at 63. These authors further note that, “Under Illinois’ Baby Richard Law, the court is required to consider best interests in making a custody determination, and must take into account certain factors, including: the child’s wishes; the interaction and interrelationship of the child with parents, siblings and any other person . . . the child’s adjustment to the home, school and community.” *Id.* As such, since even the best research findings cannot be applied conclusively to any one child, and it is unknown which combination of these factors will result in the best long-term outcome for any specific child, a subjective model of “goodness” is employed — as posited by Bradley several decades before.

33. Practice wisdom, as defined by Robert Barker in *The Social Work Dictionary* is, “A term often used . . . to describe the accumulation of information, assumptions, ideologies, and judgments that have seemed practically useful in fulfilled expectations of the job.” ROBERT BARKER, *THE SOCIAL WORK DICTIONARY* 123 (1987).

34. TRUDY BRADLEY, *AN EXPLORATION OF THE CASEWORKERS’ PERCEPTIONS OF ADOPTIVE APPLICANTS* (1966).

35. KNIGHT & GARCIA, *supra* note 8; ANN SULLIVAN, *Policy Issue, in ISSUES IN GAY AND LESBIAN ADOPTION: PROCEEDINGS OF THE FOURTH ANNUAL PIERCE-WARWICK ADOPTION SYMPOSIUM 1-9* (Ann Sullivan ed., 1995); David Cramer, *Gay Parents and Their Children: A Review of Research and Practical Implications*, 64 J. COUNSELING & DEV. 504, 504-07 (1986); Patricia J. Falk, *Lesbian Mothers: Psychological Assumptions in Family Law*, 44 AM. PSYCHOLOGIST 941, 941-47 (1989); Richard Green, *The Best Interests of the Child With a Lesbian Mother*, 10 BULL. AM. ACAD. PSYCHIATRY & L. 7, 7-15 (1982); Charlotte J. Patterson, *Child of Lesbian and Gay Parents*, 63 CHILD DEV. 1025, 1025-42 (1992).

adoptive parent's mental health status, parenting skills, and relationship quality/stability. Second, it involves evaluating each child's psychological and psycho-sexual developmental needs, the threat of sexual molestation of the child by the prospective adoptive parent, and the subsequent stigmatization and impact on peer relationships due to the placement of the child with a gay or lesbian parent. And third, it involves engaging in the process of matching a prospective adoptive parent with an available child based on the parent's strengths and the child's needs. Agencies conduct the placement process with the goal of creating a successful, lasting family.

No single study has examined the interrelationship among the factors listed. According to Bradley, operationalization within this specific model is a highly subjective process that "reflects ourselves or those we aspire to be most like or wish we had as parents."³⁶ Nevertheless, various attempts have been made to operationalize and measure the factors identified above. This Article performs an empirical examination of these factors.

A. *Mental Health of Homosexual Adoptive Parents*

Does a gay or lesbian adoptive parent have a diagnosable mental disorder? Researchers Richard Green, Jane Mandel, Mary Hotvedt, James Gray, and Laurel Smith examined the overall psychological health of lesbian mothers.³⁷ The researchers operationalized mental health through the use of standardized questionnaires such as the Bem Sex-Role Inventory,³⁸ an adjective checklist and the Jackson PRF-E.³⁹ Their findings showed that lesbian mothers scored equal to or higher than heterosexual mothers on all indicators of mental health.⁴⁰ Nevertheless, child welfare agencies continue to use the mental health factor in adoption decisions, despite the American Psychological Association's position that "there is not one objective study, by any researcher, in any country, that substantiates the theory of homosexual pathology . . . [and that]

36. BRADLEY, *supra* note 34, at 657.

37. Richard Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 ARCHIVES SEXUAL BEHAV. 167, 167-84 (1986).

38. The Bem Sex-Role Inventory is an instrument that contains 60 personality characteristics, rated on a scale from 1 (never or almost never true) to 7 (always or almost always true), to determine the respondent's degree of psychological androgyny.

39. This form is composed of 352 true-false statements focusing on normal personality functioning.

40. Green et al., *supra* note 37.

homosexuality falls within the normal range of psychological functioning."⁴¹

B. Parenting Skills of Homosexual Adoptive Parents

The parenting skills of homosexual adoptive parents have been operationalized through the use of the Iowa Parent Behavior Inventory,⁴² which examines an individual's involvement with children, including limit-setting, responsiveness, reasoning guidance, and intimacy.⁴³ Gay fathers were found to be more accepting of paternal nurturance, to be less traditional in their approach to parenting, to have positive relationships with their children, and to try harder to create stable home lives and positive relationships than heterosexual fathers.⁴⁴ An earlier study had similar findings among lesbian mothers.⁴⁵

C. Relationship Quality and Stability of Homosexual Adoptive Parents

The quality and stability of homosexual adoptive parents' relationships has been operationalized by examining the length of monogamous relationships and the number of partners. One study completed in the 1960s by the Kinsey Institute,⁴⁶ found that 71% of gay men in the sample were living with a partner. Neil Tuller, in 1978, determined that almost 100% of the lesbian couples in his study had entered into "marriages."⁴⁷

41. RICKETTS, *supra* note 19, at 122.

42. The Iowa Parent Behavior Inventory is an instrument designed to measure parental behavior in relation to the child. The manual for this instrument can be purchased from the publisher at Iowa State University Research Foundation, Inc., Child Development Department, 101 Child Development Building, Research Laboratories, Ames, IA 50011.

43. Jerry J. Bigner & R. Brooke Jacobsen, *Parenting Behaviors of Homosexual and Heterosexual Fathers*, in *HOMOSEXUALITY AND THE FAMILY* 173, 173-86 (Frederick W. Bozett ed., 1989).

44. *Id.*

45. Judith A. Miller et al., *The Child's Home Environment for Lesbian vs. Heterosexual Mothers: A Neglected Area of Research*, 7 *J. HOMOSEXUALITY* 49, 49-56 (1981); Mildred D. Pagelow, *Heterosexual and Lesbian Single Mothers: A Comparison of Problems, Coping, and Solutions*, 5 *J. HOMOSEXUALITY* 180, 180-204 (1980).

46. Debra L. Tievsky, *Homosexual Clients and Homophobic Social Workers*, 2 *J. HOMOSEXUALITY* 51, 51-62 (1988).

47. Neil R. Tuller, *Couples: The Hidden Segment of the Gay World*, 5 *J. HOMOSEXUALITY* 331, 331-43 (1978). More recently, a 2000 study estimated that 2.5% of the population is comprised of gay men, and 1.4% lesbian women. Of these, the partnership rate for gay men and lesbians are 28.4% and 44.1% respectively.

D. Psychological/Psycho-Sexual Development of the Adopted Child

Studies have shown no significant difference in the psychological or psycho-sexual development of children adopted by gay parents compared with children adopted by heterosexual parents. Utilizing the Coopersmith Self-Esteem Inventory,⁴⁸ Sharon L. Huggins found that self-esteem scores of adolescent children from divorced lesbian and heterosexual mothers had no statistically significant difference.⁴⁹ Fiona Tasker and Susan Golombok examined the psychological adjustment of children raised by either lesbian or heterosexual mothers using the State-Trait Anxiety Inventory and the Beck Depression Inventory.⁵⁰ No significant differences were found on either measure. Psycho-sexual development of children raised by homosexual parents has been analyzed by numerous measures that examine gender identity,⁵¹ gender-role behavior,⁵² and sexual orientation.⁵³ The results demonstrate that children raised by gay men and lesbians score

48. The Coopersmith Self-Esteem Inventory was developed to assess attitudes toward oneself in both general and specific contexts. Respondents state whether a set of generally favorable or unfavorable aspects of a person are "like me" or "not like me." Dan Black et al., *Demographics of the Gay and Lesbian Population in the United States: Evidence from Available Systematic Data Sources*, 37 *DEMOGRAPHY* 139, 139-54 (2000). In addition, approximately 57% of American households have either married or unmarried couples residing in them. Of those that are unmarried (since, as of the Census data collection time period there were no jurisdictions allowing same-sex marriage), almost 11% of such households were comprised of same-sex partners. While it is unknown exactly what percentage of the LGBT population this number may represent, it is clear there are many hundreds of thousands of such households currently within the United States. Tavia Simmons & Martin O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (2003). Mind Garden, which publishes a range of psychological instruments, offers the Coopersmith Self-Esteem Inventories (CSEI) at <http://www.mindgarden.com/index.htm>.

49. SHARON L. HUGGINS, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, in *HOMOSEXUALITY AND THE FAMILY* 123-35 (F.W. Bozett ed., 1989).

50. The State-Trait Anxiety Inventory measures the temporary condition of anxiety (state), as well as forms of longer-standing anxiety (trait). It includes subscales on qualities such as apprehension, tension, nervousness and worry. The Beck's Depression Inventory is a 21-item test that purports to measure the presence and degree of depression in the respondent. Fiona Tasker & Susan Golombok, *Adults Raised as Children in Lesbian Families*, 65 *AM. J. ORTHOPSYCHIATRY* 203, 203-15 (1995).

51. The measures are the Holtzman Inkblot Technique, Human Figure Drawing, and Draw-A-Person Test.

52. The measures include Block's Toy Preference Test and semi-structured playroom interviews.

53. This information was received through standardized interviews and questionnaires.

within the "normal" range of psychological and psycho-sexual development.⁵⁴

E. *Threat of Sexual Molestation to Adopted Children*

Is a gay or lesbian parent predisposed to child molestation? Brian Miller, author of *Gay Fathers and their Children*, examined this issue through in-depth interviews with gay fathers, their children, and the children's mothers. He found that none of the fathers had ever molested their children.⁵⁵ In addition, another study examining the risk for sexual abuse by homosexual parents found that, "a child's risk of being molested by his or her relative's heterosexual partner is over 100 times greater than by someone who might be identifiable as being homosexual, lesbian, or bisexual."⁵⁶

F. *Social Stigma and Peer Relationships of Adopted Children with Gay Adoptive Parents*

The social stigma and peer relations experienced by children with gay adoptive parents has been analyzed by examining children's experiences with peers (i.e., popularity, teasing, and bullying) through structured interviews and surveys.⁵⁷ Children were interviewed about such topics as play preferences, friendships, and thoughts about their life as an adult.⁵⁸ The results showed that there were no significant differences between children of homosexual or heterosexual parents on issues of peer relationships.

54. Green et al., *supra* note 37; Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 AM. J. ORTHOPSYCHIATRY 536, 536-44 (1981); Martha Kirkpatrick et al., *Lesbian Mothers and Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 545-51 (1981).

55. Brian Miller, *Gay Fathers and Their Children*, 28 FAM. COORDINATOR 544, 544-52 (1979).

56. Carole Jenny et al., *Are Children at Risk for Sexual Abuse by Homosexuals?*, 94 PEDIATRICS 41, 44 (1994).

57. Green et al., *supra* note 37; Tasker & Golombok, *supra* note 50.

58. The interviews covered such topics as past and present family relationships, peer relationships (e.g., ever been teased or bullied), sexual orientation (e.g., attractions, types of relationships) and psychological adjustment (e.g., levels of anxiety and depression, sought help from professionals about psychosomatic indicators of stress). Each of these items was subsequently examined across whether the respondent lived with a homosexual or heterosexual parent using bivariate analyses.

G. Analysis of the Decision-Making Model

In evaluating the “best-interest-of-the-child” decision-making model, it is useful to employ established criteria that can compare the relative strengths and weaknesses within the model. Thus, when critiquing any theory it is important to examine those components discussed by Robert Dubin⁵⁹ and Paul Davidson Reynolds:⁶⁰ empirical testability, explanatory power, internal consistency, parsimony, and replicability. The “best interest” decision-making model is a case-by-case approach that attempts to match individual adults and children according to highly subjective criteria.⁶¹ Therefore, it does not easily lend itself to empirical testability. Although each factor used to determine the best interests of the child has been studied individually, no study has examined the interaction of the factors within the model. Additionally, no study has examined other environmental factors, such as peer and reference model influences, which may impact the social worker’s decision. As a result, there is little internally consistent evidence to demonstrate which factors, if any, will influence the placement recommendation.⁶²

This model does not possess adequate explanatory power, and other, more plausible, explanations for placement recommendations and successful outcomes exist.⁶³ In addition, different decision makers can apply the exact same independent variables and return drastically different outcomes.⁶⁴ Diane Raymond illustrates the difficulty with the “best interest” model in the case of two lesbians who each sued their ex-husbands for custody of their children.⁶⁵ Each woman’s case was heard by a different judge. Based entirely upon the “best interest” factors, one judge awarded custody to the mother while the other did not. Since the “best

59. ROBERT DUBIN, *THEORY BUILDING* (1978).

60. PAUL D. REYNOLDS, *A PRIMER IN THEORY CONSTRUCTION* (1971).

61. PATRICIA L. PASICK & ROBERT S. PASICK, *The Developing Child*, in *A HANDBOOK OF CHILD WELFARE: CONTEXT, KNOWLEDGE, AND PRACTICE* 178-92 (Joan E. Laird & Ann Hartman eds., 1985); Tom Reilly, *Gay and Lesbian Adoptions: A Theoretical Examination of Policy-Making and Organizational Decision Making*, 23 *J. SOC. & SOC. WELFARE* 99 (1996).

62. BROOKS ET AL., *supra* note 7.

63. RICHARD P. BARTH & MARIANNE BERRY, *ADOPTION AND DISRUPTION: RATES, RISKS AND RESPONSES* (1988); Richard P. Barth et al., *Predicting Adoption Disruption*, 33 *SOC. WORK* 227, 227-33 (1988).

64. DIANE RAYMOND, “*In the Best Interests of the Child*”: *Thoughts on Homophobia and Parenting*, in *HOMOPHOBIA: HOW WE ALL PAY THE PRICE* 114-30 (Warren J. Blumenfeld ed., 1992).

65. *Id.*

interest” analysis clearly lacks precise standards, social workers and judges determine the fate of children in custody and adoption cases.⁶⁶

The complexity evident in this decision-making model does not lend itself to a simple explanation of the placement process. In fact, there is no predictability as to which explanatory variable, or combination of variables, impacts the social worker’s adoption recommendation under which circumstances. As such, placement decisions are, by their very nature, individually-based. To that end, as is current practice, prospective adoptive families are assessed on a case-by-case basis, regardless of the applicant’s sexual orientation — which has been the plea of many advocates of adoptions by gay men and lesbians.⁶⁷ To further address the factors frequently considered in adoption decisions this Article presents the findings from a study of gay men and lesbians who are currently adoptive parents, including several homosexual parents who have adopted and reside in those states forbidding such adoptive matches. Also included in the discussion are the experiences of the homosexual adoptive parents and their adopted children’s characteristics and experiences.

III. METHODOLOGY

The design for this study was a cross-sectional survey.⁶⁸ The survey was administered to gay and lesbian individuals and couples throughout the United States and one in Canada. The cross-sectional design provides a multidimensional perspective on these families’ demographics, needs, strengths, and sources of support. It does not allow for comparisons over time.

A. Study Sample

The study was advertised through a variety of media to maximize the participation of individuals throughout the country. Newspaper ads were placed in several metropolitan gay and lesbian weekly newspapers,

66. ROBERT HOROWITZ & HIROMI MARUYAMA, *Legal Issues, in ISSUES IN GAY AND LESBIAN ADOPTIONS: PROCEEDINGS OF THE FOURTH ANNUAL PIERCE-WARWICK ADOPTION SYMPOSIUM*, *supra* note 35, at 11-20.

67. See American Psychological Association, *supra* note 25; American Psychiatric Association, *supra* note 28, at 1506; National Association of Social Workers, *supra* note 28, § 4.02; American Academy of Pediatrics, *supra* note 28.

68. A cross-sectional study is “[a] study that takes place at a single point in time.” WILLIAM TROCHIM, *THE RESEARCH METHODS KNOWLEDGE BASE* 346 (2d ed. 2001). A cross-sectional study is in contrast to a longitudinal study, which takes place over time.

adoption magazines, gay parenting magazines, and a designated web site. Additionally, fliers were distributed to both gay and lesbian groups and adoption organizations, and through a gay and lesbian adoptive-parent listserv. The sample was non-random. Therefore, it cannot be generalized to the larger gay and lesbian adoptive parent population. Rather, the findings provide information only about the sample. A non-random sample was used because of the difficulty of gaining access to this population.

B. *Study Measures*

The 28-page survey assessed a variety of domains, including information on the demographics of the parents, children, adopted child of focus (i.e., the oldest adopted child in the home), the family, gay and lesbian community involvement, “out” status, adoption process and experiences, the adoption timeline, adoption costs and subsidy, the pre- and post-adoptive experiences of the child, overall adoption experience, satisfaction with services, family dynamics, social support, parent and adopted child of focus relationship, and the birth family of the adopted child of focus. Several psychometric assessment instruments, including the Family Functioning Style Scale,⁶⁹ the Parent as a Teacher Inventory,⁷⁰ the Child Behavior Checklists (ages 1½ to 5 years and 6 to 18 years),⁷¹ and the Behavioral and Emotions Rating Scale also were included.⁷² While all of these measures were included in the survey, only a sample of the findings that relate to the myths and stereotypes of this population are presented in this Article.

C. *Data Collection Process*

As mentioned previously, the study was advertised through a number of media to reach the largest possible number of individuals and couples who had adopted a child. A toll-free telephone number and an e-mail address were provided so that potential participants could contact the research staff. Once contact was initiated by the potential participants through either telephone or mail, one of the researchers would contact the parent to describe the purpose of the study and its procedures. If the parent

69. ANGELA G. DEAL ET AL., FAMILY FUNCTION STYLE SCALE, IN ENABLING AND EMPOWERING FAMILIES: PRINCIPLES AND GUIDELINES FOR PRACTICE 179-84 (Carl J. Dunst et al. eds., 1988).

70. ROBERT D. STROM, PARENT AS A TEACHER INVENTORY (PAAT) (1984).

71. THOMAS M. ACHENBACH, MANUAL FOR THE CBCL/4-18 AND 1991 PROFILE (1991).

72. MICHAEL H. EPSTEIN & JENNIFER M. SHARMA, BEHAVIORAL AND EMOTIONAL RATING SCALE: A STRENGTH-BASED APPROACH TO ASSESSMENT (BERS) (1998).

wanted to participate, the researcher obtained his or her address. A cover letter, consent form, and survey were sent to all interested participants. Participating parents were encouraged to contact the researchers if they had any questions about the survey or the procedures. Two hundred and eighty-one surveys were sent to interested parents. A total of 183 surveys were returned, yielding a 65.1% response rate.⁷³

IV. STUDY RESULTS

A. Adoptive Parents Demographics

Table 1 provides basic information on the 183 families who completed the survey. The parents' ages ranged from 28 to 66 years old. The mean age of Parent 1⁷⁴ was 44 years old and the mean age of Parent 2 was 41 years old. A little more than half of the sample (54.5%) was female, and the ethnicity of the sample was predominately Caucasian (Parent 1, 91.5%; Parent 2, 90.6%). Overall, the sample was highly educated with nearly 80% of the sample possessing at least a bachelor's degree. Likewise, approximately 70% of the parents were employed full time. The religious backgrounds of the parents were fairly diverse, with a little more than one quarter of Parent 1 indicating that he or she was Protestant. A similar finding was present for Parent 2, with almost 24% indicating that he or she was Protestant. On the whole, a substantial percentage (Parent 1, 18.1%; Parent 2, 24.5%) indicated that they were spiritual. At the time of the study, almost 92% of the sample were partnered and had been partnered for an average of 11 years. The total household income ranged from \$20,000 to \$500,000; the average yearly income was \$110,667 with a standard deviation⁷⁵ of \$73,382.

Participants were asked to identify the type of community in which they resided. Almost half (44.4%) indicated that they lived in a large urban area, whereas 30% indicated that they lived in a suburban area. Fourteen percent indicated they lived in a small urban area, and only 11% indicated

73. According to Dillman, response rates that are 60% or higher constitute good response rates. DON A. DILLMAN, *MAIL AND TELEPHONE SURVEYS: THE TOTAL DESIGN METHOD* 20-33 (1978).

74. If there was more than one parent in the home, the older parent was identified as Parent 1.

75. Assuming a normal distribution, the standard deviation provides a reference to what percent of cases fall around the mean of the item, with 64% of respondents falling plus/minus one standard deviation from the mean, 95% falling plus/minus two standard deviations and 99% falling plus/minus three standard deviations.

they lived in a rural area. Fourteen percent of the sample indicated they were very involved in the Gay, Lesbian, Bisexual, and Transgendered (GLBT) community. Almost half of the sample (47.2%) indicated that they were somewhat involved, 32.6% indicated they were minimally involved, and 6.2% indicated they were not involved in the GLBT community at all.

Parents were asked to identify their level of being openly homosexual to their families; among the Parent 1 sample, 83% indicated they were out to all family members, 13.4% indicated they were out to most family members, and 3.7% indicated they were only out to a few family members. Among Parent 2 participants, 83% were out to all family members, 11.5% were out to most family members, 4.7% were out to only a few family members, and less than 1% were not out to any family members. Survey respondents were then asked how accepting their families were to them being homosexual. Among the Parent 1 respondents, almost half (46.7%) indicated they were entirely accepting, 35.2% indicated they were mostly accepting, 16.4% indicated that their families' acceptance level was mixed, and almost 2% indicated that their families were not very accepting. For Parent 2 respondents, there were 42.5% indicated their families were entirely accepting, 45.9% who indicated their families were mostly accepting, 6.8% indicated mixed levels of acceptance, 2.7% indicated their families were not very accepting, and finally, 2.1% indicated that they were no longer speaking with their families.

Lastly, parents were asked to identify what their relationship was to the adopted child of focus.⁷⁶ In some states or locales, the second parent is not legally recognized and, therefore, has no official title. To provide some measure of parent recognition, one response used the phrase "would be if I could, adoptive parent" and defined this term for the parents. For Parent 1, almost 85% identified themselves as the adoptive parent, 8% identified as "would be if I could, adoptive parent," fewer than 1% were the foster parent, 2.3% were the biological parent, fewer than 1% were another type of relative, and 4% checked the other category. Among the Parent 2 respondents, 63.7% identified themselves as the adoptive parent, almost 16% identified themselves as the "would be if I could, adoptive parent," fewer than 1% were the foster parent, approximately 6% were the biological parent, almost 2% were another type of relative, and 11.5% identified themselves as having another type of relationship.

76. The adopted child of focus was defined for the study as the oldest adopted child in the household.

Table 1: Adoptive Parent Characteristics

Question	Distribution	
	Parent #1	Parent #2
Age	44.51 (6.42)	41.14 (6.25)
Gender (Female)	54.5%	54.4%
Race/Ethnicity		
Caucasian	91.5%	90.6%
Hispanic	5.1%	5.0%
African American	3.4%	1.3%
Other	1.2%	6.3%
Education		
High School/GED	3.4%	0.6%
Some college or AA Degree	16.9%	19.5%
Bachelors degree	26.6%	30.2%
Masters degree	37.3%	33.3%
Doctoral degree	15.8%	16.4%
Employment		
Stay at home parent	16.4%	15.3%
Unemployed, but looking	2.3%	1.3%
Employed, part-time	11.3%	13.4%
Employed, full-time	70.1%	70.1%
Religion		
Catholic	10.2%	10.7%
Protestant	27.7%	23.9%
Unitarian	13.0%	13.2%
Jewish	8.5%	8.8%
Non-specific/spiritual	22.6%	27.6%
None	9.0%	7.0%
Other	9.0%	8.8%
Partnered (Yes)	91.7%	

Number of Years Partnered	11.33 (6.39)	
Total Household Income	\$110,667 (\$73,382)	
Type of Community where individual/ couple reside		
Large urban	44.4%	
Small urban	14.4%	
Suburban	30.0%	
Rural	11.1%	
Level of involvement in GLBT community		
Very involved	14.0%	
Somewhat involved	47.2%	
Minimally involved	32.6%	
Not involved at all	6.2%	
How "out" are you with your family		
Not out to any family	--	0.7%
Out to only a few family members	3.7%	4.7%
Out to most family members	13.4%	11.5%
Out to all family members	83.0%	83.1%
General level of acceptance of your being gay or lesbian		
No longer speaking	--	2.1%
Not very accepting	1.8%	2.7%
Mixed	16.4%	6.8%
Mostly accepting	35.2%	45.9%
Entirely accepting	46.7%	42.5%
Relationship to the Adopted Child of Focus		
Adoptive parent	84.5%	63.7%
"Would be if I could, Adoptive Parent"	8.0%	15.9%
Foster parent	0.6%	0.6%
Biological parent	2.3%	6.4%
Other relative	0.6%	1.9%
Other	4.0%	11.5%
NOTE: Mean (SD); %=Valid Percent		

B. Adoption Process

The next section of the Article, as shown in Table 2, identifies the average length of time families spent in each phase of the adoption process to completion. The average time from thinking about the adoption to finalizing it was approximately 3 years. From inquiry to finalization, the time was a little more than 2 years. For adoption training, the time was 1.87 years from beginning the training to finalization, whereas the average length of time from finishing training to finalization was 1.67 years. The average time from when the adopted child of focus was presented to the family to the time of finalization was less than one year (.91 years). Finally, placement of the adopted child of focus with the family to finalization occurred in about 6 months, which is consistent with most adoption practices. Parents also were asked if they were questioned about their sexual orientation during the adoption process. From the participants, 43% indicated that they were asked about sexual orientation during the adoption process. Eighty-five percent of those questioned disclosed their sexual orientation to those involved in the adoption process.

Table 2: Adoption Process

Question	Distribution
Timing of Adoption Process Steps to Finalization	(years)
Average time from thinking about adoption	3.07 (2.75)
Average time from inquiring about adoption	2.01 (2.75)
Average time from starting training	1.87 (0.97)
Average time from finishing training	1.67 (0.95)
Average time from starting the home study process . . .	1.39 (0.96)
Average time from having home study approved	1.26 (0.99)
Average time from time first child was presented	1.03 (0.85)
Average time from when adopted child of focus was presented to you	0.91 (0.82)
Average time from adopted child of focus was placed with you	0.67 (0.77)
Asked about sexual orientation by anyone in the adoption process? (Yes)	43.3%
Did you disclose your sexual orientation to anyone in the adoption process? (Yes)	85.1%

NOTE: Mean (SD); %=Valid Percent

C. Adopted Child

Table 3 highlights the information on the adopted child of focus. The average age of the adopted child of focus was 7.24 years with a standard deviation of 5.46 years.⁷⁷ The sample was predominately male (61.5%), and the ethnicity breakdown was fairly diverse. Specifically, the most predominate ethnic category represented was Arabic (17.4%), followed by 16.9% other, 16.6% Native American, 14.3% Asian/Pacific Islander, 12.9% African American, 12.7% Hispanic, and 9.3% Caucasian. Almost 21% of the sample of adopted children of focus had an identified special physical need, and the level of physical need present was 4.89 (on a scale of 1 mild, 10 severe). Also, 74% of the adopted children of focus had special behavioral/emotional needs, with the average level of behavioral/emotional need present being 5.63 on the same scale.

Information on the type of abuse or neglect experienced by the adopted child of focus also was collected. This set of questions sought to obtain information about the child prior to the adoptive placement. From the information gathered, 16% confirmed incidents of physical abuse. The average age of onset was 2.33 years, and the mean level of severity was 3.14 out of 5. Also, 11% of the adopted children of focus had confirmed indications of sexual abuse. The average age of onset was 2.9 years, and the mean level of severity was 3.26 on a 5-point scale. Almost 29% of the sample had experienced physical neglect. The average age of onset was 1.44 years, and the average level of severity was 3.40. The occurrence of medical neglect for the adopted children of focus also was assessed. More than 17% of the sample experienced medical neglect.⁷⁸ The average age of onset was 2.06 years, with the average level of severity being 3.39. Of the adopted child of focus sample, 21.3% had experienced unspecified neglect, with the average age of onset being 1.95 years, and the average level of severity being 3.31. Abandonment was experienced by 17.8% of the sample. The average age of onset was 1.58 years, and the average level of

77. Assuming a normal distribution, the standard deviation provides a reference to what percent of scores fall around the mean. For example, in this study the standard deviation was 5.46 years; 64% of all cases had a child that was an average age of 7.24 years — plus and minus 5.46 years. Specifically, for 64% of the participants, the age of the adopted child of focus was between 1.78 and 12.7 years old. The standard deviation provides a reference to the distribution of the scores around the mean.

78. Medical neglect was defined as occurring when the parent or guardian did not attend to the child's basic health and medical needs. An example of medical neglect is when a child requires hospital treatment or care and the parent is unwilling to obtain medical treatment for the child. For this Article, only the occurrence of medical neglect was dichotomized into "yes" or "no."

severity was 3.04. As is evident in the average level of severity for all types of maltreatment, the adopted children of focus often experienced an above-average amount of maltreatment.

Finally, it is important to provide some context to the question of whether the adopted children of focus were teased because they were adopted or because they were adopted by a homosexual parent. More than 75% of the sample indicated that the adopted child of focus was never teased because he or she is adopted. More than 15% indicated that the adopted child of focus was hardly ever teased, 7.8% indicated that the adopted child was teased sometimes, and less than 1% indicated that the child was teased often because he or she is adopted. Interestingly, there were very few differences between the child being teased⁷⁹ because he or she was adopted and because he or she had homosexual parents. The results indicate that 68% of parents report that the child was never teased because of his or her parent was homosexual. Almost 22% indicated that the adopted child of focus was teased hardly ever. Nearly 8% indicated the child was teased sometimes, and 2.2% indicated that the child was often teased.

Table 3: Characteristics of the Adopted Child of Focus

Question	Distribution
Age of Adopted Child of Focus	7.24 (5.46)
Gender (Female)	38.5%
Ethnicity	
Caucasian	9.3%
Hispanic	12.7%
African American	12.9%
Asian/Pacific Islander	14.3%
Arabic	17.4%
Native American	16.6%
Other	16.9%

79. Specific questions were created that asked parents to indicate if the adopted child of focus has been teased because of being adopted or having parents who are homosexual. The questions were, "About how often do children outside of your family tease the adopted child of focus or make negative comments because she/he was adopted?," and "About how often do children outside your family tease the adopted child of focus or make negative comments because she/he is living with LGBT parents?"

Special physical needs? (Yes)	20.9%
Average level of physical needs present	4.89 (2.64)
Behavioral/emotional needs? (Yes)	74.0%
Average level of behavioral/emotional needs present	5.63 (2.51)
Type of Abuse Experienced by Child	
Physical Abuse (Yes)	16.6%
Age of Onset	2.33 (2.69)
Level of Severity	3.14 (1.03)
Sexual Abuse (Yes)	11.5%
Age of Onset	2.9 (0.99)
Level of Severity	3.26 (1.10)
Physical Neglect (Yes)	28.5%
Age of Onset	1.44 (2.86)
Level of Severity	3.40 (1.21)
Medical Neglect (Yes)	17.3%
Age of Onset	1.20 (1.37)
Level of Severity	3.47 (1.22)
Neglectful Supervision (Yes)	19.3%
Age of Onset	2.06 (3.38)
Level of Severity	3.39 (1.02)
Neglect (unspecified) (Yes)	21.3%
Age of Onset	1.95 (3.15)
Level of Severity	3.31 (1.12)
Abandonment (Yes)	17.8%
Age of Onset	1.58 (3.44)
Level of Severity	3.04 (1.64)
Children outside of family tease the Adopted Child of Focus because he/she is adopted?	
Never	76.5%
Hardly Ever	15.1%
Sometimes	7.8%
Often	0.6%
Children outside of family tease the Adopted Child of Focus because parents belong to the GLBT Community?	
Never	68.0%
Hardly Ever	21.9%
Sometimes	7.9%
Often	2.2%
NOTE: Mean (SD); %=Valid Percent	

V. DISCUSSION

Similar to adoption studies in general, this study contained some common limitations, such as a non-random sample. In addition, other potentially unique sampling limitations existed. For example, because there was no master list that could be consulted to recruit gay and lesbian adoptive parents for the study, an alternate sampling plan was utilized that included, among other things, snowball sampling.⁸⁰ Such sampling methods can skew the sample to contain little variance within demographic and other characteristics. Further, because the sample was recruited nationally based on a criteria that is difficult to verify (i.e., being gay or lesbian), no clear method, other than self-reporting, was available to confirm sexual orientation. As such, there is no guarantee that heterosexuals were not included in the sample.⁸¹ Despite these limitations, the study contains several strengths, namely that this is the first large-scale adoption study of its kind. In addition, the sample's diversity includes families from across the United States, including several from Florida where homosexual adoption is illegal.

The findings presented above show that, for this sample, the adoptive parents are highly educated and possess a correspondingly high income. For those families with two parents, the parents have been in a partnership for a significant amount of time (mean = 11 years). Many of these families had some type of a religious or spiritual connection. It also is interesting to note that these families were found in different types of communities. Within these communities, the families also were involved in the GLBT community, which indicates a high level of social support. In regard to their extended families' support and acceptance, the majority of the respondents have had support from extended families. On the whole, their gay or lesbian identity had been accepted by their families.

All parents, regardless of sexual orientation, want to be legally recognized as parents. However, with current policies and prejudices against homosexuals, this recognition is not always realized. As social

80. Snowball sampling is "[a] sampling method in which you sample participants based upon referral from prior participants." WILLIAM TROCHIM, *THE RESEARCH METHODS KNOWLEDGE BASE* 352 (2d ed. 2001). As such, the sample grows as current subjects refer new subjects. It is used primarily for samples that are hard to identify, such as the current one — where no lists of potential subjects are available and there may be stigma to such group memberships.

81. The authors communicated with each participant family in an attempt to verify their status as a homosexual adoptive parent before accepting them into the study. This was done to help maintain the sample's integrity. This was implemented because of the numerous prank and threatening phone calls made to the authors by individuals opposed to the creation of such families.

policies regarding homosexual adoption evolve, it is important that changes be made to allow both parents of an adopted child to be legally identified as his or her parent. By not legally recognizing both parents, there are multiple implications for the children and the parents. These implications include: how the sole adoptive parent is identified; what happens to the child in the event that something happens to one of the parents; what happens to the child in the event of a separation; and who is legally able to obtain medical care and make medical decisions for the child. Without legal recognition of both parents, the whole family structure is minimized and vulnerable.

The myths that have been perpetuated about gay and lesbian individuals and families are difficult to test, and many of these questions are difficult to ask. The current findings demonstrate, however, that these families are invested in making the adoption work, and the adoptive parents are committed to their children's welfare. This Article only provides a glimpse at the findings available from this survey. Additional data are available and will continue to be analyzed. However, from the initial findings it is clear that these homosexual adoptive parents are caring and dedicated parents who have many strengths to offer their children.

