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## Identity: Lesbian Lawyers in South Florida An Oral History

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## IDENTITY: LESBIAN LAWYERS IN SOUTH FLORIDA

### AN ORAL HISTORY

CHARLENE L. SMITH, EILEEN SMITH-CAVROS, ANA ALVAREZ\*

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#### I. INTRODUCTION

Individual identity is a key concept in legal classifications. However, the concept of *identity* has an identity crisis of sorts. Some theorists embrace identity—feminist theorists—and other groups eschew it—queer theorists. Identity inhabits realms beyond the theoretical—its spectrum continues all the way to the individual. Identity can be construed as biological, personal, public, legal, political, historical, and fluid among many other sometimes complementary, but often conflicting classifications. Therefore, identities are more complex than mere singular categories. Kimberle Crenshaw was the first to specifically discuss the ideas of intersectionality and identity in a discussion of violence against women, noting, “experiences of women of color are frequently the product of

intersecting patterns of racism and sexism, and how these experiences tend not to be represented within the discourses of either feminism or antiracism.”<sup>1</sup> Adding to Crenshaw’s observations about intersectionality, Patricia Hill Collins noted that:

Gender, sexuality, race, and class hierarchies all require a favorable political climate. While U.S. nation-state policies regarding marriage and family reflect dominant moral codes, they also regulate property relations. Assumptions about marriage and, by implication, desired family forms remain supported by governmental policy, corporate policies, and the legal system. For example, denying slaves legal marriages, forbidding interracial marriages, using marital status to determine taxation policies and social welfare state entitlements, and refusing legal marriage to sexually stigmatized individuals all reflect nation-state interest in regulating an allegedly natural institution.<sup>2</sup>

The study of intersectionality has continued to pose questions not only on how sex and race might interact, but also on how the following intersect: Social class, ethnicity, religion, age, sexual orientation, and multiple other ascribed or assigned statuses, characteristics, roles, and groups into which society and individuals are assigned or assign themselves. A

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1. Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243–44 (1990–1991) (footnote omitted).

2. Patricia Hill Collins, *Gender, Black Feminism, and Black Political Economy*, 568 ANNALS AM. ACAD. POL. & SOC. SCI. 41, 49 (2000), available at <http://www.jstor.org/stable/1049471>.

female lawyer might have an experience different from a lesbian lawyer, or different from a gay male lawyer, or different from an African-American lesbian lawyer; a woman who is perceived as a *lesbian lawyer* might self-describe differently if asked her own identity.<sup>3</sup> As a result, we chose to take an oral history approach to this project with the belief that although all interviewees shared the characteristics of being lesbians who were also lawyers, each woman's unique circumstances shaped who she was, how she saw herself, and how she interacted with the law.<sup>4</sup> Thus, each woman defined herself in terms of identity.<sup>5</sup> This project also considered how the legal system, the workings within it, and the concept of justice itself might

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3. See Interview with Lilas Ayandeh, Attorney at Law, The Law Office of Lilas Ayandeh, P.A., in Fort Lauderdale, Fla., 3 (June 27, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Jennifer Travieso, Attorney at Law, Ins. Law Advocates, in Fort Lauderdale, Fla., 1 (June 28, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library).

4. See Interview with Lilas Ayandeh, *supra* note 3, at 3; Interview with Robin L. Bodiford, Attorney at Law, Law Offices of Robin L. Bodiford, P.A., in Fort Lauderdale, Fla., 1–2 (July 17, 2012) [hereinafter Interview with Robin L. Bodiford (July 17, 2012)] (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Robin L. Bodiford, Attorney at Law, Law Offices of Robin L. Bodiford, P.A., in Fort Lauderdale, Fla., 1 (Aug. 3, 2012) [hereinafter Interview with Robin L. Bodiford (Aug. 3, 2012)] (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Seril L. Grossfeld, Attorney at Law, Seril L. Grossfeld Attorney at Law, P.A., in Fort Lauderdale, Fla., 1–2 (June 29, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Linda F. Harrison, Assoc. Dean, Critical Skills Program & Assoc. Professor of Law, Nova Se. Univ., Shepard Broad Law Ctr., & Phyllis D. Kotey, Dir. of Cmty. Externship Programs & Clinical Assoc. Professor of Law, Fla. Int'l Univ. Coll. of Law, in Fort Lauderdale, Fla., 1 (Aug. 1, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Lea P. Krauss, Attorney at Law, Lea P. Krauss Esquire, P.A., in Fort Lauderdale, Fla., 1 (July 17, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Michelle M. Parker, Attorney at Law, Parker Law Firm, in Fort Lauderdale, Fla., 1 (June 30, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Monica I. Salis, Attorney at Law, Monica I. Salis, P.A., in Fort Lauderdale, Fla., 1 (July 9, 2012) (on file with Nova Southeastern University, Shepard Broad Law Center Library); Interview with Jennifer Travieso, *supra* note 3, at 1. In 2012, the authors interviewed nine lesbian lawyers who practice in South Florida. These nine responded to an announcement about the oral history project on the Gay & Lesbian Legal Network (“GLLN”), which was sent to all members. Each of the lesbian lawyers granted an interview with the authors, which was videotaped, and is currently available on the Shepard Broad Law Center's Library and Technology website at: <http://nsulaw.nova.edu/library/>. Videos were transcribed and those transcriptions are currently part of the Harris L. Kimball Memorial Digital Archive of Lesbian, Gay, Bisexual, Transgender, and Queer Florida Legal Oral History. The web link is: <http://nsulaw.nova.edu/library/kimballarchive/>. Each one of the participants granted the interviewers permission to use information from the interview. This article is a product of those interviews.

5. *E.g.*, Interview with Lea P. Krauss, *supra* note 4, at 1.

interact with the lesbian status shared by all interviewees and the understanding that being a lesbian and being a lawyer might mean very different things to each woman.<sup>6</sup> We wanted to examine differences between the women’s narratives as well as similarities that arose.<sup>7</sup>

It is important to note that the group of lesbian lawyers we interviewed was accomplished through a snowball<sup>8</sup> sample of women who were practicing law, teaching law, or had practiced law in South Florida.<sup>9</sup> We acknowledge clearly that this was not a random sample and that South Florida—especially Broward County—is a unique place within the United States given its diverse population and international qualities.<sup>10</sup> In addition—as noted in a National Public Radio (“NPR”) report on the 2010 Census—Florida recorded the second largest number of same-sex couples in the United States, in spite of having a “constitutional amendment[] restricting marriage to a man and a woman.”<sup>11</sup> With regard to the project, it does not completely include a full spectrum of minority lawyers—for example, no Hispanic-American lesbian lawyers or Asian-American lesbian lawyers were included in the study.<sup>12</sup> This was not by design, but because none were reached through the snowball sample—an obvious limitation we were unable to address.<sup>13</sup>

In relation to the lesbian lawyers, Newman notes that belonging to “advantaged . . . sexuality-based groups can serve as cultural capital . . . as

6. *E.g.*, Interview with Jennifer Travieso, *supra* note 3, at 17.

7. *See infra* Part II–III.

8. *Survey Sampling Methods*, STATPAC, <http://www.statpac.com/surveys/sampling.htm> (last visited Nov. 11, 2013) (providing explanation of snowball sampling).

9. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1; Interview with Jennifer Travieso, *supra* note 3, at 1.

10. *See Broward is South Florida’s Most Racially Diverse*, S. FLA. BUS. J. (June 28, 2011, 2:52 PM), <http://www.bizjournals.com/southflorida/news/2011/06/28/broward-south-florida-rationally-diverse.html>. “Detailed racial breakdowns from 2010 [United States] Census Bureau data indicates that [thirty-seven] percent of Broward County residents are of a minority racial group.” *Id.* Further, “[t]he Williams Institute of Census has said that South Florida is one of the top spots for LGBT population [g]rowth.” Patricia Davis, *LGBT Population Increases 60% in Broward County Florida*, FLA. EST. PLAN. L. BLOG (Aug. 23, 2011, 3:09 PM), <http://www.floridaestateplanninglawyerblog.com/2011/08/the-gay-south-will-rise-again.html>.

11. Corey Dade, *Data on Same-Sex Couples Reveal Changing Attitudes*, NPR (Sept. 30, 2011, 2:51 PM), <http://www.npr.org/2011/09/30/140950989/data-on-same-couples-reveal-changing-attitudes>; *see also* FLA. CONST. art. I, § 27.

12. *But see* Interview with Lilas Ayandeh, *supra* note 3, at 19; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1.

13. *See Survey Sampling Methods*, *supra* note 8. However, the study did include Jewish, Persian, Catholic, Protestant, African-American and Caucasian participants. *See infra* Part III.

illustrated by the historical preference for white, male, heterosexual employees over women, people of color, and homosexual or transgendered individuals.”<sup>14</sup> If cultural capital “can determine a person’s social opportunities,” it follows then that in a society that is heterosexist, an identity other than heterosexual might be viewed as a liability in terms of cultural capital.<sup>15</sup> If so, can it also have an effect on what we might call *legal capital* or opportunities within the legal system—from perspectives of career or client, of success or of justice?<sup>16</sup>

## II. COMING OUT STORIES

Calhoun notes that the identities of lesbians (and gays) are usually considered from standpoints of sexuality.<sup>17</sup> Her argument, however, is that lesbian identity is “best described as an identity that breaks heterosexual law.”<sup>18</sup> While the authors of this paper do not ascribe to that as the single best description, there is within Calhoun’s claim an inherent and important truth.<sup>19</sup> The identities of lesbian lawyers, their clients, and the greater lesbian community are closely intertwined with the law and legal decisions that affect them, directly or indirectly, or shape the way that society views lesbians and the way lesbians view society and the law.<sup>20</sup> Thus, how lesbian lawyers see their own identities and those of their clients connects to how they identify the nature of law and justice as well as how they interact with the legal system.<sup>21</sup>

Some things have indeed changed in the twenty-first century for lesbian lawyers in terms of identity; other things have not.<sup>22</sup> One area that remains challenging is the declaration and/or negotiation of identity.<sup>23</sup> Some of the interviewees did not come out as lesbians until after graduating from law school or later.<sup>24</sup> Several delayed coming out for family concerns.<sup>25</sup>

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14. DAVID M. NEWMAN, IDENTITIES AND INEQUALITIES: EXPLORING THE INTERSECTIONS OF RACE, CLASS, GENDER, AND SEXUALITY 27 (2005).

15. *Id.*

16. *See id.*

17. Cheshire Calhoun, Commentary, *Denaturalizing and Desexualizing Lesbian and Gay Identity*, 79 VA. L. REV. 1859, 1859 (1993).

18. *Id.* at 1860.

19. *See id.*

20. *E.g.*, Interview with Jennifer Travieso, *supra* note 3, at 8–11.

21. *See, e.g., id.*

22. *Sexual Orientation and Homosexuality*, AM. PSYCHOL. ASS’N, <http://www.apa.org/helpcenter/sexual-orientation.aspx> (last visited Nov. 11, 2013).

23. *Id.*

24. *E.g.*, Interview with Lilas Ayandeh, *supra* note 3, at 1. *But see* Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 5–6.

Some lesbians married men and lived contrasting public and private lives.<sup>26</sup> Some had children, while others were never interested in children.<sup>27</sup> Most interviewees minimized their coming out stories as they retold them to us initially. However, as they further described events and family relationships in relation to coming out, most had some degree of trauma associated with coming out.<sup>28</sup> This ranged from angst over deciding if, when, and how to come out, to strains on relations with some family members, some of which were or are not completely resolved by coming out.<sup>29</sup> This declaration of identity and its consequences in a heterosexist and homophobic society can be an ongoing source of personal stress and difficulty that heterosexual lawyers never face.<sup>30</sup>

#### A. *Are Lesbian and Gay Male Issues Different?*

A few of the interviewees discussed their coming out as especially difficult because they were lesbian and not gay men.<sup>31</sup> For example, one noted that, in spite of holding progressive political beliefs, her father was accepting of her gay brother, but not of her being a lesbian.<sup>32</sup> However, another interviewee felt that gay men actually had more challenges than lesbians, commenting: “I do think that many gay men find much more harsh discrimination and are treated differently than lesbian women.”<sup>33</sup> Additionally, an interviewee noted that gay men she worked with on committees did not want to hear about feminism;<sup>34</sup> however, another interviewee remarked that when men found out she was a lesbian, they treated her as *one of the guys*.<sup>35</sup> A few interviewees noted that being a woman presented many challenges in itself; even *before* the challenges that

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25. *E.g.*, Interview with Lilas Ayandeh, *supra* note 3, at 1.

26. Interview with Robin L. Bodiford, (July 17, 2012), *supra* note 4, at 8; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 2–3; Interview with Monica I. Salis, *supra* note 4, at 2–3.

27. *Compare* Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1–3, with Interview with Seril L. Grossfeld, *supra* note 4, at 10.

28. *See* Interview with Lilas Ayandeh, *supra* note 3, at 18–19; Interview with Seril L. Grossfeld, *supra* note 4, at 10.

29. *E.g.*, Interview with Lilas Ayandeh, *supra* note 3, at 19.

30. *E.g.*, Interview with Jennifer Travieso, *supra* note 3, at 10–13.

31. *See, e.g.*, Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 2.

32. *Id.*

33. Interview with Lea P. Krauss, *supra* note 4, at 2.

34. Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 3.

35. Interview with Lilas Ayandeh, *supra* note 3, at 9.

lesbianism might present.<sup>36</sup> In general, however, there was a sense among most participants of shared issues between lesbians and gay men.<sup>37</sup> Further, several of the interviewees represented multiple gay male clients, and a few described their legal victories for gay male clients as their proudest career moments.<sup>38</sup>

B. *Queer Theory/Feminist Jurisprudence: Relationship to Identity*

One of the questions we wanted to consider was if the lesbian lawyers were influenced by any theoretical perspective that focused on either being a lesbian, a woman, or combinations of various approaches. For example, in the 1980s, Adrienne Rich observed that the framework of feminist jurisprudence was one where lesbians were perceived as either “abhorrent, or simply rendered invisible.”<sup>39</sup> Rich was interested in why heterosexual feminists “crushed, invalidated, forced into hiding and disguise[d]” women who loved other women, and why feminist scholarship totally neglected the lesbian existence.<sup>40</sup> Rich’s conclusion was that the “*lesbian existence* is potentially liberating for all women.”<sup>41</sup> Further, Rich observed that there was a difference “between *lesbian existence* and the *lesbian continuum*.”<sup>42</sup> Her observation was that lesbians generally led or lead double lives in order to fit into the heterosexual normative, where women are second-class citizens.<sup>43</sup>

Fourteen years later, Elvia R. Arriola noted that she perceived “the law as a powerful instrument for cultural transformation.”<sup>44</sup> Arriola was “call[ing] for [a] new perspective[] in discrimination analysis.”<sup>45</sup> She notes,

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36. *Id.* at 11; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 18; Interview with Lea P. Krauss, *supra* note 4, at 2, 4.

37. *See* Interview with Lilas Ayandeh, *supra* note 3, at 18–19; Interview with Seril L. Grossfeld, *supra* note 4, at 9–10; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 3.

38. Interview with Seril L. Grossfeld, *supra* note 4, at 10; Interview with Lea P. Krauss, *supra* note 4, at 13; Interview with Monica I. Salis, *supra* note 4, at 6–7.

39. Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 SIGNS: J. WOMEN CULTURE & SOC’Y 631, 632 & n.2 (1980) (commenting on Alice Rossi’s paper, *Children and Work in the Lives of Women*, delivered at the University of Arizona, and Doris Lessing’s book, *The Golden Notebook*).

40. *Id.*

41. *Id.* at 659.

42. *Id.*

43. *Id.*

44. Elvia R. Arriola, *Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory*, 9 BERKELEY WOMEN’S L.J. 103, 105 (1994).

45. *Id.*



as did Rich more than a decade before, that the feminist and other legal scholars failed to develop “adequate models of analysis in support of gay and lesbian victims of discrimination.”<sup>46</sup> Also, part of her article is openly critical of lesbian legal theory because it too “perpetuates the problematic idea that lesbian invisibility should be remedied by simply carving out theories around singular traits by which a person might self-identify.”<sup>47</sup> In her view, if lesbian legal theory embraces categorization into a single trait, it flounders because it fails to “capture a person’s full identity . . . to advance a meaningful principle of equality.”<sup>48</sup> The legal theory that follows the idea of a single trait results in *group-based* equality.<sup>49</sup> Arriola concludes that the courts instead should be looking at the total person, which might include “gender, sexuality, race, class, age, and ethnicity. Each trait is important to one’s moral worth, yet none provides justification for the denial of equal rights under the law.”<sup>50</sup>

Traditionally, the law has been hostile toward lesbians.<sup>51</sup> Under anti-sodomy laws, claiming the identity itself of lesbian—and acting on that identity—was deemed illegal.<sup>52</sup> Even after lesbianism itself was no longer considered *against the law*, lesbians received unsatisfactory protection under the law from the perspectives of feminist and lesbian scholars.<sup>53</sup> Professor Nancy Polikoff noted in 1986, in relation to child custody disputes involving lesbian mothers, “[t]he courtroom is no place in which to affirm our pride in our lesbian sexuality, or to advocate alternative child-rearing designed to produce strong, independent women.”<sup>54</sup>

Several decades later, how do lesbian lawyers view related issues? This will raise questions about how and if contemporary lesbian identities influence the law, and if and how law may influence lesbian identities. For example, do the interviewed lesbian lawyers believe the law treats lesbians and gays in a just manner? Why do they believe what they do, and does it affect their interpretation of law, their practice of it, their relationships with juries and opposing counsel, their political beliefs, and their day-to-day lives? However, examining the interviewees only in relation to the law is not

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46. *Id.*; see also Rich, *supra* note 39, at 632–33.

47. Arriola, *supra* note 44, at 107.

48. *Id.*

49. See *id.* at 106.

50. *Id.* at 143.

51. See FLA. STAT. §§ 798.02, 800.02 (2013).

52. See *id.*

53. See Nancy Polikoff, *Lesbian Mothers, Lesbian Families: Legal Obstacles, Legal Challenges*, 14 N.Y.U. REV. L. & SOC. CHANGE 907, 907 (1986).

54. *Id.*

enough.<sup>55</sup> Related identity issues like generational, heritage, and family issues—when women came *out*, the decade in which they became lawyers and practiced law, and how their own families reacted—as well as other identities claimed by the interviewees like racial or ethnic identities, to cite just a few examples, are also likely to interact with their self and professional identities, and perhaps impact at least some of their choices.<sup>56</sup>

The theories would seem significant to lesbian lawyers.<sup>57</sup> However, when the interviewees were asked about feminist jurisprudence, many responded that they knew very little about it.<sup>58</sup> Regardless of not connecting feminist jurisprudence with being a feminist, most considered themselves to be feminists.<sup>59</sup> For instance, Monica Salis believes that “if you stand up for women’s rights, [you are also] . . . standing up for lesbian rights.”<sup>60</sup> Many of those we interviewed said the legal system gave them a chance to change the way in which people were treated.<sup>61</sup> Monica said it was her observation that if you encountered a bigoted father with a daughter, then you argued: Would you want your daughter treated that way?<sup>62</sup> She considered it her job to make sure that the courts were fair.<sup>63</sup> Since there is “bias everywhere . . . [in] [e]very case, [her] job is to make a perfect record.”<sup>64</sup>

While the lesbian lawyers may not have had a jurisprudential theory that they identified with, they reported stories of judges who would

55. See Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 20; Interview with Lea P. Krauss, *supra* note 4, at 4–5; Interview with Monica I. Salis, *supra* note 4, at 20–21.

56. Interview with Lilas Ayandeh, *supra* note 3, at 19; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 4–5; Interview with Lea P. Krauss, *supra* note 4, at 6–7.

57. See Interview with Michelle M. Parker, *supra* note 4, at 1; Interview with Monica I. Salis, *supra* note 4, at 4.

58. *E.g.*, Interview with Lilas Ayandeh, *supra* note 3, at 3. For instance, Lilas Ayandeh said that she would not do anything to promote feminism, but she was “pro-women, doing things and would . . . vote for Hilary Clinton.” *Id.* Michelle Parker viewed feminism as fighting discrimination. Interview with Michelle M. Parker, *supra* note 4, at 1. She wants to be treated the same as men. *Id.* Jennifer Travieso said she was probably more of a feminist while in college, but did not have time when in law school. Interview with Jennifer Travieso, *supra* note 3, at 1.

59. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 17–18; Interview with Michelle M. Parker, *supra* note 4, at 1; Interview with Monica I. Salis, *supra* note 4, at 1; Interview with Jennifer Travieso, *supra* note 3, at 1.

60. Interview with Monica I. Salis, *supra* note 4, at 1.

61. *E.g.*, *id.*

62. *Id.*

63. *Id.* at 9.

64. *Id.* (“call[ing] judges on their bad calls [and] proffer[ing] into the record” all that is needed to clarify the record).

constantly refer to the male lawyers as *counsel*, while the women lawyers would be referred to as *miss*.<sup>65</sup> In fact, Lilas Ayandeh said that her female suitemate lawyer-friend got into an argument with a judge who kept calling her *miss*, and she said, “stop calling me *miss*, [I am] a lawyer too.”<sup>66</sup> And the judge responded that he did not know what she was talking about.<sup>67</sup> Lilas observed that maybe the judge was *pompous*, or he just did not know what her suitemate was talking about because the law is so geared toward men.<sup>68</sup> Thus, while the principles of feminist jurisprudence may not have been known specifically, those interviewed certainly had first-hand experiences with the law and the effects of the law being sexist.<sup>69</sup> Seril Grossfeld, for example, mentioned a case involving a divorce proceeding in which the judge said that “he [did not] think it was right . . . to throw a man out of *his* house.”<sup>70</sup>

There were those who described themselves as activists, such as Lea Krauss.<sup>71</sup> However, when asked if she considered herself a lesbian separatist, she said she did not do things to the extreme.<sup>72</sup> Lea equated being a lesbian separatist activist with making judgments that might interfere with her desire to be accepting.<sup>73</sup> Lea also said how a lesbian was treated was related to the way she looked.<sup>74</sup> If a lesbian blended into society, then she would be treated the same as heterosexual women.<sup>75</sup>

### III. HOW DID INTERVIEWEES SELF-IDENTIFY?

Nearly all of our interviewees used the word *lesbian* as one of the first words with which they identified themselves.<sup>76</sup> Robin Bodiford explained her choice of *lesbian* as a primary identifying word.<sup>77</sup> She stated:

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65. Interview with Lilas Ayandeh, *supra* note 3, at 11.  
 66. *Id.* (emphasis added).  
 67. *Id.*  
 68. *Id.*  
 69. See, e.g., Interview with Seril L. Grossfeld, *supra* note 4, at 7–8.  
 70. *Id.* (emphasis added).  
 71. Interview with Lea P. Krauss, *supra* note 4, at 2. Lea is the current president of GLLN, the Gay and Lesbian Lawyers Network, which is active in Broward County. *Id.* at 9.  
 72. *Id.* at 2.  
 73. *Id.* She also observed that women were “still struggling to get equal pay.”  
*Id.*  
 74. Interview with Lea P. Krauss, *supra* note 4, at 2.  
 75. *Id.*  
 76. Interview with Robin L. Bodiford (July 17, 2012), *supra* note 4, at 1; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1; Interview with Monica I. Salis, *supra* note 4, at 1; Interview with Jennifer Travieso, *supra* note 3, at 1.

I [am] a lesbian. . . . Because basically once you decide that you [are] a lesbian, it pretty much defines your life. You wake up every day and you [are] a lesbian and you have to deal with it and . . . [i]t does [not] go away. . . . You never get to forget about it unless you may be, you know, absorbed in a book or a movie or . . . something like that, but other than that, . . . it never goes away.<sup>78</sup>

Most interviewees also mentioned several other identifying words together; from *woman* to *mother* to *daughter* to *attorney* or *lawyer*—used by most interviewees—to *black*, rather than a single identity.<sup>79</sup> This is exemplified by Linda Harrison, who described herself as “[f]emale first, African American second, lesbian third, and mother on top of all those.”<sup>80</sup> Lea Krauss said, “I would say I identify as a gay woman, as an attorney, as a friend, a cousin. I [am] pretty family and friend oriented.”<sup>81</sup>

Several expressed discomfort at the general idea of categorizing identities.<sup>82</sup> Michelle Parker, for example, commented, “I tell other people to not put themselves [in] a category to limit themselves. I do limit [my]self, I consider myself a lesbian but I know that [is] kind of hypocritical . . . that I tell other people to not limit themselves or to categorize themselves but then I do [it] myself . . . .”<sup>83</sup> Only one interviewee volunteered the term *feminist* when we asked if the interviewees considered themselves feminists.<sup>84</sup> Interestingly, most were somewhat hesitant to fully qualify themselves as feminists for various reasons.<sup>85</sup> A few equated feminism with activism, and were not activists, therefore reluctant to call themselves feminists.<sup>86</sup> For example, Jennifer Travieso explained, “I [am] a lesbian. I would qualify myself as a feminist. . . . I think in college I was definitely a feminist. I think now I [am] maybe not as strong or as active in—under the title of feminist as

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77. Interview with Robin L. Bodiford (July 17, 2012), *supra* note 4, at 1.

78. *Id.*

79. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1; Interview with Lea P. Krauss, *supra* note 4, at 1; Interview with Monica I. Salis, *supra* note 4, at 1.

80. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1.

81. Interview with Lea P. Krauss, *supra* note 4, at 1.

82. *E.g.*, Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1.

83. Interview with Michelle M. Parker, *supra* note 4, at 1.

84. *Id.*

85. *E.g.*, Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 17–18.

86. *E.g.*, Interview with Jennifer Travieso, *supra* note 3, at 1.

I used to be.”<sup>87</sup> Several others clarified areas where they felt like they differed from some feminist thinking.<sup>88</sup> Phyllis Kotey noted:

The only reason I [am] bothered by [the feminist label] is I [am] bothered by the phrase and all the baggage that it brings with it. But for me, even with all of the baggage that it brings to bear, I still must say that I believe that in issues with gender, issues of race, that we have to be advocates and make sure that people are treated fairly. And that [is] what I see being, you know, a feminist [is] all about. It [is] not about whether I wear makeup or not, or whether I shave my legs or not, no more than being black is all about whether I raise my black power fist.

But I certainly think that it [is] important that I am always sensitive to issues of gender and I always try to be. And when I—people tell me, oh, it does [not] matter. I [am] like, well, if it did [not] matter, then we would have more women in place—in positions of power.<sup>89</sup>

Most of our interviewees were white and did not mention race or ethnicity in terms of their identities.<sup>90</sup> Two of our interviewees were African-American, one was Persian-American/Iranian-American, and three were Jewish.<sup>91</sup> These interviewees all discussed ways in which race or ethnicity impacted their identities and/or legal careers.<sup>92</sup> Both African American interviewees mentioned the critical importance of class within the legal system and one discussed being the recipient of racial bias in the courtroom in the 1990s.<sup>93</sup> Linda Harrison explained that when she was a prosecutor, “[t]he judge wanted someone else appointed to try the case” because he was just concerned about keeping his record intact of never

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87. *Id.*

88. *E.g.*, Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 17–18.

89. *Id.*

90. *See, e.g.*, Interview with Robin L. Bodiford (July 17, 2012), *supra* note 4, at 1.

91. Interview with Lilas Ayandeh, *supra* note 3, at 1; Interview with Seril L. Grossfeld, *supra* note 4, at 5; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 1; Interview with Lea P. Krauss, *supra* note 4, at 14; Interview with Monica I. Salis, *supra* note 4, at 13.

92. Interview with Lilas Ayandeh, *supra* note 3, at 1–2; Interview with Seril L. Grossfeld, *supra* note 4, at 5; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 4–5; Interview with Lea P. Krauss, *supra* note 4, at 14; Interview with Monica I. Salis, *supra* note 4, at 13–14.

93. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 24–26.

having a black person prosecute a case in his court.<sup>94</sup> Seril Grossfeld described looking for a first job after law school:

[T]he first job was difficult because I was a Jewish woman from New York in Northern Florida looking for a job. So there was [not] much opportunity and I usually got appointments for interviews . . . they could [not] tell from my name, and when I walked in, they said, “Oh, we just filled the job.”<sup>95</sup>

Persian-American interviewee Lilas Ayandeh discussed the challenges of revealing and maintaining her identity within her ethnic community and family:

[T]he [Persian] culture is so strong and rich . . . and even in Iran you hear the president say we do [not] have gay people. I mean that [is] ridiculous, what [do] you mean you do [not] have gay people, of course you do; but it [is] not something that [is] accepted . . . there is [sic] jokes about gay people from back in the day, so it [is] something that [is] just engrained in the culture that it [is] not real and the people that are there look at that as lower than dirt kind of thing. So yes it was definitely hard to come out to them [family]—they are accepting now.<sup>96</sup>

#### A. *Law School Experience*

The law school experience for a lesbian can be traumatic and/or enlightening.<sup>97</sup> She can be tolerated but ignored, or validated as someone bringing insight into the law.<sup>98</sup> Sometimes, all of these approaches are her experience.<sup>99</sup> To illustrate the traumatic, it has not been uncommon for lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) bulletin boards to be vandalized.<sup>100</sup>

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94. *Id.* at 25.

95. Interview with Seril L. Grossfeld, *supra* note 4, at 5.

96. Interview with Lilas Ayandeh, *supra* note 3, at 19–20.

97. See Scott N. Ihrig, *Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Law Students*, 14 LAW & INEQ. 555, 566 (1996).

98. *Id.*

99. *See id.*

100. *Id.* at 568. The University of Michigan Gay, Lesbian, and Bisexual group was forced to put Plexiglas over its bulletin board. *Id.* at 568 n.73. In 1988, Lynn Miller, a contributing editor to the *Student Lawyer*, noted that when she asked a lesbian who was Chair of the Lesbian, Gay, and Bisexual Caucus about being *out*, her response was that “students do [not] want to be isolated—or harassed.” Lynn Miller, *The Legal Closet*, 16 STUDENT LAW., Feb. 1988, at 12, 14. Further, the lesbian leader noted that at the University of Oregon Law

Recently, the atmosphere in most law schools is one of toleration.<sup>101</sup> However, even by 1994, any classroom discussion that focused on LGBTI issues was frequently confined to the legal arguments, according to Scott Ihrig, who studied the issue as a student at the University of Minnesota.<sup>102</sup>

Rarely were the facts of such cases discussed.<sup>103</sup> The impact was to silence the voice of the LGBTI community.<sup>104</sup> For instance, Ihrig observed that any time sexual orientation was the legal question of the constitutional law case being discussed in class, if he volunteered observations, he was told by his professor to “divorce your personal politics from your constitutional law.”<sup>105</sup>

For lesbians, the problem is compounded.<sup>106</sup> Lesbian sexuality is almost totally absent in any discussion, based on court cases.<sup>107</sup> Ruthann Robson also noted that in her experience as a law professor—even if such discussion took place—it was not uncommon for the lesbian students to censor their comments and never make them personal.<sup>108</sup> Of course, there are exceptions.<sup>109</sup> For instance, Monica Salis, who went to the University of Miami Law School in the late 1970s, said she took classes related to discrimination and she always tried to turn the focus to gay rights.<sup>110</sup> Monica also observed that she was perceived to be very *outspoken*.<sup>111</sup> For a variety of reasons, many of those interviewed were not *out* while in law school.<sup>112</sup> As has been noted, many of the interviewed lesbian attorneys waited until

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School, some “students were getting hate mail.” *Id.* The Dean did respond by sending a message to the entire student body that such mail was unacceptable. *Id.*

101. Ihrig, *supra* note 97, at 566.

102. *See id.* at 555, 557–58.

103. *Id.* at 572. Monica Salis noted that in no class that she took at the University of Miami Law School in the late 1970s, was there any discussion of sexual orientation, not even when *Bowers v. Hardwick* was assigned. Interview with Monica I. Salis, *supra* note 4, at 4.

104. Ihrig, *supra* note 97, at 566.

105. *Id.* at 558.

106. *See* RUTHANN ROBSON, *SAPPHO GOES TO LAW SCHOOL* 221 (1998).

107. *Id.*

108. *Id.* It was noted by a law student in the *Student Lawyer* (1988), “[t]here are times in class when I want to bring up gay-related issues, but I can’t raise my hand, because I know [that] everyone in the class will immediately wheel around in their chairs to see who said that.” Miller, *supra* note 100, at 14.

109. *See* Interview with Monica I. Salis, *supra* note 4, at 4.

110. *Id.* at 2, 4.

111. *Id.* at 4. Monica admits that even her high school transcript said that she had forced the closure of the school due to demonstrations, which she orchestrated. *Id.*

112. *See* Interview with Lilas Ayandeh, *supra* note 3, at 1; Interview with Seril L. Grossfeld, *supra* note 4, at 3; Interview with Lea P. Krauss, *supra* note 4, at 8.

after graduating from law school to make their identity known.<sup>113</sup> Further, their recollections were that sexual orientation was not discussed in the law classes.<sup>114</sup> Even in those law classes where the expectation that a discussion might take place—such as Constitutional Law, Family Law, or Wills and Trusts—they did not remember any mention of sexual orientation issues.<sup>115</sup> Lea Krauss validates what the studies have shown.<sup>116</sup> Lea graduated in 1999 and she does not recall any classes where sexual orientation was the focus of the legal discussion.<sup>117</sup>

There were exceptions to being silent.<sup>118</sup> Michelle Parker, who graduated in 2011, recalls that sexual orientation issues were talked about openly in some of her law classes.<sup>119</sup> Perhaps this might be related to the fact that the law school had many openly gay and lesbian law professors and even a dean.<sup>120</sup> Michelle observed that the professors knew she was a lesbian, and in her classes she felt that the professors explained things in more detail that were related to sexual orientation issues.<sup>121</sup> On the other hand, Seril Grossfeld—who attended law school in the 1970s—says that there were no open LGBTI law professors.<sup>122</sup> In fact, Seril noted that there were very few

113. See Interview with Lilas Ayandeh, *supra* note 3, at 1, 4; Interview with Seril L. Grossfeld, *supra* note 4, at 3–4; Interview with Lea P. Krauss, *supra* note 4, at 4, 6, 8.

114. Interview with Robin L. Bodiford (July 17, 2012), *supra* note 4, at 11; Interview with Seril L. Grossfeld, *supra* note 4, at 5; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 7; Interview with Lea P. Krauss, *supra* note 4, at 8; Interview with Monica I. Salis, *supra* note 4, at 4.

115. Interview with Robin L. Bodiford (July 17, 2012), *supra* note 4, at 11; Interview with Seril L. Grossfeld, *supra* note 4, at 5; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 7; Interview with Lea P. Krauss, *supra* note 4, at 8; Interview with Monica I. Salis, *supra* note 4, at 4.

116. See Interview with Lea P. Krauss, *supra* note 4, at 8.

117. *Id.* Lea says that she took Constitutional Law her last year in law school and they talked about *Bowers v. Hardwick*. *Id.*

118. See Interview with Michelle M. Parker, *supra* note 4, at 7.

119. *Id.*

120. Interview with Lilas Ayandeh, *supra* note 3, at 10; Interview with Michelle M. Parker, *supra* note 4, at 7. Michelle attended the Shepard Broad Law Center, Nova Southeastern University. Interview with Michelle M. Parker, *supra* note 4, at 7.

121. *Id.* Michelle recalls that in a Civil Procedure class where the professor knew she was a lesbian, that professor “spen[t] ten extra minutes on it just for [her] benefit.” *Id.* Lilas Ayandeh was not out while in law school and she does not remember any discussion at the same law school—Shepard Broad Law Center, Nova Southeastern University—where there was any discussion that related to sexual orientation. Interview with Lilas Ayandeh, *supra* note 3, at 1, 7. Further, Lilas did not know that there were several out professors at the law school and was surprised when told who they were. *Id.* at 9–10.

122. See Interview with Seril L. Grossfeld, *supra* note 4, at 2, 4.



women law professors.<sup>123</sup> In some instances, there were openly gay professors at the law school but their presence seemed subdued.<sup>124</sup> For instance, Jennifer Travieso remembers that she took a course in sexual identity with about six or seven other students.<sup>125</sup> It was a *paper* course and she thought that what she learned was very interesting.<sup>126</sup>

For the few who acknowledged their sexual orientation while in their teens or twenties, it was common to become activists in their undergraduate years.<sup>127</sup> Identity recognition prompted being active in law school too.<sup>128</sup> There were exceptions even to this general observation.<sup>129</sup> Monica Salis went to New York University for her undergraduate education and was involved with women's organizations on campus where half the members were lesbians.<sup>130</sup> But, when she got to University of Miami Law School in 1979, there were no identifiable lesbians.<sup>131</sup>

In contrast, Jennifer Travieso joined an underground LGBTI club at a Catholic university law school.<sup>132</sup> She decided to run the club in a much more active way.<sup>133</sup> She approached the Assistant Dean for funding, something all groups at the law school did.<sup>134</sup> The Assistant Dean flat out denied the request and Jennifer was explicitly told that the group would not be welcome.<sup>135</sup> Jennifer sought help from her favorite professor and he

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123. *Id.* at 5. Monica Salis said there were no out professors at the University of Miami Law School in the late 1970s. Interview with Monica I. Salis, *supra* note 4, at 3.

124. *See* Interview with Jennifer Travieso, *supra* note 3, at 7.

125. *Id.* at 6.

126. *Id.* at 6–7.

127. *See, e.g., id.* at 1.

128. *See, e.g., id.* at 3. Many of those interviewed are very active in the LGBTI community currently. *See* Interview with Monica I. Salis, *supra* note 4, at 14–15; Interview with Jennifer Travieso, *supra* note 3, at 14. For instance, Lea Krauss is President of GLLN, which is a very active group. Interview with Lea P. Krauss, *supra* note 4, at 9. She is also very active in The Pride Center as a board member. *Id.* One of the reasons they asked Lea to be on the board was to have a “younger perspective and a female perspective.” *Id.* at 10. She is largely responsible for assembling a women's resource center that addresses issues with regard to health, networking, and also provides a social center where women feel safe. *Id.* Until she got this established, The Pride Center was largely a *boys' club*. *Id.*

129. *See, e.g.,* Interview with Monica I. Salis, *supra* note 4, at 3.

130. *Id.*

131. *Id.* at 2–3. “[All her] friends in law school were gay men.” *Id.* at 3. “They were easy to identify and it was very comfortable. . . . We studied for the Bar, shared a hotel room up in Tampa, and took the Bar together.” *Id.*

132. Interview with Jennifer Travieso, *supra* note 3, at 3.

133. *Id.* at 3–5.

134. *Id.* at 3.

135. *Id.* at 3–4.

suggested contacting the American Civil Liberties Union (“ACLU”).<sup>136</sup> With the backing of the ACLU, the LGBTI club was born.<sup>137</sup> By the end of the year, the group won an award for being the most active at the law school.<sup>138</sup> Interestingly, the faculty sponsor of the group was not the *out* professor at the school, but rather her favorite law professor, the one who had suggested she consult the ACLU.<sup>139</sup>

Jennifer’s experiences were somewhat mirrored by Michelle Parker, who became the President of Lambda United, the law school LGBTI club at Shepard Broad Law Center, Nova Southeastern University, and made it into one of the most active groups at the law school.<sup>140</sup> She took on the task because, in her words, “equal right[s] [are] so important to me . . . [and] raising awareness is . . . important.”<sup>141</sup> In fact, Michelle said that so much of her time in law school was taken up by the group, that her grades suffered.<sup>142</sup> Fortunately, at her law school, the group had existed for some time and they were given funds without hesitation.<sup>143</sup> Under Michelle’s leadership, Lambda sponsored fundraisers with the money going to organizations such as the Broward House that helps people with HIV/AIDS.<sup>144</sup> They also joined other student groups to present a Gay Adoption Symposium.<sup>145</sup> Michelle also observed that “[she] would [have] died without the faculty [involvement].”<sup>146</sup>

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136. *Id.* at 4.

137. Interview with Jennifer Travieso, *supra* note 3, at 4.

138. *Id.* at 4–5. Some of the students at the law school were not in favor of the club, so Jennifer and her group decided to “poke fun at ourselves” and offered a free breakfast consisting of Fruit Loops. *Id.* at 5. Jennifer also indicated that she really felt *empowered* by being the founder of the law school group. *Id.* at 11. Fighting for people’s rights was an amazing experience for her. *Id.*

139. Interview with Jennifer Travieso, *supra* note 3, at 7.

140. *Compare id.* at 4–5, with Interview with Michelle M. Parker, *supra* note 4, at 1, 6. When nobody wants to lead, the law school club becomes almost underground. *See* Interview with Michelle M. Parker, *supra* note 4, at 6.

141. *Id.*

142. *Id.* According to Michelle, “[she] was making the same grades as [her] first year [friends who] all graduated with honors, except for [her].” *Id.*

143. *See id.*

144. Interview with Michelle M. Parker, *supra* note 4, at 6. They also had *Rock Out Loud* with a band and hamburgers. *Id.* Lambda gave half of what it made to *Fight Out Loud*, which helps people who “have been victims of discrimination based on their sexual orientation and sexual identity.” *Id.*

145. *Past Events: Symposium on Gay Adoption in Florida*, IACHR NEWSL. (Inter-Am. Ctr. for Human Rights, Fort Lauderdale, Fla.), Mar. 2011, at 7, available at <http://nsulaw.nova.edu/students/orgs/iachr/newsletters/index.cfm>.

146. Interview with Michelle M. Parker, *supra* note 4, at 7.

As far as helping the lesbian lawyers secure legal positions after graduating, the various law schools did not seem to be aware of any potential problems associated with getting jobs and being a lesbian.<sup>147</sup> Whether those interviewed were *out* to their future employers related to several factors.<sup>148</sup> For those who graduated in the 1980s and waited until after law school to come out, sexual orientation was not of concern.<sup>149</sup> In contrast, those who had been active and out in law school, interviewed as out lesbians.<sup>150</sup> Michelle Parker, for instance, observed that she

would rather [the firm] know that I am gay before I . . . step foot in your office because if you [are] going to have a problem with it I would rather you know now and I do [not] want to be terminated in two months because you found out that I was gay.<sup>151</sup>

Fortunately for Michelle, her firm is fine with gay folks.<sup>152</sup> Jennifer noted that “now some firms are marketing directly to the gay community.”<sup>153</sup> The gay attorney can identify with the gay community and it is actually positive.<sup>154</sup> In South Florida, there may even be an advantage to being identified as a lesbian according to Lea Krauss, the current president of the Gay and Lesbian Lawyers Network (“GLLN”).<sup>155</sup> It is a method by which to

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147. See *id.* at 7–8. In 1988, an article in *Student Lawyer* noted that “[g]ay students feel they have to remain closeted to get a job and establish a reputation . . . .” Miller, *supra* note 100, at 14. Activists are caught between a rock and a hard place. “If they include membership in any gay organizations on their resumes, [it is] an automatic warning. If they leave them off . . . [the students] ‘look like . . . boring pe[ople] with no leadership skills.’” *Id.*

148. See Miller, *supra* note 100, at 17.

149. See *id.*

150. See, e.g., Interview with Michelle M. Parker, *supra* note 4, at 8. There were those *in-between years* where those who were *out* were very afraid to be when they started their job searches. See Miller, *supra* note 100, at 14. They believed they would not get the position, and if they did, and it became known they were lesbians, they would be fired. See *id.* at 15. Their experience at the time was that they did not fit in. *Id.* They could not take their partners to any social function. *Id.* They had to be very careful about what they talked about that was personal. *Id.* Then, the result was that the lesbian/gay attorney was perceived to be removed and cold. Miller, *supra* note 100, at 15. Law professors at that time counseled gay students to do research about the firms to see which ones contributed to gay causes. *Id.* That way, they were more likely to fit in. *Id.*

151. Interview with Michelle M. Parker, *supra* note 4, at 8. Further, Michelle said she wanted to be free to take her girlfriend to the Christmas party. *Id.* And she wanted to know if the firm was anti-gay before working for them. *Id.*

152. *Id.* The firm’s secretary is a lesbian and her uncle, who is gay, is the person in charge of all the firm’s scheduling. *Id.*

153. Interview with Jennifer Travieso, *supra* note 3, at 11.

154. *Id.*

155. Interview with Lea P. Krauss, *supra* note 4, at 3, 9.

get business and, further, the LGBTI community “feel[s] comfortable dealing with a lesbian [attorney].”<sup>156</sup> “[P]rofessionally, you can use that to your advantage.”<sup>157</sup>

For lawyers, education is never finished.<sup>158</sup> In fact, Continuing Legal Education (“CLE”) is a requirement.<sup>159</sup> With the influence of such groups as the GLLN,<sup>160</sup> the Florida Bar presented a CLE program geared to LGBTI issues.<sup>161</sup> The presentation covered such issues as death of partners and how the remaining partners might not have any rights.<sup>162</sup> As Jennifer noted, “[i]f you do [not] have the proper documents in place and . . . [the] partner’s family does [not] agree with you, they come in . . . [and] take the body.”<sup>163</sup> Jennifer expressed her dismay, “it [is] completely legal for them to do that. It [is] heart wrenching.”<sup>164</sup>

### B. *LGBTI Client’s and Court Experience*

Various judicial councils and bar associations have been concerned about fairness in courts for the LGBTI community.<sup>165</sup> For instance, the Arizona report found that “[t]hirteen percent (13%) of judges and attorneys have observed negative treatment by judges in open court toward those perceived to be gay or lesbian.”<sup>166</sup> Further, if sexual orientation was part of the legal issue, “[thirty-nine] percent believed their sexual orientation was used to devalue their credibility.”<sup>167</sup>

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156. *Id.* at 3.

157. *Id.*

158. *See Continuing Legal Education Requirement*, FLA. B., <https://www.floridabar.org/DIVCOM/PI/BIPS2001.nsf/1119bd38ae090a748525676f0053b606/8182932fc055e6f78525669e004f74f2!OpenDocument> (last updated May 26, 2005).

159. *Id.*

160. *See* Interview with Lea P. Krauss, *supra* note 4, at 12; Interview with Jennifer Travieso, *supra* note 3, at 9. Lea P. Krauss is currently the president of the GLLN. Interview with Lea P. Krauss, *supra* note 4, at 9.

161. *See* Interview with Jennifer Travieso, *supra* note 3, at 9–10.

162. *Id.*

163. *Id.* at 10.

164. *Id.*

165. *See* GAY & LESBIAN TASK FORCE, STATE BAR OF ARIZ., REPORT TO THE BOARD OF GOVERNORS 18 (1999); SEXUAL ORIENTATION FAIRNESS SUBCOMM., JUDICIAL COUNCIL OF CAL., SEXUAL ORIENTATION FAIRNESS IN THE CALIFORNIA COURTS 1 (2001), available at <http://www.courts.ca.gov/documents/report.pdf>.

166. GAY & LESBIAN TASK FORCE, STATE BAR OF ARIZ., *supra* note 165, at 20.

167. Todd Brower, *Obstacle Courts: Results of Two Studies on Sexual Orientation Fairness in the California Courts*, 11 AM. U. J. GENDER SOC. POL’Y & L. 39, 45 (2003) [hereinafter Brower, *Obstacle Courts*].

It has been observed that once the client's sexual orientation becomes part of the legal proceeding, the entire proceeding is overshadowed by the trait.<sup>168</sup> When juror polls are taken, jurors are more likely to say that "they cannot be fair . . . [to] gay litigants," compared to any other group.<sup>169</sup> Given this knowledge, it would appear that some lawyers use this animosity to plant negative seeds in prospective jurors' minds.<sup>170</sup> For instance, when an attorney asks whether the prospective juror would "accept unbiased testimony from [a] gay witness[]," the implication is that the gay witness is unreliable.<sup>171</sup> Further, if the LGBTI lawyer represents activists in the LGBTI community, a conflict may arise.<sup>172</sup> This fact may be important because, as Professor Nancy D. Polikoff noted, if the activist client wanted, for example, to shout out in a courtroom, she as the lawyer was conflicted between identifying with her client's need to be heard, and her desire to abide by her respect of the judicial system.<sup>173</sup> With one exception, none of those interviewed represented gay activists.<sup>174</sup> Only a few of those interviewed actually had clients who even identified as LGBTI.<sup>175</sup> Lilas Ayandeh, being the accidental exception by representing a client who had a civil rights claim, said that she advertised in *Girl Magazine*, which is well known in the South Florida lesbian community.<sup>176</sup> From that advertisement, Lilas was approached by a client who wanted to be represented by her because she wanted a lesbian lawyer.<sup>177</sup> Lilas sought out civil rights attorneys for their

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168. Todd Brower, *Of Courts and Closets: A Doctrinal and Empirical Analysis of Lesbian and Gay Identity in the Courts*, 38 SAN DIEGO L. REV. 565, 609–10 (2001).

169. *Id.* at 611. The jurors are more likely to be less fair to gay or lesbians than "African-Americans, Asians, Hispanics, or Whites." *Id.*

170. Brower, *Obstacle Courts*, *supra* note 167, at 58.

171. *Id.*

172. See Nancy D. Polikoff, *Am I My Client?: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 450 (1996).

173. *Id.* at 449–50.

174. Compare Interview with Seril L. Grossfeld, *supra* note 4, at 16, with Interview with Lilas Ayandeh, *supra* note 3, at 4–5, Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 2, Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 12–13, Interview with Lea P. Krauss, *supra* note 4, at 17, Interview with Michelle M. Parker, *supra* note 4, at 8, Interview with Monica I. Salis, *supra* note 4, at 6, and Interview with Jennifer Travieso, *supra* note 3, at 7.

175. See Interview with Lilas Ayandeh, *supra* note 3, at 4; Interview with Seril L. Grossfeld, *supra* note 4, at 10; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 12–13; Interview with Michelle M. Parker, *supra* note 4, at 8; Interview with Monica I. Salis, *supra* note 4, at 6; Interview with Jennifer Travieso, *supra* note 3, at 7.

176. Interview with Lilas Ayandeh, *supra* note 3, at 4.

177. *Id.*

advice as to whether the case had merit.<sup>178</sup> The case ended as other civil rights attorneys said it would.<sup>179</sup> The client lost due to the weakness of the facts in her case.<sup>180</sup>

Generally, the court system in Broward County was seen as fair toward the LGBTI community.<sup>181</sup> While Michelle M. Parker has many LGBTI clients, the issues are usually not gay related.<sup>182</sup> The reason that her firm has so many gay clients is due to the manner in which they advertise on the GLLN website.<sup>183</sup> GLLN is a very active legal network.<sup>184</sup> Thus, many in the community decide on which lawyer they will retain based on finding them on the network.<sup>185</sup> Michelle noted that they handle Title VII cases, but based on gender, not sexual orientation.<sup>186</sup> Thus, Michelle noted that while their clients had been fired because they were lesbian, the focus of the case was sex discrimination because the client did not fit the *female stereotype*.<sup>187</sup>

#### IV. FLORIDA LAW AS IT RELATES TO THE LGBTI COMMUNITY

Florida's LGBTI population is one of the highest in the United States, and the figure is continually rising.<sup>188</sup> In the past decade, the number of same-sex households alone has greatly increased in Florida.<sup>189</sup> One would infer from such statistics that the LGBTI community is attracted to Florida

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178. *Id.* at 5.

179. *Id.*

180. *See id.* Some part of the loss was due to the fact that the client had been “pulled over for a DUI [and in doing so] almost hit th[e] Deputy on the side of the road.” Interview with Lilas Ayandeh, *supra* note 3, at 5. However, the client was convinced that the whole episode was due to her sexual orientation. *Id.* at 6. The client arrived at this conclusion because when she was stopped, the deputy asked if she was gay. *Id.* He probably arrived at this conclusion because she had short hair and her partner, who was also in the car, was very feminine. *Id.*

181. *Id.* at 6; *see also* Interview with Lea P. Krauss, *supra* note 4, at 17.

182. *See* Interview with Michelle M. Parker, *supra* note 4, at 8.

183. *See id.*

184. *See* Interview with Lea P. Krauss, *supra* note 4, at 9.

185. *See id.* at 13; Interview with Michelle M. Parker, *supra* note 4, at 8.

186. Interview with Michelle M. Parker, *supra* note 4, at 8; *see also* *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79–80 (1998).

187. Interview with Michelle M. Parker, *supra* note 4, at 8; *see also* *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (discussing sex stereotyping).

188. GARY J. GATES, *SAME-SEX COUPLES AND THE GAY, LESBIAN, BISEXUAL, POPULATION: NEW ESTIMATES FROM THE AMERICAN COMMUNITY SURVEY 6* tbl.3, app. 1 (2006), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-Same-Sex-Couples-GLB-Pop-ACS-Oct-2006.pdf>.

189. Jeff Kunerth, *More Gays are Now Families*, ORLANDO SENTINEL, Aug. 18, 2011, at A1.

due to its favoring laws and liberal constituency; however, that is not the case.<sup>190</sup> Florida's laws towards members of the LGBTI community have been described as hostile and even *draconian*.<sup>191</sup> Historically, the treatment towards the LGBTI persons in Florida exemplifies an overall societal animosity.<sup>192</sup> There have been “‘witch hunts’ for lesbian and gay teachers, political attacks through voter initiatives, [and] overtly discriminatory laws.”<sup>193</sup>

Florida's legislation and judiciary make a clear distinction between the LGBTI individual and the heterosexual individual.<sup>194</sup> In Florida, the LGBTI individual's rights and protections are limited in comparison to those of a heterosexual individual.<sup>195</sup> Although the LGBTI community, at a local level, might enjoy some added protections that the State of Florida fails to provide,<sup>196</sup> “the scope of [such] protections is limited and . . . do[es] not geographically encompass a large percentage of Florida's LGBT[I] population.”<sup>197</sup> Florida's LGBTI community faces much discrimination in various aspects of the law due to their sexual orientation.

#### A. *Right to Marry*

On September 21, 1996, Congress effectuated the Defense of Marriage Act (“DOMA”), which grants states the right to decline recognition of same-sex marriages sanctioned in another state.<sup>198</sup> DOMA was motivated

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190. Matthew T. Moore, *Long-Term Plans for LGBT Floridians: Special Concerns and Suggestions to Avoid Legal and Family Interference*, 34 NOVA L. REV. 255, 256 (2009); see also GATES, *supra* note 188, at 6 tbl.3, app. 1; Kunerth, *supra* note 189.

191. See Moore, *supra* note 190, at 256.

192. See *id.*

193. William E. Adams, Jr., *A Look at Lesbian and Gay Rights in Florida Today: Confronting the Lingering Effects of Legal Animus*, 24 NOVA L. REV. 751, 751 (2000).

194. See *id.* at 754.

195. CARLTON FIELDS & EQUAL. FLA. INST., A LEGAL HANDBOOK FOR LGBT FLORIDIANS AND THEIR FAMILIES 7–10 (3d ed. 2012), available at [http://www.CarltonFields.com/Files/Uploads/Documents/OtherPubs/Equality\\_Florida\\_Handbook\\_3Ed\\_06\\_2012.pdf](http://www.CarltonFields.com/Files/Uploads/Documents/OtherPubs/Equality_Florida_Handbook_3Ed_06_2012.pdf).

196. See Kunerth, *supra* note 189. For example, “Orlando and Orange County both offer domestic-partnership benefits to same-sex couples—something they [did not] do [ten] years ago.” *Id.*

197. Moore, *supra* note 190, at 259.

198. Defense of Marriage Act of 1996 § 2(a), 28 U.S.C. § 1738C (2012); see also Nanci Schanerman, Note, *Comity: Another Nail in the Coffin of Institutional Homophobia*, 42 U. MIAMI INTER-AM. L. REV. 145, 150–51 (2010).

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of

by the likely prospect that same-sex marriages would soon be recognized in Hawaii.<sup>199</sup> “[T]he federal government was worried that [Hawaii] was dangerously close to granting same-sex marriages, and the implications of the Full Faith and Credit Clause would mandate recognition of marriages performed in Hawaii in every state around the country.”<sup>200</sup> By enacting DOMA, the federal government’s purpose was to leave the decision of recognizing same-sex marriage up to each state, rather than having it mandated upon all states on the basis of federal principles.<sup>201</sup>

The Florida Legislature took prompt action with regard to the Federal DOMA and, by June 1997, the DOMA law was accepted and codified into the *Florida Statutes*.<sup>202</sup> In the process of enacting the Florida DOMA, many supporters of such law made their hostility toward the LGBTI community known.<sup>203</sup> Take, for example, the words of Senator Grant, an advocate for Florida’s DOMA, ““God created Adam and Eve, not Adam and Steve,”” or how he expressed that it was ““[g]reat that [the Act] [took] effect on June 4, right smack dab in the middle of Gay Pride Week.””<sup>204</sup>

Although Florida’s DOMA makes clear that same-sex marriages are not recognized within the state, the issue did not stop there.<sup>205</sup> In 2003, when the Supreme Court of Massachusetts overturned its state law banning same-sex marriage,<sup>206</sup> Florida’s opponents to same-sex marriage were quick to realize that Florida’s DOMA was also at risk of being overturned.<sup>207</sup> For that

any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.

Defense of Marriage Act of 1996 § 2(a).

199. See *Baehr v. Lewin*, 852 P.2d 44, 59–60, 67 (Haw.), *reconsideration granted in part*, 875 P.2d 225 (Haw. 1993), and *appeal after remand sub nom. Baehr v. Miike*, 910 P.2d 112 (Haw. 1996), *remanded*, 1996 WL 694235 (Haw. Cir. Ct. Dec. 3, 1996), *aff’d*, 950 P.2d 1234 (Haw. 1997); Schanerman, *supra* note 198, at 150.

200. Schanerman, *supra* note 198, at 150.

201. *Id.* at 150–51.

202. FLA. STAT. § 741.212 (2013); Michael J. Kanotz, Comment, *For Better or for Worse: A Critical Analysis of Florida’s Defense of Marriage Act*, 25 FLA. ST. U. L. REV. 439, 445 (1998).

203. Kanotz, *supra* note 202, at 446.

204. *Id.* at 445–46 (second alteration in original).

205. *Id.*

206. *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 948 (Mass. 2003); Lynn D. Wardle, *Non-Recognition of Same-Sex Marriage Judgments Under DOMA and the Constitution*, 38 CREIGHTON L. REV. 365, 375 (2004–2005).

207. See *Vote Yes on Amendment 2*, CHRISTIAN FAM. COALITION, [http://cfcoalition.com/full\\_article.php?article\\_no=94](http://cfcoalition.com/full_article.php?article_no=94) (last visited Nov. 10, 2013). The coalitions advertised various reasons why an amendment to the Florida Constitution was necessary. *Id.*



very reason the process to amend Florida's Constitution began.<sup>208</sup> In 2005, "[a] coalition of groups joined . . . and agreed on the language [for] the Florida Marriage Protection Amendment . . . ."<sup>209</sup> The proposed language stated, "'marriage is the legal union of only one man and one woman as husband and wife, no other legal union *that is treated as marriage or the substantial equivalent thereof* shall be valid or recognized."<sup>210</sup> The Supreme Court of Florida approved the language of the Amendment by a unanimous vote.<sup>211</sup> By 2008, the decision to determine whether the proposed Amendment was to become part of the Florida Constitution was left in the hands of Florida's constituents.<sup>212</sup>

There were ugly campaign tactics favoring the passage of the Amendment; one campaign advertisement particularly encouraged voters to vote in favor of the Amendment by threatening that activist judges could *ignore the will of the people* and legalize same-sex marriage if the Amendment was not passed.<sup>213</sup> Furthermore, advertisements emphasized hostile societal views against the LGBTI community by stating that the Amendment would "protect[] . . . children from being taught [by] public schools that same-sex marriage is the same as natural marriage," and it would "give[] children the best chance for both a mom and a dad."<sup>214</sup> The results were surprising to the LGBTI community since opinion polls "never showed the [Amendment] getting any more than [fifty-nine] percent

208. *See id.*

209. *Florida Voters Approve Marriage Protection Amendment*, PROLIFEBLOGS.COM (Nov. 4, 2008, 9:44 PM), [http://www.prolifeblogs.com/articles/archives/2008/11/florida\\_voters.php](http://www.prolifeblogs.com/articles/archives/2008/11/florida_voters.php). "Amendment 2 defines marriage as the union of one man and one woman and will prohibit polygamy, group marriage, and same-sex marriage from being recognized in Florida." *Id.*

210. Anthony Niedwiecki, *Florida's Amendment 2: What Does "Substantial Equivalent" to Marriage Mean?*, BILERICO PROJECT (Oct. 20, 2008, 3:00 PM), [http://www.bilerico.com/2008/10/floridas\\_amendment\\_2\\_what\\_does\\_substanti.php](http://www.bilerico.com/2008/10/floridas_amendment_2_what_does_substanti.php).

211. Advisory Op. to the Att'y Gen. re Fla. Marriage Prot. Amendment, 926 So. 2d 1229, 1241 (2006); *Florida Voters Approve Marriage Protection Amendment*, *supra* note 209.

212. *See* FLORIDA FAMILY POLICY COUNCIL ET AL., CONSTITUTIONAL AMENDMENT PETITION FORM: FLORIDA MARRIAGE PROTECTION AMENDMENT 1 (n.d.), available at <http://election.dos.state.fl.us/initiatives/fulltext/pdf/41550-1.pdf>.

213. FLA. FAMILY POLICY COUNCIL, YES ON 2: FACT SHEET 1 (2008), available at <http://ccpcf.org/Voter-Guides/2008/2008MarriageAmend2.pdf>.

Massachusetts . . . activist judges ha[d] re-written marriage laws and *ignored the will of the people* by legalizing same-sex marriages. There is a national movement to do this all over the country, which is why [twenty-seven] states have passed state constitutional amendment [sic] to protect marriage. . . . Amendment 2 protects the definition of marriage from activist judges.

*Id.* (emphasis added).

214. *Id.*

support.”<sup>215</sup> Yet the Amendment passed by a supermajority; “[a]pproximately 4.6 million voters supported [the] Amendment, . . . while about 2.8 million opposed it.”<sup>216</sup> Passage of this Amendment “demonstrates that neither legislative nor societal hostility in Florida is likely to end soon.”<sup>217</sup>

For now, an LGBTI individual in a long-term, non-marital relationship will continue to be viewed as an *individual* under the laws of Florida.<sup>218</sup> Since the LGBTI community is denied of the right to marry, they are also denied the “legal status and certain benefits derived therein.”<sup>219</sup>

Marriage bestows upon couples a litany of legal rights and benefits, including but not limited to: [F]iling joint state and federal income tax returns, social security survivor benefits, immigration benefits, bereavement leave, immunity from testifying against your spouse in court, wrongful death and loss of consortium relief, sick leave to care for a partner, assumption of a spouse’s pension, automatic inheritance rights, child custody, burial determination, hospital visitation rights, divorce protections, and domestic violence protection.<sup>220</sup>

Acknowledging that change is necessary, the Supreme Court of the United States found section three of DOMA unconstitutional.<sup>221</sup> Even so, LGBTI individuals must undertake “costly and time consuming litigation under Florida law” to make sure that his or her loved one does not become a *legal stranger* upon the occurrence of an unexpected event.<sup>222</sup>

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215. *Florida Marriage Amendment Wins 62% Support*, FLA. BAPTIST WITNESS (Nov. 13, 2008), <http://gofbw.com/News.asp?ID=9579>.

216. *Id.*; *Florida Voters Approve Marriage Protection Amendment*, *supra* note 209.

217. Moore, *supra* note 190, at 256.

218. *Id.* at 257.

219. Melissa A. Provost, Comment, *Disregarding the Constitution in the Name of Defending Marriage: The Unconstitutionality of the Defense of Marriage Act*, 8 SETON HALL CONST. L.J. 157, 159 (1997).

220. *Id.*

221. *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013) (reasoning that, “[t]he federal statute is invalid, for no legitimate purpose overcomes the purpose and effect to disparage and injure those whom the State, by its marriage laws, sought to protect in personhood and dignity”).

222. Moore, *supra* note 190, at 280; *see also* William Gibson, *Lesbian Case in Miami Highlighted Denial of Hospital Visitation Rights*, SUNSENTINEL (Apr. 16, 2010, 11:18 AM), [http://weblogs.sun-sentinel.com/news/politics/dcblog/2010/04/lesbian\\_case\\_in\\_miami\\_highligh.html](http://weblogs.sun-sentinel.com/news/politics/dcblog/2010/04/lesbian_case_in_miami_highligh.html).

B. *What the Future May Hold?*

Even when the LGBTI individual takes legal measures to protect his or her partner and provide him or her with rights to prevent them from becoming *legal strangers* upon the occurrence of an unexpected event, there still remains the frightening possibility that such legal documents will be ignored because the gay and lesbian “relationship is so thoroughly invisible and disrespected.”<sup>223</sup> Take for example the 2008 case of Clay Greene and Harold Scull, partners of twenty years, whose legal measures to “name[] each other [as] beneficiaries of their respective estates and agents for medical decisions” were completely ignored.<sup>224</sup> “By the time [Scull] died, county officials had [already] sold all of the couple’s possessions, confiscated their cats, and assumed control over their finances.”<sup>225</sup> Scull died without seeing his partner Greene, since Greene was confined to a nursing home and prohibited from visiting him.<sup>226</sup>

Although the legal measures taken by an LGBTI individual might be ignored or contested,<sup>227</sup> such measures are still the best option an LGBTI individual has to provide rights and protect his or her life partner. In Florida, the LGBTI individual must plan ahead in the event sickness or death strikes.<sup>228</sup> This is especially true since “Florida [is] hostile to same-sex relationships and consider[s] same-sex partners to be legal strangers.”<sup>229</sup>

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223. Gerry Shih, *Suit Charges Elderly Gay Partners Were Forced Apart*, N.Y. TIMES (Apr. 20, 2010, 2:09 AM), <http://bayarea.blogs.nytimes.com/2010/04/20/suit-charges-elderly-gay-couple-was-forced-apart/?scp=1&sq=elderly%20gay%20partners&st=cse>.

224. *NCLR Launches Campaign on Behalf of Clay & Harold*, DAILY KOS (Apr. 19, 2010, 5:43 PM), <http://www.dailykos.com/story/2010/04/19/858870/-NCLR-Launches-Campaign-on-Behalf-of-Clay-Harold>.

225. Nancy J. Knauer, *Gay and Lesbian Elders: Estate Planning and End-of-Life Decision Making*, 12 FLA. COASTAL L. REV. 163, 164–65 (2010).

226. *Id.* at 164; *NCLR Launches Campaign on Behalf of Clay & Harold*, *supra* note 224.

227. See CARLTON FIELDS & EQUAL. FLA. INST., *supra* note 195, at 14; MOVEMENT ADVANCEMENT PROJECT ET AL., *LGBT OLDER ADULTS: FACING LEGAL BARRIERS TO TAKING CARE OF LOVED ONES* (2010), *available at*, <http://www.lgbtagingcenter.org/resources/pdfs/LGBTOlderAdultsandTakingCareofLovedOnes.pdf>.

228. See CARLTON FIELDS & EQUAL. FLA. INST., *supra* note 195, at 14.

229. Knauer, *supra* note 225, at 188.

## 1. Transfer of Property

In Florida, a LGBTI individual must utilize legal tools and documents to make sure that his or her life partner has access to him or her and to his or her property upon death or incapacity.<sup>230</sup>

[T]here are a wide variety of legal documents available and recognized under Florida law that can be used to facilitate the orderly transfer of various types of property upon death, in the event of incapacity, or to otherwise avoid the *default* disposition of those assets upon death under existing law.<sup>231</sup>

So in Florida, if a LGBTI individual wishes for his or her life partner to be granted any of his or her property upon death, he or she must have valid legal documents specifying such wishes because failure to do so can leave the surviving life partner empty handed.<sup>232</sup>

Although some states have facilitated matters for their LGBTI community in this regard by granting legal recognition and protection to the same-sex relationship, Florida is not one of those states.<sup>233</sup> Florida's legislature has failed various times to pass laws that would "recognize the long-term relationships of same-sex couples"; until such occurrence, Florida's same-sex partners will continue to be "forced . . . to fit themselves into existing legal categories."<sup>234</sup>

Same-sex partners can "fit themselves into existing legal categories"<sup>235</sup> through estate planning.<sup>236</sup> "[E]state-planning documents enable[] same-sex partners to give each other some measure of legal standing and protection."<sup>237</sup> For example, through a valid will, same-sex partners can devise their property to their partners—devisees—rather than allowing

230. See CARLTON FIELDS & EQUAL. FLA. INST., *supra* note 195, at 14.

231. *Id.*

232. *Id.* at 14–15.

233. See Aimee Bouchard & Kim Zadworny, *Growing Old Together: Estate Planning Concerns for the Aging Same-Sex Couple*, 30 W. NEW ENG. L. REV. 713, 749 (2008). "The Hawaii [L]egislature passed the Hawaii Reciprocal Beneficiaries Act, which granted some of the legal rights of marriage to couples who registered as *reciprocal beneficiaries*." *Id.* at 717. "When Vermont extended the status of a civil union to same-sex couples, it granted them all the same legal rights as provided by marriage within the state . . ." *Id.* "The California Domestic Partner Rights and Responsibilities Act states that same-sex domestic partners will be treated like heterosexual married partners in the event of the death of one spouse." *Id.* at 720.

234. Adams, *supra* note 193, at 761 & n.74, 762.

235. *Id.* at 762.

236. Knauer, *supra* note 225, at 167.

237. *Id.*

Florida's intestacy laws to govern the distribution of their property.<sup>238</sup> If the probate method is not preferred, the LGBTI individual has other options, such as "trusts, joint ownership, and transfer on death designations."<sup>239</sup> Unlike heterosexual couples, if same-sex partners fail to take legal action to provide their long-term partners with rights, their partners will be *legal strangers* in the eyes of Florida law.<sup>240</sup>

## 2. Visitation Rights and End of Life Decisions

Some of the most unconscionable are laws that stand in the way of LGBT[I] people taking care of those they love, in life and in death. . . . LGBT[I] people could be excluded from medical decision-making for a partner. . . . [U]pon the death of a partner, LGBT[I] people are often denied making end-of-life decisions about last rites, funerals, and disposition of remains.<sup>241</sup>

Unlike heterosexual couples, same-sex couples have to provide the hospitals with legal documents "before being allowed to take part in [their] partner's care" or to even be allowed to see their partner.<sup>242</sup> This is why LGBTI individuals are advised to have legal documents that verify their relationship and grant their partners the right to make medical and end-of-life decisions.<sup>243</sup>

A recent Florida case that gained much national attention, *Langbehn v. Public Health Trust of Miami-Dade County*,<sup>244</sup> exemplifies the difficulties same-sex partners face in obtaining access to their hospitalized partner and in being permitted to make medical decisions on behalf of their partner.<sup>245</sup> Janice Langbehn was not allowed access to Lisa Pond, her partner of eighteen years, during the critical hours of Pond's hospitalization when she

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238. *Id.* at 189–90, 192.

In the vast majority of states where the decedent is not survived by a *spouse*, the rules of intestate succession distribute the decedent's property to the closest relatives in the following priority: Children, parents, siblings, nieces and nephews, grandparents. . . . If a decedent is not survived by any relatives within the prescribed degrees of relationship, all property will escheat to the state.

*Id.* at 190–91 n.141 (emphasis added).

239. *Id.* at 189–90.

240. *See* Knauer, *supra* note 225, at 188.

241. MOVEMENT ADVANCEMENT PROJECT ET AL., *supra* note 227.

242. Tara Parker-Pope, *How Hospitals Treat Same-Sex Couples*, N.Y. TIMES (May 12, 2009, 12:00 PM), <http://well.blogs.nytimes.com/2009/05/12/how-hospitals-treat-same-sex-couples/>.

243. *Id.*

244. 661 F. Supp. 2d 1326 (S.D. Fla. 2009).

245. *Id.* at 1331–33.

remained semi-conscious.<sup>246</sup> Although Janice had a power of attorney, which authorized her to make medical decisions on behalf of her partner in the case of incapacity, no one in the hospital “acknowledged the legal effect of the document.”<sup>247</sup> Instead, Janice was informed by a social worker that because Florida was an anti-gay state, she was not going to be allowed to see Pond or know about her medical condition.<sup>248</sup> It was not until Pond’s sister arrived at the hospital that Janice was allowed access to Pond, but at that point, Pond was already unconscious and died soon thereafter.<sup>249</sup>

Although Janice unsuccessfully sued the hospital and hospital staff for the emotional distress she was forced to endure,<sup>250</sup> her case was not overlooked by the President of the United States.<sup>251</sup> President Barack Obama noted,

[LGBTI] Americans are “uniquely affected” by relatives-only policies at hospitals . . . [and] “are often barred from the bedsides of the partners with whom they may have spent decades of their lives—unable to be there for the person they love, and unable to act as a legal surrogate if their partner is incapacitated.”<sup>252</sup>

Therefore, in 2010, President Obama issued a memorandum requiring hospitals that accept Medicare or Medicaid funds to adopt policies that would provide visitation rights to same-sex couples.<sup>253</sup> Further, the memorandum directed hospitals to respect “all patients’ advance directives, such as durable powers of attorney and health care proxies.”<sup>254</sup>

Since hospitals must abide by the President’s executive order to continue obtaining funding from the government, it is not surprising that Florida hospitals have changed their policies to include same-sex partners as

246. *Id.*

247. *Id.* at 1332.

248. *Id.*; see also Susan Donaldson James, *Lesbians Sue When Partners Die Alone*, ABC NEWS (May 20, 2009), <http://abcnews.go.com/Health/story?id=7633058>.

249. Erin Shaughnessy Zuiker, *The Rights of Patients to Visitors of Their Choice: CMS Expands the Meaning of “Immediate Family” and Through Regulation Requires Hospitals to Do the Same*, HOSPS. & HEALTH SYS. RX, May 2011, at 16, 16.

250. *Langbehn v. Pub. Health Trust of Miami-Dade Cnty.*, 661 F. Supp. 2d 1326, 1347 (S.D. Fla. 2009).

251. *Obama Orders Hospital Visitation Rights for Gays, Lesbians*, CNN POLITICS (Apr. 16, 2010, 2:34 AM), <http://www.cnn.com/2010/POLITICS/04/15/hospital.gay.visitation/index.html>.

252. *Id.*

253. *Id.*

254. President Barack Obama, Presidential Memorandum—Hospital Visitation (Apr. 15, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-memorandum-hospital-visitation>.

part of their “family member” definitions and have adopted a non-discrimination policy that encompasses sexual orientation, gender identity, and gender expression.<sup>255</sup> Although such policy changes are occurring throughout Florida hospitals, they are not a result of any state action.<sup>256</sup>

President Obama’s memorandum did not cover end-of-life decisions that arise when dealing with funeral decisions and disposition of remains.<sup>257</sup> However, this issue also causes problems for the same-sex partners, specifically when “[f]amilies [are] unfamiliar with or intolerant of a same-sex relationship [and they] may make after-death arrangements contrary to a couple’s wishes.”<sup>258</sup> In Florida, “any person may carry out written instructions of the decedent relating to the decedent’s body and funeral and burial arrangements.”<sup>259</sup> Therefore, it is advised that same-sex partners provide directives on how they wish their remains to be disposed.<sup>260</sup> If such measures are not taken, the same-sex partner will have no say in such decision regarding the area of burial and cemetery arrangements, since the state law has traditionally vested decision-making authority in the next of kin.<sup>261</sup>

### 3. Living Facilities

About eighty percent of senior care is provided by family, but since LGBTI elders typically do not have the traditional family support system, many end up relying on nursing homes or other institutions for long-term care.<sup>262</sup> The thought of going to a nursing home or a living facility raises many fears for the LGBTI elders.<sup>263</sup> Unfortunately, their fears are validly

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255. *Id.*; see also, e.g., JACKSON HEALTH SYS., VISITATION POLICY 1–2 (2010), <http://www.jacksonhealth.org/library/policies/jhs-visitation-policy.pdf>.

256. See President Barack Obama, *supra* note 254; see also, e.g., JACKSON HEALTH SYS., *supra* note 255.

257. See President Barack Obama, *supra* note 254.

258. Bouchard & Zadworny, *supra* note 233, at 748.

259. FLA. STAT. § 732.804 (2013).

260. Bouchard & Zadworny, *supra* note 233, at 748.

261. Jennifer E. Horan, Note, “When Sleep at Last Has Come”: Controlling the Disposition of Dead Bodies for Same-Sex Couples, 2 J. GENDER RACE & JUST. 423, 428 (1999) (discussing the difficulty encountered by surviving same-sex partners).

262. LGBT MOVEMENT ADVANCEMENT PROJECT & SERVS. & ADVOCACY FOR GAY, LESBIAN, BISEXUAL, & TRANSGENDER ELDERS, IMPROVING THE LIVES OF LGBT OLDER ADULTS ii, 33–34 (2010), available at <http://www.sageusa.org/resources/publications.cfm?ID=21>.

263. Dean H. Freeman, *Gay Seniors Fear Nursing Home Abuse in Broward if “Outed”*, FLA. NURSING HOME LAW BLOG (Aug. 18, 2012), [http://www.floridanursinghomelawyerblog.com/2012/08/gay\\_seniors\\_fear\\_nursing\\_home\\_1.html](http://www.floridanursinghomelawyerblog.com/2012/08/gay_seniors_fear_nursing_home_1.html).

rooted, especially when elders “face a heightened risk of abuse . . . regardless of other identity factors.”<sup>264</sup> Being part of a minority group makes the LGBTI elders more susceptible to being subjected to emotional and physical hostility and to being the first target of abuse in living facilities.<sup>265</sup> For such reasons, many LGBTI elders who end up in long-term care institutions feel forced to *closet* their sexual orientation.<sup>266</sup>

Although the Nursing Home Reform Act (“NHRA”) was designed to protect LGBTI elders from discrimination, abuse, and neglect in federally certified nursing homes,<sup>267</sup> this does not mean that such conduct does not continue to occur.<sup>268</sup> Regardless of the federal protections, the LGBTI elders are correct in believing that in such institutions “[t]hey can[not] be guaranteed an environment . . . where they will be treated equally.”<sup>269</sup> A national survey indicated that forty-three percent of 770 LGBTI elders living in a nursing home “reported some type of mistreatment by staff or fellow patients” and “about [twenty] percent of LGBT[I] patients were abruptly discharged from their facility—a far higher rate than their straight counterparts.”<sup>270</sup> Also, since the NHRA protections do not cover living facilities or nursing homes that are not federally funded, it is up to the states

264. Jaime E. Hovey, Note, *Nursing Wounds: Why LGBT Elders Need Protection from Discrimination and Abuse Based on Sexual Orientation and Gender Identity*, 17 ELDER L.J. 95, 96 (2009).

265. *Id.*

266. Diane C. Lade, *Nursing Home as Closet—‘Gen Silent’ Film on Gay Seniors Exposes Prejudice, Fear*, SUN-SENTINEL, Aug. 7, 2012, at 1A (“More than three-fourths of the LGBT[I] survey respondents said gay seniors would hide their sexual orientation if they ended up in institutional care.”); see also Daniel Redman, *They Stood Up for Us: Advocating for LGBT Elders in Long-Term Care*, 21 TEMP. POL. & CIV. RTS. L. REV. 443, 452–53 (2012).

Vera and Zayda were together for fifty-eight years. When Vera’s Alzheimer’s became too much for Zayda to deal with, they went into an assisted living facility. Despite the fact that they had been partners for nearly six decades, they were afraid to be out in this facility, and they presented themselves as sisters instead. Once Vera passed away, Zayda did not feel like she could speak about their relationship. She did not put up any pictures or any indications of the fact that she had lived this life with this person whom she loved, and with whom she had built a family.

Redman, *supra* note 266, at 453.

267. NAT’L SENIOR CITIZENS LAW CTR. ET AL., LGBT OLDER ADULTS IN LONG-TERM CARE FACILITIES: STORIES FROM THE FIELD 21 (2011), available at [http://www.lgbtagingcenter.org/resources/pdfs/NSCLC\\_LGBT\\_report.pdf](http://www.lgbtagingcenter.org/resources/pdfs/NSCLC_LGBT_report.pdf).

268. Rob Barry et al., *Neglected to Death, Part 1: Once Pride of Florida; Now Scenes of Neglect*, MIAMI HERALD (Apr. 30, 2011), <http://www.miamiherald.com/2011/04/30/2194842/once-pride-of-florida-now-scenes.html>.

269. Lade, *supra* note 266.

270. Freeman, *supra* note 263.



to set those protections.<sup>271</sup> Sadly, Florida has not been at the forefront in enforcing laws protecting the elders in long-term care facilities, let alone creating laws that would protect the LGBTI elders in long-term care facilities.<sup>272</sup> Instead, “[r]eports have criticized [Florida] nursing homes and assisted living facilities for not meeting the specialized health and welfare needs of elderly homosexuals.”<sup>273</sup> Until proactive measures are taken by Florida to hold the long-term care institutions accountable for unfair treatment towards the LGBTI elders, the LGBTI elders feel forced to hide their identity in order to diminish the likelihood of abuse, discrimination, and neglect.<sup>274</sup>

### C. Adoption

Until recently, Florida had a total ban on homosexual adoption.<sup>275</sup> “In 1977, Florida became the first state to enact a [blanket exclusion] on adoption[] by gay[s] or lesbian[s] . . . .”<sup>276</sup> The statute plainly stated “[n]o person eligible to adopt under this statute may adopt if that person is a *homosexual*.”<sup>277</sup> The legislation clearly singled out the LGBTI community from adopting on the basis that the group was *dangerous to children*.<sup>278</sup> Even though there was a “lack of empirical studies or legislative fact-finding regarding the harms of adoption by gay or lesbian adults, the legislature[’s]” hostility was enough to enact the ban on all homosexual adoptions.<sup>279</sup> As

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271. NAT’L SENIOR CITIZENS LAW CTR. ET AL., *supra* note 267, at 21–25.

272. NAT’L GAY & LESBIAN TASK FORCE, STATE NONDISCRIMINATION LAWS IN THE U.S. (2013), available at [http://www.thetaskforce.org/downloads/reports/issue\\_maps/non\\_discrimination\\_6\\_13\\_color.pdf](http://www.thetaskforce.org/downloads/reports/issue_maps/non_discrimination_6_13_color.pdf); *Report Reveals Elder Abuse in Florida Assisted Living Facilities*, HUFFINGTON POST (May 8, 2011, 10:22 PM), [http://www.huffingtonpost.com/2011/05/08/report-reveals-elder-abuse\\_n\\_858892.html](http://www.huffingtonpost.com/2011/05/08/report-reveals-elder-abuse_n_858892.html). The article points out “Florida’s state regulators’ failure to monitor and enforce the laws protecting some of society’s most vulnerable residents.” *Report Reveals Elder Abuse in Florida Assisted Living Facilities*, *supra* note 272.

273. 15 JEROME IRA SOLKOFF & SCOTT M. SOLKOFF, *FLORIDA ELDER LAW* § 24.5 (2012–2013).

274. Freeman, *supra* note 263; Lade, *supra* note 266.

275. See Fla. Dep’t of Children & Families v. Adoption of X.X.G. & N.R.G., 45 So. 3d 79, 81, 91–92 (Fla. 3d Dist. Ct. App. 2010).

276. Tiffani G. Lee, Note, Cox v. Department of Health and Rehabilitative Services: *A Challenge to Florida’s Homosexual Adoption Ban*, 51 U. MIAMI L. REV. 151, 151 (1996).

277. FLA. STAT. § 63.042(3) (1977) (current version at FLA. STAT. § 63.042 (2013)) (emphasis added).

278. Lee, *supra* note 276, at 154; FLA. STAT. § 63.042 (1977) (current version at FLA. STAT. § 63.042 (2013)).

279. Lee, *supra* note 276, at 155.

one senator pointed out, the statute “had nothing to do with adoption and everything to do with discrimination against homosexuals.”<sup>280</sup>

In Florida, the right to adopt has been incessantly fought for by the LGBTI community for thirty-six years.<sup>281</sup> In many cases like *Lofton v. Kearney*,<sup>282</sup> homosexual foster parents challenged the constitutionality of Florida’s adoption ban.<sup>283</sup> The courts constantly upheld the adoption ban, mainly on the reasoning that the best interest of the child was a legitimate basis for the ban.<sup>284</sup> However, it has been clear to many that “the best interest of the child standard, that was offered as the *legitimate purpose* behind the per se denial of homosexual adoption, [was] merely a guise for discrimination.”<sup>285</sup>

After previous failed legal challenges to the adoption ban, a Third District Court of Appeal decision has changed the *playing field* in the favor of the LGBTI community.<sup>286</sup> In 2010, the Third District Court of Appeal deemed the law banning homosexuals from adopting unconstitutional.<sup>287</sup> The court held that “the best interests of children are not preserved by prohibiting homosexual adoption,” and “the [law] violated . . . equal protection rights of the children [and their prospective parents].”<sup>288</sup> For now, the prohibited adoption by gays and lesbians is no longer in effect.<sup>289</sup> But the

280. *Id.* Oddly enough, members of the LGBTI community could become foster parents, but could not adopt those foster children until the legal challenge was initiated by a gay foster father. See *In re Adoption of Doe*, 2008 WL 5006172, at \*1 (Fla. 11th Cir. Ct. Nov. 25, 2008), *aff’d sub nom.* Fla. Dep’t of Children & Families v. Adoption of X.X.G. & N.R.G., 45 So. 3d 79 (Fla. 3d Dist. Ct. App. 2010). The Florida Circuit Court of the Eleventh Judicial Circuit found the prohibition against adoption unconstitutional. *Id.* at \*29.

281. See FLA. STAT. § 63.042(3) (1977) (current version at FLA. STAT. § 63.042 (2013)); *Lofton v. Kearney*, 157 F. Supp. 2d 1372, 1374–76 (S.D. Fla. 2001); *Cox v. Fla. Dep’t of Health & Rehabilitative Servs.*, 656 So. 2d 902, 902–03 (Fla. 1995) (per curiam).

282. 157 F. Supp. 2d 1372 (S.D. Fla. 2001).

283. *Id.* at 1374.

284. See, e.g., *id.* at 1383–84.

285. Carolyn S. Grigsby, Note, *Lofton v. Kearney: Discrimination Declared Constitutional in Florida*, 21 ST. LOUIS U. PUB. L. REV. 199, 224 (2002); see also Timothy P.F. Crowley, Case Note, *Lofton v. Kearney: The United States District Court for the Southern District of Florida Holds Florida’s Statutory Ban on Gay Adoption Is Not Offensive to the Constitution*, 11 TUL. J.L. & SEXUALITY 253, 263 (2002).

286. See Fla. Dep’t of Children & Families v. Adoption of X.X.G. & N.R.G., 45 So. 3d 79, 81, 91–92 (Fla. 3d Dist. Ct. App. 2010); Susan Spencer-Wendel, *Gay Adoption Ban Overturned; an Appeals Court Rejects Nation’s Last Prohibition; State Stops Enforcing It*, PALM BEACH POST, Sept. 23, 2010, at A.1.

287. *Adoption of X.X.G. & N.R.G.*, 45 So. 3d at 92; Spencer-Wendel, *supra* note 286.

288. *Adoption of X.X.G. & N.R.G.*, 45 So. 3d at 87, 91.

289. Spencer-Wendel, *supra* note 286.

fight is far from over; a backlash against gay and lesbian adoption continues to ensue.<sup>290</sup> There remains the lingering possibility of another Florida appellate court ruling differently on the matter, which would take it to the Supreme Court of Florida to make the final ruling.<sup>291</sup>

#### D. *Child Custody*

In Florida, a LGBTI parent might face child custody and visitation issues in two main factual contexts: 1) “[A] person who enters into a heterosexual marriage and has children, [but] later divorce[s] after discovering that he or she is gay, lesbian, bisexual, or transgender,” or 2) “[a] same-sex couple[] . . . rais[es] a child or children together [and later] separate[s].”<sup>292</sup> In the first scenario, the legal issues for the LGBTI parent arise due to his or her sexual orientation and/or gender identity.<sup>293</sup> While in the second scenario, the legal issues for the LGBTI parents typically arise because only one of the LGBTI parents is the *legal* parent of the child.<sup>294</sup> Under Florida law, there is a lot more guidance on how to deal with child custody or visitation issues if the LGBTI parent had the child from a prior heterosexual relationship.<sup>295</sup>

In a custody decision, it is the court that decides which parent is better fit to retain custody over his or her child.<sup>296</sup> A “family court judge applying a ‘best interest of the child’ test, has *broad discretion* in defining which family members or forms are deviant and which are normal and healthy.”<sup>297</sup> In Florida, the problem for the LGBTI parent lies in the broad discretion that the judges have.<sup>298</sup> Many court decisions show that judges decide child custody matters based on the social stigma of homosexuality, rather than what is truly in the best interest of the child.<sup>299</sup> Take, for

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290. *See id.*

291. *Id.*

292. NAT’L CTR. FOR LESBIAN RIGHTS, CHILD CUSTODY AND VISITATION ISSUES FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PARENTS IN FLORIDA 1 (2009), available at [www.nclrights.org/wp-content/uploads/2013/07/2007\\_10\\_02\\_FLCustodyPub.pdf](http://www.nclrights.org/wp-content/uploads/2013/07/2007_10_02_FLCustodyPub.pdf).

293. *See Maradie v. Maradie*, 680 So. 2d 538, 540 (Fla. 1st Dist. Ct. App. 1996) (per curiam).

294. NAT’L CTR. FOR LESBIAN RIGHTS, *supra* note 292, at 1–2.

295. *See* FLA. STAT. § 61.13(2)(c) (2013).

296. *Id.*; *see also* Barbara Bennett Woodhouse & Kelly Reese, *Reflections on Loving and Children’s Rights*, 20 U. FLA. J.L. & PUB. POL’Y 11, 19 (2009).

297. Woodhouse & Reese, *supra* note 296, at 19 (emphasis added).

298. *See Packard v. Packard*, 697 So. 2d 1292, 1293 (Fla. 1st Dist. Ct. App. 1997) (per curiam); *Maradie*, 680 So. 2d at 543.

299. *Packard*, 697 So. 2d at 1293; *Maradie*, 680 So. 2d at 540.

example, *Maradie v. Maradie*,<sup>300</sup> where the trial court below removed child custody rights from a lesbian-mother on the basis that the “homosexual environment is not a traditional home environment and can adversely affect a child,”<sup>301</sup> or *Packard v. Packard*,<sup>302</sup> where the trial court below reasoned that due to the mother’s sexual orientation, the father would “provide a more traditional family environment for the children.”<sup>303</sup> Even though the Florida appellate courts have clarified that sexual orientation of an LGBTI parent should *only* be considered in determining custody matters if it has a direct bearing on the “welfare of the child,” these types of rulings exemplify how social stereotypes disfavor the LGBTI parent in Florida.<sup>304</sup>

Unlike LGBTI parents from prior heterosexual relationships, “[s]ame-sex parents in Florida . . . face unique legal issues” because, typically, “both partners in a same-sex couple *cannot* establish a legally recognized parental relationship to the couple’s child.”<sup>305</sup> Since same-sex couples in Florida cannot gain parental rights on the basis of marriage, there are very few avenues available for a LGBTI non-legal parent to form legal ties with his or her child.<sup>306</sup> A recent avenue that has become available to Florida’s LGBTI non-legal parents is second-parent adoption.<sup>307</sup> “Second-parent adoption in Florida is when an unmarried parent adopts her partner’s biological or adoptive child. This adoption generally gives the second parent full legal parental rights, legal and custodial.”<sup>308</sup> This adoption option only recently became available to Florida’s LGBTI community as a result of Florida’s lift on the ban of homosexual adoption.<sup>309</sup> Although the second-parent adoption option might be available, it remains a new and unsettled law in Florida.<sup>310</sup>

If a LGBTI non-legal parent is unable to establish legal ties to the child, Florida case law precedent does not favor his or her fight in obtaining

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300. 680 So. 2d 538 (Fla. 1st Dist. Ct. App. 1996) (per curiam).

301. *Id.* at 540.

302. 697 So. 2d 1292 (Fla. 1st Dist. Ct. App. 1997) (per curiam).

303. *Id.* at 1293.

304. *See id.* (quoting *Maradie*, 680 So. 2d at 542); *see also* *Jacoby v. Jacoby*, 763 So. 2d 410, 413 (Fla. 2d Dist. Ct. App. 2000).

305. NAT’L CTR. FOR LESBIAN RIGHTS, *supra* note 292, at 7 (emphasis added).

306. *See supra* Part IV.A.

307. *Second Parent Adoption*, GIDEON I. ALPER ATT’Y & COUNS. LAW, <http://www.galperlaw.com/gay-law/second-parent-adoption/> (last visited Nov. 10, 2013).

308. *Id.*

309. *See supra* Part IV.C; *Second Parent Adoption*, *supra* note 307.

310. The Law Firm of Adam B. Cordover, P.A., *A Story of Second Parent Adoption*, ABC FAM. L. BLOG (Apr. 28, 2012), <http://abcfamilyblog.wordpress.com/2012/04/28/an-interesting-story-of-second-parent-adoption/>.

child custody or visitation rights.<sup>311</sup> “Florida’s appellate courts have consistently held that parental rights cannot be extended or established based upon the emotional or psychological bond that develops over time when one treats a child as his or her own, even with the legal parents’ knowledge and consent.”<sup>312</sup> The Florida judiciary is continually unwilling to apply the legal theories that could grant the LGBTI non-legal parent custodial rights to the child.<sup>313</sup> More often than not, Florida courts treat the LGBTI non-legal parent as a legal stranger to the child.<sup>314</sup> In *Wakeman v. Dixon*,<sup>315</sup> the court rejected the former domestic partner’s claim of parental rights as a *de facto* or *psychological* parent as there is “no right to claim court-ordered visitation as a *psychological parent*, and the court lacks the inherent authority to award it.”<sup>316</sup> Florida’s Judiciary justifies its reluctance to extend theories of *de facto parent* or *psychological parent* with the argument that those “rights are, with regard to a non-parent, statutory, and the court has no inherent authority to award” them.<sup>317</sup> Not surprisingly, the Florida Legislature has taken no action in granting the court such authority.<sup>318</sup> Quite obviously, the inaction of Florida’s Judiciary and Legislature in this matter stems from legal animus towards the LGBTI community.<sup>319</sup>

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311. See *T.M.H. v. D.M.T.*, 79 So. 3d 787, 807 (Fla. 5th Dist. Ct. App. 2011) (Lawson, J., dissenting) (citing *Wakeman v. Dixon*, 921 So. 2d 669, 673 (Fla. 1st Dist. Ct. App. 2006) (per curiam)), *aff’d in part, disapproved in part*, No. SC12-261, 2013 WL 5942278 (Fla. Nov. 7, 2013); *Lamariatata v. Lucas*, 823 So. 2d 316, 319 (Fla. 2d Dist. Ct. App. 2002); *Kazmierazak v. Query*, 736 So. 2d 106, 110 (Fla. 4th Dist. Ct. App. 1999); *Music v. Rachford*, 654 So. 2d 1234, 1235 (Fla. 1st Dist. Ct. App. 1995) (per curiam) (citing *Meeks v. Garner*, 598 So. 2d 261, 262 (Fla. 1st Dist. Ct. App. 1992)); *Taylor v. Kennedy*, 649 So. 2d 270, 271–72 (Fla. 5th Dist. Ct. App. 1994).

312. *T.M.H.*, 79 So. 3d at 807 (Lawson, J., dissenting).

313. See NAT’L CTR. FOR LESBIAN RIGHTS, *supra* note 292, at 10–12.

314. See *id.* This is a growing issue especially when “[a]n increasing number of same-sex couples are choosing to have children. . . . Reproductive options for same-sex couples who desire to parent include adoption, foster care, embryo adoption, surrogacy, donor sperm insemination (“DI”), donor oocyte with gestational carrier (“GC”), and shared maternity.” Deborah Smith, *What are the Reproductive Options When a Same-Sex Couple Wants a Family?*, SEXUALITY, REPROD. & MENOPAUSE, Aug. 2011, at 30, 30–31.

315. 921 So. 2d 669 (Fla. 1st Dist. Ct. App. 2006) (per curiam).

316. *Id.* at 672–73 (citing *Swain v. Swain*, 567 So. 2d 1058, 1058 (Fla. 5th Dist. Ct. App. 1990)).

317. *Music v. Rachford*, 654 So. 2d 1234, 1235 (Fla. 1st Dist. Ct. App. 1995) (per curiam) (quoting *Meeks v. Garner*, 598 So. 2d 261, 262 (Fla. 1st Dist. Ct. App. 1992)); see also *Wakeman*, 921 So. 2d at 673 (quoting *Music*, 654 So. at 1235).

318. See *Wakeman*, 921 So. 2d at 672.

319. See Memorandum from Williams Inst. On Florida—Sexual Orientation and Gender Identity Law and Documentation of Discrimination 8 (Sept. 2009), available at [williamsinstitute.law.ucla.edu/wp-content/uploads/Florida.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/Florida.pdf).

### E. *Employment Discrimination*

“[T]he Florida Civil Rights Act does not cover employment discrimination on the basis of sexual orientation or gender identity.”<sup>320</sup> It has been clearly documented that, in Florida, LGBTI individuals experience employment discrimination at a high rate.<sup>321</sup> Yet, the Florida Legislature has failed to take action to prevent such injustices from continuing.<sup>322</sup> To this day, Florida does not have a “statute prohibiting employment discrimination based on sexual orientation or gender identity.”<sup>323</sup> In 2008, the Florida Legislature made attempts to add sexual orientation and gender identity as impermissible grounds for discrimination, but since animus towards the LGBTI community is prevalent within the legislature, no protection has passed.<sup>324</sup> Take, for example, Florida House Representative D. Alan Hays, who believes that LGBTI individuals ““need psychological treatment.””<sup>325</sup> Until such animosity towards LGBTI individuals is extinguished, it is unlikely that LGBTI individuals will have a legal remedy in matters of employment discrimination.<sup>326</sup> Until then, cases like that of Steven Stanton—who was employed for seventeen years as a city manager but fired once he announced plans of getting a gender change—will continue to occur.<sup>327</sup>

## V. WHAT THE LESBIAN LAWYERS OBSERVED ABOUT THE LEGAL SYSTEM

Lesbian lawyers have multiple challenges relating to the legal system.<sup>328</sup> The first is that the law itself was written by males and to advantage males.<sup>329</sup> Women were a later *addition*.<sup>330</sup> Deborah L. Rhode gives due credit to contemporary changes in regard to sex and the law, noting

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320. *Id.* at 1.

321. *See id.* at 1–8, 17–30.

322. *Id.* at 9–11.

323. *Id.* at 1.

324. Memorandum from Williams Inst., *supra* note 319, at 9–10.

325. *Id.* at 10.

326. *See id.*; Willie Howard, *Stanton Starts Work as City Manager*, SUNSENTINEL (May 5, 2009), [http://articles.sun-sentinel.com/2009-05-05/news/0905010127\\_1\\_city-manager-steve-stanton-gender-identity](http://articles.sun-sentinel.com/2009-05-05/news/0905010127_1_city-manager-steve-stanton-gender-identity).

327. *See* Howard, *supra* note 326.

328. Deborah L. Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1004 (2002).

329. *See* CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 3–4 (1983 ed. 1983).

330. *See id.* at 219 tbl.12.1. Less than 5% of the lawyers were women in the 1960s and fewer than 2% were law professors. *Id.* at 4 tbl.1.1, 219–20 tbl.12.1.

that “[t]oday, the legal landscape has been transformed.”<sup>331</sup> But she contends that even with more women in law and the abiding belief that “*the woman problem* has been solved,”<sup>332</sup> inequities remain a serious problem from salaries to mentoring to promotions.<sup>333</sup> Rhode believes that these and other areas remain—and often continue—to present obstacles and challenges to lesbian lawyers and their clients.<sup>334</sup>

All of our interviewees described a changing legal system and a changing world for lesbian lawyers, although they described different degrees of systemic change.<sup>335</sup> Most felt the law was more or less equal in its treatment of lesbian and gay clients and lawyers<sup>336</sup> and seemed to feel that “for the most part, [they thought] judges just care about the law. They [are] not—they [are] not [sic] going to necessarily care about is he gay or straight.”<sup>337</sup> Jennifer Travieso expressed mixed feelings—shared by several—that if a jury knows, it may, but it would probably not affect a judge because they mostly just use the law.<sup>338</sup> On the other hand, Robin Bodiford stated flatly that there is “[n]o such thing as someone not bringing biases to [the] bench.”<sup>339</sup> And Michelle Parker, when asked to describe her *angriest moment*—as all interviewees were—answered, “[m]y angriest moment is that there is bias everywhere. You [are] not always going to get a fair deal, like life is [not] fair . . . .”<sup>340</sup> Monica Salis affirms, “[m]y job is to make the court be fair. . . . There [is] bias everywhere. Every case. Every case.”<sup>341</sup> Interestingly, even most of those who described the legal system as primarily *fair*, later went on to describe incidents of unfairness within the system or in

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331. Rhode, *supra* note 328, at 1001.

332. *Id.*

333. *Id.* at 1001–04.

334. *See id.* at 1003–06.

335. Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 5; Interview with Seril L. Grossfeld, *supra* note 4, at 18; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 22; Interview with Lea P. Krauss, *supra* note 4, at 5; Interview with Jennifer Travieso, *supra* note 3, at 17; *see* Interview with Lilas Ayandeh, *supra* note 3, at 18; Interview with Michelle M. Parker, *supra* note 4, at 11–12; Interview with Monica I. Salis, *supra* note 4, at 19–20.

336. *See* Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 4–5; Interview with Seril L. Grossfeld, *supra* note 4, at 18; Interview with Monica I. Salis, *supra* note 4, at 19.

337. Interview with Jennifer Travieso, *supra* note 3, at 8.

338. *Id.*; *see also* Interview with Lea P. Krauss, *supra* note 4, at 17; Interview with Michelle M. Parker, *supra* note 4, at 9; Interview with Monica I. Salis, *supra* note 4, at 9.

339. Interview with Robin L. Bodiford (Aug. 3, 2012), *supra* note 4, at 5.

340. Interview with Michelle M. Parker, *supra* note 4, at 12.

341. Interview with Monica I. Salis, *supra* note 4, at 9.

individuals within the system;<sup>342</sup> for example, how heterosexual women lawyers found more success,<sup>343</sup> how men still outnumber women in many courtrooms,<sup>344</sup> how juries might deal unfairly with LGBTI individuals, how opposing lawyers might *use* a person's sexual orientation as an issue,<sup>345</sup> how some judges demonstrated biased language or behavior, and the difference in perspectives between urban courts compared to courts in North Florida.<sup>346</sup>

The interviewees agreed that same-sex marriages deserved equal legal footing—no matter whether they saw marriage itself as a *positive* institution or not.<sup>347</sup> Yet same-sex marriage remains unavailable in most states and has found inconsistent support in the courts at best.<sup>348</sup>

In addition, our research experience in the snowball sample done for this project contradicts the idea that we have achieved equality, in terms of sexual orientation, within the legal profession.<sup>349</sup> Monica Salis, one of our interviewees who works with the local GLLN, also commented:

A lot of gay attorneys are not out. They [are] out socially. They [are] out in organizations. We have, I [would] say, a good [thirty] percent of GLLN members that [will not] put their name on a list, do [not] want their name anywhere, and then there [are] a whole bunch of people that [will not] join . . . at all or come to our events, and they [are] known in the community as gay, not any question.<sup>350</sup>

In a truly equal legal world, lesbians in the legal profession would not need to self-censor interviews or organizational memberships.<sup>351</sup> Indeed, some of the comments in our interviews suggest that this is still necessary, especially for beginning lawyers at larger firms.<sup>352</sup> One experienced attorney interviewee, when asked for advice for young lawyers, said, “bear in mind that most of the people in the world are heterosexual and . . . you have to

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342. See, e.g., *id.* at 9.

343. See Interview with Michelle M. Parker, *supra* note 4, at 1.

344. See Interview with Seril L. Grossfeld, *supra* note 4, at 18.

345. Interview with Michelle M. Parker, *supra* note 4, at 9.

346. Interview with Monica I. Salis, *supra* note 4, at 9–10, 17–18.

347. Interview with Lilas Ayandeh, *supra* note 3, at 8; Interview with Seril L. Grossfeld, *supra* note 4, at 17; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 16–17; Interview with Lea P. Krauss, *supra* note 4, at 6; Interview with Michelle M. Parker, *supra* note 4, at 10; Interview with Jennifer Travieso, *supra* note 3, at 12–13.

348. See *supra* Part IV.A.

349. See *supra* Part III.

350. Interview with Monica I. Salis, *supra* note 4, at 11.

351. See *id.*

352. See, e.g., Interview with Seril L. Grossfeld, *supra* note 4, at 22–23.



deal with them” and that “there [are] still a lot of conservative firms. If that[] [is] where you want to have [the] job, you have to abide by their rules.”<sup>353</sup> She finished by noting that a young lawyer “[cannot] be radical if you want to work for a [big] firm. . . . Once you[] [are] inside . . . you might be able to shake things up . . . .”<sup>354</sup>

Although some interviewees stressed the *fairness* of the law to gays and lesbians,<sup>355</sup> some also wanted to see a lesbian on the Supreme Court of the United States.<sup>356</sup> One said, “it would be [nice] to have someone on [our] team up there.”<sup>357</sup>

All our interviewees spent years practicing, teaching, or studying law in South Florida.<sup>358</sup> However, while many interviewees emphasized the concept of fairness for all within the legal system,<sup>359</sup> only one interviewee mentioned the many years in which gays and lesbians were treated unfairly in terms of law and forbidden to legally adopt in Florida—though they were considered *fit* foster parents.<sup>360</sup>

## VI. CONCLUSION: SOME MUSINGS ON IDENTITY AND LAW

It may seem at first that the issue of identity is a personal one, best examined through sociology or psychology, and irrelevant to law. However, in reality, for LGBTI and all those whose sexuality does not fit into mainstream categories—identity, society, and law are strongly intertwined.<sup>361</sup> Why is identity important in law? Courts of law, like people, have the power to define, restrict, or even liberate an identity.<sup>362</sup> The Court has done each of these in its history.<sup>363</sup> For instance, in *Romer v. Evans*,<sup>364</sup> one side singled people out, based on their identity, for a lack of protection under the law.<sup>365</sup>

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353. *Id.* at 22.

354. *Id.* at 23.

355. *E.g.*, Interview with Monica I. Salis, *supra* note 4, at 7.

356. *E.g.*, Interview with Lilas Ayandeh, *supra* note 3, at 12–13.

357. *Id.* at 13.

358. *See supra* Part I.

359. *E.g.*, Interview with Monica I. Salis, *supra* note 4, at 7.

360. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 3–4; *see also* Lofton v. Kearny, 157 F. Supp. 2d 1372, 1375 (S.D. Fla. 2001).

361. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620, 627–30 (1996).

362. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003); *Romer*, 517 U.S. at 627–29.

363. *Lawrence*, 539 U.S. at 578; *Romer*, 517 U.S. at 627–29; *Bowers v. Hardwick*, 478 U.S. 186, 188–90 (1986).

364. 517 U.S. 620 (1996).

365. *Id.* at 624.

They said that Coloradans could not enact local laws to protect a group<sup>366</sup>—homosexuals—and three dissenting members of the Court evidently saw that as acceptable.<sup>367</sup> Another example is *Bowers v. Hardwick*,<sup>368</sup> which upheld sodomy laws that declared homosexual sex a *crime*—the Court essentially criminalized people’s identities.<sup>369</sup> Of course, this decision was later overturned in *Lawrence v. Texas*,<sup>370</sup> but consider the devastating effects of the original ruling on identity from societal and personal standpoints.<sup>371</sup> The effects linger today—as people and groups continue to attempt to use the courts to restrict homosexual identity.<sup>372</sup>

Thus, finding out how lesbian lawyers identify and what their triumphs and challenges have been in the legal field provide an important historical perspective, and inform us about contemporary evolutions in the field. Our interviewees were a wonderfully diverse group of women that shared some qualities in common, such as lesbianism and a legal degree, but differed in race, ethnicity, class, political beliefs, family, generation, and disclosure of identity—by method, time, and impact of coming out.<sup>373</sup> They did share one other quality—a passion for justice in the legal system.<sup>374</sup> Perhaps that passion manifests itself in their choices related to the practice of law.<sup>375</sup> None were corporate lawyers, for example.<sup>376</sup> It may be that corporate lawyers are less likely to be involved in the GLLN for various reasons and were, therefore, not reached by this snowball sample. Most—but not all—saw the legal system as generally fair to LGBTI, even while surrounded by examples—particularly in Florida—of when it is not.<sup>377</sup> This

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366. *Id.* at 624, 635–36.

367. *Id.* at 636 (Scalia, J., dissenting).

368. 478 U.S. 186 (1986).

369. *Id.* at 187–89.

370. 539 U.S. 558 (2003).

371. *See id.* at 578; Adams, *supra* note 193, at 751–52; Ihrig, *supra* note 97, at 558; *supra* Part II.

372. *Langbehn v. Pub. Health Trust of Miami-Dade Cnty.*, 661 F. Supp. 2d 1326, 1332 (S.D. Fla. 2009); *Packard v. Packard*, 697 So. 2d 1292, 1293 (Fla. 1st Dist. Ct. App. 1997) (per curiam); *Maradie v. Maradie*, 680 So. 2d 538, 540–41 (Fla. 1st Dist. Ct. App. 1996) (per curiam).

373. *See supra* Parts I–III.

374. Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 8; *see also* Interview with Michelle M. Parker, *supra* note 4, at 6.

375. *See supra* Parts I–II.

376. *See* Interview with Lilas Ayandeh, *supra* note 3, at 4; Interview with Seril L. Grossfeld, *supra* note 4, at 1; Interview with Linda F. Harrison & Phyllis D. Kotey, *supra* note 4, at 8; Interview with Lea P. Krauss, *supra* note 4, at 11; Interview with Michelle M. Parker, *supra* note 4, at 11; Interview with Monica I. Salis, *supra* note 4, at 1; Interview with Jennifer Travieso, *supra* note 3, at 1.

377. *See supra* Part V.

may speak to optimism, it may speak to the increasing changes and ongoing evolution of the legal system, or it may be influenced by the loyalty; all seem to relate to principles of law and to the legal system in the United States. Lesbian lawyers are faced with contradictions within the system.<sup>378</sup> They have been taught respect for the rule of law in law school, yet the same system and associated set of laws still discriminate against them at an identity-based level.<sup>379</sup> They remain both insiders and outsiders to the system.<sup>380</sup> This is another quality they share and one that puts them in a very different place from lawyers who are not lesbians.<sup>381</sup>

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378. See Memorandum from Williams Inst., *supra* note 319, at 2–8; *supra* Part IV.

379. See Memorandum from Williams Inst., *supra* note 319, at 2–8; *supra* Part IV.

380. See Memorandum from Williams Inst., *supra* note 319, at 2–8; *supra* Parts IV–V.

381. See Memorandum from Williams Inst., *supra* note 319, at 2–8; *supra* Parts IV–V.