

THESIS

CONSIDERATIONS IN CHILD CUSTODY EVALUATIONS WITH GAY AND LESBIAN
PARENTS: A QUALITATIVE STUDY

Submitted by

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ABSTRACT

CONSIDERATIONS IN CHILD CUSTODY EVALUATIONS WITH GAY AND LESBIAN PARENTS: A QUALITATIVE STUDY

Even though gay men and lesbian women are often involved in child custody evaluations with previous, heterosexual partners, there is little research centered on which factors child custody evaluators consider when evaluating families with a gay or lesbian parent. Using Interpretative Phenomenological Analysis, surveys from 19 child custody evaluators were analyzed for common themes. The analysis generated four key themes that influences evaluator rulings when conducting child custody evaluations with a gay or lesbian parent separating from a heterosexual partner. Also found in this study are factors that evaluators feel the family court system deem important. Results from the present research demonstrate inconsistency between how child custody evaluators conceptualize and conduct evaluations that involve families with one gay or lesbian parent versus two heterosexual parents. Possible implications for training and practice are discussed.

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Considerations in Child Custody Evaluations with Gay and Lesbian Parents: A Qualitative Study

In the last few decades, legal and policy questions relevant to the family lives of gay and lesbian individuals have been the subject of much debate (Buxton, 1999; Franklin, 2003; Kendell, 2003; Patterson, 2009; Tye, 2003). Gay men and lesbian women constitute a special population that warrants specific knowledge and skills in the delivery of services that are not routinely acquired in the training of psychologists. With that said, it is unclear whether child custody evaluators have an understanding of gay and lesbian issues and their impact on evaluations. Furthermore, it has yet to be addressed if child custody evaluators deem these issues as important to even consider when conducting evaluations. The purpose of this exploratory study is to qualitatively examine the considerations that child custody evaluators take into account when a custody evaluation is being conducted with a gay or lesbian parent in the United States. More specifically, this study aims to further clarify the thought processes that child custody evaluators go through when they are presented with an evaluation that involves a gay or lesbian parent.

Demographics of Same-Sex Couples

Although some individuals believe that a family is something more than a legal relationship and that caring for one another transcends legal boundaries, the vast majority of the policies that govern people's lives define family as a legal unit comprised of a married man and woman with their own biological or adopted children (Cahill & Tobias, 2007). The Federal Defense of Marriage Act (DOMA) defines marriage as a legal union between one man and one woman for purposes of all federal laws, and provides that states need not recognize a marriage from another state if it is between persons of the same sex (Babst, 2002). Currently, 37 states

have their own DOMA's, while 2 more states have strong language that defines marriage as one man and one woman (Babst, 2002). These laws and assumptions underlying family policy do not reflect the current demographic reality of families in the United States. Estimates from the 2000 Census indicate that the number of gay or lesbian parents in the United States range from two to eight million (Human Rights Campaign Report, 2001). Of these parents, 34% of lesbian couples and 22% of gay male couples have at least one child under eighteen years-old living in their home (Human Rights Campaign Report, 2001). At the Williams Institute, Gates (2007) combined 1990 and 2000 census data with data from the 2002 through 2006 Community Surveys to estimate that the number of same-sex couples increased 21 times faster than the United States population from 1990 to 2006. While these figures most likely represent an undercount of the actual number of gay and lesbian families in the United States, they still display an increase from previous decades.

Legal Context of Gay and Lesbian Parents

Increased visibility has not necessarily led to increased acceptance; many still have reservations when it comes to the ability of gay and lesbian individuals to parent (Kendell, 2003; Patterson, 2009; & Tye, 2003). However, the problem does not start with societies' disapproval of gay and lesbian individual's parenting abilities. There is a much more general and pervasive bias against their sexuality that spills over into societies' attitudes about their parenting. Reeder, Pryor, Wohl and Griswell (2005) found that individuals have a tendency to attribute negative motives to others whose attitudinal positions differ from one's own position, especially when it comes to issues such as sexual orientation and gay marriage. The general level of bias that exists with respect to homosexuality and same-sex relationships certainly impacts the way gay and lesbian individuals are viewed in any aspect of their life.

While there is an increase in the number of same-sex couples who are having children together through assisted reproduction, most gay and lesbian individuals become parents in the context of a prior heterosexual marriage or relationship before coming out as gay or lesbian (Patterson, 2009). These cases arrive in court when previously married heterosexual parents are divorcing after one has come out as homosexual and the parents cannot agree on custody and visitation (Patterson, 2009). Such cases raise questions about whether a parent's sexual orientation should be considered in making custody and visitation decisions for a minor child or children. For heterosexual couples, the parent's psycho-sexual history is not relevant for the evaluation, so why is this standard changed for gay or lesbian parents?

Additionally, if a gay or lesbian couple separates after they have adopted a child or had a child through assisted means questions about custody and visitation may also find their way to court. In this case, custody disputes between same-sex parents are shaped by the legal inequality between the parents. The biological (or adoptive) parent is legally recognized while the non-biological (or non-adoptive) parent is not (Rohrbaugh, 2007). Throughout these custody disputes, gay and lesbian parents frequently report discrimination in child custody processes and not infrequently, are stripped of their parental rights altogether, simply for being gay or lesbian (Patterson, 2009).

Custody Disputes and Visitation

In nearly every state, custody decisions must be determined according to the "best interests of the child" but there is variability from one jurisdiction to another when it comes to addressing the question of whether a parent's sexual orientation should be considered relevant in deciding a child's best interest. Because of the ambiguous nature of the standard, it offers no clear guidelines that can help in custodial decision-making (Gould, 2007). This subjectivity,

coupled with the courts' attachment to the notion that the best psychological interests of the child are rooted in the traditional heterosexual familial system, places the burden of proof on gay or lesbian parents to show that their sexual orientation will not have any adverse effects on the child or children (Bricklin, 1995).

Such vagueness in the standard provides courts with immense discretion as to what evidence is considered and how much weight that evidence is accorded (Huff, 2001). Kendall (2003) reported that there were at least six states in which courts automatically presume that a gay or lesbian parent is unfit to have custody and at least as many in which courts may prohibit a gay or lesbian parent from exercising visitation in the presence of a same-sex partner. Generally, courts approach the issue of how a parent's sexual orientation affects parental fitness in three ways. First, courts applying the *per se* rule hold that a parent's homosexual conduct renders them an unfit parent as a matter of law (Huff, 2001). In these cases, sufficient evidence of a parent's homosexual conduct is enough to revoke parental rights. Second, some courts presume that a child or children will in some way be adversely affected by placement in the custody of a parent who is or has been involved in a homosexual relationship (Huff, 2001). While these lines of reasoning used to be fairly common, courts are moving more towards an evidentiary approach. This approach, often referred to as the nexus test, requires evidence that the parent's homosexual conduct affects or will likely negatively affect the child(ren) (Huff, 2001).

Movements away from *per se* rulings are not always synonymous with neutrality on the subject of sexual orientation in custody disputes. Overall, discrimination against gay and lesbian families by courts is declining but laws and social policies regarding gay families remain highly

inconsistent from state to state (Franklin, 2003). Laws are widely discrepant and local courts enjoy tremendous decision-making latitude. The following cases display the discrepancy in decision-making across courts.

- In 2002, the Alabama Supreme Court affirmed a trial court decision denying custody to a lesbian mother. In this case, Chief Justice Moore authored a concurring opinion condemning homosexuality as an “inherent evil and an act so heinous that it defies one’s ability to describe it” (D.H. v. H.H., 2002).
- In 2002, a Mississippi trial court granted full custody to a father who had been convicted of domestic violence and who admitted recent drug use, on the grounds that the mother had been in a relationship with another woman. The Chancellor stated that “it is unacceptable for any child to be around this type of behavior”. This judgment was later overturned (Fulk v. Fulk, 2002).
- In 2001, a Tennessee Supreme Court overturned an appellate decision that barred a woman from having her female partner in the home during overnight visits with her daughter (Eldridge v. Eldridge, 2001).

As these cases illustrate, legal inequalities can be and are often manipulated during high-conflict custody disputes. Even though the legal standard for case decisions is supposed to be “the best interest” of the child, rulings frequently occur that are harmful to the child(ren).

Child Custody Evaluations

Even in jurisdictions that prohibit discrimination on the basis of sexual orientation, overcoming judicial stereotypes about gay and lesbian parents in such a case can be a challenge. This is mainly due to the fact child custody cases involve more emotion than almost any other area of law (Huff, 2001). For all parties involved, these cases can elicit intense feelings and bring forth personal backgrounds in a process that is supposed to remain objective, especially when homosexuality in general is debated socially, religiously, and politically. When discussing legal issues involving gay or lesbian persons, it is sometimes easier to endorse or to condemn

homosexuality than to seek empirical facts and to reason with logic (Buxton, 1999). These factors alone can lead evaluators to treat a gay or lesbian parent differently than a heterosexual parent (Huff, 2001).

The process of determining child custody in divorce contexts and the role of psychological experts in making these determinations have become increasingly controversial in recent years because there is often confusion between forensic and clinical roles. Undertaking competent child custody evaluations is not simply an extension of clinical evaluations and decision-making. It is a complex, sophisticated methodology integrating a large number of varying disciplines, each with its own literature base, conceptual frameworks and practice guidelines (Gould, 1998). As opposed to developing a supportive, accepting and empathetic relationship within a therapist-patient framework, an evaluator must remain neutral, objective and detached within an attorney-client framework, for the custody evaluators legal duty is to provide information to the court and the family about the best psychological interests of the child(ren). However, these lines become blurred when evaluator's recommendations exceed the data or are based on absent or faulty reasoning (Gould, 1998).

With courts relying on the expertise of psychologists in making decisions, it is clear to see how providing testimony that exceeds the limits of the data, goes beyond current empirical research or is beyond the professional competencies of the evaluator can become problematic. Judges deem reports by mental health professionals as influential because it provides them with a glimpse of the bigger picture, especially when the cases are heavily contested. In particular, judges find it most helpful when mental health professionals provide an expert opinion in cases involving parental unfitness (Wallace & Koerner, 2003). Furthermore, child custody evaluators are thrust into the role of educator because judges and attorneys do not typically have extensive

knowledge of the specific issues confronting gay and lesbian families (Franklin, 2003). With this much power placed on child custody evaluators, it is imperative to question if their practices and recommendations are based on empirical knowledge and awareness of issues concerning gay and lesbian parents or if they are based on personal prejudices and biases (Gould, 2007).

Social Science Research on Gay Men, Lesbian Women and their Children

Child custody evaluations do not occur in isolation from larger events in our society. What happens to children in these cases has everything to do with the prevailing community attitudes towards homosexuality, and specifically, towards gay men and lesbians as parents. Even as the United States has become more accepting, sexual minority individuals continue to experience considerable discrimination and hostility (Herek, Gillis, & Cogan, 2009).

Differentials in power and status are legitimized and perpetuated by society's institutions and ideological systems, including religion, the law, and medicine (Herek, 2009). Structural sexual stigma, which is referred to as heterosexism, ensures that sexual minority individuals have less power than heterosexuals. Any sexual identity that varies from being "fully heterosexual" is viewed as deviant, morally wrong, and unnatural (McGeorge & Carlson, 2011).

Operating through two general processes, heterosexism is relatively autonomous from the prejudice of individual members of society (Herek, Gillis, & Cogan, 2009). First, a presumption of being heterosexual renders gay, lesbian, and bisexual people invisible and unacknowledged by societies institutions. Second, when sexual minority individuals become visible, heterosexism perpetuates the assumption that heterosexuals, heterosexual behavior, and opposite-sex relationships are normal and natural, whereas homosexuals, homosexual behavior and same-sex

relationships are abnormal, unnatural and inferior (Herek, 2009). Thus, heterosexism serves as the backdrop for which individuals, regardless of their sexual orientation, experience and manifest sexual stigma.

It has been over thirty years since “homosexuality” was removed from the DSM’s list of disorders, but considerable evidence remains that heterosexuals hold negative attitudes towards gay and lesbian individuals (Buxton, 1999; Crawford, McLeod, Zamboni, & Jordan, 1999; Patterson, 2009; Santilla, Sandnabba, & Wallenborg, 2007). Stigmas abound in popular culture, which describe a gay or lesbian individual as promiscuous, a corrupter of children, unable to have a stable relationship, and holding a wish to be a member of the opposite sex (Buxton, 1999; Crawford, McLeod, Zamboni, & Jordan, 1999; Patterson, 2009; Santilla, Sandnabba, & Wallenborg, 2007). Furthermore, certain groups portray parenting by gay men, lesbians, and same-sex couples as a threat to children. The most commonly held views of gay and lesbian individuals being unfit parents are based on the following beliefs: gay parents are mentally ill, gay parents will molest their children, their children will be stigmatized by peers, and their children will become gay or lesbian themselves or they will have a troubled gender-role development (Santilla, Sandnabba, & Wallenborg, 2007).

In response, the American Academy of Pediatrics, the American Psychological Association, the National Association of Social Workers, the American Psychiatric Association and the American Psychoanalytic Associations have unanimously stated that not a single study has found children of gay and lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents (Cahill & Tobias, 2007). Extensive social science

research has studied the children of gay and lesbian parents and found that the children's psychological adjustment, school performance, gender identity, and gender-role behavior are not related to their parents' sexual orientation (Buxton, 1999; Raley, 2010; Rohrbaugh, 2007).

Taken as a whole, both empirical research fail to demonstrate any significant damage on children's development either from living with or visiting their gay or lesbian parent (Buxton, 1999; Franklin, 2003; Kendell, 2002; Patterson, 2009; Raley, 2010). Even though these conclusions paint a consistent picture, gay and lesbian parents seeking custody of their children face many obstacles and conjure up concerns in various jurisdictions across the country. The concerns raised by various jurisdictions, judges, and society place the child custody evaluators involved in these cases in a tough position when trying to determine what decision would be in the best interests of the child. With so much weight being placed on their recommendation, it is imperative that we understand and explore the considerations and circumstances that child custody evaluators take into account when they are conducting evaluations involving gay or lesbian parents.

Present Study

The objective of the present study is to explore the considerations that child custody evaluators take into account when evaluating gay and lesbian parents. The research questions that will be guiding the inquiry of this study are as follows:

1. What considerations do child custody evaluators take into account when they are conducting an evaluation with a family that has a gay or lesbian parent?
2. Do you think that the family court system in your jurisdiction would like you to take into account any circumstances when performing custody evaluations with gay and lesbian parents? If so, what are those circumstances?

Method

Qualitative Methodology and Rationale

For this study, Interpretative Phenomenological Analysis (IPA) was selected as an appropriate method to explore these questions. Like other phenomenological approaches, IPA focuses on exploring and describing the experiences of participants through examining rich descriptions of those experiences (Willig, 2001). IPA allows for flexibility in exploring the personal experiences of child custody evaluators when they work with gay and lesbian parents because it places emphasis on both the life worlds of participants and how meaning occurs and is made sense of in social interaction (Murray, 2004).

Researcher-as-instrument Statement. The researcher is a 26-year old woman with Persian American and European American ethnic heritage who identifies as lesbian. The researcher is a student in a doctoral program in counseling psychology, and has seen adult clients in a university counseling center and in a department clinic that provides sliding scale services to community members. She has never personally experienced a child custody evaluation or having a gay or lesbian parent, but was motivated by an interest in forensic psychology and its application to issues of diversity.

Participants

Consistent with IPA, purposive sampling was used to find participants who met the requirements and make up a relatively homogenous sample (Smith & Osborn, 2003). Participants were recruited through professional organizations and listserv notices in forensic psychology professional networks (see Appendix A), and were from various regions in the United States. In order to participate, individuals were required to be qualified to conduct child custody evaluations currently or in the past and be at least 18 years old. Participants were selected for

information richness and because this approach is not concerned with making broad generalizations on the topic, small sample sizes are acceptable for addressing the research questions (Brock & Wearden, 2006).

The sample for this study consisted of nineteen (12 women, seven men) child custody evaluators (Table I). Ages ranged from 44 to 71 years; 12 described their sexual orientation as heterosexual, four as lesbian, and three as bisexual. Participants were from all geographical regions of the United States, as well as Canada. The number of evaluations conducted ranged from five to upwards of 500, with 12 of the participants having conducted less than 100 evaluations. Of these evaluations, 13 evaluators reported conducting at least one child custody evaluation with a gay or lesbian parent. However, only one participant reported conducting more than five child custody evaluations with a gay or lesbian parent.

Just under half of the participants stated that they had no training at all in gay and lesbian issues. Of the participants who reported having training with gay and lesbian issues, only 3% reported having formal graduate training in the area. Aside from graduate training, participants reported receiving training from workshops/conferences (77%), continuing education (31%), professional experience (15%), and reading books/journals (15%).

Table 1
Participant Demographics

Participants	Percentage
Sex	
Female	63%
Male	37%
Sexual Orientation	
Heterosexual	63%
Lesbian	21%
Bisexual	16%
Gay	0%
Highest Degree	
Ph.D.	56%
M.A. or M.S.	28%
Other (M.D., J.D.)	17%
Practicing Region	
Northeast	21%
Midwest	21%
Canada	16%
Southeast	16%
West	16%
Southwest	11%
# of Evaluations Conducted	
Less than 100	63%
101 - 300	21%
301 +	16%
Involving Gay/Lesbian Parent	
Less than 5	92%
More than 5	8%
Specific Training on LGB Issues	
Yes	58%
No	42%
Type of Training on LGB Issues	
Workshops/Conferences	77%
Continuing Education	31%
Professional Experience	15%
Reading books/journals	15%
Graduate Training	3%

Procedure and Data Collection

Data was collected through self-report questionnaire responses using the internet. More specifically, an internet survey was created on a website operated and maintained by Qualtrics, a leading provider of online survey services. The questionnaire was designed according to IPA guidelines (Willig, 2001). The questionnaire was semi-structured, with questions intending to elicit the considerations that child custody evaluators take into account when working with gay and lesbian parents who are seeking custody after separating from a heterosexual partner. The questions varied slightly depending on if the participant is a child custody evaluator that has had experience with conducting evaluations with a gay or lesbian parent or not.

Participants were recruited online via Internet sites, online discussion boards, and e-mail listservs. A solicitation notice was provided, providing participants with information about the study. Participants indicated their informed consent by clicking a consent button prior to viewing any questions (see Appendix B). The data collected from participants was aimed at answering the research questions directly through open-ended questions (see Appendix C).

Data Analysis

The data was analyzed using Interpretative Phenomenological Analysis (IPA) (Willig, 2001). This particular form of qualitative analysis was selected because of its emphasis on driving themes or categories from the data itself, rather than categorizing data on the basis of pre-defined categories (Murray, 2004). Due to the textual nature of the online survey, transcribing the interviews was not necessary, as participants typed in the data themselves.

Data was analyzed following the steps outlined by Creswell (2007). In brief, both deductive and inductive approaches were used. The deductive approach was driven by the research questions and was used group the data into two categories or domains reflecting the

research questions. Within the two domains, the data was approached inductively; producing four codes identifying common meanings, patterns, comments and insights within the data. From here, a master list of domains, themes and subthemes was produced.

Establishing Trustworthiness

Within qualitative research, establishing trustworthiness increases the confidence that the findings are worthy of attention (Creswell, 2007). The present study used two methods of establishing trustworthiness. The first method was peer review (Creswell, 2007). The researcher sought feedback throughout the data collection and data analysis process from a research peer and a counseling psychology faculty member. All members were trained in and knowledgeable about forensic psychology and qualitative research.

The second method of establishing trustworthiness was the researcher's journal, in which reflections regarding the study procedure, questions, ideas and hypotheses were recorded. These notes were used to identify issues to discuss with the research team as well as to formulate preliminary analyses and conclusions during both initial and final stages of analysis.

Results

The analysis generated four key themes reflecting evaluators' views of what is important to take into account when conducting child custody evaluations with a gay or lesbian parent separating from a heterosexual partner. These were grouped into two broad domains (Table 2) informed by both the research questions and the participants' responses. The first ("Considerations in cases involving gay or lesbian parent") pertains to themes concerning the opposing views of what is similar or different about these cases from heterosexual cases from the perspective of the evaluator whereas the second ("Considerations desired by the family court system") reflects the differing opinions of how family court systems will handle these cases.

These domains are organizing categories and do not represent discrete entities; different viewpoints surrounding these issues are embedded within psychological practice issues and there are, therefore, inevitably some shared features between themes.

Table 2
Summary of Domains, Themes, and Subthemes

Domain: Considerations in cases involving gay or lesbian parents	
1: Same considerations in cases involving a gay/lesbian parent separating from a heterosexual partner as cases involving heterosexual parents	1.1: Use “Best Interests of the Child” standard 1.2: These cases are not any different than cases involving heterosexual parents 1.3: Same issues involved as you see in heterosexual cases
2: Differing considerations in cases involving a gay/lesbian parent separating from a heterosexual partner than cases involving heterosexual parents	2.1: Knowledge of their own biases 2.2: Importance of inquiring about parent’s understanding of potential challenges and their willingness and ability to handle these challenges 2.3: Acknowledging heightened emotionality and homophobia in these cases and families 2.4: Knowledge of the current research
Domain: Are there considerations desired by the family court system?	
3: No: There are not any considerations desired by the family court system.	3.1: Courts want the “Best Interests of the Child” standard applied
4: Yes: There are considerations desired by the family court system.	4.1: Depends if rural or urban county 4.2: Current research in the area 4.3: General perceptions of GLBT parents

Domain: Considerations in cases involving gay or lesbian parent

The themes in this domain reflect the participants’ viewpoints on how custody cases involving a gay or lesbian parent separating from a heterosexual partner should be handled. A common consensus was not found among participants, allowing for two different themes to emerge.

Theme 1: Same considerations in cases involving a gay/lesbian parent separating from a heterosexual partner as cases involving heterosexual parents. Participants explained that they would not treat custody cases involving a gay or lesbian parent any differently than they would treat cases involving heterosexual parents. The most commonly cited reason was that child custody cases should always follow the “best interests of the child” standard (subtheme 1.1). Several participants felt that this standard was all encompassing of the issues that may arise in cases. A common reaction was that of certainty that the “best interests of the child” standard should be the only consideration when entering into a child custody evaluation, regardless of circumstances such as sexual orientation.

“...all of the same circumstances I would take into account for heterosexual parents – the best interest standards for the children.” [P16]

“No, the best interests of the children involved remain my primary concern.” [P5]

Along the same lines, a few participants felt that the guidelines set forth by the states (subtheme 1.4) surrounding the “best interests of the child” were sufficient.

“Colorado sets out factors to be considered when evaluating Best Interests of the Child(ren). I use those elements in all evaluations.” [P9]

Overall, participants who expressed that they would take the same considerations into account when conducting a custody evaluation with a gay or lesbian parent, felt that these cases are the same as any custody evaluation (subtheme 1.2).

“Unless the facts of the case suggest otherwise, none that would differentiate the case from two heterosexual parents in a custody dispute.” [P10]

For these participants, cases involving a gay or lesbian parent are not any different than cases involving a heterosexual couple separating. The same issues (subtheme 1.3) are present, regardless of the makeup of the family.

“...the impact of the change in family structure will depend on the personalities and life experiences of everyone involved, as in any other case.” [P15]

“The same circumstances as in all CE: children’s needs, parenting abilities, goodness of fit between children and parents.” [P18]

Theme 2: Differing considerations in cases involving a gay/lesbian parent separating from a heterosexual partner than cases involving heterosexual parents. Custody cases involving a gay or lesbian parent separating from a heterosexual partner were perceived as requiring different considerations than cases that involve two heterosexual parents separating. One issue that participants pointed out was the presence of bias (subtheme 2.1). Whether the bias comes from the evaluator, the other parent or culture, the issue was deemed important to consider.

“I try to stay a little more cognizant of issues of bias; my own and any presented by the parents and/or collateral contacts.” [P6]

“...try to be alert to possible cultural biases” [P15]

These participants described a range of different responses but typically conveyed the importance of evaluators understanding the challenges (subtheme 2.2) that may arise in these cases. Some participants referred to challenges in general while other participants referred challenges presented by society that surround sexuality. One participant was very specific in stating that the evaluator must not only be aware of the challenges that may arise but must also help the parents understand those challenges as well and prepare for them. Not only is ability of the parent to handle certain challenges important, but the willingness is also crucial in these cases.

“Ability of each parent to share information about sexuality with the children in an age-appropriate manner... Ability or willingness of each parent to access support resources in the community, for themselves, as well as the children” [P1]

“I inquire about their understanding of the potential challenges, ostracizing effect on school-age children when classmates/parents learn about their child’s family.” [P8]

Participants were also keenly aware of the emotions involved in these cases, both personal and societal that are different from cases involving heterosexual parents. The acknowledgement of heightened emotions and litigation may be common in all cases but homophobia is not. Participants pointed out that both overt and internalized homophobia are important issues to address within themselves, the families and close contacts.

“...extent to which homophobia (overt or internalized) affects parents’ relationship with each other, as well as relationship with children” [P1]

“...homophobia in extended family or close contacts.” [P13]

The use of current research was seen as vital in these cases. Participants voiced the importance of knowing and understanding the implications of the most updated research on gay and lesbian issues as well as parenting issues. Furthermore, participants acknowledged the need to address some of the social stereotypes and stigmas that are associated with gay and lesbian individuals with current research in order to properly handle these cases.

“...the research indicating that children of gay parents are equally or better adjusted than heterosexual parents... [and] research indicating the low rate of child abuse amongst same-sex raised children” [P3]

Domain: Are there considerations desired by the family court system?

The themes in this domain reflect participants’ views of whether the family court system in their jurisdiction desires for the evaluator to take anything into consideration when conducting custody cases with a gay or lesbian parent. These themes reflect the participants understanding of how these cases are connected to the way they are viewed and handled in the court system.

Theme 3: No. A little less than half of participants did not feel that the family court system in their jurisdiction desired the evaluator to take into account any different considerations or circumstances in custody cases with a gay or lesbian parent. Again, participants felt that any issue that needs to be considered is not specific to sexual orientation; therefore, not any different than cases with heterosexual parents. More specifically, the “best interests of the child” standard (subtheme 3.1) is applicable across all cases and is all the court is concerned with.

“...not specific to homosexuality, same considerations as with heterosexual parents – personal stability particularly” [P16]

“best interest standard for children” [P11]

Theme 4: Yes. Over half of the participants felt that the family court system in their jurisdiction would like them to consider certain circumstances based on the fact that the custody case involves a gay or lesbian parent. These themes exhibit the participant’s awareness of their surroundings and the current societal climate of gay rights. Several participants acknowledged how their geographical location (subtheme 4.1) may impact the courts desire for information. The location of the jurisdiction will greatly influence how conservative the court is, invariably affecting how the court views the issues at hand.

“...County is ultra conservative. Sexual orientation would be considered a negative.” [P17]

“...it depends on the county; those in rural areas are different.” [P5]

“Most of the courts in... are sophisticated in understanding the special circumstances in GLBTQ parents” [p19]

To address these differences that come with geographic location, participants voiced that the court would desire the current research in the area (subtheme 4.2). Participants felt that the courts would not only want the research to address parental issues, but also address the

perceptions surrounding sexual orientation (subtheme 4.3). Negative perceptions of gay and lesbian parents will undoubtedly happen and participants' anticipated the court wanting those issues to be addressed.

“...perceptions that GLBT parents are child molester, immoral” [P8]

“...determination of de facto parent hostility towards parent on the basis of sexual orientation alone” [P13]

Discussion

In various ways, the current study demonstrates inconsistency between how child custody evaluators conceptualize and conduct evaluations that involve a gay or lesbian parent separating from a heterosexual partner. Participants alternated between relying on “the best interests of the child” standard, published guidelines and personal experience for guidance with these cases. Furthermore, a significant number of participants reported that these cases should not be treated any differently than cases involving two heterosexual parents and that the family court system desired no additional information than with cases involving two heterosexual parents. The variance between participant's responses highlights the lack of congruence in evaluators' understanding of relevant issues and preferred practices in child custody cases that involve a gay or lesbian parent.

Participants relied the most heavily on the “best interests of the child” standard to guide them in these particular cases, perhaps due to the family court system's reliance on this standard. The “best interests of the child” is the standard for awarding child custody in the United States, presumably placing supreme importance on the child's physical and psychological well-being. In theory this standard seems ideal but custody decisions tend to focus on parents rather than children in practice. Not only do these decisions focus on details of the parents, they tend to be marred by societal, cultural and personal bias. With the family court system being rooted in an

ideology that privileges one familial ideal (e.g. a belief in the superiority of raising children in a family of two heterosexual married individuals) and a lack of a set definition, how much guidance does this standard actually provide in cases involving a gay or lesbian parent?

Various organizations such as the American Psychological Association (APA), American Psychology – Law Society (AP-LS), and Association of Family and Conciliation Courts (AFCC) have put forth guidelines in hopes to implement objective standards for child custody evaluations on which evaluators may rely. While all of these organizations have provided guidelines that specifically apply to child custody evaluations, explicit guidelines concerning child custody evaluations with gay and lesbian parents do not exist. The guidelines that are most relevant to these cases surround boundaries of competence and the impact of personal beliefs and experience.

The APA addressed these areas by stating that “general competence... is necessary but is insufficient in and of itself” and that if, during an evaluation, issues arose “that are outside [the] psychologists’ scope of expertise, they seek to obtain the consultation and supervision necessary to address such concerns” (p. 864, American Psychological Association, 2010). Furthermore, the guidelines detailed the need for psychologists to remain aware of their own biases, as well as those of others, and specified sexual orientation among several other areas of personal and societal bias that psychologists should avoid using as a basis for discriminatory practice (American Psychological Association, 2010).

Placed within this context, the results of this study are problematic because they represent the lack of acknowledgement by approximately half of the participants that treating cases involving a gay or lesbian parent, like cases involving two heterosexual parents, constitutes competent and non-discriminatory practice. Conceptualizing custody evaluations with a gay or

lesbian parent the same as an evaluation with two heterosexual parents fails to recognize a multitude of issues that may be relevant to the case such as: attitudes toward and stigmas surrounding homosexuality, experiences and challenges faced in homosexual relationships and families, as well as issues of diversity and individual differences.

Additionally, the number of participants who reported having formal training versus those who did not was striking considering 68% of the sample reported conducting a child custody evaluation with a gay or lesbian parent, with 92% of the sample conducting between one and five evaluations with a gay or lesbian parent. A lack of understanding of issues coupled with a lack of training could lead evaluator's to unknowingly place more harm on these families. The failure to routinely and carefully consider the impact of sexual orientation on child custody evaluations has a potential to dramatically affect the rights of gay and lesbian parents.

Ultimately an evaluator cannot decide the outcome of a custody dispute but it is still the evaluator's ethical responsibility to provide the court with recommendations based on the most updated research. Thus, it is important for evaluators to be aware of the ways in which courts interpret and use information and how that may vary across jurisdictions. Courts cannot deny or restrict custody based solely on a parent's sexual orientation but can use various rationales in determining custody by a gay or lesbian parent. The court may question whether the child will be stigmatized or harassed because of their parents sexual orientation, if exposure to their parent's sexual orientation will affect the child's own sexual orientation, or if granting custody to a gay or lesbian parent will affect the moral well-being of the child. Therefore, presenting cases involving a gay or lesbian parent to a court as being the same as cases involving two heterosexual parents may also fail to address factors the court deems to be relevant.

Limitations

In the present study, as well as qualitative research, the goal was to gain an in-depth understanding of a particular phenomenon rather than to generalize results to the entire population. Therefore, when interpreting these results, readers should be mindful of the characteristics of participants when making judgments about their applicability. For instance, most participants identified as female and heterosexual. It is not a representative sample of all psychologists who might conduct child custody evaluations with gay or lesbian parents.

Another potential limitation is that research questions might have elicited socially desirable responses from participants. Some participants seemed to be arguing against varying considerations for gay and lesbian parents with the intent of not discriminating against gay and lesbian individuals. Although part of this response may be unavoidable due to the widespread cultural debate of gay rights, future studies should be careful to use neutral questions and fully explain the purpose of the questions. Finally, the majority of participants self-identified as female and approximately one-third self-identified as lesbian or bisexual, which could have potentially influenced the results of the study.

Implications for Training and Practice

There are at several possible implications of this study that can improve custody evaluator's skills and performance regarding the evaluation of gay and lesbian parents in custody disputes. First, there is a pressing need for further research on how evaluations are conducted with gay and lesbian parents and the use of standardized procedures, as they apply to child custody evaluations. Such procedures can include but are not limited to psychological testing,

home visits and observations of parent-child interactions. Research should also address the myriad of issues involved in these cases and common themes that come up in court when these cases are presented.

Second, professional organizations should consider specifying guidelines that are applicable to evaluations that involve a gay or lesbian parent. The guidelines should address minimum levels of training necessary to be competent on top of considerations that should be taken into account such as appropriate test selection, home visits and observations of parent-child interactions. Evaluators should also be aware of state laws regarding same-sex civil unions concerning each individual case. Knowledge about these topics is a powerful tool for evaluators so that they are able to address questions posed by the court and on the witness stand.

Finally, governing bodies must mandate training for current child custody evaluators to put in place skills necessary to conduct minimally competent sexual orientation-related custody evaluations. In a number of states, training mandates have been employed to implement general standards in child custody evaluation and to assure adequate knowledge regarding domestic violence concerns in custody determinations; therefore, it is reasonable to expect and require evaluators to be trained in how issues surrounding sexual orientation may affect a child custody evaluation.

The results of this study are not to advocate an increase in the focus on sexual orientation in child custody disputes, but rather to recognize that sexual orientation is an area requiring specialized knowledge and skills. Evaluations should be conducted with consideration to that particular family's situation and someone with a specialized knowledge of sexual orientation

issues should make recommendations to the court. Sexual orientation and parenting by gay and lesbian parents is an area that is widely debated and it should not be assumed that child custody evaluations and evaluators are immune to societal, religious and political influence.

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Appendix A

Participant Recruitment Notice

Considerations in Child Custody Evaluations with Gay and Lesbian Parents: A Qualitative Study

We are conducting an online study at Colorado State University to investigate the considerations taken into account by child custody evaluators when conducting child custody evaluations with families that include a gay or lesbian parent as well as investigate the considerations that child custody evaluators view as important to take into account if they were to conduct a child custody evaluation with a family that included a gay or lesbian parent. The only requirements for participation in this study are that the you either be currently qualified to conduct child custody evaluations or have been qualified in the past to conduct child custody evaluations and that you are at least 18 years-old.

Participation in this research requires only that you complete a brief online questionnaire that asks you questions about you and your views when conducting child custody evaluations with gay and lesbian parents. The questionnaire will take you approximately 20 minutes to complete, and we do not ask questions that require you to provide any personally identifying information. Your responses will be kept strictly confidential, and all data will be encrypted using the same standards that businesses use for handling credit card information.

If you are interested in participating in this research, please click on the link below for more information.

[\[Insert study URL here\]](#)

Thank you for your consideration,

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Appendix B

Cover Letter

Dear Participant,

You are being invited to take part in this research because you indicated that you are an adult (at least 18 years-old) who is currently qualified to conduct child custody evaluations or has been qualified to conduct child custody evaluations in the past. The purpose of the study is to investigate the considerations taken into account when conducting child custody evaluations with families that include a gay or lesbian parent.

Considerations in Child Custody Evaluations with Gay and Lesbian Parents: A Qualitative Study is being conducted by Roxanne Rassti (Co-Principal Investigator), a graduate student in the Department of Psychology at Colorado State University, and her advisor, Larry Bloom, Ph.D. (Principal Investigator), a faculty member in the Department of Psychology at Colorado State University.

If you decide to participate in the study, you will be asked to complete a brief questionnaire that will ask you questions about your considerations when conducting child custody evaluations with families that include a gay or lesbian parent. They questionnaire should take no more than 20 minutes to complete, and it will be completed online, by clicking the link below to proceed.

There are no known risks for participating in this study. It is not possible to identify all potential risks in research procedures, but the researchers have taken reasonable safeguards to minimize any known and potential, but unknown, risks. The possible benefits from taking part in this study include gaining more insight into your own views and practices when conducting child custody evaluations. Furthermore, while the information collected may not benefit you directly, the information learned in this study may be helpful in what is contributed to the scientific literature on child custody evaluations with families that include a gay or lesbian parent.

Your participation in this research is entirely voluntary. If you decide to participate in the study, you may withdraw your consent and stop participation at any time without penalty.

As part of the data collection for this study, the survey website will record IP addresses from each computer used to complete this survey. It is highly unlikely that an IP address could be used to personally identify a given research subject. However, testing to see if the same IP addresses appear multiple times could be used as a way to gauge whether the same participants are completing the survey multiple times. IP addresses will solely be used to determine whether participants have attempted to complete the survey more than once. Once it is determined whether or not there are duplicate IP addresses, the IP address information will be deleted from the data set to ensure participant privacy and anonymity.

We will keep private all research records that identify you, to the extent allowed by law. Your information will be combined with information from other people taking part in the study. When we write about the study to share it with other researchers, we will write about the combined information we have gathered. You will not be identified in these written materials. We may publish the results of this study; however, we will keep your name and other identifying information private. This study is anonymous. That means that no one, not even members of the research team, will know that the information you give comes from you.

At the end of the study, you will be given the option to provide your email address in order to have the results of the study sent to you, but providing your e-mail address is completely optional. If you do

provide your e-mail address, it will be deleted from all records after the results have been sent to you, and your data will never be connected to your email address.

Before you decide whether to accept this invitation to take part in the study, **you may as any questions that might come to mind by e-mailing the Co- investigator, Roxanne Rassti, at Roxanne.rassti@colostate.edu** now. Later, if you have questions about the study, you can contact the investigator at that e-mail address as well. You may also contact the faculty sponsor/principal investigator, Larry Bloom, at Larry.Bloom@colostate.edu or via telephone at 970-491-5214. If you have any questions about your rights as a volunteer in this research, contact Janell Barker, Human Research Administrator at 970-491-1655.

This cover letter was approved by the CSU Institutional Review Board for the protection of human subjects in research on (Approval Date).

If you have read and understand the above information, please click on the ‘I Consent’ button below to indicate your consent to participate in this study.

If you do not wish to participate in the study, simply close the window.

Appendix C

Questionnaire

Please answer the following questions as accurately as you can.

1. **Sex:** Male Female Transgender

2. **Age:** _____

3. **Sexual Orientation:** Heterosexual
 Bisexual
 Gay
 Lesbian
 Other _____

4. **Highest level of education:**

- _____ High School (Grades 9-12)
- _____ Trades School or Community College (Associate's Degree)
- _____ Some College (less than 4 years or no degree)
- _____ College Degree (Bachelor's or 4 year degree)
- _____ Master's Degree
- _____ Doctor of Psychology Degree (Psy. D.)
- _____ Doctor of Philosophy (Ph. D.)
- _____ Other Degree (M.D., J.D., or other degree requiring graduate education)

5. **Jurisdiction in which you conduct child custody evaluations (County, City, State):**

6. **Number of years conducting child custody evaluations (approximately):** _____

7. **Have you received any formal training on LGBT issues? Please explain:**

8. **Have you have any experience with gay and lesbian individuals? Please explain:**

