

EXHIBIT B

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 KRISTIN M. PERRY, et al.,)
4 Plaintiffs,)
5 v.) No. 09-CV-2292 VRW
6 ARNOLD SCHWARZENEGGER, in)
7 his official capacity as)
8 Governor of California,)
9 et al.,)
10 Defendants.)
11
12 Washington, D.C.
13 Friday, October 30, 2009
14 Deposition of LOREN DEAN MARKS, called for
15 examination by counsel for Plaintiffs in the
16 above-entitled matter, the witness being duly sworn
17 by CHERYL A. LORD, a Notary Public in and for the
18 District of Columbia, taken at the offices of COOPER
19 & KIRK PLLC, 1523 New Hampshire Avenue N.W.,
20 Washington, D.C., at 9:31 a.m., and the proceedings
21 being taken down by Stenotype by CHERYL A. LORD, RPR,
22 CRR.

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2

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1 some contexts, provide the backdrop, and we spend a
2 lot more time talking about principles than family
3 structure.

4 Q. Is there anything specific that you can
5 name about lesbian and gay parents and the outcomes
6 of children raised under their care that we do not
7 know as compared to what we know about parents raised
8 by 2 married -- a married man and a woman?

9 A. It's a good question.

10 The answer is that based on the empirical
11 evidence, we know little, because the research to
12 this point has almost never compared directly lesbian
13 families to use your example with 2-parent married
14 biological -- again, marriage-based families.

15 Direct scholarly comparisons there have
16 almost never been made.

17 Q. Have they never been made?

18 A. There have been a couple, but they are --
19 they are rare, and they are the exception to the
20 rule.

21 Q. What are the couple that you referred to?

22 A. One, and this is -- this is a little bit

1 vague in terms of my reading of the literature.
2 There's a Wainright and colleagues study that came
3 out in 2004 that did comparisons if memory serves me
4 correctly with heterosexual parents.

5 And those may -- those may have been --
6 may include married parents there. It's been a
7 little while since I saw that study, so it would be
8 good for me to be able to take a peek at it, but I
9 don't -- I don't believe that they said specifically,
10 but it could have included married parents.

11 One that explicitly does include 2-parent
12 married biological parents with same-sex couples was
13 published in 1996 by Sortirious Sarantakos in
14 Children Australia.

15 Q. What did that study conclude?

16 A. That study looked at 3 different family
17 structures, the 2 that I mentioned, as well as
18 cohabiting heterosexual couples. And on most of the
19 child outcome measures, the findings were tiered with
20 the child outcomes of 2-parent married biological
21 parents being optimal cohabiting parents, second, and
22 the hetero- -- or the homosexual couples third, in

1 that order.

2 That was true for most but not necessarily
3 all of the outcomes that were looked at by
4 Sarantakos. That's one study of, you know, many that
5 I've looked at generally that again, almost no
6 studies -- those -- those 1 or 2 come to mind.

7 There may be 1 or 2 others, but virtually
8 all of the studies that I've read compare -- do not
9 compare, rather, 2-parent married biological families
10 directly with same-sex parents.

11 Q. You're not aware of any other studies
12 right now as you sit here?

13 MR. THOMPSON: And let me just state for
14 the record that Professor Marks is preparing a
15 rebuttal report dealing with the same-sex parenting
16 literature, and we're prepared to allow you to ask
17 questions about this, but his research is ongoing,
18 and he'll be submitting on November 9th a rebuttal
19 report on this.

20 So we just want the record to be clear
21 that he didn't come here today necessarily with an
22 encyclopedic knowledge of every detail of the

1 literature.

2 But go ahead.

3 A. In -- if I were a betting person, I would
4 assume that since this is a budding field that there
5 have been studies that have come out recently that
6 I'm unaware of. I certainly admit to that
7 possibility.

8 But in terms of studies that I've read
9 before today coming in here, again, I'll restate that
10 the studies that directly compare 2-parent married
11 biological families with same-sex parents are very
12 scant.

13 BY MR. MCGILL:

14 Q. You submitted your report in this case on
15 October 2nd; is that correct?

16 A. Correct.

17 Q. Are there any studies relating to
18 parenting by gay men or lesbians that you have -- are
19 aware of now but were not aware of on October 2 when
20 you signed the report?

21 A. Yes, there are.

22 Q. Which -- which studies are you -- were you

1 not aware of on October 2?

2 A. That's a difficult question to answer with
3 a lot of confidence, but Professor Lamb -- of course,
4 I had the opportunity to read his report, and if
5 memory serves me correctly, there are at least, you
6 know -- at least a couple that he raised in his
7 report that -- that were new -- that were new to me
8 at least.

9 As I've been preparing my rebuttal, I have
10 found 1 or 2 others. For example, one -- one that
11 does come to mind is a Wainright and Patterson study
12 done in 2006. That's -- that was one that was new to
13 me.

14 I don't know if Dr. Lamb referenced it or
15 not, but it's new to me over the past month or so.
16 I've tried to keep my eye out.

17 Q. Are there any others that you can think of
18 that you reviewed for the first time after October 2
19 when you signed the report?

20 A. Oh, there -- I'd read pretty widely in the
21 field preceding October 2nd, but again, yes, there
22 are -- it's difficult for me to -- to disentangle.

1 I'm not trying to be evasive. It's
2 difficult for me to disentangle when I've read, you
3 know, hundreds of studies this year on a number of
4 different subjects, you know, what ones are new for
5 the past month. There have been some.

6 Q. Do you know what they are?

7 Can you name any others?

8 A. Many -- many of the studies -- now, going
9 back to your original question, Matt, are you talking
10 just about same-sex parenting studies, or how broad a
11 net are you casting?

12 Q. Thank you for asking me to clarify the
13 question.

14 I am referring to just those studies
15 relating to same- -- to parenting by gay men or
16 lesbians.

17 A. I've read recently several -- several of
18 Lamb's studies that -- that indirectly and opaquely
19 address same-sex issues, several of those, in
20 addition to Wainright.

21 Q. Let me see if I can get at the question
22 this way.

1 Your report attaches a list of references.

2 A. Right.

3 Q. And I presume your rebuttal report will do
4 the same.

5 A. Right.

6 Q. So can I safely assume that any reference
7 that is appended to -- on your list of references to
8 the rebuttal report that is not listed on your list
9 of references to this report would be ones that
10 you've considered for the first time?

11 MR. THOMPSON: No.

12 And I'm going to object because this is
13 calling for legal conclusions.

14 Obviously, Professor Marks for 15 years
15 has been studying this, and for the issues that are
16 relevant to this report, namely the importance of
17 married biological parenting, all of those -- this
18 report doesn't in any way address the same-sex
19 parenting literature.

20 He has included all of the materials that
21 are directly relevant, but he comes to this with
22 having studied thousands of studies. And just as

1 Professor Sagura (phonetic) earlier this week made
2 clear that he wasn't listing everything that he's
3 ever read in political science that relates to
4 something, so too Professor Marks has listed the
5 items that were directly relevant to the issues in
6 this report.

7 BY MR. MCGILL:

8 Q. Do you agree with Mr. Thompson's statement
9 that your report does not consider any of the
10 literature relating to parent gay men or lesbians?

11 MR. THOMPSON: And that mischaracterizes
12 what I said, but --

13 A. This -- this study that we have in front
14 of us right now, I tried to carefully reference and
15 document the studies that I referred to to address
16 the question what are the child outcomes that we're
17 aware of associated with 2-parent married biological
18 families.

19 It's -- to me, my rebuttal that I'm
20 working on for Dr. Lamb -- it's a -- it's a very
21 different document. I imagine that there will be by the
22 time I'm done be some overlap, but there will

1 certainly be references given the topical difference
2 that will be new to the rebuttal report. I know
3 there will be.

4 BY MR. MCGILL:

5 Q. Is there any reference on your list of
6 references that deals with parenting by gay men or
7 lesbians?

8 A. On --

9 Q. -- the list of references appended to your
10 report that you've submitted in this case.

11 A. And there may well be.

12 Q. Can you name any as you sit here right
13 now?

14 MR. THOMPSON: You want him to review the
15 list?

16 Look at the list, Professor Marks. I
17 guess Mr. McGill would like you to review the list
18 one by one.

19 A. And what -- what page are we looking at,
20 just so that we're literally on the same page?

21 BY MR. MCGILL:

22 Q. This is page 12. I'm asking if as you sit

1 here right now -- I'm looking at your list of
2 references, which is -- has a 12 at the bottom of it.

3 A. To me at a glance, these references -- to
4 me at a glance, these references refer to family
5 structures used relating to 2-parent married
6 biological families.

7 At a glance, I don't see -- at a glance, I
8 don't see any that -- that directly relate or that
9 are comparing 2-parent married biological families,
10 which is the focus of this report, to same-sex --
11 same-sex parenting.

12 I may be overlooking one, but --

13 Q. Are there any references listed there that
14 deal with same- -- with parenting by gay men or
15 lesbians at all?

16 A. Again, Matt, let's see -- at a glance, I
17 would say, no, there are not. There may be, but, no,
18 there are not.

19 Again, my focus in this report was on
20 2-parent married biological families, and as I
21 earlier stated, there's -- there's very, very little
22 that directly compares 2-parent married biological

1 families to same-sex couples.

2 Q. And I want to confirm, because they don't
3 appear on your list, that the -- 2 of the studies in
4 the field of parenting by gay men or lesbians that
5 you referred to earlier, the Wainright study and the
6 Sarantakos -- did I --

7 A. Sarantakos, that's correct.

8 Q. -- the Sarantakos study, you did not
9 consider those studies in the course of preparing
10 this report?

11 A. I did consider. I had read both of those
12 studies before preparing this report, and because of
13 the comparison to drop in one or 2 studies at this
14 point that were outside of my central -- well, I
15 guess the Sarantakos study addressed it, Wainright.

16 I'm dealing with studies by the hundreds
17 here. And a study here, a study there, you know, as
18 Mr. Thompson referred to earlier, those 2 studies are
19 not referred to, so are, you know, hundreds of others
20 in general.

21 There could have been but weren't. There
22 are many, many others I could have listed, but that

1 wasn't -- that wasn't my focus.

2 Q. There are many other studies you could
3 have listed on your index of material considered?

4 MR. THOMPSON: Yes.

5 As we have said, that Professor Marks
6 comes to this with 15 years of experience, and he did
7 not purport to list every piece of literature he's
8 ever read that in any way informs his views in this
9 case.

10 BY MR. MCGILL:

11 Q. Do you have an answer to the question?

12 A. When you're -- when you're writing a
13 report, you're drawing off -- I think indirectly at
14 least everything that you've read, everything that
15 you've cataloged probably influences you in some way.

16 And at some point, that becomes difficult
17 to catalog. The references that I list in here, I
18 tried dutifully to include and specifically
19 reference. That -- that met meticulously my
20 obligation as I understand it. Making a list of
21 everything that I've read would be impossible.

22 Q. So this is the list of materials that you

1 primarily considered in connection with preparing the
2 report?

3 MR. THOMPSON: Objection, mischaracterizes
4 the testimony, and objection, asked and answered.

5 A. These -- these materials that are listed
6 here were considered in formulation of my expert
7 report. But again, they're -- they're in no way
8 exclusive.

9 BY MR. MCGILL:

10 Q. How did you distinguish between the
11 references to list and the references not to list?

12 A. That's a good question.

13 And in the case -- in the case of this
14 expert report, some of my judgments were based on not
15 just what studies were available to me, but I wanted
16 to focus on the highest-quality studies available.
17 And I believe that most of the studies, most of the
18 work that you'll find cited here is -- is of high
19 quality, Nobel laureates.

20 Akerlof as an economist, several pieces by
21 Paul Amato, and others, who are premier. So among
22 the available sources, I tried to select from -- from

1 the best.

2 MR. THOMPSON: We've been going about an
3 hour. We'd like to take a break.

4 MR. MCGILL: As you wish.

5 MR. THOMPSON: Okay.

6 THE VIDEOGRAPHER: This ends videotape
7 number 1. The time is now 10:27 AM.

8 (Recess.)

9 THE VIDEOGRAPHER: We're now back on the
10 record.

11 This is the beginning of videotape number
12 2. The time is now 10:40 AM. You may proceed.

13 BY MR. MCGILL:

14 Q. So when we left off, Professor Marks,
15 the -- just to close the loop on where we were, you
16 said, do I understand you correctly to say that you
17 distinguished between the materials that you chose to
18 list on your index of materials considered and those
19 you chose not to list by listing only those materials
20 of the highest quality on your index?

21 A. The sources that I list I believe are of
22 high quality, but -- and indicate ones in most cases

1 I took a close look at again. There certainly was a
2 quality factor.

3 Q. And the sources that are not listed here
4 presumably are of lesser quality?

5 A. Well, there are some that are -- I'm sure
6 there are some very high-quality studies generally
7 that aren't on here, but, yes, of the ones that I've
8 considered, these are -- these are high-quality
9 studies for the most part.

10 Q. What are your primary areas of research
11 interest?

12 A. My primary research interests are faith
13 and families and African American families. I spend
14 quite a bit of time in both of those.

15 I do dabble in, you know, some other
16 areas, but those are focal.

17 Q. How does your research on faith and
18 families and strong African American families relate
19 to your opinions and your report in this case?

20 MR. THOMPSON: Objection, vague.

21 Go ahead.

22 A. With -- with maybe one, 2 contextualizing

1 exceptions, I don't believe I cite my own work
2 directly in this -- this expert report.

3 So in terms of my direct impact, minimal
4 to -- to moderate, although I -- although those are 2
5 focal areas of my -- there -- there are probably a
6 hundred different subdisciplines within family
7 studies that I'm responsible for in some -- some
8 level as a teacher that I cover, that I read, so --

9 BY MR. MCGILL:

10 Q. Is parenting by gay men and lesbians among
11 the hundreds of subdisciplines that you're
12 responsible for?

13 A. Yes.

14 Q. You're a peer reviewer on several
15 journals.

16 Correct?

17 A. I am.

18 Q. And what do you do as a peer reviewer?

19 A. As a peer reviewer, the editor of a
20 journal will send -- will send you a study, usually a
21 study that is within your interest area, you know,
22 your specialty area. And they will ask -- ask you to

1 carefully read, respond to issues that -- that are
2 raised.

3 In my instance, I have a methods specialty
4 as well, and sometimes I'm asked to give some -- some
5 input on the research method that's used.

6 Q. Why is peer reviewing important?

7 A. Peer reviewing is an effort to maintain
8 minimal standards in the field.

9 Q. Does work that is peer-reviewed presumably
10 meet minimal standards in the field?

11 A. It depends on the journal.

12 There -- there are a variety -- variety of
13 journals. There's also a great degree of
14 subjectivity that comes into play in terms of -- in
15 terms of reviewers as most within the field will tell
16 you.

17 Social scientists are not immune from
18 cultural or biases -- cultural opinions, et cetera.

19 Q. Now, you mentioned before -- I just want
20 to circle back to your statement that you have a
21 specialty in methodology.

22 Could you elaborate on that?

1 A. My focus in terms of methods is
2 qualitative, and there are 2 broad types of methods
3 that are used, qualitative and quantitative.

4 Quantitative tends to deal with
5 statistics, qualitative with nonnumerical data. Any-
6 -- anyone in my field -- just about anyone deals with
7 both.

8 Q. And your work with strong African American
9 families exemplifies that qualitative method of
10 research?

11 A. It does.

12 Q. And with respect to your work as a peer
13 review, you mentioned that authors of social science
14 are not immune from -- from bias.

15 What do peer reviewers do to ferret out
16 bias?

17 A. That's a good question, Mr. McGill. I
18 don't have an empirical response to that question.

19 I think it's -- it's cause for speculation
20 on my part. My professional opinion would be that
21 you don't, that there's a scientific objective, you
22 know, an ideal of objectivity, but it's a target

1 that's rarely hit.

2 You have your biases. I do. Anybody who
3 is reviewing carries those with them as well. They
4 should try to check them, but whether they do or not,
5 I don't know for sure.

6 Q. What are your biases?

7 A. That's a -- that's a good question.

8 Can you -- can you be a little bit more
9 specific in terms of a given area?

10 Biases can be broad certainly.

11 Q. You said to me that some researchers have
12 their biases and you have yours. And I'm just really
13 asking you to elaborate on that statement.

14 A. One of -- one of my biases is that
15 research should be very, very thoroughly documented,
16 referenced, even meticulously so, including reports.
17 I think that many within my field would say that
18 having an appreciation of qualitative methods can be
19 a bias as well.

20 Q. Any others that you can think of?

21 A. I think that -- that a bias I have
22 relative to many in my field is an optimism.

1 What I mean by that with specific
2 reference to my discipline is, I -- I prefer to look
3 at strengths over weaknesses or pathologies as -- as
4 a general rule.

5 Q. Do you have -- have you published or do
6 you have in press any writings other than those
7 listed on your CV?

8 A. I don't believe so, Mr. McGill.

9 As I said earlier, and this is -- this is
10 fairly recent. With the exception that we addressed
11 earlier, this should be accurate.

12 Q. Are there any publications on that list
13 that you no longer believe represent high-quality
14 social science?

15 A. On -- on the list that I --

16 Q. Of your own publications.

17 A. Oh, of my own.

18 Q. Correct.

19 A. I -- I am, what, in my eighth year as a
20 professor.

21 One of my biases is that we should aim for
22 the gold standard. While I've had research that's

1 been covered nationally in the Washington Times and
2 won awards, I tend to be -- tend to be hard on myself
3 sometimes.

4 I stand behind the research that I did as
5 the best that I was capable of at the time. We all
6 make professional progress.

7 There are still -- I'm still aiming for
8 that -- that gold standard study by the standards
9 that I would apply myself. I haven't hit it yet.

10 Q. Are there any studies or writings of your
11 own or coauthored by you listed on your CV that you
12 believe should not today be considered high-quality
13 social science?

14 A. Yes, yes.

15 Q. Which ones?

16 A. In -- in writing, there are different
17 audiences that one addresses.

18 You have your academic scholarly audience
19 that's addresses primarily through peer-reviewed
20 journals that you mentioned earlier.

21 Q. Okay.

22 A. I've also been asked on occasion to write

1 lay -- more lay-targeted publications and the method,
2 the approach that you use is -- is different. And
3 you're not necessarily trying to aim for a scholarly
4 objective or ideal.

5 You're trying to convey a principle or a
6 message, still with the scholarly mind-set. But
7 certainly some of my work would fall under that kind
8 of category.

9 Q. And of your work that has been published
10 in peer-reviewed journals, do you consider all of
11 that work to still be high-quality social science?

12 A. The short answer would be no.

13 Again, my standard is high. I apply that
14 to myself as well.

15 In my experience producing gold standard
16 research is -- it's a career goal for -- for most of
17 us within the social sciences, one that you have to
18 build toward. I believe that I'm knocking on the
19 door of producing gold standard research in my field
20 and have spent 10 or 12 years building up a sample, a
21 national sample that's -- that's impressive or that
22 approaches a gold standard, but it takes years and

1 years to -- to do that.

2 Have I paid that price yet?

3 Have I paid those dues?

4 No, not fully. And I will be the first

5 one to admit that like I said earlier, I'm still

6 striving for that gold standard. I haven't reached

7 it.

8 Q. In what areas do you consider yourself to
9 be an expert?

10 MR. THOMPSON: Objection to the extent it
11 calls for a legal conclusion.

12 But go ahead.

13 A. My -- my Ph.D. as you're aware is in
14 family studies. Family studies is a broad field, and
15 so by public standards, I would be an expert in that
16 field broadly speaking, which would include some
17 elements of -- of others.

18 BY MR. MCGILL:

19 Q. So although you are as you said still
20 learning, you consider yourself to be an expert?

21 MR. THOMPSON: Objection, mischaracterizes
22 the testimony.

1 A. The way that I just used, expert, was in
2 connection with the -- the lay audience with the
3 general population.

4 Q. As of approximately what date do you
5 believe that you became an expert?

6 MR. THOMPSON: Objection to the extent it
7 calls for a legal conclusion.

8 A. In connection with this -- this expert
9 report, the first one, in -- in academia generally,
10 once -- once one has achieved tenure, that would be a
11 widely accepted benchmark, not just landing a first
12 job or receiving a Ph.D. degree, but achieving tenure
13 would be a significant landmark.

14 I think that's -- that's as good as most.
15 Still inadequate, probably.

16 BY MR. MCGILL:

17 Q. And do I remember correctly that you
18 became a tenured professor about -- was it June of
19 2008 that you said?

20 A. June of 2008.

21 Q. Do you consider yourself to be an expert
22 in your areas of primary research interest?

1 A. In the areas of faith and families and
2 specifically strong African American families, yes,
3 yes, I would.

4 Q. Are you an expert in child adjustment?

5 MR. THOMPSON: Objection, vague.

6 A. Child adjustment is one of -- again one of
7 the many, many areas that I'm responsible for knowing
8 something about.

9 Is it one of my focal interest areas?

10 No, it is not.

11 BY MR. MCGILL:

12 Q. But you still consider yourself to be an
13 expert in child adjustment?

14 A. By the standards of my field, I don't
15 study the specific concept of child adjustment. I do
16 study child outcomes at some length, and family
17 outcomes.

18 Q. And you would not have contended in --
19 earlier than your date of being a tenured professor
20 that you were an expert in any field, would you?

21 MR. THOMPSON: Objection, mischaracterizes
22 the testimony.

1 A. In -- in the content areas that I
2 mentioned, by the field standard, I think tenure as I
3 mentioned earlier is as good of a bar as any.

4 BY MR. MCGILL:

5 Q. Prior to your engagement as an expert in
6 this case, had you ever undertaken research on the
7 effective family structure on child outcomes?

8 A. Yes.

9 Q. When?

10 A. I am -- at the outset, I was a fathering
11 scholar. My research interests transformed a little
12 bit over time from fathering to family.

13 Much of the fathering literature links
14 fathers to children's outcomes, so from the very --
15 the very inception of -- my inception into the
16 research world of family studies, it was child
17 outcome-related, father-child outcomes.

18 Q. Have you published any original research
19 concerning the effect of family structure on
20 childhood outcomes?

21 A. If I can go back to the qualitative,
22 quantitative question for just a moment, which was

1 asked -- which was asked previously.

2 Quantitative methods like -- meet precise
3 concepts like specific child outcomes. You mentioned
4 I believe earlier child adjustment.

5 Qualitative research tends to be a little
6 bit more holistic. Most of the research I've done
7 that would deal with relationships between adults
8 and -- and children would focus more on the process
9 and the interaction that takes place as opposed to
10 specific outcomes.

11 Most of my field would view that as a
12 difference in methodology and focus.

13 Q. So you study parenting processes more than
14 parenting structures?

15 A. I've studied both.

16 Q. Do you have an opinion on what causes
17 better child outcomes as between processes and
18 structure?

19 MR. THOMPSON: Objection, vague.

20 A. That, then, is a central question in the
21 social sciences.

22 Again, as you're probably aware, I would

1 based on my reading of the empirical literature say
2 that both play an important role. Many -- many
3 within the social sciences are -- tend to be from the
4 more traditional set -- argue very hard for
5 structure. Some argue for processes.

6 I think both are very, very important, and
7 it's difficult to -- to disentangle the 2. The
8 exception that I would draw would be 2-parent married
9 biological family.

10 That -- that structure empirically stands
11 out as unique in the empirical work that I've read.

12 BY MR. MCGILL:

13 Q. And in the empirical work that you have
14 read, is it that the -- that family structure
15 correlates to good child outcomes, or is it that
16 itself causes good child outcomes?

17 MR. THOMPSON: Objection, vague.

18 A. The research is almost always in any --
19 any area of social science correlational and not
20 causal, and that's true across subdiscipline and
21 topic. There -- to rephrase it, there are many, many
22 significant unanswered questions in social sciences

1 generally.

2 BY MR. MCGILL:

3 Q. Am I correct that you have never conducted
4 any original research on families headed by lesbian
5 or gay parents?

6 A. Yes.

7 Q. Do any of your published writings or
8 articles in press discuss children raised by lesbian
9 or gay parents?

10 A. No, Mr. McGill, I don't believe they do
11 one way or the other, meaning positively or
12 negatively.

13 Q. Are there any other qualifications
14 that you have that we have not discussed that relate
15 to your opinion as you've set it forth in your
16 report?

17 A. In the expert report -- that's a broad
18 question.

19 None come to mind at the moment that
20 directly bear on it, but there -- there may be.

21 Q. When were you retained as an expert?

22 A. Mr. Thompson contacted me by phone in

1 early September of this year.

2 Q. Other than attorneys involved in the case,
3 which would include Mr. Thompson --

4 MR. THOMPSON: Barely.

5 BY MR. MCGILL:

6 Q. -- did you consult with anyone before you
7 agreed to become an expert witness?

8 A. No.

9 Q. You did not discuss with anyone whether or
10 not you should be involved in this case?

11 A. No.

12 Q. Approximately how many hours did you spend
13 researching -- researching and writing your report?

14 A. During the month of September -- basically
15 the month of September -- I think I filed the report
16 on October 2nd. If memory serves me correctly, I was
17 contacted by Mr. Thompson on September 4th.

18 My Excel spreadsheet hours log that I sent
19 to him listed 199 and a half hours, and there were
20 probably some that were not listed. It was a long
21 month, Mr. McGill.

22 Q. David wishes his associates worked that

1 hard.

2 MR. THOMPSON: They used to.

3 BY MR. MCGILL:

4 Q. So based on what you just said there, am I
5 right in thinking that the only work you performed in
6 connection with this case was in connection with that
7 report?

8 A. The only work -- could you please reframe
9 the question one more time.

10 Q. Yes.

11 Did you perform any work in connection
12 with your retention as an expert that did not lead to
13 the opinions expressed in your report?

14 A. During that month, I read and read and
15 read. A fraction of what I read shows up in this
16 report.

17 Q. But all the work of reading was in
18 connection with the report.

19 Correct?

20 A. With -- with this report.

21 I also did -- did some reading more
22 broadly on same-sex parenting topics.

1 Q. Did you have any projects assigned to you
2 that were not related to this report?

3 A. From Mr. Thompson and the firm?
4 You're not talking about LSU?

5 Q. No.

6 A. You're not trying to make that --

7 Q. Of course not, no.

8 A. No.

9 I was working on my report.

10 Q. Okay. Other than opinions you will
11 express in connection with your rebuttal report with
12 Dr. Lamb, do you intend to offer any opinions that
13 are not expressed in that report?

14 A. Today -- or when you say, offer -- offer
15 opinions --

16 Q. Do you intend -- let me rephrase the
17 question.

18 MR. THOMPSON: At trial.

19 Right?

20 MR. MCGILL: Pardon?

21 MR. THOMPSON: At trial.

22 BY MR. MCGILL:

1 Q. I'm referring to at trial, yes.

2 A. And I'm sorry.

3 No. My opinions will be limited to this
4 report and whatever shows up in the rebuttal.

5 Q. Now, are -- there are materials that are
6 cited in your report that are not listed on your
7 index of material considered.

8 A. M-m-m.

9 Q. Let me represent that to you.

10 A. Go ahead.

11 Q. Is there a reason why that -- that is so?

12 A. If -- if there are -- if I'm understanding
13 you correctly, there are citations in the body of the
14 report that don't show up in the reference section?

15 Q. Correct.

16 A. Okay. If -- and I assume that you're
17 right -- that would be --

18 Q. I'll give you an example.

19 MR. THOMPSON: And just so the record is
20 clear, you're saying they're not in the references
21 section or in the materials considered?

22 MR. MCGILL: That's correct.

1 think it's a good -- it's a good study.

2 Q. Would you call it a gold standard?

3 A. My -- my memory of that study doesn't let
4 me make a judgment one way or the other on that, same
5 as Flewelling and Bauman.

6 Q. Did you read Flewelling and Bauman in
7 connection with preparing your report?

8 A. Flewelling and Bauman -- the 1990 study.

9 Q. That's correct.

10 A. I don't think I read Flewelling and Bauman
11 entirely. Brown -- you know, as you're reviewing
12 studies, some of them you read enough to get the
13 context and to get the gist of what they're saying.

14 Flewelling and Bauman, Rickel as well,
15 Rickel '85, less so, Brown more completely so.

16 Q. So the studies -- the references cited in
17 the report, you did not read all of those references?

18 MR. THOMPSON: Objection, mis- --

19 A. No.

20 My statement was, I didn't read some of
21 them in their entirety. Some I did. Some I read
22 selections from.

1 BY MR. MCGILL:

2 Q. I just want to make sure I understand it
3 correctly, that there are some of the references that
4 are cited in your report that you did not read in
5 their entirety?

6 A. Yes.

7 Q. Okay. Thank you.

8 I had questions about 2 others that did
9 not appear on your index.

10 Johnson 1996.

11 A. Yeah.

12 I believe Johnson 1996 addresses drug
13 addiction. And in the case of Johnson, actually, I
14 think he brought up Flewelling and Bauman with some
15 of those that addressed -- they addressed a number of
16 issues only -- only drug use I believe -- again, my
17 memory is imperfect, but I focused the portions that
18 were relevant to my report, not in its entirety.

19 Q. Is there a reason why Johnson is not on
20 your list of index material considered?

21 A. No.

22 It should be.

1 Q. And finally, the Moore child trends
2 research brief?

3 A. Moore should be on there as well. That's
4 an unintentional omission. And that's a study I did
5 read in its entirety.

6 Q. And so I'm clear about this aspect, now
7 focusing on your index of material considered, is it
8 true that for some of those articles that are on the
9 index, you did not read them in their entirety?

10 A. I read the portions that were relevant
11 to -- to my report, but did I read them in their
12 entirety?

13 Not necessarily.

14 Q. For every reference cited in the report or
15 listed on the index, you read at least part of it.

16 Correct?

17 A. Yes.

18 Q. Do you believe that you understood each of
19 those references, those cited in your report, those
20 on the index, as they related to your report?

21 Let me rephrase that question.

22 To the extent that the studies are

1 relevant to your report, do you believe you fully
2 understood each of the studies cited in your report
3 and listed on your index?

4 A. I think that there -- there are
5 complexities and nuances in just about any study that
6 you read that you miss, you know, that the author or
7 researcher can't fully convey to you.

8 But in terms of basic comprehension and
9 getting the idea that was being conveyed, yes.

10 Q. Are all of the words in the report that
11 are not in quotation marks your own words?

12 A. Yes.

13 It was a sole -- absolutely sole-authored
14 expert report.

15 Q. In reaching your opinions that you state
16 in the report, did you find it necessary to make any
17 assumptions?

18 MR. THOMPSON: Objection, vague.

19 A. If -- if memory serves me correctly, I
20 made 2 concluding points in -- in the report. I
21 believe that both of those are empirically
22 documentable repeatedly, but in social sciences by

1 definition, any reasonable social scientist is going
2 to admit that there are differences of
3 interpretation.

4 Certainly Dr. Lamb and I would agree on
5 that point, I think.

6 BY MR. MCGILL:

7 Q. You mentioned Dr. Lamb.

8 Is he an authority in his field?

9 MR. THOMPSON: Objection, vague.

10 A. He is.

11 BY MR. MCGILL:

12 Q. Would you consider him an expert in his
13 field?

14 MR. THOMPSON: Objection to the extent it
15 calls for a legal conclusion.

16 A. I would.

17 BY MR. MCGILL:

18 Q. Let us at last turn to your actual report.

19 Could you please turn to paragraph 42,
20 which appears on page 10 of what has been marked as
21 exhibit 2.

22 There you state: Based on available

1 social science that meets established standards, the
2 biological marriage-based, open paren, intact, close
3 paren, family is associated with better child
4 outcomes than nonmarital, divorced, or stepfamilies.

5 What are the established standards to
6 which you refer?

7 A. In this transaction, I should have -- I
8 should defined it better I think than putting, that
9 meet established standards.

10 I am not referring just to peer-reviewed
11 standards. I am referring to -- as you used the term
12 earlier, and I think I did too, gold standard,
13 high -- high-end research.

14 Q. Is your expert report based only upon
15 social science that meets established standards which
16 as you have just now defined it means gold standard
17 high-end work?

18 A. No, not exclusively.

19 But as I mentioned at the front, that --
20 that was where I spent the majority of my time. And
21 that is the standard of the research by which I'm
22 making these claims.

1 Q. And based on what you said earlier,
2 your -- your own published articles, then, none of
3 them would meet the established standards as you've
4 defined it?

5 A. That's right.

6 It's an ideal that I continue to shoot
7 for.

8 Q. To meet established standards, is it
9 important that the social science be based on data
10 that is reasonably current?

11 MR. THOMPSON: Objection, vague.

12 A. Not necessarily, because -- because
13 society is constantly changing.

14 I think it's optimal to have more recent
15 studies, but I think that -- that many scholars,
16 myself included, would prefer slightly dated gold
17 standards study, by which I mean, a large probability
18 sample, that it is generalizable, and although not
19 required, longitudinal or multiple measures across
20 time.

21 Let me -- and again, I failed to make that
22 distinction here. But when -- when I throw out the

1 term gold standard, a gold standard study the way
2 I've defined it here would -- would meet those --
3 those criteria.

4 BY MR. MCGILL:

5 Q. To meet an established standard -- or --
6 excuse me -- to meet what you have defined as
7 established standards, a study must be longitudinal;
8 is that correct?

9 A. Not -- not must, but it adds considerable
10 strength to the study if it can show measurement
11 across time.

12 Q. Is there a point at which the data
13 underlying a study becomes so old that the social
14 science can no longer be considered to meet what you
15 have defined as established standards?

16 MR. THOMPSON: Objection, vague.

17 A. I think I interrupted myself earlier when
18 I said I would take a gold standard study that was
19 dated over a poor-quality one that was current in --
20 in many cases.

21 You know, it's a fair question to say,
22 well, at what point does that change, 20, 30, 40

1 time, parent-child shared time. They would include
2 money. They would include contact. They would
3 include warmth, relational quality, those kinds of
4 issues. They would include education perhaps.

5 Q. Would it include --

6 MR. THOMPSON: (Making noise.)

7 Q. Oh, I'm sorry.

8 Please complete your answer.

9 A. It's okay, Mr. McGill.

10 Whether -- there are a number of factors
11 that have been listed by researchers that have been
12 hypothesized and even studied, but certainly the
13 structure of -- of marriage itself. I mean, that's
14 kind of implicit in the response, as well as biology,
15 which is implicit in the response.

16 But again that's an incomplete answer, but
17 it covers some -- some of the big ones.

18 Q. What researchers have identified biology
19 as a cause of good child outcomes?

20 And let me be more specific.

21 What researchers have identified a
22 biological connection between parent and child as the

1 cause of good adjustment outcomes?

2 A. I know of no empirical research in the
3 social sciences that to the satisfaction of the field
4 has been able to say, this is causal rather than
5 correlational. That is true for biology and many
6 other factors.

7 Social science generally does not -- does
8 not have the rigor and the strength to make causal
9 statements.

10 Q. Are you saying that social science could
11 not even say that parenting skills, high parenting
12 skills cause good child outcomes?

13 MR. THOMPSON: Objection, vague.

14 A. There -- there are 3 -- there are 3
15 necessary components to -- to make a causal statement
16 that are -- that are usually associated in the social
17 sciences -- or in I should say science.

18 One is that the cause -- and we'll use
19 parenting skills. Cause has to precede the effect.
20 That's kind of the low-hanging fruit and obvious.

21 Another is that you have to establish some
22 kind of a link between the 2, which we often refer to

1 I don't lose too much sleep over either
2 one of those. I'm still aiming for the gold
3 standard.

4 MR. MCGILL: I've been informed, our
5 videotape is nearly up, and this is a natural break
6 point for me, if it's amenable to you.

7 THE WITNESS: Yes.

8 THE VIDEOGRAPHER: Okay. This ends
9 videotape number 2 in the deposition of Dr. Loren
10 Marks. The time is now 11:49 AM.

11 (Recess.)

12 THE VIDEOGRAPHER: We're now back on the
13 record.

14 This is the beginning of videotape number
15 3. The time is now 12:03 PM. You may proceed.

16 BY MR. MCGILL:

17 Q. To reorient ourselves, I'm addressing
18 paragraph 42 of your opinion, and just to recap, your
19 phrase the biological marriage-based intact family is
20 associated with better child outcomes.

21 For definitional purposes, you have told
22 me that you used the term biological and intact in

1 the same manner as the researchers you cite; is that
2 correct?

3 A. To the best of my knowledge, yes.

4 Q. And "associated with" is synonymous with
5 "correlated to"?

6 A. Yes.

7 Q. That brings me to the phrase than
8 nonmarital, divorced, and stepfamilies.

9 Am I correct that your opinion compares
10 only the intact family as you have defined it to
11 these other 3 categories?

12 A. Only -- so you're saying only compares the
13 intact family to these -- to these 3.

14 Do you mean exclusive to all other family
15 forms?

16 Q. My -- that is the nub of my question, is,
17 your sentence says that the biological marriage-based
18 intact family is associated with better outcomes than
19 nonmarital, divorced, and stepfamilies.

20 A. Yes.

21 Q. Are there other family structures that the
22 biological marriage-based intact family is also

1 better than?

2 A. Well, we're just talking about child
3 outcomes.

4 Q. With respect to child outcomes.

5 A. With respect to child outcomes.

6 There -- there may be, but the gold
7 standard research that I reviewed focuses on
8 comparisons with -- with these 3 family forms in the
9 intact family.

10 Q. Can you define for me the term nonmarital
11 as you use it in this report?

12 A. I believe that in most of the cases, the
13 researchers use nonmarital as -- at least somewhat
14 synonymous with cohabiting. We -- they also -- it's
15 a little bit of a messy term in that it can also
16 include single-parent families, which -- which are
17 sometimes included under the divorced heading,
18 sometimes not.

19 So it's a little bit messy there, but
20 certainly we've got single -- single-parent families,
21 cohabiting families would be including both.

22 Q. When this sentence says, the biological

1 it's embryonic.

2 The other family forms, at least some of
3 the others, single parent versus stepfamily, as I
4 said, it's messy. There's -- there's some pros and
5 some cons.

6 BY MR. MCGILL:

7 Q. So you don't have any clear opinion as to
8 the best family structure for that child?

9 A. Not -- not a scholarly opinion as to an
10 ideal family.

11 Q. Assume the following facts: An unmarried
12 lesbian, in a long-term committed and loving
13 relationship with another woman conceives a child and
14 gives birth to the child.

15 What is the best possible family structure
16 for that child to produce good child adjustment
17 outcomes?

18 MR. THOMPSON: Objection, incomplete
19 hypothetical.

20 A. The literature, empirical literature on
21 that -- on that hypothetical isn't sufficient for me
22 to form a confident, scholarly opinion.

1 BY MR. MCGILL:

2 Q. Do you believe -- referring back to the
3 same child born to an unmarried lesbian woman -- do
4 you believe it would improve that child's adjustment
5 if she -- if that lesbian were to marry a man?

6 MR. THOMPSON: Objection, incomplete
7 hypothetical.

8 A. That's a scenario that I don't know if
9 I've seen a single empirical study on, and I wouldn't
10 be comfortable offering a scholarly opinion on that
11 either.

12 BY MR. MCGILL:

13 Q. What about a nonscholarly opinion?

14 MR. THOMPSON: Objection, beyond the scope
15 of his report.

16 A. I'd be reluctant to even offer a personal
17 opinion.

18 In the report, I focus in detail -- even
19 though there's always going to be some assumption and
20 interpretation, I try to take pride on not stepping
21 outside of the data.

22 If -- if there's not a single study on the

1 matter, my -- my opinion is -- is not worth much more
2 than anybody else's who is an expert.

3 Q. So the data that you have reviewed does
4 not support the conclusion that the intact family is
5 the best family structure for those children?

6 MR. THOMPSON: Oh, vague as to, those
7 children, and incomplete.

8 A. Early on, I stated that the intact family
9 has not been directly compared with a couple of
10 exceptions to children in same-sex context.

11 BY MR. MCGILL:

12 Q. Turning to the next portion of paragraph
13 2, you state that: Comparative advantages of the
14 intact family are, quote, evident in connection with
15 critical societal concerns, including but not limited
16 to health, morality, and suicide rates, drug and
17 alcohol abuse, criminality and incarceration,
18 intergenerational poverty, education and/or labor
19 force contribution, and early child bearing.

20 How do you define the term critical
21 societal concern?

22 A. Each of these issues is -- is not just an

1 cross-sectional sample of the same group?

2 A. Well put.

3 Thank you.

4 Q. So I want to now just summarize what I
5 understand to be your opinions, and tell me if there
6 are -- at my conclusion, if there are additional
7 opinions that we need to flesh out.

8 Based on the available social science that
9 meets established standards, and you have defined
10 established standards as gold standard, high-level
11 social science research, the biological
12 marriage-based intact family which you have defined
13 to mean that -- as a child with a male parent and a
14 female parent both of whom are genetically related to
15 the child in marriage is associated with better child
16 outcomes, which is to say, is correlated with better
17 child outcomes than nonmarital, divorced, or
18 stepfamilies, and you use each of those 3 terms you
19 say in an amalgam of the way the researchers use
20 them.

21 A. And we would add and include single and
22 cohabiting in there.

1 Q. And to be clear: Single and -- any single
2 parent, unwedded, never married, single parent, and
3 any cohabitating relationship, you would classify as
4 nonmarital for purposes of this report?

5 A. It could capture it, yes.

6 Q. Comparative advantages are evident in
7 connection with critical societal concerns, including
8 but not limited to health, mortality, and suicide
9 rates, drug and alcohol abuse, criminality and
10 incarceration, intergenerational poverty, education
11 and/or labor force contribution, and early child
12 bearing.

13 MR. THOMPSON: Go ahead. I just don't
14 want him to answer without my objecting.

15 Go ahead.

16 BY MR. MCGILL:

17 Q. And you added to that, early sexual
18 activity.

19 Correct?

20 MR. THOMPSON: Objection, vague as to what
21 the comparative advantages are.

22 A. Yes.

1 BY MR. MCGILL:

2 Q. And there are no other critical societal
3 concerns other than those that we just discussed that
4 are addressed in your report.

5 A. Those -- those are the major ones, and I
6 believe those are the ones that I address in the
7 report.

8 Q. So the -- just to recap it, just to make
9 sure I've got it right, based on social science that
10 is gold standard, high-level social science, the
11 intact family defined as a married man and woman
12 genetically related to each of their children is
13 correlated to better child outcomes than nonmarital,
14 meaning any single never-married parent or any
15 cohabitating couple with children, divorced, or
16 stepfamilies.

17 Does that fairly capture your opinion?

18 MR. THOMPSON: Objection, mischaracterizes
19 the testimony, and it's compound in the extreme.

20 A. Yes, with -- with the caveat noted
21 earlier, that there are other family forms that --
22 that are not included in the report based on

1 limited -- more limited research.

2 BY MR. MCGILL:

3 Q. And among those family forms that are not
4 included would be married adoptive families?

5 A. M-hm, yes.

6 Q. And also parents who are lesbian or gay
7 and raising a child?

8 A. Yes.

9 Q. These are separate categories you did not
10 analyze in the context of this report.

11 Correct?

12 A. Correct.

13 And as I said, I believe those probably
14 deserve discrete categorization.

15 Q. And other than the 6 areas of societal
16 critical concern listed here in paragraph 42 of your
17 report, which is exhibit 2, there are no other
18 critical societal concerns that you are addressing.

19 Correct?

20 A. None that I'm addressing in the report.

21 Q. And it is your opinion that for each of
22 those 6 issues of critical societal concern, with the

1 same 2 adults of different sex at these times for the
2 Swedish population and housing censuses. Children
3 were categorized irrespective of whether their parent
4 or guardian were biological parents.

5 Would you agree with me that Professor
6 Weitoft included nonbiological parents in his sample?

7 A. Yes, yes, I would.

8 Q. And is there any reason based on the
9 Weitoft study to limit the conclusion about the
10 protective benefits of marriage to biological
11 parents?

12 A. Based on -- based on this study, no, no,
13 one study among hundreds.

14 Q. Moving --

15 MR. MCGILL: Would you please mark as
16 exhibit 4.

17 (Marks Exhibit No. 4
18 was marked for
19 identification.)

20 BY MR. MCGILL:

21 Q. I'm moving now, Professor Marks, to
22 paragraph 15, and specifically, the last sentence of

1 paragraph 15 of your report, which is marked as
2 exhibit 2, and it appears on page 4 of your report.

3 There you say: In a recent related
4 review, Wilcox and colleagues state that, quote,
5 teens living with both biological parents are
6 significantly less likely to --

7 A. It should say "use."

8 Q. -- use --

9 A. I omitted a word there.

10 Q. -- illicit drugs, alcohol, and tobacco.

11 And you italicized the words both biological parents.

12 Why did you italicize the words both
13 biological parents?

14 A. I was going back to the point that biology
15 is important in connection with marriage and
16 parenting. I wanted to underscore that.

17 Q. Okay. This study -- or this publication
18 of Wilcox and colleagues, this is not a -- original
19 research.

20 Correct?

21 A. This is -- this is a review, report type
22 of publication.

1 Q. And is the publication in which it
2 appeared a peer-review journal?

3 A. The publication is -- it's a peer-produced
4 by a team of scholars, but I think that technically
5 it would not be classified as a peer-review journal.
6 It would not.

7 Q. Would you please turn, Professor Marks, to
8 pages -- to page 24 and 25, which is the page that
9 you've cited for this quotation.

10 And I would ask you to just read the
11 sentence that begins on the last line of page 24 and
12 continues to page 25. And you can read it to
13 yourself. I'll read it for the record.

14 A. Okay.

15 Q. Data from the national household survey on
16 drug abuse show that even after controlling for age,
17 race, gender, and family income, teens living with
18 both biological parents are significantly less likely
19 to illicit drugs, alcohol, and tobacco.

20 Now, Wilcox and colleagues does not define
21 the term biological parents, do they?

22 MR. THOMPSON: Are you giving him a minute

1 to look at the study, or are you asking him off the
2 top of his head?

3 A. I don't know if they do or not,
4 Mr. McGill.

5 BY MR. MCGILL:

6 Q. But as you had -- just as you said before
7 that you used terms in the same manner in which the
8 researchers you cite used the terms, would you expect
9 Wilcox and colleagues to use the term biological
10 parents in the same manner in which the researchers
11 who they cite use the term?

12 A. I believe I would, but there are always
13 exceptions.

14 Q. If Wilcox and colleagues used the term
15 biological parents in a manner different from the
16 authority for which they cite, would that suggest
17 that the proposition is not supported by the
18 authority that they cite?

19 A. Could -- could you restate --

20 Q. Sure.

21 A. -- please.

22 Q. If Wilcox and colleagues defined

1 biological parents differently from the authority
2 that they cited, wouldn't that suggest that the
3 proposition that Wilcox and colleagues state is not
4 supported by the citation that they give for it?

5 A. So you're saying if it's overextended, if
6 the use is overextended -- if their definition
7 doesn't match that in the source that they cite, is
8 that a problem in essence?

9 I would say that, yeah, that's a mistake.

10 Q. And -- but in this context, we would
11 expect Wilcox and colleagues to be using the term
12 biological parents as -- in the same way in which the
13 authority that they cite for it, would we not?

14 A. I would imagine -- neither -- neither
15 myself on page 4 nor Wilcox on page 25 explicitly
16 indicate marriage or not, but both of them say,
17 biological, both biological.

18 Q. Are you -- so you cited Wilcox and
19 colleagues in your report without knowing how they
20 used the term biological parents?

21 MR. THOMPSON: Objection, mischaracterizes
22 the testimony.

1 A. With -- without knowledge of their
2 citation, or of Wilcox themselves?

3 BY MR. MCGILL:

4 Q. Let me ask the question this way.

5 A. M-hm.

6 Q. Dr. Marks, do you know how Wilcox and
7 colleagues are using the term biological parents
8 based on reading page 25?

9 A. To be precise, they don't mention
10 marriage, nor -- nor do I on page 4, but, no, no.

11 Q. I'd ask you now to look at page 40 of the
12 Wilcox --

13 A. Same report?

14 Q. Same report.

15 This is into the footnotes.

16 A. Okay.

17 Q. Now, Wilcox and colleagues drop a footnote
18 called number 103 at page 25, and they cite a 1996
19 study of Robert Johnson.

20 Is that the same study that you also cite
21 as a see also in footnote 16 of your report?

22 A. It is.

1 Q. Have you read the Johnson study?

2 A. I've read portions of it, but -- I'll
3 leave it at that.

4 Q. Do you know how Johnson defined the term
5 biological?

6 A. I don't recall, no.

7 MR. MCGILL: Would you please mark this as
8 exhibit number 5.

9 (Marks Exhibit No. 5
10 was marked for
11 identification.)

12 BY MR. MCGILL:

13 Q. Can you tell me what -- based on your
14 knowledge as you sit here, what was Johnson's primary
15 conclusion in this 1996 study?

16 A. No.

17 And going back, we're talking about
18 hundreds of different studies.

19 Q. Do you know what data Johnson drew upon to
20 draw his conclusions?

21 A. I don't -- I don't remember, except that
22 it was a study that came out of one of the National

1 Institutes of Health I believe here in the D.C. area.

2 Usually that data is good.

3 Q. And Wilcox tells us in fact that it's from
4 the national household survey on drug abuse.

5 Does that refresh your recollection?

6 A. I honestly didn't remember for sure either
7 way.

8 Q. I'd like you to look at page -- I'd like
9 you to look at page 2 of Mr. -- Dr. Johnson's study,
10 and the very first bullet point, page 2. I'm going
11 to read that for the record.

12 A. Okay.

13 Q. Adolescents living with 2 biological, open
14 paren, including adoptive, close paren, parents are
15 significantly less likely to use alcohol, cigarettes,
16 and illicit drugs or to report problems associated
17 with the use than adolescents not living with 2
18 biological parents.

19 Had you read that before you signed your
20 report?

21 A. I don't remember reading that line.

22 Q. Can you please now turn to page 6 of his

1 report.

2 A. M-hm.

3 Q. Footnote 3, which is down at the bottom of
4 the page, and I'll read it and you can read it to
5 yourself.

6 Most studies do not distinguish biological
7 parents from adoptive parents since the latter is a
8 rare family form in virtually all studies.
9 Presumably, though, families in which both parents
10 have adopted the child are considered to be intact.

11 Had you read that footnote before you
12 signed your report?

13 A. I don't remember reading this footnote.

14 Q. Do you -- do you disagree with its -- with
15 the content of that footnote?

16 A. I stated earlier in my -- in my deposition
17 that adoptive study -- or adoptive families, I
18 believe, may be included, but oftentimes authors
19 don't state -- don't -- don't make that explicit
20 statement.

21 It wouldn't surprise me if studies do
22 sometimes lump them in with intact families, but it's

1 rarely made explicit like it is here. I mentioned
2 earlier that adoption studies specifically focus on
3 and pull out, disentangle, you might say. Adoptive
4 families are fairly rare. They might be included
5 under other headings.

6 Q. Do you recall a couple hours ago when I
7 asked you if you made any assumptions when you put
8 together your report?

9 A. Yes.

10 Q. Did you assume when you read the term
11 biological parent in the social science literature
12 that it excluded adoptive parents?

13 A. I think that -- that that is an assumption
14 that I made, you know, clearly with respect to
15 this -- this particular study.

16 Q. Do you disagree with Johnson that that
17 largely is an erroneous assumption?

18 A. I note that he doesn't offer a citation
19 here to that opinion of his. His opinion is probably
20 worth as much as anybody else. It is -- as I've said
21 specific studies on adoptive families are limited.

22 Whether they're included under other

1 headings in various studies, it's -- it's rarely
2 explicitly mentioned.

3 Q. Is Johnson's study one that you would
4 characterize as gold standard social science?

5 A. I think it's a fine study, yes.

6 Q. Can you turn to page 12, please.

7 A. M-hm.

8 Q. Page 12, the first bullet point numbered
9 1, I'll read it and you can read along: 10 family
10 types are defined as follows in order of decreasing
11 frequency. 1, mother, father. The respondent
12 reported the presence in the household of a mother
13 and a father, open paren, biological or adoptive,
14 close paren. The respondent did not report in the
15 presence -- the presence in the household of any of
16 the other 7 relations, that is, the respondent did
17 not report living with a stepmother, a stepfather, an
18 other relative, a nonrelative, or a spouse.

19 Do you take that to mean that -- to mean
20 as I do that Johnson defined a mother or a father as
21 a biological or an adoptive mother or father?

22 A. Yes.

1 Q. Do you read that as I do that Johnson does
2 not distinguish between biological and adoptive
3 parents?

4 A. He doesn't there.

5 Q. Do you believe that Wilcox -- Wilcox's
6 statement turning back to page 25 -- you need not
7 turn to it because it's quoted in paragraph 15 of
8 your report.

9 Do you believe that Wilcox's statement
10 that teens living with both biological parents are
11 significantly less likely to use illicit drugs,
12 alcohol, tobacco -- do you believe that's accurately
13 supported by the Johnson study?

14 A. Taking a close look at these -- at these
15 definitions as been presented, I would withdraw
16 that.

17 Q. Would you also withdraw your emphasis on
18 both biological parents?

19 A. Certainly so.

20 Q. Would you delete the word biological?

21 A. I would.

22 Q. I want to move now to your discussion of

1 Q. And so you're familiar with this article?

2 A. Even though I read it from beginning to
3 end, it's one of hundreds. I remember that it was --
4 as it says here, very large. In fact I think it was
5 the largest study that I reviewed in terms of sample
6 size.

7 Q. Did you read it in preparation for this
8 deposition?

9 A. No.

10 Well, I read it to prepare the report, but
11 I haven't read it recently.

12 Q. Do you know as you sit here whether
13 Professor Brown is using the term biological parent
14 in the same way that you are in your report?

15 A. Memory -- memory, again, I am making the
16 assumption that she did.

17 Q. You're assuming that she excluded adoptive
18 families?

19 A. No.

20 I'm assuming that -- that this is the
21 exact phrase that she used in her article and I
22 italicized it.

1 Q. How do you think that Susan Brown is using
2 the term biological parent?

3 A. Well, she -- she may like -- like Johnson
4 certainly have included an adoptive -- or included a
5 small number of adoptive families on into the
6 biological. Researchers have a right to do that.

7 Q. Do you know one way or the other?

8 A. I don't recall for certain.

9 Q. Brown's study sought to investigate the
10 effects of parental cohabitation on children's
11 development.

12 Correct?

13 A. It is a family structure issue article --
14 I remember that -- so it wouldn't surprise me if it
15 includes cohabitation.

16 Q. And it was -- who were -- who do you --
17 what populations was she comparing?

18 A. She was looking at 2-parent biological is
19 what was confirmed here, cohabiting couples.

20 In terms of -- in terms of memory, I can't
21 remember further than that.

22 MR. MCGILL: 7?

1 The -- the other significant element of
2 the answer is, my benchmark for comparison was the
3 intact family compared with other family forms. I
4 didn't mean to be intentionally exclusionary of
5 same-sex family forms. It's just that they've very,
6 very, very rarely been -- been compared with -- with
7 I think the 1 or 2 exceptions that I mentioned.

8 So it's not just a gold standard. As I
9 said, there are non-gold standard studies cited in
10 the research, but there are very few studies that
11 make that direct comparison. The 2 that are at --
12 you know, open that can of worms with one -- you
13 know, one study, one study, no.

14 Q. I believe you said before -- and correct
15 me if I'm wrong, please -- that the -- you thought
16 that the family structure of 2 gay men raising a
17 child or 2 lesbians raising a child ought to be
18 treated as a separate category, separate from other
19 unmarried families, which was your second of 4
20 categories.

21 A. Yes, I believe I said that, that they
22 should be discrete and researched independently.

1 Q. And would you further state that you
2 cannot generalize from findings that relate -- or the
3 findings that emerge from a comparative study of
4 intact families to unmarried families?

5 You cannot draw conclusions about this
6 separate category of families headed by gay couples
7 and lesbian couples from a comparison between intact
8 families and unmarried families as you've defined
9 those terms?

10 MR. THOMPSON: Objection, vague.

11 A. To draw that comparison, other than the 2
12 studies that I've mentioned or any others that I'm
13 unaware of that exist, you would need to take at
14 least one inferential step.

15 That would be a judgment call, not a
16 black-and-white, straight comparison.

17 BY MR. MCGILL:

18 Q. And it's not your intention anywhere in
19 this report to make such an inferential step?

20 A. No.

21 Q. So your report has nothing whatever to say
22 about childhood adjustment outcomes of children

1 A. Yes.

2 Q. Is the proclamation a statement that
3 members of the LDS church are obliged to accept and
4 follow?

5 MR. THOMPSON: Objection, beyond his
6 expertise.

7 A. The words that you used were obliged
8 and --

9 BY MR. MCGILL:

10 Q. -- obliged to accept and follow.

11 A. In the LDS faith, as in the Catholic faith
12 and any other, there are wide varieties of opinion,
13 acceptance of formal documents.

14 Is this accepted by many Latter Day
15 Saints?

16 Yes, I believe it is. I don't know what
17 percentage.

18 MR. MCGILL: I'm going to mark as an
19 exhibit a copy of -- as exhibit 13 a copy of, the
20 family, a proclamation to the world.

21 (Marks Exhibit No. 13

22 was marked for

1 identification.)

2 BY MR. MCGILL:

3 Q. In the first paragraph at the bottom, the
4 proclamation states that: The proclamation contains
5 principles that are vital to the happiness and
6 well-being of every family.

7 Do you agree that the principles stated in
8 the proclamation are vital to the happiness and
9 well-being of every family?

10 MR. THOMPSON: Objection, irrelevant.

11 A. I believe that there are principles in
12 here that can be beneficial.

13 BY MR. MCGILL:

14 Q. Do you believe that each of the principles
15 stated in the proclamation is in the words of the
16 proclamation vital to the happiness and well-being of
17 every family?

18 MR. THOMPSON: You're going to have to let
19 him read it if you want to ask him to sign off on
20 everything, unless it's a memory test.

21 MR. MCGILL: It's one page. He can read
22 it if he likes.

1 A. And Mr. McGill, if you could restate your
2 question before.

3 BY MR. MCGILL:

4 Q. My question is whether you agree that the
5 principles stated in this document are vital to the
6 happiness and well-being of every family.

7 MR. THOMPSON: I object on the ground
8 that -- of vagueness and relevance and beyond the
9 scope of his expertise.

10 A. This -- this is a statement of -- of
11 dogma, and I -- I came here as an empirical
12 scientist.

13 My argument earlier is that we have
14 biases, and it's important to acknowledge those
15 biases and to try to be honest and forthright, and
16 then to try and proceed in an open-minded way,
17 considering others' opinions. I think that that is
18 true for -- for both sides.

19 Returning -- returning to point, I think
20 it's very important to draw a distinction between my
21 scholarly opinion, my evidence-based opinion, and my
22 personal dogma, which -- which everyone holds.

1 Do I believe that there are principles
2 here that would be or could be vital to the happiness
3 and well-being of every family, part of my faith and
4 my dogma is, I do believe there are worthwhile
5 principles in here that could be applied to -- to
6 other families.

7 What -- what I want to very, very clearly
8 indicate is that my personal beliefs are just that.
9 They're personal. Although these may be in my
10 personal belief helpful to others, I do not seek to
11 impose them upon other people.

12 Sacred to me, applicable to me, and there
13 are principles of -- well, I'll just stop there.

14 BY MR. MCGILL:

15 Q. And I want to say for my part that I
16 respect that view.

17 And what I want to do is because this
18 source of potential bias was not disclosed in your
19 expert report, I want to quickly and respectfully put
20 it on the record and then be done.

21 Do you agree with the statement that
22 children are entitled to birth within the bonds of

1 matrimony and to be reared by a father and a mother
2 who honor marital vows with complete fidelity?

3 MR. THOMPSON: Objection, vague.

4 A. Let me say in terms of personal dogma,
5 yes.

6 In terms of scholarly opinion and support,
7 it's an entirely different issue. And as you
8 mentioned, I did not bring up issues of religious
9 bias in my report or -- or other issues, nor did
10 Dr. Lamb.

11 This -- this goes beyond technicality to
12 me. It's -- it's an issue of fair play. I don't
13 know what the legal technicalities are.

14 But to save you some time, do -- do I
15 honor this document as personal dogma applied to me?

16 We don't need to walk clear through the
17 document, which frankly is sacred to me, important to
18 me, meaningful to me.

19 What I wish to say is that as a scholar,
20 in the report the points that are made are documented
21 not to religious literature, to empirical
22 scholarship. And I would ask for some respect in --

1 in the effort to be forthright, to be honest. And
2 I'm putting my hand in front of you, Mr. McBride --
3 or -- I'm sorry -- Mr. McGill.

4 This -- this is not a scholarly issue to
5 me. It's something more sacred, though we can
6 continue.

7 BY MR. MCGILL:

8 Q. I don't mean to be disrespectful at all.

9 Do you -- can you see -- or can you
10 understand why one -- if one learned that an expert
11 had drawn a conclusion based on -- ostensibly based
12 on social science that the intact family is the ideal
13 context for the -- for child outcomes, and that's
14 quoting from paragraph 44 of your report, can you see
15 why if that same person also believed as a matter of
16 religious dogma that children are entitled as a
17 birthright to be born within the bonds of matrimony
18 and reared by a mother and father -- can you see why
19 that might appear to be to some a source of potential
20 bias?

21 MR. THOMPSON: Objection, calls for
22 speculation as to some unknown hypothetical person.

1 MR. MCGILL: I'm asking his own opinion.

2 MR. THOMPSON: About what some unnamed
3 person one might think somewhere in some other
4 galaxy.

5 A. In terms of potential bias, certainly.

6 In the same way that -- that advocate and
7 activist scholars of same-sex parenting or same-sex
8 marriage would have biases as well. The -- the fact
9 that each of us have biases -- again my argument is
10 not that that's something to be ashamed of. It's
11 something to be forthright with so that we can be
12 challenged.

13 And I don't take -- I don't take offense.
14 I was just asking for -- for fair play in terms of
15 bias. The issue is not limited to religion.

16 BY MR. MCGILL:

17 Q. Sir, I would agree that it is certainly
18 not limited to religion. And I don't -- would not
19 imply otherwise.

20 I very much want to be respectful of your
21 views. And at the same time I'm -- I want to just
22 get on the record these biases. So, I will try it

1 The thought didn't cross my mind.

2 I was aware that a complete curriculum
3 vitae was being sent. And I'm fully aware of things
4 that I've written, including the reflexivity
5 sections.

6 And it -- it just didn't seem -- didn't
7 seem relevant to restate obvious biases that are
8 discussed very candidly elsewhere, as -- as you've
9 indicated.

10 As you're looking, let me return to an
11 issue that you brought up earlier.

12 You remember that the charge on this
13 article was to address both strengths and also
14 challenges, or potential negatives. This -- this I
15 believe, Mr. McGill, is part of the challenge to the
16 scholar, to -- to look empirically even at things
17 that fit into our dogma, and to point out flaws,
18 weaknesses, incomplete information.

19 And that's -- that's what I -- I strived
20 to do in the scholarly report.

21 Q. Do you believe that homosexual behavior is
22 sinful?

1 MR. THOMPSON: Objection, vague.

2 He's not a theologian.

3 A. No, indeed, I'm not a theologian.

4 Again in terms of -- in terms of
5 scholarship, science is a poor -- poor informant in
6 terms of morality for my opinion. That lies with
7 other fields, moral philosophy, theology, et cetera.

8 But let me still directly address your
9 question.

10 Is homosexuality a sin.

11 Did I hear that correctly?

12 BY MR. MCGILL:

13 Q. My question was whether you believe that
14 homosexual behavior as distinguished from same-gender
15 attraction, whether homosexual behavior is a sin.

16 A. Is a sin.

17 As I mentioned, in connection with the
18 dogma that we read earlier, which I've already told
19 you I believe in it here in terms of personal life
20 and dogma, I believe that any sexual contact outside
21 of marriage -- traditional marriage is wrong for me.

22 In fact -- and I'm including both

1 homosexual and heterosexual sexual contact before
2 marriage or after marriage with anybody but my
3 spouse. That is my dogma.

4 Would it be a sin for me?

5 I've made personal covenants to follow
6 that dogma, personal covenants I believe to both my
7 God and my wife.

8 Would it be a sin for me?

9 Yes, in my definition of sin. I want to
10 explicitly state that I am referring to me. I'm
11 referring to sexual behavior in general, not singling
12 out homosexual behavior.

13 It's a pretty high bar. That's a pretty
14 high ideal. Believe me, I've lived with it for a
15 long time. But I do not impose that on anyone else.
16 I impose that by a sacred covenant to myself.

17 One of my other religious tenets -- I
18 don't know if it shows up in this article or not --
19 is judge not that you be not judged.

20 In other words, do I hold that standard
21 for myself?

22 I do.

1 Do I impose it on others?

2 I believe in cleaning up my own backyard.

3 Q. And for clarity sake, the -- the dogma
4 that you referred to just in your last response,
5 that's known as the law of chastity.

6 Correct?

7 A. That is correct.

8 Q. Did your religious convictions impact your
9 opinion that the ideal family structure is marriage
10 between man and a woman and a child biologically
11 related to each in any way?

12 A. My exposure to -- to that -- that dogma
13 I'm sure is one of many factors that -- that ran
14 around in my head.

15 But again I was called as an expert
16 witness in the same sense that I wouldn't come in
17 here and make my argument based on what's stated in
18 the family proclamation to the world. I took that
19 same approach in my scholarly -- my scholarly work.

20 I think I've addressed again and again
21 that I acknowledge potential for bias and that that
22 makes challenge fair play. However, please remember

1 my earlier statement that I also have taken upon me
2 the burden of challenge. This is -- you know,
3 scholarship is about strengths and challenges, not
4 just dogmatically presenting one.

5 Q. When is the first time you held the belief
6 that the ideal family structure is marriage between a
7 man and a woman and a child biologically related to
8 each?

9 MR. THOMPSON: Objection, relevance.

10 A. Mr. McGill, I don't know. I don't know
11 how to answer that question.

12 BY MR. MCGILL:

13 Q. Is it -- is it fair to say that you held
14 that view, you held that belief before your
15 engagement as an expert in this case?

16 A. Yes.

17 Q. Is it fair to say you held that belief
18 before you received your Ph.D. degree?

19 A. Yes.

20 Q. Did you hold that belief before you
21 graduated from college?

22 A. Yes.

1 Q. So that belief predates your work as a
2 social scientist?

3 A. Yes.

4 MR. MCGILL: We'll take a 1- , 2-minute
5 break and find out if there are any last questions.

6 MR. THOMPSON: Sound good.

7 THE VIDEOGRAPHER: We're going off the
8 record. The time is now 6:09 PM.

9 (Recess.)

10 THE VIDEOGRAPHER: The time is now 6:13
11 PM. You may proceed.

12 BY MR. MCGILL:

13 Q. Dr. Marks, earlier in the deposition
14 today, we addressed paragraph 15 of your report,
15 which is marked as exhibit 2.

16 A. Okay.

17 Q. Can you go back to that.

18 A. I'll try -- I'll try and get there
19 quickly. Okay.

20 Q. And addressing the last sentence: Wilcox
21 and colleagues state that teens living with both
22 biological parents are significantly less likely to