The Voice of the Petitioner: The Experiences of Gay and Lesbian Parents in Successful Second-Parent Adoption Proceedings

Catherine Connolly

Gays and lesbians have recently turned to the courts and the law for recognition of their families. Some of the most successful cases are those won by a gay or lesbian "second-parent" of a child whose biological or legally adoptive parent is his or her partner. The court opinions granting these second-parent adoptions have often portrayed these petitioners as similar to an idealized heterosexual family unit, albeit with two same-sex parents. In this study, 20 parents who successfully pursued a second-parent adoption were interviewed to examine their experiences with the legal system. Results indicate that these petitioners did not envision themselves as similar to heterosexual families and resisted attempts by state actors who tried to formulate them as such. The literature on legal consciousness and pragmatism is used to analyze the respondents' experiences.

Introduction

Gays and lesbians fall in love, have sexual relations, and care for each other and their children without the sanctity of the state. Only recently, in very limited situations and jurisdictions, have gays and lesbians successfully challenged legal restrictions on formal marriage, domestic partnerships, civil unions, adoption, and foster parenting. Some of the most successful petitions have been brought by "second-parents," a term coined by Delaney (1991) to denote the lesbian (or gay) partners of legal parents who wish to have their relationships with their partner's child recognized by the state. Legal parental status is necessary for a second-parent to make legal decisions regarding the child and for the parenting couple to organize family life with choices similar to heterosexual parents and stepparents. Federal policies

A version of this article was presented at the Law and Society Association's Annual Meeting, May 1997, St. Louis, Missouri. I thank Lois Berry for useful comments. Recent drafts of this manuscript received valuable comments from the participants at the University of Wyoming, Women's Studies brown bag lunch series, Dec. 2000. Address correspondence to Catherine Connolly, Ph.D., J.D., Director Women's Studies, University of Wyoming, 414 Ross Hall, Laramie, WY 82071–3293 (e-mail: cconn@uwyo.edu).

Law & Society Review, Volume 36, Number 2 (2002)

such as income tax exemptions, intestate succession, and eligibility for entitlement programs require a legally defined family. Most private insurance carriers require a state-sanctioned family for extension of health or life insurance benefits. Doctors—as well as schools, day care centers, prisons, and other institutions—often require that parents, and only parents, make arrangements for the care of their children (Connolly 1998, 2002).

Late in 1991, a New York court was the first to publish an opinion allowing a second-parent adoption. In that case, *In the Matter of a Child Whose First Name Is Evan (In re Evan)*, Judge Preminger carefully evaluated New York adoption law, the social science evidence on gay parents, and the documentation provided by the petitioning lesbian couple. Ultimately, she concluded that nothing prevented the adoption. Immediately after the ruling in the *Evan* case, numerous couples began similar proceedings in courts around the country.[1] My then-partner and I were one of them, and in mid-1992, the chief family court judge in Buffalo, New York, smiled and turned to my 5-year-old son and exclaimed that he was such a lucky boy to be part of a family now. To us, however, Lucas had been part of a family since birth. The adoption was the culmination of our attempts to guarantee both of his mothers the ability to parent legally. I had fought (and lost) the "family" issue with both our attorney and the certified social worker and was not willing to jeopardize the judge's signature on the final forms by repeating "the law did not make us a family." What I had said earlier to the attorney and a social worker was that, until the adoption, the law had denied us the same rights to parent as heterosexuals have had—to enjoy the same duties and obligations to our child as were realized by heterosexual parents. Lucas had enjoyed life with two mothers, only one of whom had the legal ability to make binding decisions. The adoption would expand that number to two; but it did not make us a family. Though I celebrated the event as a victory both for us personally and for other gay and lesbian parents who wished to have their relationships with their children legally recognized, the legal process ignored our reality as both lesbians and parents.

To better understand the role of law in my family and our resistance to the definitions and processes imposed upon us while we were participants in the adoption proceeding, I conducted 15 interviews with 20 gay and lesbian parents who had successfully pursued a second-parent adoption. Like Barbara Yngvesson, who wrote compellingly about her own and others' experiences as participants in "open" adoptions, I was interested

[1] Some courts have ruled in favor of second-parent petitions, but others have ruled negatively. The number of states that allow this type of adoption changes regularly. Up-to-date information on each state's statutes can be found by contacting advocacy organizations, such as the National Center for Lesbian Rights, the Human Rights Campaign, the National Gay and Lesbian Task Force, or the ACLU.

in analyzing how "this personal dimension of my work is closely tied to a long-term political and theoretical interest in what it means to talk about social 'order' and with the way meanings take shape or evolve over time in processes that are neither determined nor unconstrained (1997:32)." I was also interested in exploring how the law and legal procedures were used, ignored, and circumvented, and in discovering the meaning participants placed on their involvement.

I conducted interviews until the data gathered became redundant. Only the experiences of successful petitioners were examined to avoid the confounding factor of "disappointment of defeat" in the discussion. Finding subjects was difficult. Although I had read every reported second-parent adoption judicial opinion, they were of little use making contacts, as they typically identified the parties only by initials or the first name of the child. I began my study with an interview of my friends and then utilized news reports from the national wire services, which divulged names, to make the next contacts. Ultimately, the majority of respondents came from a call for participants on several Internet listservers. I corresponded with potential interviewees several times to introduce the research before conducting phone interviews, which lasted one to three hours. I conducted the interviews in 1997 and audio recorded them; later, I transcribed them. The responses I use in this article are from those transcriptions. The names of the parents and children have been changed. Words or phrases such as "um" or "you know" have been deleted for clarity.

The interviewees were from seven states, and although they all had a successful second-parent adoption in common, their paths to parenting were diverse. The most typical parenting arrangement was that of long-term lesbian couples who had used donated sperm for conception. Most of the couples did not know the sperm donors, although several donors were friends of the interviewees, and one woman's brother-in-law had donated. Other parenting arrangements included a biological mother with a child from a previous heterosexual relationship, several single-parent adoptions (often done with a wink and nod from an adoption agency), and one gay couple who had used a surrogate mother impregnated with one of the men's sperm, making him the biological father. The majority of the interviewees were lesbians; three couples were gay. These differences did not significantly impact the respondents' experiences with the legal system nor their analyses of that experience.

Like myself, most interviewees experienced a profound response to the legal process involved and were adamant in their desire to see modifications in the legal procedures. The relatively recent literature on legal consciousness helps to put these reactions in a theoretical context.

Legal Consciousness

Legal consciousness explores the ways in which individuals and groups make sense of the law and legal institutions. How, when, and why is the law invoked? What types of self-conscious decisions do the participants make? How do commonplace transactions and relationships come to assume or not assume a legal character (see Ewick & Silbey 1998)? According to Sarat and Felstiner (1995:6), "Law exists and takes on meaning in and through the everyday world of social relations, while everyday life is, in turn, constructed and made meaningful by legal ideas and practices." Similarly, Levine and Mellema (2001:195) suggest that for many, "Law permeates social life and helps define the role of the individual and her relationships with others in a way that makes sense. Law and social practices are so inextricably linked that it is often impossible to know where one ends and the other begins."

How the law operates is very different for those within its bounds and those outside of it. For traditional families, that is, a heterosexual married couple with children, the law is simultaneously centered and invisible. They may move in and out of institutions, such as education and the economy, with relative ease, but the further away from this norm a family is, the less ease exists. The law becomes centered not as a "pass" for movement but as a restriction. For example, a marriage license, rather than love or commitment, is necessary for inclusion in a spouse's health insurance. For a heterosexual couple, the choice not to marry may mean a lack of spousal benefits. For gay and lesbian families, the burdens become greater—the inability to marry, for example, excludes gay couples from both spousal and parental rights. Thus, gay and lesbian families are overwhelmingly conscious of the role of law in legitimating relationships between adults based on sexuality, and the relationships between parents and children.

Many gay and lesbian families have the conscious choice of one of the following: to ignore the law and risk the consequences, to engage the law and risk the consequences, or to challenge the law and, again, risk the consequences. Ewick and Silbey (1998) have addressed these choices in their book, *The Common Place of Law: Stories from Everyday Life.* In their examination of legal consciousness, they have developed a tripartite model that describes people's beliefs about the law and their individual reactions: "Before the Law" describes the law as a grand, reified formal process, used by participants when all other solutions to problems fail; "With the Law" describes the law as an arena of strategy and self-interest, a biased commodity manipulated by those who engage within its parameters; and finally, "Against the Law," shows how people respond to the oppressive nature of laws through individual and group resistance to anything legal. Ewick

and Silbey contend that these categories overlap and permeate everyday behavior. Moreover, when individuals choose not to engage in the legal arena, through resistance or avoidance, the power of the law is equally evident. (For descriptions of this typology, see also Levine & Mellema 2001; and Mezey 2001.) However, the power of Ewick and Silbey's categories must also be examined in relationship to group identity elements, such as race, gender, class, and sexuality (Levine & Mellema 2001).

The most prominent *legal* categorization of gays and lesbians has historically been as those who practice sodomy. The U.S. Supreme Court, in the case *Bowers v. Hardwick* (1986), upheld Georgia's anti-sodomy statute. According to the Court in *Hardwick*, there is no constitutional protection afforded to those who practice sodomy; thus, the state could prohibit and penalize sexual conduct between consenting adults that it found morally offensive. The Court rejected arguments that gay sexual behavior is similar to non-procreative sex by heterosexuals and should, like those activities, be constitutionally protected. One of the results of *Hardwick* is that sexual behavior became a defining characteristic of homosexuality. Thus, legal claims based on sexual orientation were often conflated with illegal sexual behavior. Courts now rely upon the *Hardwick* ruling to bolster legal decisions that have denied claims of discrimination in work situations that have been brought by gays and lesbians (Rubenstein 1993), as well as cases involving child custody and visitation (see, e.g., *Bottoms v. Bottoms* [1994]).

It is not surprising that legal arguments framed by gay or lesbian petitioners, as well as legal decisions that favored gays or lesbians written following *Hardwick* have tended to remove or to de-emphasize the issue of sexuality. These arguments and decisions have also reduced claims of discrimination against gays and lesbians to a unitary measure, such as worker, parent, or immigrant, rather than one based exclusively on sexual acts. Though these unitary dimensions are true in part, they often ignore the relevance of the parties' sexuality and stigmas attached to homosexuality, the variables that were often the impetus to the petitioner's legal claim or to the discriminatory behavior of the perpetrator of that discrimination. When such cases have been unsuccessful, they have often failed on the basis that sexual orientation (i.e., non-heterosexual sexual orientation) is legally invisible. The decisions in successful petitions, such as those in the second-parent adoption cases examined here, often ignored the fact that the underlying need for the petition was the (homo)sexuality of the petitioners. Instead, the courts focused on the legal principles and procedures involved in making the petitioners a legal family. In the positive second-parent adoption cases, the courts overviewed, in detail, the financial assets and economic well-being of the petitioners and their homes and

home life and decided that the adoption was simply "in the best interests of the child." The courts in these cases never questioned the bias in the statutes that necessitated the petitions and the extent of the evaluation of the petitioners.

Although it may be argued that the granting of second-parent adoptions indicates courts' progressive change toward the legal recognition of family diversity, the judicial opinions reviewed show that the courts have tried to portray these gay and lesbian families as similar to an idealized heterosexual family unit. Interpretations of these cases as the courts' acceptance of family diversity and plurality are simultaneously true and wishful thinking. First, emphasizing gay and lesbian families as similar to normative heterosexual families reproduces an ideal at the expense of ignoring the rich, unique experiences of gay and lesbian families. Second, the legal recognition of these families centers the law as legitimating them in ways that the petitioners in these cases have themselves rejected. In order to explore these issues, I illustrate them briefly with themes developed in the interviews, and show how these themes reflect Ewick and Silbey's tripartite typology. Following this discussion, I return to the subject of legal consciousness.

Going to Court: Process and Choices

The interviewed petitioners were all quite savvy. No one "took them to court." They chose when and how to pursue the second-parent adoptions. The couples used attorneys who understood adoption laws and who they believed would be effective in and familiar with either family or probate court. For example, Carter and Bill from Washington, D.C., fired their first attorney, a gay activist who knew little about the inner workings of family court and adoption, and instead hired a straight woman who had extensive experience networking in family law. Similarly, a New York couple, Rachel and Becky, talked about their satisfaction with their selection of an attorney based on her ability to have a "schmoozable relationship with the judge." Although several interviewees were attorneys, only one handled the proceedings herself. Most attorneys chose to frame the petitions similar to a heterosexual stepparent adoption. None of the attorneys in these successful second-parent adoption cases raised federal or state grounds or tried in other ways to argue "gay rights." Experience from lesbian and gay parental visitation cases indicated that these arguments would most likely fail (Connolly 1996). Instead, the petitions were typically very simple and were framed as actions involving children's rights. The petitioners argued that the action was simply in "the best interests of the child." If a state statute required adopting stepparents to be married, the attorneys either ignored the language or argued successfully that gays and

lesbians could not marry and thus were exempt from the marriage requirement.

When possible, attorneys "forum shopped," choosing courts and/or judges believed to be supportive, or at least sympathetic. Unless explicitly forbidden to do so by statute, or impossible because of the size of the jurisdiction, every respondent indicated that his or her lawyer strategically chose the court and judge who ultimately decided the case. For example, Rachel and Becky from New York were fairly confident their petition, the first in their county, would be granted: "Once we had sort of handpicked the judge, once we didn't go through the normal channels, essentially . . . I didn't have any fear of [the adoption] not going through, because I don't think [the judge] would have accepted [the case] if he wasn't going to grant it." Many interviewees indicated that their attorneys withdrew their adoption petitions from consideration when they perceived a court was hostile. One respondent from the state of Washington reported, "We were set to go and the judge called our lawyer the night before and said, 'If I have to rule on this in the morning I will rule, No,' so, we pulled it out. . . . And the next judge, we know, was just as negative, and so we waited another two months" (Maggie, Washington).

This overt manipulation of the system belies the notion that the established legal procedures were paramount or even relevant to the petitioners. These petitioners acted similarly to Ewick and Silbey's interviewees who had acted "With the Law."

Not surprisingly, each of the respondents pursued an adoption to secure legal protections and benefits for the children that were not possible otherwise—Ewick and Silbey's notion of "Before the Law." One biological mother I interviewed had lost her job, and her partner had attempted unsuccessfully to include their children on her health insurance (Bev and Kate, Vermont). One couple pursued the adoption because they "did everything [they] could do legally, but it wasn't enough. We created paperwork that said that Abby gave me a say over Leah in matters of medical care and schooling, . . . but our lawyer was fairly clear that that was not a guarantee [of the non-biological parent's legal rights concerning the child]" (Ellen and Abby, Vermont). Almost all of the couples had had an emergency room experience that had scared them, in which the non-legal parent was excluded from making a decision about the treatment of, or even being with, an injured child:

> When our son had his first set of tubes put in his ears [to drain an infection], and my partner went to the bathroom or something, I was in recovery with him. He was kind of jiggling around while I was getting him dressed, so I went over to the nurse and asked her if I could give him some water from a bottle I had brought with me. She looked at me and said, "When

> the real mother comes in she'll decide, after we talk to her about post-surgery [procedures]." (Maggie, Washington)

A few respondents were fearful of what could happen if the legal parent died—that the deceased parent's family of origin might demand custody:

> There was also something that we felt was a real danger looming for us, and that was the interference of my brother and his family. And when this [the adoption] came through I felt an instant protection and an immunity of sorts. I wasn't afraid that he could hurt us anymore. (Carolyn and Sarah, Illinois)

Another was concerned that the local child protective services might make the child, who had been adopted by only one of the couple, a ward of the state:

> I think in my mind what I was most afraid of was that something would happen to me and this child would go back to being an orphan. I knew Abby's family wouldn't take her. I was afraid this whole thing would end up in probate or whatever court one goes through and the courts would say, "This is a lesbian relationship. It's better for this kid to go into foster care." I wasn't afraid of Abby's family; I was afraid of the homophobia of the courts. (Ellen, Vermont)

Carter and Bill from D.C. had a "homemade" surrogate agreement that they knew would not be enforceable in court. They felt that the adoption would make all their relations secure. This couple also wanted to do what they called "remove the asterisk," indicating that gay and lesbian parents often complete institutional forms with an asterisk and a note to explain the parenting relationship. Soon after the adoption, their daughter's teacher attempted to force them to modify her school registration form by saying, "Well, one of you is the father and the other isn't. Really." To which they replied with confidence, "No. We're both her father. Really." The teacher backed down.

As a secondary response, some interviewees included a sense of duty to the gay community as a further reason to petition for adoption. Carter and Bill felt they were a good test case: "[T]hat we would push the envelope in that way." Another felt that their gay, lesbian, bisexual, and transgendered (GLBT) community expected them to pursue the proceeding because one of the parents was an activist attorney using the analogy "that the carpenter's family should have a nice looking house" (Rita, Vermont). One couple said that they had a very committed "out" relationship; they would be hypocrites if they chose not to pursue the adoption (Rachel and Becky, New York).

Through their comments, many of the petitioners acknowledged implicitly the coercive manner in which the law operated as an institution. Based on their experiences, they saw that without legally recognized relationships, tangible benefits and security were lacking in their families: health insurance, decisionmak-

ing ability in an emergency situation, custody upon death, and relations with school and medical officials. As good parents, they sought to rectify that situation by obtaining a legal document to assure that their children would have the best possible care. The legal petitions would establish that their children would have two parents with decisionmaking authority and fiscal responsibility. These were typically and simply "children's rights" petitions. The legal papers strategically ignored any arguments that gay and lesbian individuals should be able to maintain family forms or that co-parents have a loving, nurturing, parental relationship with a child that exists outside of biology or law.

While the legal petitions ignored this reality, the manner in which the interviewees conducted themselves during the home studies did not. Using Ewick and Silbey's typology, the language used in the petitions most often reflected the power of the law to legitimate ("Before the Law"), and the manipulative techniques, such as forum shopping, used by the petitioners to succeed might be best construed as "With the Law." How the petitioners acted with the social workers, the agents of the state who evaluated the home life of the petitioners, often reflected Ewick and Silbey's "Against the Law" typology.

The Belly of the Beast: The Home Study and Final Hearing

Home studies, usually conducted by state social workers, are typical when strangers adopt children. According to Lipsky (1980), the power of "street-level bureaucrats" is enormous. These state bureaucrats, including social workers, operate outside of public scrutiny and with wide discretion. In the case of stranger adoption, they have final say about whether a couple is "fit" to parent. Adoptive parents who already know, or are partners of, the parents of children they want to adopt, expect treatment appropriate to them as individuals. Afterall, in addition to their desire to petition for adoption for the best interest of the child and their partnership, they are civic-minded individuals who are ultimately providing a service to the community by adopting a needy child. Lipsky summarizes the dilemma: "[C]lients seek services and benefits; street-level bureaucrats seek control over the process of providing them (1980:60)." The "winner" in this tug-of-war, is often clear, and, therefore, clients, including parents, learn to "play the game" by answering intrusive questions and subjecting themselves to criminal background checks. According to Modell (1994:94), her typically white, middle-class, heterosexual interviewees often found the adoption process humiliating. They felt that they "took action (to provide a home for a needy child) only to come [up against] rules, regu-

lations and obstacles." But ultimately, they complied in order to succeed.

The gay and lesbian parents in this study often expected the state process to be different. The children already lived in their homes and, regardless of the state decision, the children would continue to live with them. This is one more reason they believed their adoption petitions were more analogous to those of heterosexual stepparents. The legal process for stepparents to adopt the children of their new spouse is often much more relaxed and usually does not require a full home study.

Despite attempts by most of the respondents' attorneys to mirror stepparent adoptions, many courts compelled them to follow procedures that mimicked a complicated stranger adoption rather than a simpler stepparent adoption. Most of the proceedings thus required official and full intervention of the state social services department. The costs associated with these home study reports were borne by the petitioners, and most were quite expensive, often in the thousands of dollars. Jon from New York reported that their second-parent adoption cost $5,000.

We spent a good portion of each interview discussing the home study since it is *the only* "independent" source of information that the court uses to evaluate the suitability of the adopters and their environment. In all cases in which this report was needed, the social worker spent several hours with the parties and produced a written document. The interviewees' experiences with the social workers were generally negative.

Three areas of concern emerged in the interviews: First, one social worker, although professing to be gay-friendly, did not, as one interviewee put it, "know the basics—the kinds of things straight people don't even think about—like Social Security [regulations in regard to gay couples]. We had to educate her" (Bev, Vermont). Next, some social workers tried to convince the petitioners that the adoption was very meaningful on an emotional level, although many of the couples had explained that the adoption was irrelevant to their family dynamic and had been pursued merely to protect the children. Finally, some social workers asked what couples felt were inappropriate questions, such as, "Where did they meet? How do gay people become attracted to each other and fall in love?"—As one couple stated, "It was almost a bit . . . voyeuristic" (Susanna and Billie, California).

Respondents from California were most likely to report that the home study process was especially onerous. In these cases, the couples worked hard to engage the social worker in order to get a thorough report; otherwise, the report would be perfunctory and would simply recommend rejection of the petition.[2]

[2] According to Doskow (1999), the California Department of Social Services (DSS) has maintained a policy requiring its social workers to recommend the denial of any petition for adoption in which a child is to be adopted by an unmarried couple. In 1995, DSS

One couple reported that their assigned social worker wanted to do the home study over the phone, because she would simply deny the couple's petition for adoption. The petitioners refused and demanded that the home study be done in person. Another California couple, however, was very successful in their pursuit of a lengthy and favorable home study, notwithstanding the state statute (see note 2). They described their experiences, in part, as follows:

> Our social worker was a 55–60 year old African American gal, and though she was friendly, she told us right away that she would submit a denial. She was very hesitant to engage us. When she came in she didn't even want to walk down the front hall. . . . "Honey, I thought to myself, "you're going down that hall; I just painted in there." *We* had to figure how to engage *her*. Our attorney warned us that this could happen, so we were ready. . . . We pulled out everything, from the quilt grandma made for us to our pictures at [age] 22 in college. We finally got her to hold Taylor [the child they were petitioning to adopt]. Our adoption was through a private agency, where the birth mother actually picked us. We had put together a book that the agency showed to birth mothers for their selection of adoptive parents. In that book we had at least 10 letters of recommendation. The social worker sat down and read every one of them. After that, she came to a better understanding. We could tell there was a shift . . . that she was supporting us. She came with two sets of forms, one for each of us . . . [but]she ended up just filling out one—for a joint adoption. (Abe and Carl, California)

This couple explained that their social worker strategically placed their application during a window of opportunity, which made their final proceedings easier. In contrast, another couple had some heated arguments with the state social worker, even though they acknowledged that they tried not to "piss her off because she could lose their file and hold them up indefinitely" (Susanna and Billie, California). This couple pursued two second-parent adoptions, three-years apart. For them, the procedures were not only absurd but also traumatic. For each proceeding, the biological mother was obligated to complete forms as if

changed its policy from an automatic recommendation of denial based on petitioners' marital status to a case-by-case determination of the best interests of the child. This policy was in effect for only a few months, however, before then-governor Pete Wilson ordered DSS to return to its original policy. Thus, regardless of a favorable evaluation, home study reports conclude with the statement that "[a]gency and State policy recommends denial of same-sex adoptions because the child does not benefit from a legal marriage." (See Cal. Fam. Code 8806, for the role of DSS in evaluating adoption petitions.) Some California county judges have chosen to ignore the official recommendation for denial of second-parent adoptions and have instead relied on the substantive findings of the home study; however, the continuation of this policy has been challenged. Doskow (1999) reported that 15 California counties have granted second-parent adoptions. Recently, the California Supreme Court has agreed to review a decision of a San Diego appellate court that ruled that trial courts lacked the authority to grant second-parent adoptions (*Sharon S. v. Superior Court of San Diego County*, 2002).

she were relinquishing her child to a stranger for adoption, and the co-parent as if she were adopting the child from a stranger. The petitioners attached notes and affidavits to the forms with explanations, but they were thoroughly disgusted by the degradation of engaging in the process. The second adoption attempt was worse for them. During this process, the state social worker was very interested in the development of the couple's then-three-year-old daughter. According to Susanna and Billie, the social worker inquired whether the child asked about her father. When the mothers answered negatively, the social worker responded, "Well, that must be because you don't create the opportunity for her do that." The social worker then continued to profess her opinions that children like their daughter "end-up all screwed-up and in counseling." She insisted that the adoption itself was meaningful and disagreed vehemently with the mothers, who felt that the decree would be irrelevant to the children. The social worker saw a parallel between their situation and a typical stepparent adoption where a new husband adopts the children of his new wife to show that his financial support equals love. The couple adamantly disagreed and explained again that the non-biological mother was, in fact, the primary parent to the children and the biological mother worked outside the home (Susanna and Billie, California).

Other petitioners from California became similarly aggravated with the process as well as the social worker's attitude. They had used an unknown donor through a fertility specialist. The doctor gave them a small strip of paper that summarized the donor's height, weight, and eye color, which they gave to the social worker. When she returned for the next step in the evaluation, she gave the couple a photocopy of the same paper and a form for them to complete to acknowledge that the state had provided information on the donor. Next, the social worker asked the couple how they planned on telling the child about his father, to which one of the parents responded, "You mean donor? In our view, Patrick does not have a father." According to the respondents, the social worker pulled back and replied, "Well, let me make a suggestion. Let me say something. Every child has a father." The respondents did not retreat and ended the discussion by stating,

> We don't see it that way. Patrick will be brought up knowing that he has two parents—both of whom happen to be mothers. He does not have a father. . . . We're probably talking about semantics, but Patrick will know everything we know, and we will certainly tell him right from the get-go how he was conceived and what we did in order to have him. And we will be telling him about all the people that helped us get him. All the doctors and—and this wonderful man who helped by giving us this donation [of sperm] and that's how we intend to portray

> this person. And so, if you're asking, Do we intend to tell him about the donor? Absolutely. Will we show him the little strip of information? Sure. (Jean and Alice, California)

Though none of the interviewees knew each other, many of their experiences were similar, and they responded similarly when confronted with ignorance or hostility by state officials, even those who were in powerful positions regarding their petitions. On the one hand, it could be argued that these petitioners were "losing it" by making bad choices. Why did they not merely say what was expected of them? They each had experienced attorneys who counseled them on the procedures, including appropriate responses and behaviors. On the other hand, many of the respondents chose to ignore the advice of counsel and demonstrated a tremendous amount of resistance to the social workers' attempts to portray their lives in ways that were offensive or demeaning. This behavior shows a steadfast refusal to conform, even when the stakes were very high.

Lucie White (1990), in her provocative and now-famous article about Mrs. G's refusal to misstate what she did with an overpayment from an insurance company, similarly shows that not all disempowered people conform. Mrs. G. risked losing her AFDC payment when she testified that she had used the insurance overpayment to buy her children Sunday shoes. Her attorney had urged her to say that she had used the money to replace old, worn-out shoes that her children could no longer wear. Why would Mrs. G. take such a risk? Why did many of the gay and lesbian parents choose to argue with social workers? The answer is complicated, but it certainly relates to behaviors that individuals typically exhibit when confronted with state actions that offend a fundamental sense of one's identity.

Mrs. G's kids would have "Sunday shoes" because that is part of who they are; just as my interviewees would not respond to the social workers in ways that they felt would denigrate their lives. It is interesting that many of the respondents disagreed about the final step in the second-parent adoption process. The petitions usually culminated in a hearing in judges' chambers. These meetings typically were very short, but for many of the interviewees, they were very meaningful. As Theresa in Massachusetts remarked, "I didn't feel as if Jon was really my son until I got that stupid piece of paper. . . . I never before felt like it was equal [to an adoption involving heterosexuals], now I do." Abe and Carl from California called it a "seal of legitimacy." Another found this final hearing "the most affirming thing in the process," and yet another felt that the judge was honored to be part of the process (Jan, Washington). One couple that jointly adopted an infant believed the judge wanted their adoption to reflect the state's legitimating authority to recognize their home with two parents and a child. To clarify, again, how they perceived their

family, they brought 19 people, who, for the most part, had no biological relationship to any of the parties, to the judge's chambers to finalize the proceedings (Abe and Carl).

The whole process, including the final hearing, insulted others: "I was put-upon. Why did I have to go through this and spend a-not-inconsiderate amount of money? It was a bit humiliating. Then, I was supposed to be grateful? Why do I have to be grateful for this?" (Maria, Massachusetts). Again, these responses are mixed and complicated. The petitioners showed choice and agency, as well as compliance and resistance.

Discussion

In Mari Matsuda's (1990:1778) discussion of pragmatism in American legal thought, she outlines how "subordinated people, . . . make history, particularly when their political practice gives them a consciousness of their position." She illustrates her points with examples that include workers claiming the eight-hour-day, women claiming suffrage or leaving batterers, and African Americans pursuing access to public accommodations and voting rights. Matsuda carefully interprets the efforts of these groups and individuals that at once deconstruct the law and use it. She concludes that such efforts are not always easy or smooth, and are often filled with failures, contradiction, and compromise. Matsuda's analysis helps to underscore the importance of the second parents' acts and our need to understand their experiences. Judges and commentators should not be the sole source of knowledge. These gay and lesbian petitioners showed a consciousness of self, as parents who understood how and why they were using the courts. They were pragmatic in their choices and pursuits. Their pragmatism was not steeped in acceptance of the status quo or false consciousness. They made strategic choices to use the law only when they felt the time was ripe for them and their children. They maintained their dignity and carefully chose what, if anything, to compromise on.

Although many of the interviewees indicated that they *did* see their lives twisted or categorized by social workers, attorneys, or the courts in disrespectful ways, not one intimated that he or she compromised any fundamental aspect of his or her life. When asked if they attempted to "act straight" for attorneys, social workers, or judges, each respondent answered with a vehement, "No." None of these parents saw themselves or their families as similar to heterosexuals; more precisely, no one saw the relevance of a heterosexual comparison except for discussions concerning the framing of the petition as similar to that of a heterosexual stepparent adoption. Moreover, the petitioners in these cases often understood that their victories were important to others. Therefore, they evinced a sense of duty to the broader community of

gays and lesbians. Thus, these petitioners engaged the law in a very self-conscious manner. For many of them, their petitions were not only for the benefit and protection of their families but also to expand the boundaries of the law to include gays and lesbians in ways that had not been done before.

According to Carolyn and Sarah, an Illinois couple with a second-parent adoption who had moved to Arizona:

> We're active with a group called "Rainbow Families." It's a gay and lesbian families' organization. We're the only ones who have the extent of legal rights that we do. And we are the envy of the group. . . . I'm very proud, . . . but I need to stay informed, and I need to continue working for a cause like this in every state, because it's right and I believe in it, and if we don't stay alert and aware and hard-working, it could go away. And [we] want everyone to have the same opportunity that [we have] had.

Most of the interviewees voiced similar concerns regarding their adoption and spoke of the need for activism. None indicated that pursuing a second-parent adoption was a totally private matter.[3] Not all gays and lesbians, however, support these parents' efforts.

Although some gay or lesbian couples have children and then use the courts to secure recognition for themselves, others have interpreted these moves as an unacceptable "sell-out." As lesbian comic Suzanne Westenhoffer joked, "One of the benefits of being gay was not having to get married or go into the military." Lesbian legal theorist, Ruthann Robson (1994), has argued persuasively that the family should be resisted in all forms, as capitalist economic relations have dictated family relations and family theories, both traditional and pluralistic. "Benefits" such as health insurance, housing, and parenting, according to Robson, should not depend on one's family or spouse-like status because these categories are typically proven through other economic accomplishments—such as joint bank accounts or joint home-ownership. For others, living their lives without children is part of their contribution to, as well as their critique of, society. Additionally, some gays feel the need, and have the ability, to organize and live their lives without the knowledge or interference of the state, whether it concerns intimacy, marriage, divorce, or parenting, and they wish to set an example for heterosexual society.

These criticisms are not lost on the second-parent petitioners. As one interviewee acknowledged, "Yes, I did lose some lesbian friends—some that believed even having kids was trying to pass, or to act heterosexual. Friends who said, 'Yeah, you can still come over to our house but . . . we don't want your child

[3] Many respondents chose to participate in this study to share their experiences with others in the hope that this process can be improved. It is likely that there are successful second-parent petitioners who would describe the process and outcome as "private."

around'" (Maggie, Washington). One interviewee, however, explained that becoming a mother and choosing to relate openly to her child's doctor, teachers, and other parents forced her out of the closet, a process that is unique to gays and lesbians and usually foreign to heterosexuals. She was not trying to "pass" as heterosexual by having a child, and she resented any implications that she was. To the contrary, she became more openly lesbian (Theresa, Massachusetts).

When asked if the adoption proceedings reflected the petitioners' self-definition of a family, their answers were *very* complicated. The simple question, "How do you define a family?" elicited long responses, often 10 minutes or more. One couple, who were in different rooms on phone extensions, decided that they needed to see each other before they could answer and moved to the same room. Without exception, the respondents included comments on the complicated reality of gay and lesbian relationships, which go beyond bloodlines. One California parent, who I believe must have thought about this question before, answered that, to him, family means "common interests, common bonds, common expectations, . . . a common ability to forgive, forget, and compromise—obviously a small nucleus of people, but not biological. I think family is more functional than lineage."

The core of much of the controversy, in the courts as well as in public discourse, regarding second-parent adoptions is contemporary society's definition of family. While Coontz (1992) and Stacey (1991) have shown that the traditional, normative, heterosexual family is more myth than reality, both acknowledge its persistence in contemporary ideology as well as in family theory. According to Nobel Prize-winning economist Gary Becker, in *A Treatise on the Family* (1981), the sexual division of labor is the central theme of family life. Two decades earlier, the benchmark nuclear family was defined by Pitts (1964:56) as the "socially sanctioned cohabitation of a man and woman who have preferential or exclusive enjoyment of economic and sexual rights over one another and are committed to raise the children brought to life by the woman." Becker used an economic analysis to show the benefits that exist when the husband in this structure is assigned instrumental activities and the wife, expressive ones. In this view, conformity to this structure and these gender-divided roles is essential for family stability, and dire consequences exist in society when there is an absence of a gender-based division of labor. According to these theorists, gay and lesbian intimate relations, and especially their families with children, may exhibit ambiguous and contradictory role expectations, challenges to existing societal norms and values, and, generally, a danger to societal social equilibrium.

Of course, not all family theorists agree that this model of the family is necessary, or even beneficial, to the healthy functioning

of a society. Life-course and feminist theorists have argued that family structures and roles have been socially rather than biologically constructed and are therefore mutable, depending upon the needs and desires of individuals and their communities, without the dire consequences outlined above. (See Allen & Demo 1995; and Sprey 1988, for overviews of family theories.) In particular, regarding gender role development, Stacey and Biblarz's (2001) extensive review of the literature has shown that children of gay and lesbian parents display both similarities to and differences from children raised by heterosexual parents. Generally, Demo and Allen (1996:415) summarize how the existence of lesbian and gay families challenges predominant theories of family structure and process. "These families exist—and even thrive—in a society that stigmatizes them. They break the mold of the benchmark family by disturbing sexist and heterosexist norms."

Modell's (1994) work on stranger adoption gives us another example of how the model family has been challenged. She shows that stranger adoption has traditionally been designed to construct the adoptive family just as the stereotypical blood-related family—to the detriment of all the parties involved. To rectify the damage from such a construct, legal and cultural responses have included demands for the extension of freedom-of-information laws to include adoption records, and, although this may be traumatic, permission for adopted children to search for their biological parents, and legal authority for birth parents to search for children they had put up for adoption. Modell concludes with a request for more open procedures that acknowledge that adoptive families are not "just like" biological families. Adoptive families may include kinship by blood through birth parents as well as kinship by law. They have issues that are unique and that exist outside the normative family previously described by traditional family theorists.

Similarly, gay and lesbian "kinship" families and intimate relations have their own etiologies (for examples, see Weston 1991; Lewin 1993; Allen and Demo 1995; Bozett 1987; and Falk 1989). Kath Weston, in *Families We Choose* (1991), shows that biology and/or law are neither necessary *nor* superfluous to understanding the relations among gay and lesbian families of origin and those of choice. Weston explains, "A lesbian can choose to bear a child in the hope of gaining acceptance from 'society' and straight relatives, or she can embark on the same course with a sense of daring and radical innovation, knowing that children tend to be 'protected' from lesbian and gay men in the United States (1991:200)." The interviewees in this study indicated that their reasons and experiences have been both.

All of the second-parent couples acknowledged that the proceedings did give them more confidence as parents in their interactions with such social institutions as schools, day cares, and

doctors. Some went further: "As much as I resist this [fact], . . . something about the proceeding made our relationship more solid" (Bev, Vermont). An interviewee from California responded, "I never wanted a marriage, but now I'm convinced that there is something to be said for public ceremonies. . . . [The adoption process] was pretty profound . . . striking. The adoption for me has been a seal of approval—that as a couple we can't get elsewhere." Other couples answered this question by discussing legalized marriage. Some were pragmatic, stating that a marriage would make life easier in general; and some were ambivalent. Even though several interviewees felt that the adoption was a type of legitimacy and that other legal proceedings might be beneficial, no one saw marriage or any other type of legal decree as necessary to meet their definition of family.

The reaction from families of origin also provided some insight on the significance of legal proceedings as a source of legitimacy. Abe and Carl's equally conservative parents sent birth announcements to extended family after the adoption. Another interviewee mentioned that her brother and his wife were visiting and had attended the final hearing in the judge's chambers. The proceeding was very moving for all of them, and her brother understood for the first time that his sister needed a judge to legalize what he and his wife took for granted (Susanna and Billie, California).

Nevertheless, many respondents said that the adoption proceeding did not honor their family. One summarized the proceedings and the aftermath as "intrusive on my life in a way it didn't need to be, and I didn't like being judged in a way that wasn't warranted" (Susanna, California). Rita from Vermont, a jurisdiction that required no home study and only a ten minute pro-forma appearance in judge's chambers, initially wanted the birth certificate just to indicate the second-parent: "There is no reason for us to have [had] to wait [even] one minute."

Each of the interviewed couples was adamant that they would pursue another adoption if they had more children, and they would recommend the process to others. However, most respondents wanted the proceedings streamlined and would agree with Sarah from Arizona:

> There was no predictability or systematic process. That was very hard. For us it meant we were on pins and needles. Everything was so subjective. My hope would be that whatever the process is, that it be a predictable and routine process—that families can be educated about, can get advice about, can follow and complete without a lot of mumbo-jumbo or surprise or difficulty. That's the way it ought to be. . . . I just want that road to get smoother and affordable and predictable for the many, many families who should have this.

And they would agree with Jan from Washington: "I would like to see precedent enough so that a judge who is homophobic or Catholic or whatever he wants to be will still have to pass this type of adoption because that's the way the law is."

Conclusion

The voices of these petitioners tell us that they presented themselves in the legal system in a self-conscious manner and used this system to their advantage to obtain formal recognition for their families of choice. They did so with dignity, and with resistance to unacceptable formulations of their lives. The "legal consciousness" of these petitioners reflected each of the typologies illustrated by Ewick and Silbey (1998). The petitioners understood that the law, and only the law, could give them status (Before the Law); they manipulated the legal process to their benefit (With the Law); and they resisted offensive procedures and people (After the Law). In the end, the resultant two-parent family was worth the hassle. The children of these petitioners can now be cared for legally by both parents, illustrating the "power in legal categorization" (Mertz 1994:1255). As Sarat and Felstiner (1999) have noted, "[A]t a global level, law . . . shapes how individuals conceive of themselves and their relations with others."

Even though commentators, attorneys, and the courts often portrayed these petitions and petitioners as similar to traditional family forms, especially those of heterosexual stepparents, the interviewees saw the comparison as limited and useful only in terms of formulating a legal claim based on precedent. They are not heterosexual and their families are not like those of heterosexuals. As a result, there may be a wider impact to their successful petitions.

McCann (1994) suggests that social change may be most effectively enacted in relation to law when it sustains the momentum of change: Legal reforms (or their failures) may generate significant new resources, opportunities, and aspirations for continued struggle. Legally recognized GLBT families with children can be seen as such an example. The family still holds a sanctified place in contemporary society, and the model of a married, heterosexual couple with children is the (fictive) norm. This traditional family unit interacts with other social institutions (such as the schools, the work environment, the law, and the medical profession) in an expected manner. One family structure that may upset that norm is that of children with gay or lesbian parents. When two moms or two dads appear at a parent-teacher meeting or in an emergency room with their child, there may be conflict or resistance by "street-level bureaucrats." When those teachers or medical personnel are "forced" by law to accommodate gay and lesbian parents, changes in attitudes and

procedures may occur; then, on a different level, other, more subtle changes will likely occur. How, for example, might a school or a teacher respond when a child presents a family tree that does not fit on the pre-formed stencil distributed in class, or when parents of X refuse to let their child play with Y because Y's parents are gay, and the kids debate the issue on the playground? What may happen, as Bower (1994) suggests, is that communities will be forced into discussions that did not occur previously. When we gays or lesbians are afforded the same rights, duties, and obligations to our families and children as that of heterosexuals, it will preclude others' ability to constrain us based on the lack of legal status. It will open the door to discussions of these kinds of sociolegal issues.

Legal recognition may not be the panacea to the denigration of GLBT individuals and communities, however. Weston (1991), for example, questions what will happen when legal advances for gays and lesbians are solely analogized to heterosexual relations, such as a partner to a spouse or a co-parent to a stepparent. What about other forms of personal relationships prevalent in gay communities, such as friendship and multi-household families? These complicated issues were not addressed by the courts or by the petitions presented by the respondents interviewed for this study. None of the petitioners in this study presented a family form different from that of a two-parent family. Yet, most of their responses to the question about the meaning of family certainly allowed for more than two parents with children, as well as families without children. The law can be a vehicle for social change, but it can also spur attempts to reproduce normative behaviors and expectations. It is yet to be seen whether the courts will agree, and whether the legal consciousness of these petitioners will impact subsequent hearings and rulings concerning other family forms.

References

Allen, Katherine, & David Demo (1995) "The Families of Lesbians and Gay Men: A New Frontier in Family Research," 57 *J. of Marriage & the Family* 111–27.

Becker, Gary (1991). *A Treatise on the Family*, 2nd ed. Cambridge: Harvard Univ. Press.

Bower, Lisa C. (1994) "Queer Acts and the Politics of 'Direct Address': Rethinking, Law, Culture, and Community," 28 *Law & Society Rev.* 1009–34.

Bozett, Frederick (1987) *Gay and Lesbian Parents*. New York: Praeger.

Connolly, Catherine (1996) "An Analysis of Judicial Opinion in Same-Sex Visitation and Adoption Cases," 14 *Behavioral Sciences & the Law* 187–204.

——— (1998) "The Description of Gay and Lesbian Families in Second-Parent Adoption Cases," 16 *Behavioral Sciences & the Law* 225–36.

——— (2002) "Lesbian and Gay Parenting: A Brief History of Legal and Theoretical Issues," 26 *Studies in Law, Politics & Society* 189–206.

Coontz, Stephanie (1992) "*The Way We Never Were: American Families and the Nostalgia Trap.* New York: Basic Books.

Delaney, Elizabeth (1991) "Statutory Protection of the Other Mother: Legally Recognizing the Relationship Between the Non-Biological Lesbian Parent and Her Child," 43 *Hastings Law J.* 177–216.

Demo, David, & Katherine Allen (1996) "Diversity Within Gay and Lesbian Families: Challenges and Implications for Family Theory and Research," 13 *J. of Social & Personal Relationships* 415–34.

Doskow, Emily (1999) "The Second Parent Trap: Parenting for Same-Sex Couples in a Brave New World," 20 *J. Juvenile Law* 1–22.

Ewick, Patricia, & Susan Silbey (1998) *The Common Place of Law: Stories from Everyday Life.* Chicago: Univ. of Chicago Press.

Falk, Patricia. J. (1989) "Lesbian Mothers: Psychosocial Assumptions in Family Law," 44 *American Psychologist* 941–47.

Levine, Kay, & Virginia Mellema (2001) Review Symposium: The Common Place of Law, "Strategizing the Street: How Law Matters in the Lives of Women in the Street-Level Drug Economy," 26 *Law & Social Inquiry* 169–208.

Lewin, Ellen (1993) *Lesbian Mothers: Accounts of Gender in American Culture.* Ithaca: Cornell Univ. Press.

Lipsky, Michael (1980) *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services.* New York: Russell Sage Foundation.

Matsuda, Mari (1990) Symposium on the Renaissance of Pragmatism in American Legal Thought, Comment, "Pragmatism Modified and the False Consciousness Problem," 63 *Southern California Law Rev.* 1763–81.

McCann, Michael (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization.* Chicago: Univ. of Chicago Press.

Mertz, Elizabeth (1994) "A New Social Constructionism for Sociolegal Studies," 28 *Law & Society Rev.* 1243–66.

Mezey, Naomi (2001) Review Symposium, The Common Place of Law Out of the Ordinary, "Law, Power, Culture, and the Commonplace," 26 *Law & Social Inquiry* 145–68.

Modell, Judith (1994) *Kinship with Strangers: Adoption and Interpretations of Kinship in American Culture.* Berkeley: Univ. of California Press.

Pitts, J. R. (1964) "The Structural Functional Approach," in H. T. Christensen, ed., *Handbook of Marriage and the Family.* Chicago: Rand-McNally.

Robson, Ruthann (1994) "Resisting the Family: Repositioning Lesbians in Legal Theory," 19 *Signs: J. of Women in Culture & Society* 975–96.

Rubenstein, William (1993) *Lesbians, Gay Men, and the Law.* New York: New Press.

Sarat, Austin, & William Felstiner (1995) *Divorce Lawyers and Their Clients: Power and Meaning in the Legal Process.* New York: Oxford Univ. Press.

Sprey, Jetse (1988) "Current Theorizing on the Family: An Appraisal," 50 *J. of Marriage & the Family* 875–90.

Stacey, Judith (1991) *Brave New Families.* New York: Basic Books.

Stacey, Judith, & Timothy Biblarz (2001) "(How) Does the Sexual Orientation of Parents Matter?" 66 *American Sociological Rev.* 159–83.

Weston, Kath (1991) *Families We Choose.* New York: Columbia Univ. Press.

White, Lucie (1990) "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on Hearing of Mrs. G," 38 *Buffalo Law Rev.* 1–57.

Yngvesson, Barbara (1997) "Negotiating Motherhood: Identity and Difference in Open Adoptions," 31 *Law & Society Rev.* 31–80.

Cases Cited

Bottoms v. Bottoms 18 Va. App. 481 (1994), rev'd., 457 S.E.2d 102 (1995).
Bowers v. Hardwick 478, U.S. 186 (1986).
In re Evan 153 Misc.2d 844; 583 N.Y.S. 2d 997 (1992).
Sharon S. v. Superior Court of San Diego, S102671, 2002 Cal. LEXIS 459; 93 Cal. App. (2002).