

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

APRIL DEBOER, ET AL.,

Plaintiffs,

v.

HONORABLE BERNARD A. FRIEDMAN

No. 12-10285

RICHARD SNYDER, ET AL.,

Defendants.

_____ /

BENCH TRIAL

Monday, March 3, 2014

Appearances:

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Bench Trial
Monday, March 3, 2014

I N D E X

- - -

<u>Defendant's Case in Chief</u>	<u>Page</u>	<u>Vol.</u>
Mark Regnerus, Ph. D.		
Direct Examination By Ms. Heyse:	6	1
Certification of Reporter	118	

Bench Trial
Monday, March 3, 2014

4

1 Detroit, Michigan
2 Monday, March 3, 2014
3 1:00 p.m.

4 - - -

5 **THE COURT:** Thank you. You may be seated,
6 who is the next witness?

7 **MR. POTCHEN:** Before we begin, I would like
8 to apologize I didn't bring this up before the break. Mr.
9 Girgis was on the stand and he authenticated the book,
10 What is Marriage? And we would like to move to admit this
11 book. I mean, he's still in the courtroom if you would
12 like to ask any questions about that. But to the extent
13 that this Court ruled regarding his qualifications for an
14 expert, we understand that, but --

15 **THE COURT:** I will admit it for the sole
16 purpose -- is that he testified that this was his book and
17 that this is a copy of that book. It was part of the voir
18 dire to see whether or not he could testify.

19 **MR. POTCHEN:** Thank you, your Honor. And
20 that's Defendant's Exhibit Number Four.

21 **THE COURT:** Very well. Okay.

22 **MS. HEYSE:** He is just right in the hall.

23 **THE COURT:** No worries. As I said, both
24 side -- collegiality in terms of timing.

25 **MS. HEYSE:** Thank you, your Honor.

1 Q. Do you hold any other titles at the University of
2 Texas at Austin?

3 A. I am a research associate in the Population Research
4 Center.

5 Q. And are you tenured?

6 A. I'm tenured.

7 Q. And when were you tenured?

8 A. I was tenured in 2007.

9 Q. And what are your duties with respect to the
10 positions that you hold at the University of Texas?

11 A. I am responsible for up to four courses per year,
12 administrative duties. In terms of committees, chairs and
13 sitting on the committees, like admissions and things like
14 that.

15 THE COURT: Like admissions? That is the
16 most important one, you would think.

17 THE WITNESS: Right. And I expected to have
18 an ongoing research agenda.

19 BY MS. HEYSE:

20 Q. You mentioned you teach some courses at the
21 university?

22 THE COURT: I didn't hear the question.

23 BY MS. HEYSE:

24 Q. You mentioned that you teach --

25 THE COURT: Pull the microphone closer.

1 Probably the base so you don't have to worry about moving
2 it. Perfect.

3 **BY MS. HEYSE:**

4 **Q.** You mentioned, Doctor, that you teach some courses
5 at the university. Can you tell us little bit about
6 those.

7 **A.** My primary course is the Introduction To Sociology
8 for undergraduates. It's a large course. Basically it
9 covers the fundamentals of the discipline. And then I
10 will teach as my secondary course sometimes I will teach a
11 graduate course in how to write for the social sciences.
12 And sometimes I will teach a sociology and religion
13 course. I came in teaching because I'm interested in
14 sociology and religion, back in 2002. So I still teach
15 classes on it occasionally. But intro is my primary.

16 **Q.** And you mentioned you have some administrative
17 responsibilities. Can you explain that a little bit more?

18 **A.** Right. This semester I am on the, this year I'm on
19 the Admissions Committee Team. We review people who apply
20 for the graduate program in sociology, offer admission to
21 some of them. And the Executive Committee which is sort
22 of, we give counsel to the Chair of the Department on
23 certain matters that come before their attention. So,
24 this is the kind of committee work we are talking about.

25 **Q.** Okay. Thank you. Can you tell us little bit about

1 your educational background --

2 **A.** My Master's and Ph.D. is from the University of
3 North Carolina, Chapel Hill, in sociology.

4 **THE COURT:** Where? Blue?

5 **THE WITNESS:** North Carolina. Sky blue. Not
6 dark blue.

7 **THE COURT:** That's right. I was just there
8 last week on the campus.

9 **A.** Nice. Prior to that time I had my undergraduate
10 degree at Trinity Christian College, a small liberal arts
11 school outside Chicago, also in sociology.

12 **Q.** What does the study of sociology entail?

13 **A.** Sociology is about sort of the influence of social
14 forces on human behavior and then also how people, how
15 they operate in sort of social groups and things like that
16 and sort of the influence of sort of how social structures
17 change or don't change. And but then within that there
18 are, you know, dozens of sort of subdisciplines where
19 people focus their attention one, say, for example,
20 religion or family or the economy and like that.

21 **Q.** And where do you tend to focus your attention,
22 Doctor Regnerus?

23 **A.** In my research?

24 **Q.** Yes?

25 **A.** As I said, I started at University of Texas

1 interested in sociology of religion, mapping religious
2 influences on human behavior with an emphasis on teenagers
3 because I was interested in the data from the National
4 Longitudinal Study of Adolescent Health based at the
5 University of North Carolina where I went to school. But
6 I drifted away from that over the last few years. I wrote
7 on religious influences on adolescent sexual behavior. At
8 that point I became interested in sort of the study of
9 sexual relationships and relationship formation. And so
10 that's what I have done since then.

11 **Q.** Can you give the Court an overview of your
12 employment history before coming to the University of
13 Texas?

14 **A.** Right. After I finished my Ph.D. in 2000 I was
15 employed for a year as a research associate at the
16 University of North Carolina. And then I went to Calvin
17 College in Grand Rapids for a year. I was the director of
18 the center for social research. And then from there I
19 went to Texas in 2002.

20 **Q.** You mentioned you teach an introduction to sociology
21 course at the University of Texas. What are some of the
22 topics that are covered in that particular course?

23 **A.** We give, I should say I gave introduction to the
24 basic research methods for sociologists, what sociologists
25 do. But then we go through some of the kinds of the key

1 aspects of sociology -- the socialization, how people
2 learn things, culture, what it is, how it changes, social
3 structure and how things change very slowly and often not
4 at all. And then we get a little bit later in the
5 semester we hit on things like family, population change,
6 some of the sort of more focused areas within sociology.

7 **Q.** Does that course touch on the issues of same sex
8 marriage or parenting?

9 **A.** It does. Not extensively so, but it does.

10 **Q.** Have you published any peer review articles?

11 **A.** Yes. About 30 to 32, somewhere in there. 31.

12 **Q.** Do any of them deal with issues that are relevant to
13 this trial?

14 **A.** Yes. A few.

15 **Q.** And how are they relevant?

16 **A.** One is on the New Family Structure Study which is --
17 that was something I published in 2012 which I'm sure we
18 will talk about. And the follow up which was not peer
19 reviewed but it was a response to critics of the original
20 study. So those are the two primary.

21 **Q.** Aside from those that specifically address
22 children's outcomes, what we are going to talk about
23 today, do you have -- to any of those address more general
24 topics of say, parent/child relationships?

25 **A.** Uh-huh.

1 Q. And how many those touch on that topic?

2 A. I think there are roughly six, six or seven that
3 talk about the relationship between parent and children
4 and especially the quality of interaction between parent
5 and child.

6 Q. Do any of the peer reviewed articles address the
7 topic of social science research methods?

8 A. Right. Probably five or six would be characterized
9 as being about methods or methodological novelties, ways
10 of asking certain questions in different ways, yeah.

11 Q. Have you published any books, Doctor Regnerus?

12 A. I published two books.

13 Q. What are the topics of those books?

14 A. The first one which I briefly mentioned earlier was
15 on -- it's called *Forbidden Fruit: Religion In The Lives,*
16 *Religion Sexual Behavior In The Lives Of American*
17 *Teenagers.* That was 2007 from Oxford. The second one was
18 called *Pre-Marital sex in America: How young Americans*
19 *meet, mate and think about marrying.* That was 2011 from
20 Oxford.

21 Q. And were your books well received by your peers?

22 A. Generally speak, yeah. I had multiple reviews in
23 journals about those books. I think the last book had
24 one, you know, mediocre review but it had four or five
25 positive reviews.

1 Q. Have you ever been asked to review other peers'
2 work?

3 A. Yes.

4 Q. And how many times have you done that?

5 A. For journal article peer review I have done at least
6 three times as many as I have published. So, somewhere
7 between 90 and 120 I would say over the last 12 years.

8 Q. Just out of curiosity have you done any peer review
9 work since the release of the NFSS study?

10 A. Yes.

11 Q. Have any -- has any of your peer review work covered
12 the issues of marriage or same sex marriage?

13 A. Same sex relationships, yes.

14 Q. Have you given any presentations, Doctor Regnerus?

15 A. I have.

16 Q. How many have you given?

17 A. Probably somewhere between 50 and 60, I would say.

18 Q. And what topics?

19 A. Oh, all manner of topics. As I said earlier my
20 research interests have changed somewhat. Most of the
21 articles that I have published are those 30, I had
22 presented in conference format at least at some point or
23 another, so --

24 Q. Have you received any awards or recognition for your
25 work?

1 **A.** Yes.

2 **Q.** Okay. And what type of awards or recognition have
3 you received?

4 **A.** It's listed in the CV in detail. But 2001 there was
5 ASA Section, the American Sociological Association section
6 on religion through a paper award for the year. I think I
7 one that one twice. One was with co-authors. I think I
8 won the ASA sections, Religion Section Student Award at
9 one time and I think was runner up a couple times in the
10 crime law and deviance section of the ASA student paper.

11 **Q.** And that's the American Sociological Association?

12 **A.** That is.

13 **Q.** ASA?

14 **A.** Yes.

15 **Q.** How many studies or data collection efforts have you
16 collected?

17 **A.** I have been a part of probably five or six data
18 collection efforts. National Longitudinal Study of
19 Adolescent Health and National Study for Family Growth.
20 They each asked me to play a minor role in different
21 points in consulting on their survey questionnaire in one
22 particular section of that. The National Study Of Youth
23 And Religion I was more of a key part in that. Then the
24 New Family Structure Study one I was principal
25 investigator of. So I would say at least five in general

1 that I have been part of either in a minor way or an
2 extensive way. A project on religion and H.I.V. AIDS in
3 Africa. That was several years ago. That was -- I was
4 the co-investigator of that.

5 Q. You touched on this a little bit, but how many of
6 these studies were you the principal investigator?

7 A. Either principal or co of two, I would say.

8 Q. Are you affiliated with the Austin Institute for the
9 Study Of The Family And Culture?

10 A. I am.

11 Q. And how are you affiliated?

12 A. I am a senior fellow.

13 Q. And what does the Austin Institute do?

14 A. We conduct research, social science research on
15 matters related to family, marriage, sexual behavior, that
16 general orbit of things.

17 Q. When did you become a senior fellow?

18 A. I think it was late summer, early fall of 2013.

19 Q. Okay. And how did you get that position?

20 A. I was part of the founding of that institute and so
21 in discussion with other people who helped found it, it
22 just made more sense for me to have a senior fellow
23 status, not in the sort of the running of the day-to-day
24 of it.

25 Q. What does being a senior fellow entail?

1 **A.** I give ideas to the staff about things that they
2 should consider studying. There is a research associate
3 or research assistant, I guess, that we co-author pieces
4 with and he crunches numbers and I give him ideas about
5 what he should consider doing. So it's ideation mainly, I
6 would say.

7 **Q.** Can you give an example of the type of work that you
8 do at the Austin Institute?

9 **A.** Well, we have -- one of the things we are interested
10 in doing is sort of getting information out in creative
11 ways speaking not just sort of the standard journal format
12 but based on my suggestion and encouragement they created
13 an animated video of about nine minutes that focuses on
14 the dynamics of the mating market.

15 **THE COURT:** What kind of market?

16 **THE WITNESS:** The mating market. How people
17 meet and fall in love and some marry or some don't. So
18 that went up live in February and it's already got about
19 300,000 views. So, things like that. But also sort of
20 regular academic papers. We call them research shorts
21 where the research assistant will crunch some numbers and
22 write a brief kind of on-line abstract of certain ideas.

23 **Q.** And just for the record, where is that available?

24 **A.** These things are on the web, the Austin students'
25 website.

1 Q. Okay. Have you spoken to any legislature or
2 legislative officials?

3 A. I think it was back in November. I am not totally
4 sure about the date of 2013, some Hawaiian legislators, I
5 went out and talked to. I think there were four of them
6 in advance of their, I think they had the same sex
7 marriage bill going through both their house and Senate.

8 Q. What was the purpose of your speaking with them?

9 A. They wanted to ask me questions about the New Family
10 Structure Study and my awareness of other population based
11 projects going on in the area about that.

12 Q. And have you written or signed any Amicus briefs
13 regarding --

14 A. I have.

15 Q. -- regarding same sex marriage?

16 A. I have.

17 Q. At this time, if you will look at that very large
18 binder next to you and open it up to the tab for Exhibit
19 Five?

20 A. My CV?

21 Q. Yes. Can you identify that for me, Doctor Regnerus?

22 A. Yes. That's my Curriculum Vitae.

23 Q. I'm sorry?

24 A. My Curriculum Vitae.

25 Q. Does that appear to be a true and accurate copy of

1 your Curriculum Vitae?

2 **A.** Yes.

3 **MS. HEYSE:** Your Honor, I move for admission
4 of State Defendant's Exhibit Number Five.

5 **THE COURT:** Any objection?

6 **MS. COOPER:** No objection.

7 **THE COURT:** Received.

8 **BY MS. HEYSE:**

9 **Q.** Doctor Regnerus, can you explain the areas of
10 expertise you will be testifying about today?

11 **A.** I will be testifying about sociology in general,
12 survey research methods and measurement of sexual
13 relationships and I presume the New Family Structure Study
14 and its articles.

15 **Q.** Thank you. And more specifically within those areas
16 of the expertise, have you been asked to provide your
17 expert opinion regarding outcomes for children being
18 raised in same sex households, correct?

19 **A.** Yes. That's correct.

20 **Q.** And did you, in fact, conduct a study called The New
21 Family Structure Study the acronym NFSS?

22 **A.** I did.

23 **Q.** Did that study look at adult outcomes among children
24 whose parents reported having a same sex relationships?

25 **A.** I looked at adult children who reported their

1 parents have had same sex relationships, yes.

2 Q. And the outcomes for those individuals?

3 A. Yes. But it was not the parent who reported the
4 relationship. It was the child.

5 Q. Thank you for clarifying.

6 A. Adult child.

7 Q. Can you tell the Court what methods you followed
8 with regard to the NFSS? What type study was that?

9 A. Right. This was a large survey. We screened 15,058
10 people, asked them a series of questions. The key focus
11 here was the question whether their mother or father,
12 while they were growing up, whether the mother or father
13 ever had a romantic relationship with a member of the same
14 sex. And we then interviewed extensively across a lot of
15 different domains, 2,988 people, including everyone who
16 said yes to that particular question. And then I analyzed
17 that data.

18 Q. And why did you follow those methods? Is this a
19 typical or standard --

20 A. Right. I don't think it was typical or standard.
21 In this domain of study there are not very many very large
22 population based samples out there because we are talking
23 about a fairly small population to begin with. So, the
24 interest was in sort of collecting a large enough number
25 of cases so that you didn't encounter a problem with too

1 small of samples to actually detect differences between
2 groups which tended to be a problem certainly when you
3 think about studies that compare 18 kids. And, I mean,
4 you are just not going to have enough cases to detect real
5 differences that maybe exist in the population.

6 Statistically you can't do that. So we want to collect a
7 large population data set because there is not many of
8 them on this broader topic.

9 **Q.** And what were your general findings?

10 **A.** Our general findings were that.

11 **MS. COOPER:** Objection. The witness has not
12 been qualified as an expert yet.

13 **THE COURT:** Yes. The objection is sustained.
14 He has gotten a little bit further.

15 **MS. HEYSE:** Thank you, your Honor. Two
16 things, your Honor. I forget at the outset to provide you
17 with a copy.

18 **THE COURT:** That's great. Just hand it to
19 me.

20 **MS. HEYSE:** I apologize.

21 **THE COURT:** Nothing to worry about. Thank
22 you.

23 **MS. HEYSE:** And, second, then at this time,
24 your Honor, I move to qualify Doctor Regnerus as an expert
25 in the area of sociology, and, more specifically, the

1 sociology of sexual behaviors.

2 **THE COURT:** Okay. Counsel, do you have any
3 objection or voir dire?

4 **MS. COOPER:** No objection.

5 **THE COURT:** You may proceed.

6 **MS. HEYSE:** Thank you, your Honor.

7 **BY MS. STANYAR:**

8 **Q.** Doctor Regnerus, I want to start out talking about
9 sampling and general research methods terminology. Okay?
10 What is population based data?

11 **A.** Population based data is about the sampling that is
12 involved in this. There two broad different types of
13 sampling strategies when you want to talk -- to get
14 information about a group of people. There is probability
15 based sampling and there is non-probability based
16 sampling.

17 So, for example, if I wanted to get a population
18 based sample of the City of Detroit, you would want
19 everyone in Detroit to have an equal chance of being in
20 it, in your sample. So that's a probability based study
21 of a particular population. So you note underlying
22 population and then you can generate meaningful estimates
23 and statistics because the underlying population you are
24 trying to map is known. That's different than
25 non-probability based studies which might want to get at a

1 population but the methods they use don't allow them to
2 generalize to a larger population.

3 **Q.** Would an example of a population based probability
4 study be one that's nationally representative?

5 **A.** A nationally representative study would be, its
6 population that speaks to, you know, the nation, right?
7 So, there are a variety of these kinds of studies out
8 there, sure.

9 **Q.** That would be one type?

10 **A.** Uh-huh.

11 **Q.** And you touched a little bit on a non-probability
12 sample. Would an example of a non-probability sample be a
13 convenient sample?

14 **A.** Yes, correct.

15 **Q.** Okay.

16 **A.** Convenient samples are a type of non-probability
17 sample where you pick, I mean, you use variety of means to
18 sort of collect the people that are going to be in your
19 study. It could be, you know, like you go in a coffee
20 shop and you can pull off a tab. Would you like to be in
21 this study? Or you see a billboard. We would like you
22 for this study. That is a convenient sample. People opt
23 into that. And since it's not really known what is the
24 underlying probability that they would be picked randomly,
25 it's difficult to generalize that to the broader

1 population that you might be after.

2 So there is convenient samples, too, that are --
3 we call them snowball samples where if I said I want to
4 talk to -- I want to survey Red Wings fans, you talk to
5 one, you say, do you know any other ones? My brother.
6 You talk to the brother. It's a snowball. You pick up
7 cases along the way. So, you know, that's not a
8 probability sample because not everybody has an equal
9 chance of being in it. They are opting in based and on
10 their own self selection and observation about it. So
11 it's not able to tell us about the real population that
12 you are after like a probability study can.

13 **Q.** Okay. If these convenient sample studies are not
14 able to tell you about the population as a whole, why are
15 they used?

16 **A.** Well, there are different things you can learn from
17 convenient samples and I have used them in my own research
18 in the past. I mean, depends on what you purported to do
19 with them, right? So the book I am slowly working on, we
20 talked to a hundred different 24 to 32 year olds. We
21 wanted 50 men, 50 women. So we call that a quota sample.
22 Right? And we didn't use some sort of random method to
23 get them in. We just want different people of different
24 kinds of jobs. And so it was a quota sample. But I can't
25 generalize from that to knowing something about all 24 to

1 32 year olds. What I can say is I have learned something
2 about the lives of these people. What I can't know from
3 it is how similar they are or how different they are from
4 all 24 that 32 year olds. From that kind of thing and
5 hopefully in the same book, I lean on probability,
6 nationally representative samples, survey data. So, it's
7 more, for me, that provides color commentary. You can go
8 in-depth in people's lives and things like that but you
9 don't get a sense of what is going on among the large
10 group that way.

11 **Q.** So, in your opinion, should these convenient samples
12 be used to render opinions in social science?

13 **A.** Not exclusively. I mean, they can inform us about
14 aspects of people's lives and relationships but I don't
15 think you should make major decisions without getting a
16 sense of the underlying population and especially leaning
17 on national representative data.

18 **Q.** So there a better method for rendering opinions in
19 social science?

20 **A.** I think it's unwise to make major decisions without
21 leaning on large population based nationally
22 representative studies especially if you have something
23 that is -- has more of a broad or national scope to it.
24 Sure.

25 **Q.** So is there such thing as an ideal study?

1 **A.** Depends on what the purpose -- what you are trying
2 to accomplish. But ideal studies of this sort would be
3 large. I mean, you say how large? Large enough so that
4 you could analyze, you can create sub-samples that are not
5 ten or fifteen people large. You know, hundreds and
6 hundreds of cases drawn from a sampling strategy where
7 everybody in the underlying population you are trying to
8 get at has an equal chance of getting in, equal chance of
9 weighing in. I think that's the fairest way.

10 **Q.** Would an ideal study be a random sampling?

11 **A.** Yes.

12 **Q.** Okay. Why is that important?

13 **A.** Random is just sort of, do the people who make up
14 this population have a equal shot at being part of it? I
15 think that's what random is about. And I think it's a
16 good thing, otherwise people, if people just opt in you
17 don't hear the average person. You hear the people who
18 are most interested in signing up for the study.

19 **Q.** And in the ideal study, it would be representative?

20 **A.** It would be representative of the underlying
21 population that you are trying to --

22 **Q.** Would it be longitudinal?

23 **A.** Ideally, yes. I mean, the benefits of measuring
24 people over time and revisiting them is a helpful thing.
25 You can see how they changed. And you can see how, you

1 can see how people change or how trends emerge or fade
2 over time if you talk to the same people or you give the
3 same questions over ideally many years. I mean, one of
4 the better studies that we hear about regularly is the
5 general social survey. They ask the same questions, some
6 of which get out of date. They asked the same questions
7 since 1972. So you can kind of map how --

8 **THE COURT:** Who is they? Who does that
9 study?

10 **THE WITNESS:** The National Opinion Research
11 Center at University of Chicago.

12 **A.** So quite often when you see in the newspaper some
13 sort of social survey, some change in American views on
14 this, that or the next thing, it will be from the general
15 social survey. It's not asking the same people but it's
16 asking a different group of people the same question over,
17 every two years for since 1972.

18 **BY MS. HEYSE:**

19 **Q.** Would your ideal study also be replicable?

20 **A.** Ideally, yes. You know, when I have created survey
21 questions I will often sort of lean on other people who
22 have asked them so that if they have a national
23 representative survey and I have one, we can ask the same
24 question and you can compare them over time. So,
25 replicability is ideal.

1 Q. Why is that important?

2 A. So that you can sort of assess changes or trends,
3 surveys questions. You first want them to be valid, good,
4 that they measure what they purport to measure. But
5 seconding you want them to be comparable which is what is
6 replicability is about.

7 Q. And why is this ideal study that you described
8 better than the convenient sample studies?

9 A. I'm sorry. Could you say that again?

10 Q. Why is the ideal study that we just talked about
11 random, representative, longitudinal, replicable? Why is
12 that better than these convenient sample studies?

13 A. Because you actually know something about the
14 underlying population you purport to talk about. So, what
15 happens often is, and in a lot of convenient samples they
16 don't claim to do this, but people still tend to interpret
17 their data in that way because you see a study and you
18 automatically kind of mentally accord it, this is a study
19 of all such and such. Even if they don't, even if the
20 creators of the study are not claiming that. But a
21 convenient sample is like we learn something about who is
22 in the sample. Since we don't know their likelihood of
23 inclusion because it's not a probability sample, we don't
24 know if what they are like is what the underlying
25 population is like. So, there are some limitations to

1 what you can know from convenient samples.

2 Q. So would it be fair to say can you learn a lot about
3 individuals that are being studied?

4 A. Is it fair to say -- I'm sorry?

5 Q. You can learn a lot about the individuals being
6 studied?

7 A. Sure.

8 Q. But not necessarily about the population or the
9 nation as a whole?

10 A. Correct.

11 Q. Okay. In social science research is it important to
12 have a clearly defined comparison group before you draw a
13 conclusion regarding differences between those two groups?

14 A. Right. It's ideal. And people will disagree on the
15 construction of the comparison groups, but what you want
16 to be as clear about who is in this and who is not in this
17 so that when other scientists come along and read your
18 data they can sort of say, I see how you made that group
19 and I agree or disagree or I think we should do it a
20 different way.

21 Q. What are controls in social science research?

22 A. Controls. Okay. So, when we talk about regression
23 models, when we predict an outcome based on a set of
24 independent variables or a set of effects, usually we have
25 in mind like the thing we are most interested in, like

1 what is the effect of X and Y? Net of other things,
2 right? When you say net of other things you are talking
3 about a set of controls. Usually sometimes they are
4 standard. Sometimes they are just things that you think
5 may influence an outcome but that are not critically
6 important to what you are interested in. So that what we
7 call controls. And most regression models employ some
8 sort of series of controls when they are doing that.

9 **Q.** And why are they used?

10 **A.** In part because you want to sort of test sort of the
11 influence of X on Y and you might be hypothesizing it
12 exists independently of this set of controls. So, but
13 it's usually sort of a standard set of demographic things
14 you will often see. Other things that might affect the
15 outcome but that are not of interest to you or
16 different -- there is no sort of established protocol
17 about what must be a controlled variable in models. I
18 mean, some -- there are disputes in sociology, like should
19 you have 20 control variables? Some people call it
20 everything but the kitchen sink. Other people say, no, we
21 don't have all of those. Focus on just a handful. So
22 there is no protocol, but it's a common practice.

23 **Q.** What are some the standard or common controls that
24 you mentioned?

25 **A.** Age, like as people age, they tend to do different

1 things or think different things. So, gender or sex,
2 male, female, race and ethnicity and that's the sort of
3 the -- in sociology we often do mother's education as a
4 proxy for social class of the family. Income, if you know
5 it, although a lot of people don't like to report their
6 income. So sometimes that can be a little tricky. But
7 there is a standard -- those are standard controls.

8 **Q.** Okay. Let's turn now to the American Psychological
9 Association's position with regard to outcomes for
10 children. Are you familiar with their No Differences
11 Claim?

12 **A.** In general, yes.

13 **Q.** Do you have an opinion on that No Difference Claim?

14 **A.** I think it's premature. In the social science of
15 family which I have monitored off and on since I have been
16 in graduate school I have not been actively into it until
17 the last several years. But things historically did not
18 change very quickly in the study of families and parents
19 and things like that. But they seem to have changed
20 rapidly in the last ten or fifteen years. And such that
21 it seems premature to say that something that involves a
22 reduced kinship, meaning somebody is not a biological
23 parent to the child, to claim there are no differences.
24 And it's important to clarify what the No Differences is
25 against.

1 But it suggests there is no differences between
2 a parenting unit that, at least in one case, it lacks a
3 genetic link to a child compared to parent units where
4 there is a mother and a father and they are both the
5 parents of that child and they stay in that relationship
6 together. That had long been considered. I mean, in 1994
7 I think it was McLanahan and Sandefur in Wisconsin. And
8 this was not a study of same sex parents, but it was about
9 single parent families. And they said, if we were going
10 to design the ideal family, I mean, we would pick this
11 sort of two parent ideal where there is two genetic
12 connections to the child, two sources of -- resources for
13 the child and security and things like that.

14 So just to watch the social science discourse
15 change so rapidly on this subject struck me as
16 unscientific, premature, and worth -- I mean, scientists
17 are nothing if not tending to be a little skeptical when
18 people purport rapid change in a paradigm. So it just
19 strikes me as premature.

20 **Q.** What type of studies does the APA rely onto support
21 this No Differences Claim?

22 **A.** There are probably other people who could speak to
23 that a little more clearly. But my read on it is when it
24 was issued, there was primarily non-probability samples.
25 More psychology than sociology. And I'm not trying to

1 criticize the psychologists here, but I think it's wise if
2 you are going make a statement on No Differences that you
3 would want a variety of probability sample studies to be
4 weighed in that. So there are more non-probability
5 convenient samples studies than I would want to lean on in
6 making that claim.

7 **Q.** Okay. And do these non-probability convenience
8 sample studies tend to be small in size?

9 **A.** Not all of them. But most them, typically well
10 under a hundred. Sometimes 78 or 44. Yeah. Typically
11 under a hundred.

12 **Q.** Okay. And what is the problem with the small sample
13 size?

14 **A.** The small sample size issue is, do you have, they
15 call it statistical power, do you have the power to detect
16 real differences that might exist in the population but --
17 and the smaller the sample size, the more difficult it
18 becomes to detect real differences. So you could, if you
19 had 20 cases of something versus 20 other cases, you could
20 say we don't detect any statistical difference between
21 this group of 20 and this group of 20. You could look at
22 face value, you can look at the numbers and they could
23 look dramatically different but they are not statistically
24 different because they are, it's called type two error,
25 the ability to detect statistically what might exist in

1 reality. So the smaller the sample size, the higher the
2 risk of making that kind of error is. So, the known
3 hypothesis, when you look at groups, you say there is no
4 differences, but you can make a mistake in saying I see no
5 differences when there actually exists -- your sample size
6 is too small to detect them.

7 **Q.** Would it be fair to say that bigger is better for
8 purposes of statistical power?

9 **A.** Generally bigger is better.

10 **Q.** Do the studies that the APA relies on, what type
11 comparison groups do they use?

12 **A.** That also varies widely. Some of the No Differences
13 Claims have been about -- one I can remember is a matched
14 sample of comparable sort of social demographics, but that
15 was one of the Patterson pieces that exactly used the 44
16 cases in the Ad Health Study which is a probability study.

17 But the comparison group was some matched sample
18 out the same study, but they didn't tell us what they were
19 like. Right? I mean, were these kids from single parents
20 or kids from step-parents? Have they had household
21 transitions in their lives? They didn't say. So some of
22 them are more clear about their comparison category being
23 heterosexual single mothers or heterosexual step-parents
24 arrangements. But in those studies there has been wide
25 variety of comparison groups used. Not -- I mean there is

1 not one stable reliable comparison group.

2 Q. You mentioned this earlier, and I wanted to make
3 sure it's clear for the record, you referred to something
4 called reduced kinship. Can you explain what that is?

5 A. Right. Reduced kinship is sort of the basic idea
6 that when a biological mother and father are not raising a
7 child together in the same household, some guys go off to
8 the military, so, I mean, there is still an intact family
9 even though dad or whoever is gone. But where the family
10 has been broken up, the mother, biological mother, and
11 father are not actively in, you know, raising the child
12 together at the same time.

13 Q. Do you have any opinion with regard to children
14 being exposed to reduced kinship?

15 A. I think it's not the ideal. Now, we certainly
16 didn't necessarily forbid diminished kinship
17 relationships, obviously. But states typically consider
18 them as concessions to, ideally -- I think about foster
19 care. There is always that impulse to get foster children
20 back in the household with their mother and father. And
21 so far as that is possible, states wish to do that.
22 That's sort of this longstanding interest in kinship
23 structure.

24 Q. So just to be clear, are you saying that either
25 step-parenting or adoption are bad things?

1 **A.** I am not saying they are bad things. I am saying
2 they are typically recognized as concessions, sometimes
3 necessary, but sort of not the ideal what people want for
4 a child typically.

5 **Q.** What is the ideal.

6 **A.** Married, mother and father, stably residing with the
7 child.

8 **Q.** And why is that better than a reduced kinship
9 relationship?

10 **A.** Well, better largely in the data historically but
11 also back to that McLanahan and Sandefur comment, they
12 talk about biological parents are less likely to abuse or
13 harm a child. It doesn't mean they never do, but on
14 average, they are less likely than a step-parent
15 relationship. More likely to sacrifice for that child.
16 And just, in general, children flourish better in
17 households where mom and dad are together and married.

18 **Q.** Turning back now to the studies that the APA relied
19 on. Did some of those studies use a comparison group with
20 reduced kinship?

21 **A.** Yes. I mean, many of them did. There was no
22 consistent -- there is not a consistent category that was
23 used as a comparison.

24 **Q.** Do you see this as a problem or --

25 **A.** I understand the impulse because there is, in a lot

1 of these same sex parents relationships, there is reduced
2 kinship, I mean, almost by definition there, right? So
3 there is an impulse to compare them to something
4 comparable. At the same time, one runs the risk in this
5 declaring there is no difference in forgetting to compare
6 them to sort of kinship structures that are in tact and
7 original, biological. So I think we run the risk of not
8 remembering the structure that has been historically best
9 for children. So then when you get claims like No
10 Differences, I think they, you know, people hear this and
11 think they are just like anybody else. Well, anybody else
12 perhaps of diminished kinship structure which is not
13 ideal.

14 **Q.** Are there also issues with source bias in these
15 small convenient samples relied on by the APA?

16 **A.** Yes. Source bias is who is doing the reporting on
17 the child in the study? Some of the times you are talking
18 about children who are young, too young to report for
19 themselves so the parents will report. But parents, you
20 when parents are talking about their kids and their
21 well-being, you know, I know about my kids. I am more apt
22 to paint them publicly as better than they, right? I say
23 my kids are good, right? But there is an impulse in
24 reporting about one's children to feel social desirability
25 bias, the impulse to say things about them that may not be

1 completely a hundred percent accurate.

2 So, that improves if you talk to say, teenagers,
3 about themselves. Right? Teachers, teachers often can
4 give what I call a little more objective perspective
5 although teachers have their own biases, but it's probably
6 ideal to wait until, I think to wait. That's why we did
7 to wait until they are out house so they can reflect on
8 their own lives and speak for themselves.

9 **Q.** So, Doctor Regnerus, are you saying there is no
10 benefit to the type of studies that the APA relied on?

11 **A.** I am not saying there is no benefits. Different
12 studies seek to do different things. Some studies kind of
13 are social psychological aspects of parent/child
14 relationships or parenting processes. So you can learn a
15 lot from the dynamics of different families from
16 convenient sample studies. What you cannot know is how
17 much they reflect an underlying population. So, if you
18 had ten same sex couples in a convenient sample you can
19 know a lot about those ten, but can you know how similar
20 those ten are to same sex couples everywhere? I would
21 said the answer is no, not from a non-probability study.

22 **Q.** So given that critique, in your opinion, what type
23 of study is needed to definitively conclude there is no
24 difference?

25 **A.** What kind of study is needed?

1 Q. Yes.

2 A. A study as far as I am aware has not been done yet.
3 The science in this domain as I said is new. People have
4 been studying this for a while but just in the last year
5 several years we have kind of started getting questions on
6 it and to national representative studies. I have a
7 longitudinal study, something that tracks kids from, I was
8 going to say from birth, but really you want people from
9 before, when parents meet or get together, and track them
10 through the birth of children into ideally into their
11 adulthood and interview every few years.

12 So, and a large -- that would be a large study,
13 a national representative study. I mean, it reminds me
14 of, you know, day care was -- the affects of day care and
15 kids is people have all sorts of opinions about that, but
16 several years ago there was finally this Omnibus study of
17 day care that had come to fruition, meaning they had done
18 several different waves of this talking to parents,
19 watching children, etc. So, it kind of clarified the story
20 about day care and people's lives, kids' lives, that I
21 think would be ideal and necessary really to get a sense
22 of whether the No Differences line is true or with respect
23 to what kind of kinship structure are we talking about No
24 Differences.

25 **THE COURT:** What did the study say about day

1 care?

2 **THE WITNESS:** You know, I don't actually
3 recall the punch lines because my kids were really small
4 and in day care. But I was thinking it was a mixed bag
5 and it was not sort of -- they are not demonstrable. I
6 think the mother/child connections were a little weakened
7 but the kids didn't seem any worse for wear academically
8 for it. And socially, they were a little bit more
9 advanced. I think that was the punch line. But I just
10 remember it being an Omnibus study of day care that people
11 have been waiting for a long time.

12 **BY MS. HEYSE:**

13 **Q.** I want to talk about the New Family Structure Study
14 and I am going refer to it at the NFSS. Again, you were
15 the principal investigator for that study, correct?

16 **A.** I was.

17 **Q.** And is this a large population based study?

18 **A.** It is. I mean, as large as we could make it. We
19 screened 15,000 people between the ages of 18 and 39.
20 15,058. Asked them a series of questions, one of which
21 was, you know, there are about adoption and things like
22 that. But one of which was, have your mother or father,
23 did the mother or father have a romantic relationship with
24 a member of the same sex while you were growing up with
25 another woman or another man? And we interviewed all

1 those, 2000 some odd other people from different kinds of
2 household experiences, and asked them 80, 100 plus
3 different questions about their life in the past, their
4 relationship with their parents, mother, father, how their
5 life is going now, questions about their employment
6 status, any interaction with the Criminal Justice System,
7 education. I think I had a question or two on religion.
8 A series of questions on sexual behavior. Just kind of
9 across the spectrum set of questions.

10 **Q.** Okay.

11 **A.** What was your original question? Did I answer it?

12 **Q.** Yes, you did. That's fine. What were your general
13 findings with regard to that study?

14 **A.** My general findings with regard to the study is, I
15 called into the question the No Differences Claim with
16 respect to the in tact biological family which is not
17 often used as the comparison category in a lot of these
18 convenient samples, when mom and dad are married, were
19 married and are married, even when the child is an adult,
20 compared to kids for whom their mother or their father had
21 had a same sex relationship. And out of 40 different
22 outcomes we evaluated including things that they reflected
23 on their childhood and things that are current today. 25,
24 I might get the details mixed up, but 25 of the 40
25 different outcomes, there was a simple statistical

1 difference and always in the favor of the in tact
2 biological family. I think 24 of those held up after,
3 meaning they were still significant with a series of
4 controlled variables. The controlled variables were age,
5 race, ethnicity, mother's education, gender, their
6 perception about their family income while they were
7 growing up, a measure of whether they had been bullied as
8 a child or during their growing up years, and a measure of
9 the gay friendliness of the state in which they were
10 residing now, measures of the different states. There was
11 scale I think the Los Angeles Times put out, one to five.
12 I used this as a control variable.

13 So even after those controls there was 24
14 differences between the kids who grew up in an in tact
15 biological family and kids for whom the mother had a same
16 sex relationship. There were fewer statistical
17 differences between kids whose father had a gay
18 relationship. Partly that is a function of the sample
19 size. We had 73 of those cases compared to 175 for the
20 mother, where the mother had a same sex relationship.

21 So when you get to smaller ends, you, of course,
22 you lose statistical power. So even if there were
23 differences, you would be less apt to detect that many of
24 them. There are fewer among the men. And they were less
25 likely to have lived with their father as well. So, then

1 they were with their mother.

2 And then I also compared them with kids who grew
3 up in step-families or kids who had single parents. Now,
4 what we did is had a household roster where we asked who
5 did you live with at each year while you were growing up?
6 Who was in the household? And, I mean, there is a lot of
7 messy households out there. So even the step-parenting
8 thing, we said, the step-parents might have come in at age
9 16, might have come in at age two, right? Single parents
10 where the mom never really, typically the mother, they
11 lived with her and she didn't remarry. But we also
12 compared kids who said their mom had a same sex
13 relationship or the dad with kids that largely grew up in
14 a single parent household or step-parenting household and
15 adopted before age two. --

16 **THE COURT:** Define same sex relationship.

17 **THE WITNESS:** I mean, just from that screener
18 question where we said, while you were growing up did your
19 mother ever have a romantic relationship with another
20 woman, I think, or it might have been phrased a member of
21 the same sex. Did your father ever have a romantic
22 relationship with a member of the same sex?

23 **THE COURT:** While you were growing up?

24 **THE WITNESS:** During your growing up years.

25 **THE COURT:** So they may not have even been in

1 that same household.

2 **THE WITNESS:** They may not have been in same
3 household.

4 **THE COURT:** If there's divorce or separation.

5 **THE WITNESS:** There was a great deal of
6 separation, yes.

7 **THE COURT:** Just curious.

8 **A.** Just to follow up on that. The screener question
9 was designed to be able to capture people for whom that
10 may have been true as well as people for whom, you know,
11 no, I was -- my mother had me by assisted reproductive
12 technology. We didn't ask whether that was true. They
13 could have stayed with their mother and partner during
14 their entire growing years.

15 So that was the product of the decision we
16 hammered out at the beginning like how do we -- we know
17 that like ART is not going to be common as a form of how
18 these kids came into being, but how can we make sure that
19 gets included even though we don't expect it to be the
20 normative experience of kids. So that question was meant
21 to be big enough to get in the fold everybody for whom,
22 you know, their parents had had a same sex relationship,
23 some of which lasted, some of which they started with, a
24 majority of which they did not start with. They started
25 with a heterosexual union.

1 **THE COURT:** Okay. I was just curious. Thank
2 you. You may continue.

3 **MS. HEYSE:** Thank you.

4 **BY MS. HEYSE:**

5 **Q.** I'm going to back you up a little bit, Doctor
6 Regnerus, and talk about how the NFSS came about. When
7 did you first begin working on the NFSS?

8 **A.** I think it was envisioned in 2010 at some point. I
9 want to say in the fall, but it might have been kicking
10 around in the summer.

11 **Q.** Go ahead.

12 **A.** It was not my brain child, but it came out of the
13 series of conversations that were involving me and
14 eventually the funding agency, Witherspoon Institute,
15 Princeton, New Jersey. And kind of the recognition that,
16 wow, the social science here doesn't have a lot of
17 probability based large samples, albeit, of a smallish
18 population. There was a sense of a lot of social science
19 here based on small samples, the non-probability samples.
20 There should be more on large samples, probability
21 samples.

22 So, I was finishing my second book at that time
23 and this was, you know, an idea that struck me as curious.
24 So I agreed to think more about it. And then there was a
25 meeting of several social scientists to talk about what

1 would social science in this domain of family look like?
2 And out of that emerged, I mean, I proposed a project that
3 eventually turned into the NFSS, although basically it was
4 just this idea of we should do a big study, a big random
5 population based study in this area. But it didn't take
6 real shape until January of 2011 when I had gotten several
7 consultants on board who met in Austin in January to talk
8 about sampling strategy which was kind of a big deal
9 because I had said, you know, the way that studies had
10 been done before, this was non-probability samples, etc.
11 How should we be distinctive? So the assumption in the
12 room was, we have to have a probability sample, nationally
13 representative.

14 And we talked about what should be on the
15 survey? But the primary thing was hammering out how are
16 we going to go about getting a nationally representative
17 sample? So I had a representative of the data collection
18 firm that I had already figured we should go with because
19 they are the largest in the country, present to tell us
20 what he thought their data, I mean, the people in their
21 sample, how many people could -- what the sample sizes
22 would look like. So, that was January 2011.

23 And then at spring, we wrote the survey for it
24 and got it started in July. Most of the cases came in
25 early because -- they can collect data rather quickly on,

1 you know, cases that are easy to find, but we really sort
2 of emphasized to them we want to find as many adopted kids
3 and children who said their mother and father had a same
4 sex relationship. So we left it in the field for quite a
5 while. I mean, months and months until, I don't know,
6 early 2012. Yes. Does that answer the question?

7 **Q.** Uh-huh. You mentioned that Witherspoon Institute
8 funded the NFSS. Were there any -- was there any other
9 funding for the study?

10 **A.** I don't know. Like half way along Witherspoon had
11 reached out to the Bradley Foundation to see if they would
12 help. They are in Milwaukee. Also, a socially
13 conservative foundation. But, they said, sure, we will
14 help. I think they paid \$90,000 for it.

15 **Q.** You mentioned also conservative?

16 **A.** Witherspoon, they are -- I think they originally
17 started as kind of a Gradebooks Institute located next to
18 Princeton. But they are generally socially and
19 politically conservative. And they hadn't funded social
20 science research but they were interested in it and
21 excited about the study possibility and agreed to fund it.
22 I agreed. I floated the idea and agreed to lead it if
23 they didn't tell me how to do it, nor would they have a
24 clue how to do, you know, a probability based survey
25 study.

1 Q. Were any deadlines placed on you by the Witherspoon
2 Institute?

3 A. You know, in all the e-mail that came out about this
4 study, there was one where Louise Tellez, who is the
5 President of Witherspoon, had said it would be nice to
6 have this by the time the Supreme Court case is on. I
7 think that was back in 2010. I was oblivious of the
8 Supreme Court cases.

9 Q. I want to stop you there. What Supreme Court cases
10 are you referring to?

11 A. He just said Supreme Court cases.

12 Q. Okay.

13 A. Or something like that. I had never considered that
14 a deadline or a mandate of any sort, keeping in mind that
15 was 2010, well before anything came to the Supreme Court.
16 But he said, you know, the emphasis is just on doing a
17 good job. I always saw my goal as doing a good job. The
18 only deadline I worked with was internal because I had
19 finished one book and was interested in starting another
20 book on 24 to 32 year old relationship behaviors.

21 And I didn't want this to take forever. So, I
22 kept, you know, I think a lot, a lot of researchers say I
23 would like to be done by such and such a time so I can get
24 on with another project. I told them I would write them a
25 report at the end of the project and that report was, in

1 my mind, a primary deliverable. And that just -- I had
2 set deadlines for myself about when that report should get
3 written. And I had one of my colleagues at the University
4 of Texas had agreed to, you know, co-author that report
5 with me. And we were going to discuss all sorts of the
6 statistics and comment back and forth about what we saw in
7 the data.

8 **Q.** Were you provided any directive from the Witherspoon
9 Institute or anyone else for that matter about the results
10 of the study?

11 **A.** No. I had told Witherspoon, well, they wouldn't
12 have attempted to do that, but I told them I am going to
13 tell you whatever the data says. And, frankly, I had no
14 idea what the study would reveal.

15 **Q.** Doctor Regnerus, was the purpose of the NFSS to
16 inform the debate on same sex marriage?

17 **A.** Not to my -- in my estimation, it was not. I say in
18 the articles I have written about it, that it doesn't
19 primarily address, it's not intended to address political
20 and legal questions. I'm here addressing a legal
21 question. But that's not its intention. It's not its
22 primary strength I would say.

23 That said, it can be -- I mean, politicians and
24 legislators can, you know, they should have good
25 information and I think I wanted to provide quality

1 information on people's household experiences and child
2 outcomes that they might find useful. But that was not
3 its intention.

4 **Q.** I think you mentioned earlier that you had some
5 assistance or you were consulted with regard to drafting
6 the survey?

7 **A.** Uh-huh.

8 **Q.** Is that correct?

9 **A.** Yes.

10 **Q.** Were there any individuals -- actually, can you tell
11 me who assisted with that survey?

12 **A.** Cynthia Osborne at the LBJ school in UT was the kind
13 of the co-investigator of sorts. She helped me with the
14 survey questionnaire and was more interested in it than
15 the average consultant. Back in January of 2011 we met in
16 Austin with several people who offered advice on the
17 design and broadly on the survey. Most of them, their
18 roles started and finished roughly then. I kept them
19 aware of what was going on at different points in time.
20 In the spring of 2012, I offered the data to them. Only a
21 couple of them wanted it at the time. So, does that help?

22 **Q.** Did you ask Doctor Gary Gates to consult on your
23 study?

24 **A.** I did ask him to consult. I asked Brandt (ph)
25 Powell of Indiana University to consult. I asked my

1 Michael Rosenfeld to consult. He gave me some good
2 information but elected not to consult. Abbey Goldberg,
3 Susan Brown at Bowling Green. And it might be one or two
4 others. Tim Bidlar (ph), Southern Cal.

5 **Q.** Did Doctor gates decline your invitation?

6 **A.** He did.

7 **Q.** How many outcomes were you evaluating in the survey
8 itself?

9 **A.** We had no fixed idea. Just we had, wanted to have a
10 big survey of a lot of present and past stuff. And if I
11 had to tally them up there is probably 80, 100 different
12 distinctive outcomes. Some of them we pooled into
13 indexes. You could use them separately if you wanted to,
14 but --

15 **Q.** How many did you ultimately settle on when you
16 analyzed the data?

17 **A.** I settled on 40 for the published article.

18 **Q.** And how were those outcomes chosen?

19 **A.** To be a broad representation of their growing up
20 years, their current life, and different kinds of domains,
21 a little bit of, you know, experience with the Criminal
22 Justice System. I think we had, you know, smoking,
23 drinking behavior, how to get -- how do you get along with
24 your mother, parent/child. There is an index of sort of
25 the security of your -- as you reflect upon your life

1 growing up, how secure did your family feel? Do you feel
2 you have any negative experience that you are still
3 working out with respect to the family? Your family of
4 origin, sexual partnerships, experience of sexual
5 violence, just a bunch different domains. 40 total
6 questions or 40 total variables.

7 **Q.** Who did your data collection, Doctor Regnerus?

8 **A.** It's a research firm called Knowledge Networks. I
9 think they're in Paolo Alto, in Washington. As far as I
10 can tell, they do the best on-line population based
11 nationally representative survey firm. They keep an
12 active data base of over 50,000 people that you can, you
13 pay to sample those people. So, it's the best on-line
14 source of nationally representative data that's out there.
15 They get a lot of federal contracts, a lot of university
16 contracts.

17 **Q.** Did Professor Michael Rosenfeld also use that
18 particular data collection?

19 **A.** Yes, for how his How Couples Stay Together Project,
20 which is a two year, three wave study. He might still be
21 doing that study in different waves. But he used
22 Knowledge Networks for that.

23 **Q.** So you were able to analyze the data, Doctor
24 Regnerus. How many individuals reported growing up with a
25 parent that had a same sex relationship?

1 **A.** We had 248 total out of the 15,048 who said, yes, my
2 mother or my father had a romantic relationship with
3 someone of the same sex. 157 said that was true of their
4 mother. 73 said it was true their father.

5 **Q.** So you observed more children reporting their mom
6 had a same sex relationship, correct?

7 **A.** That's correct.

8 **Q.** Were you able to -- if I can have the next slide,
9 please -- were you able to tell who those children lived
10 with and how were you able to tell?

11 **A.** Yes. I mean, this slide is of, well -- there is not
12 175. Not quite 175 filled out all of the household
13 calendar data. But of those that did, we were able to map
14 who grew up with who, when. Those are four of the most
15 common living arrangements. And you can tell that modal
16 means by which kids came into the world was with a
17 biological mother and father. And that union failed and
18 at some point after that they had -- that's when the
19 relationship, same sex relationship they are speaking of
20 occurred.

21 Another -- it looks like roughly 30 to 35
22 percent said at the time of their birth or age one they
23 were only with their biological mother. So, most of those
24 same sex relationships did not occur, the vast majority
25 did not occur at birth.

1 **Q.** I just want to back up for a minute because I'm not
2 sure we touched on it. What is the household calendar?
3 What was purpose of it?

4 **A.** The household calendar is envisioned like an Excel
5 file where you -- they had told us who had lived with them
6 at some point in their childhood and we automatically map
7 onto this screen those names, those roles. If they said
8 the mother had a same sex partner, so that row comes in,
9 and each year while they were growing up. And we asked
10 them to tell, who did you live with at the different years
11 of your life until you left the household or turned 18?

12 And so they would click on like when -- they
13 could click saying I lived with my mother the entire time
14 and it all goes in. But if they had lived with different
15 people or if mom had had a spouse that came, a husband
16 came, they would, if they left their mom to live with
17 their dad, we could X out until that age and then X in
18 they lived with their father. So that is how the
19 household calendar worked.

20 **Q.** And if I understand you correctly, the majority of
21 the respondents in the NFSS were the product of a failed
22 heterosexual union?

23 **A.** Yes. And you can see from the slide that that is
24 the case.

25 **Q.** For the folks that are not familiar with this graph,

1 can you just explain what this represents?

2 **A.** So, if you look at the pyramid, the triangle at the
3 bottom that starts -- this is the percentage of
4 arrangements, the household arrangements, and on the
5 bottom is the age and years of the child, the respondent
6 who is now an adult. So you can see that over half said
7 when I was age one I was with my biological mother and
8 biological father. That is the darkest part of the bottom
9 group. Another share that gray area, said I lived with my
10 biological mother only from. So that is almost all the
11 way up to 90 percent of the kids.

12 Then next to top haphazard row, those who said
13 they lived with their biological mother or mother's
14 partner, very few were born into that arrangement but the
15 share of them that experienced it grew over time
16 especially, I mean, the modal age is 14. That is when the
17 most people who said their mom had a same sex
18 relationship, lived with mom and her partner, and that
19 goes to 18. It diminished a little bit. But teenage
20 years were when that maternal same sex relationship was
21 most likely to be residential for the kid.

22 **Q.** What is the final category?

23 **A.** The top, the biological mother, biological father,
24 which is typically, so far as we can tell, probably a
25 joint custody kind of relationship. You spend time, but,

1 yeah, the joint custody kind of relationship, so far as I
2 can tell. They could say, if they had joint custody, I
3 lived with my mother and I lived with my father, but they
4 were not in the same place.

5 **Q.** Thank you. Did you use the acronyms LM and GF in
6 your results?

7 **A.** I did in the initial, the July 2012 article, and I
8 regret that. And I said that as much in the November
9 followup because it seemed to conflate sexual orientation,
10 using it as adjective rather than a reflection of the
11 relationship.

12 In the original article in July 2012 I said,
13 right when I described these acronyms I said, we shouldn't
14 assume this means that the parent is lesbian by their own
15 self-reported orientation because we didn't talk to the
16 parents and I didn't want to presume that the child -- I
17 didn't want the child feeling like they had to out their
18 parent if their parent was not out. So I stated pretty
19 clearly in the article, one should not read this as a
20 description of orientation of their parents.

21 But I regret doing that. And the origin was
22 that when I first got the data back, the first round of
23 the data back, I was like, I need some acronyms to start
24 working through this and when I was coding the data. So
25 that is what I did. And I never really let it go. So I

1 clarified in the November article, I shouldn't be
2 conflating this in the popular imagination even if I had
3 been clear in the article. So at that point I said let's
4 talk about these as mothers who have had lesbian
5 relationships or fathers who had a gay relationship.

6 **Q.** And just so the record is clear, the LM
7 represents --

8 **A.** It stands for lesbian mother.

9 **Q.** And then the GF?

10 **A.** Gay father.

11 **Q.** Thank you. Did you control for family transitions
12 or instability in the NFSS?

13 **A.** I did not control for that in either the July or the
14 November follow up. And that's been a source of some
15 contention about this. Not about the data set, because
16 the data set is able to evaluate this. But it became
17 obvious to me in analyzing the data that, and you can see
18 a little bit in the slide, that sort of the household
19 transitions were notable and most of the children who
20 experienced mother who had a same sex relationship or the
21 father who had a same sex relationship experienced
22 household instability. And there was only handful of
23 cases where there was a nonstop presence of mom and her
24 partner in the household the entire childhood of the
25 respondent.

1 So what does one do with instability? Some
2 people do control for it. And but my intention in the
3 July 2012 article was -- so this is a mapping of a new
4 data set and a description of a data set and I
5 characterized it that way in print. So I didn't think it
6 was helpful to control for instability which in some ways,
7 you know, I mean, there is a debate about this. Does it
8 hide something or does it reveal something? I wanted to
9 map something.

10 One of the things I think sociology is best at
11 is its ability to describe social reality. And in the
12 literature on same sex parenting, one could say that
13 rapidly moving to control for instability when instability
14 is endemic, writes it off like it's a control variable.
15 It's like we are not concerned about it. It doesn't
16 matter. And I thought that is not -- that doesn't really
17 do a service to trying to help people understand the lives
18 and households that we are describing. So I didn't elect
19 to do it in this study. It can be done. And the way I
20 framed it is that I made public and in November of 2012,
21 like five, four months, three months after this, the
22 article came out and saying there are different ways
23 people can evaluate this data and they are welcome to do
24 that.

25 **THE COURT:** So, is this the place to take an

1 afternoon recess?

2 **MS. HEYSE:** Sure.

3 **THE COURT:** You can segue-way in?

4 **MS. HEYSE:** I will make it work, your Honor.

5 No problem.

6 **THE COURT:** I am not in a hurry. We will
7 take a 15 minute recess and reconvene at quarter to.

8 Thank you.

9 **MS. HEYSE:** Thank you, your Honor.

10 (Recess from 2:15 p.m. until 2:30 p.m.)

11 **THE COURT:** Thank you. You may be seated.

12 Doctor, first of all, I never know, do the profs like to
13 be called doctor or professor?

14 **THE WITNESS:** I prefer my first name.

15 **THE COURT:** No, I can't do that. But I
16 understand. I am just curious.

17 **THE WITNESS:** Doctor is fine.

18 **THE COURT:** I'm going ask you to straighten
19 out your chair and kind of talk to counsel and right into
20 the microphone. And I will tell you why. Usually I like
21 to have face contact with you. But the people -- you
22 maybe seated, I'm sorry -- the people that are here are
23 having a difficult time hearing you. And also being able
24 to see you and so forth. So just talk to counsel and move
25 your chair a little bit more. There you go. And those

1 that can't hear, raise your hand this time. Don't wait
2 until we get to a break. Okay. You may proceed.

3 **THE WITNESS:** Would you like me to address
4 you?

5 **THE COURT:** No. Just look at counsel and then
6 your voice will be directed to her and to those that are
7 here and I can still hear. No problem. They are having a
8 hard time, and I understand why. These microphones are
9 such. Talk to counsel. They will be able to hear and see
10 you. For those that are hear, when you can't hear, don't
11 wait for a break. Raise your hand.

12 **MS. HEYSE:** Thank you, your Honor. I
13 understand they were having trouble hearing me, too.

14 **THE COURT:** Oh, good.

15 **MS. HEYSE:** I will try to pay attention.

16 **THE COURT:** Again, I'm sorry we had to wait
17 to long.

18 **MS. HEYSE:** Hopefully I will be closer.

19 **THE COURT:** I will, too, now. I just
20 realized I am not talking in the microphone.

21 **MS. HEYSE:** Thank you.

22 **BY MS. HEYSE:**

23 **Q.** I just want to backtrack for a moment, Doctor
24 Regnerus. Before the break we were actually taking a look
25 at this graph and I want to just make it clear or have you

1 make it clear, what does this graph actually represent?

2 **A.** Right. It shows the sort of diversity of household
3 occupants for children who said their mother had a same
4 sex relationship. Clearly from that bottom piece you see
5 is that from the left side, age one, 55 percent of kids
6 said they lived with biological mother and father when
7 they were age one and that diminishes all the way down to
8 just a handful of cases well under 10 percent that was the
9 case at age 18.

10 A lot of them lived with just their biological
11 mother only. And that's not necessarily the same people
12 in the big gray block, but the same share roughly as at
13 age one lives with only their mother at age 18. And that
14 share above it, this is the kind of thing where you are
15 thinking about, when a child lives with his mom and her
16 same sex partner. Very few of them were born into that,
17 right? It looks like we have -- there's only two cases so
18 far as I can tell in the data where it's the case. And
19 along the way that number increases because either the
20 mother begins to partner with somebody or a relationship
21 fails and she begins to partner with somebody and that
22 peaks at age 14 where I think I want to say there was like
23 20 cases. I can't exactly recall where they are with
24 their mother and the partner in the same household. It
25 fluctuates over time.

1 This also gives you an indication of sort of the
2 difficulty in tracking stability because it fluctuates
3 over time in that mother and mother's partner unit. So
4 the share of people who lived with their mom and her
5 partner for I think it was for over five years is like, I
6 think it was like 30 cases or so. It diminishes. Over
7 ten years it's less than that and down to the entire
8 childhood is two cases, right? And people got upset about
9 that, saying, you know, this is not a comparison of kids
10 who lived their entire life.

11 I said, that's correct. But this is a
12 population based study. This is what is going on in the
13 population of kids who are 18 to 39 years old now telling
14 us who they lived with when. It doesn't purport to be a
15 study of something that is not the case in the broader
16 population.

17 So, it looks quite different than some of the
18 non-probability studies that begin with a proposed sample
19 of people who are with their mom and partner at birth.
20 That's just uncommon in the population in this era. How
21 common it is today, I don't know. I don't think it's been
22 established.

23 **Q.** Sure. Does this graph tell you anything about the
24 number of respondents of the NFSS that were the product of
25 a failed heterosexual union?

1 **A.** On the left, you know, most at age one is when
2 biological mother and father are together. Now, this does
3 not reflect their union status. Some of them were
4 married. Some of them were not married. But this slide
5 doesn't distinguish between that.

6 **Q.** And does it also indicate that a large majority of
7 respondents from the NFSS were being raised at least
8 living with the single mom?

9 **A.** Yes. A lot. Right? I mean, of this population,
10 right? Which is already a smallish minority. I mean, as
11 I said earlier, that becomes the modal household unit
12 where at probably at by age 10 or 11 the bio mom and dad
13 category has receded enough that the single mom, bio
14 mother only is pronounced then. So, the case where you
15 live with mom and her partner is higher obviously then
16 at -- in the teenage years but it's never the modal
17 household circumstance.

18 **Q.** So this indicates that for whatever reason the
19 children started out living with both bio mom and dad for
20 a period of time and then ultimately?

21 **A.** That is the modal, the most common experience.

22 **Q.** And ultimately, the biological father left the home
23 and mom was left to raise the kids?

24 **A.** Who knows who left the home? It was mom and the
25 child, and then some share -- that's when you sort of,

1 they start. The mother's partner moves into the household
2 at some point. But that is never a large share of the
3 population.

4 **Q.** Okay. Thank you.

5 **A.** The focus though is to get a portion of what is
6 really going on out there, regardless of what we thought
7 might be going on.

8 **Q.** Okay. Thank you for explaining that. So what
9 comparison did you -- first comparison group did you
10 actually use for purposes of your results of the reporting
11 your reports of the NFSS?

12 **A.** I used the in tact biological family where the mom
13 and dad were together when the child was born and they are
14 still together today.

15 **Q.** Okay. Why did you use that particular comparison
16 group?

17 **A.** Because historically in the sociology of family it
18 had been documented that a stable in tact mom and dad
19 household has been the best context for children to
20 flourish in. So, I thought, well, why not? Why would you
21 want to compare it against something less than what has
22 been -- had long been considered the ideal, right?

23 **Q.** And I think you mentioned earlier in your testimony
24 that in doing that comparison in 24 of the 40 outcomes
25 when you had controlled the children, the respondents in

1 the NFSS that had been exposed to a same sex relationship,
2 the outcomes were poorer from them when you compare them
3 to the stably in tact opposite sex union?

4 **A.** Correct.

5 **Q.** Was there a particular comparison group that had
6 outcomes most similar to the children who lived for some
7 duration with their mother or father and same sex partner?

8 **A.** Yeah. I got at this a little bit more firmly in the
9 November followup in social science research where you
10 split out more types of categories. Instead of 8, there
11 was 15. They compared most favorably, the ones where mom
12 lived, the respondent lived with the mom and partner for
13 some period of time, they compared most favorably to
14 single parents who did not have subsequent relationships
15 over the course -- before the child left the household.
16 They compare also fairly favorably to the child who said
17 their father had a gay relationship. And not that far
18 different, I mean, I think there was four differences, I
19 could look it up if you like, with step-parenting
20 arrangements, although I would have to look that up to
21 confirm that.

22 **Q.** Okay. What were some of the outcomes if you recall
23 where children of parents who had a same sex relationship,
24 those outcomes were poorer than those of the children that
25 were raised?

1 **A.** Repeat that.

2 **Q.** I'm sorry. It's a longer question so I am happy to
3 do that. What were some of the outcomes, some of the
4 categories of outcomes where the children that were -- the
5 parents had had a same sex relationship, were poorer than
6 those of children who were raised by the stably in tact
7 biological?

8 **A.** Right. I can look it up and rattle them off or
9 rattle some of them off from memory.

10 **Q.** Which are you more comfortable with?

11 **A.** I would rather look it up. Do you want that from
12 the original or the followup where I have more categories
13 including when the respondent lived with the mother and a
14 partner?

15 **Q.** I am looking for some examples. I don't need an
16 exhaustive list.

17 **A.** Sure.

18 **THE COURT:** And tell us what you are looking
19 at, Doctor.

20 **A.** Sure. This is page 1372 of the November followup
21 where I compared -- they said the mother had a
22 relationship with another woman and they lived with their
23 partner. This is from Table One. After the set of
24 controls they are more likely to have received welfare
25 while growing up. They were more likely to be currently

1 on public assistance, currently less likely to be
2 currently employed full-time, more likely to be currently
3 unemployed, more likely to say they had an affair while
4 they were married or cohabiting, more likely to have had a
5 sexually transmitted infection.

6 Table Two has less educational attainment, less
7 safety or security if their family of origin that they are
8 reflecting on, more negative impact from their family of
9 origin.

10 The Table Three has greater marijuana use,
11 greater frequency of smoking, frequency of having been
12 arrested or pled guilty to a non-minor offense. More
13 female sex partners among women. More male sex partners
14 among men.

15 **Q.** Can you just identify for the record what exhibit
16 number that is, Doctor Regnerus?

17 **A.** The tab number you mean?

18 **Q.** Correct.

19 **A.** That's seven.

20 **Q.** So State's Proposed Exhibit Seven. And can you
21 identify for the record what that document is, Doctor
22 Regnerus?

23 **A.** The title of it? Parental Same Sex Relationships.
24 Family stability And Subsequent Life Outcomes For Adult
25 Children. Answering Critics of the New Family Structure

1 Study.

2 Parental Sexual Relationships, Family
3 Instability, and Subsequent Life Outcomes For Adult
4 Children, answering critics of the New Family Structure
5 Study with additional analysis.

6 Q. And is that your article, doctor Regnerus?

7 A. That's the November followup.

8 Q. Correct. Did you -- is that your original writing?

9 A. Correct.

10 Q. And does that appear to be a true and accurate copy?

11 A. Yes.

12 MS. HEYSE: At this time, I move for
13 admission of the State Defendant's Exhibit Number Seven,
14 your Honor.

15 THE COURT: Any objection?

16 MS. COOPER: No objection.

17 THE COURT: Number 17 is received.

18 BY MS. HEYSE:

19 Q. I guess while you have that book in front of you,
20 Doctor Regnerus, if you can open it to Exhibit Tab Six?

21 A. Okay.

22 Q. Can you identify that document for me?

23 A. By title?

24 Q. First identify what it is.

25 A. It's the original NFSS based summary article that I

1 wrote which appeared in Social Sciences in July 2012.

2 **Q.** And very slowly, can you give us the title?

3 **A.** How Different Are The Adult Children Of Parents Who
4 Have Same Sex Relationships: Findings From The New Family
5 Structure's Study.

6 **Q.** Okay. And does this appear to be a true and
7 accurate copy of your article?

8 **A.** Yes.

9 **MS. HEYSE:** I move at this time for the
10 admission of State Defendant's Exhibit Number Six.

11 **THE COURT:** Any objections to six, you mean?
12 17 was already received.

13 **MS. HEYSE:** Yes. We went backwards.

14 **MS. COOPER:** No objection.

15 **THE COURT:** Very well. Received.

16 **BY MS. HEYSE:**

17 **Q.** Doctor Regnerus, were there any limitations to the
18 NFSS?

19 **A.** Yes. As in all studies have their limitations, this
20 is not a longitudinal study. It's cross-sectional. So
21 you get a snapshot at one point in time. So it's not able
22 to answer causal sort of claims about this causes this is
23 to happen. And I stated that clearly in the article.

24 It is not a study of parental same sex
25 orientation or sexual orientation. And I stated that

1 pretty emphatically as well. I don't make claims about
2 the influence of sexual orientation, strong claims on any
3 sort of outcome. It's more a focus on relationships.
4 Partly it's a function of, you know, I don't think there
5 is any standard way that social scientists have decided to
6 document the orientation of parents in the literature as
7 far as I can tell. Certainly not in the census it does
8 not ask about orientation at all. So that's -- I'm losing
9 track of the original question.

10 **Q.** I was asking if there were any limitations to the
11 NFSS?

12 **A.** Right. It was not about -- not intended to be about
13 the orientation of parents. So it really is like snapshot
14 data, is able to answer certain things about what is going
15 on now without being able to say where it all came from.

16 **Q.** Okay. Were there any limitations with regard to the
17 age of the respondents?

18 **A.** To some extent. I mean, they are 18 to 39. So
19 these are young adults. So some, I mean, they all at some
20 level are removed from the household of origin. Most of
21 them, I assume. If they had gone to like age 13 that
22 would have involved a lot more invasive human subjects
23 review, I suspect. So we didn't.

24 But also that's a different kind -- there I
25 don't have the method of variance of asking kids who are

1 now out of the house. You have to blend it with kids who
2 are in the house. But, so that's, I mean, one could say
3 it's a limitation. I think it's a source of strength to
4 talk to people after they are done with their childhood,
5 so to say.

6 **Q.** We took a look at the graph but were you actually
7 able to come up with a percentage of NFSS respondents that
8 were a product of the failed heterosexual union?

9 **A.** I think I said 55 percent is what that looks like at
10 age one.

11 **Q.** And were you able to determine a percentage of
12 respondents who were the product of assisted reproductive
13 technology or ART?

14 **A.** We didn't ask about their origins. So I took an
15 educated guess based on like whether the child was ever in
16 the household with a father. So I thought that's unlikely
17 to be the case. Or so I think in the original article my
18 hunch is, I think I said 18 to 25 percent that is the
19 maximum that was of a planned origin. Even though I still
20 think that's unlikely to all be assisted reproductive
21 technology. I don't think very many is the bottom line.

22 **Q.** What else would it be if it's not -- if they don't
23 fall within the ART category?

24 **A.** Surrogacy if it was among fathers. Yeah. So I
25 don't think -- I think the number is fairly small. It's

1 hard to decipher like the bio mother only category. Like
2 did she -- was she in the union with a man for this?
3 Likely, I would say, but we don't know for sure.

4 **Q.** And were you able to determine the percentage of
5 respondents who were the product of an adoption?

6 **A.** Yes. There were statistics around adoption, either
7 by strangers or family members before age two or after age
8 two, by one person or two persons, yes.

9 **Q.** Okay. Was there any potential for source bias in
10 the NFSS?

11 **A.** In so far as you are not talking to the parents of
12 these children, I suppose. You are not getting reports
13 from their employer and things like that. But you are
14 getting a report from an adult about their own life. So I
15 think less source bias than you might have with studies of
16 younger children.

17 **Q.** And you made the NFSS data available to the public?

18 **A.** I did.

19 **Q.** And when did you do that?

20 **A.** I think it was November 1st, 2012 or right around
21 that, give or take a few days.

22 **Q.** Why did you do that?

23 **A.** It might have been October 1st. October 1st or
24 November 1st. Because I had said I would. Because it's a
25 scientific value to -- science moved forward, whether it's

1 a social science or natural science, if people share their
2 data and can, you know, everybody can have an open look at
3 the data. And, you know, it long aggravated me that there
4 had been data sets dealing with not just this subject but
5 subject matters I am interested in that have not been made
6 public because they were funded privately. So nobody got
7 to know what their data says, right? So I was under no
8 obligation to release it because it was not federally
9 funded data. But it's the right thing to do.

10 **Q.** Not all researchers do that?

11 **A.** No. One of the primary data collection projects
12 that has contributed to the literature around this subject
13 is the National Longitudinal Lesbian Family Study.
14 Privately funded so far as I can tell. And never been
15 released publicly. I don't know what wave it's on now but
16 now it's 20 some years old I think. And, you know, I
17 think it's now 21 published studies. So, I mean, it's
18 fair to say, yeah, there is a literature that says, that
19 often says no differences. But when you're talking about
20 21 studies based on a small end sample of 78 people and a
21 data set that's never been made public so nobody else can
22 evaluate it, I mean, it's -- I don't think that is a
23 scientific value.

24 **Q.** Thank you. Doctor Regnerus, is researching the same
25 sex community challenging?

1 **A.** It is. I mean, it's numerically a small population
2 at face value. There are different estimates about
3 basically, how we are going to map this? Is this about
4 sexual identity? Is it about attraction? Is it about
5 same sex behavior? There are different ways you might
6 want to map this. I elected to map it by relationship
7 behavior, parental relationship behavior. Fairly
8 objective in some ways.

9 You ask somebody to say, tell when your mother
10 or father, have they had a romantic relationship? So I
11 consider that a fairly objective measure. Obviously, it's
12 coming from somebody who is offering that information.
13 But it's not like saying, do you think your father is gay
14 or do you think your mother is a lesbian, which the child
15 may or may not think that. The parent may or may not
16 self-identify as that.

17 So I wanted to stick to relationship behavior.
18 And so I think we found 1.7 percent of the population had
19 a mother or father who said they had a mother or father
20 who had had a same sex romantic relationship.
21 1.7 percent. So you know you are looking for a small
22 population to begin with and it's a share -- it's a
23 percentage of the population who would consider themselves
24 gay or lesbian, right? Not all of them have children. And
25 in this era, from 18 to 39 year olds, I didn't want to

1 make assumptions about how their parents or the kids would
2 describe their parents' identity. So that's why we stuck
3 with relationship behavior. That's long been my general
4 interest in the study of relationships is behavior, not
5 identity.

6 **Q.** Okay. Is the same sex community as a whole very
7 diverse?

8 **A.** It seems to me to be, yes. In both in the census
9 and in the NFSS, and I think Mike Rosenfeld's census based
10 study, I think he said 43 -- something like 43 percent or
11 39 percent of the population was of same sex couples in
12 his case, were African-American or Hispanic. I think mine
13 was 43 percent African-American or Hispanic.
14 Disproportionate compared to their shares in the
15 population as a whole. But they also, African-American
16 and Latino same sex couples, according to the National
17 Study Of Family Growth, another population study, are more
18 apt to have children and want to have children. So the
19 more you think about it, compared to the NLFSS which has,
20 I think is 12 percent of the national lesbian family
21 study. I think 12 percent is non-white. 94 percent of
22 them have a college education. That's just not -- that's
23 not reflective the underlying population, which is why we
24 wanted to go to population based studies.

25 **Q.** Let me back you up just a little bit. I think you

1 mentioned in mine, you saw diversity. Are you referring
2 to in the NFSS you were able to tell about diversity?

3 **A.** Right. In the appendix I compared the general
4 percentages of a lot of different things to the current
5 population study. I think I saw the University of
6 Michigan, the National Study Of The Family Growth,
7 National Study Of Youth And Religion, Ad Health, all of
8 them. So that's how you kind of show people that your
9 data looks like other nationally representative population
10 based samples.

11 **Q.** Again, what was the percentage for minorities in the
12 NFSS?

13 **A.** In the NFSS, I think 43 percent. I think that was
14 it, that were African-American or Latino.

15 **Q.** You mentioned the NLFSS. So that is a study that is
16 relied on by the APA for purposes of the No Differences
17 Claim.

18 **A.** A couple times.

19 **Q.** Okay. And so it's your opinion that the type of
20 diversity that you found in the NFSS and other studies is
21 not reflected in those small convenient samples?

22 **A.** It is not.

23 **Q.** That are relied on by the APA?

24 **A.** 94 percent. I think 30 percent of the US has a
25 college education, I think. And this is 94 percent. But

1 it comes from how do they collect -- how do they gather
2 their sample? It was essentially a convenience sample. I
3 think it included snowball aspects to it by putting up
4 advertisements in lesbian book stores in Washington,
5 Boston and San Francisco. So they are apt to pick up
6 people who frequent those book stores. Right? So, and
7 those three towns you would be more likely to be college
8 educated. So, I mean, you get where the
9 disproportionality comes from. But it's still like, that
10 is not an accurate reflection of the underlying population
11 of same sex parents.

12 **Q.** So in your opinion, diversity is reflected at these
13 large population based studies?

14 **A.** Yes, almost by definition since they are probability
15 samples. That is a more accurate picture of what is going
16 on out there as a whole.

17 **Q.** Did the NFSS tell you anything about the stability
18 of same sex couples?

19 **A.** Yes, it did. You look at sort of how many kids
20 lived with their mother and father for different -- or
21 their mother and her same sex partner for how long. I
22 think there was a total of 85 who lived with mom and her
23 partner for at least some segment of one year. Right? I
24 think it was 31 of those 85 lived for only up to one year
25 with mom and a partner together before either the

1 relationship ended or, I mean, the person left the
2 household, the partner left the household or they turned
3 18. Another 20 cases, that was for two years duration.
4 And then that number keeps shrinking all the way to like
5 only two cases where they spent the entire growing up
6 years together. Yes.

7 So, I mean, the instability was notable. And
8 for the fathers who had a gay relationship, it's even, you
9 know, very few of them lived with dad and his partner for
10 a share of a year.

11 **Q.** So, so I understand you correctly, the NFSS showed
12 that there was instability within?

13 **A.** Within the household, right, in terms of comings and
14 goings. We are not exactly able to measure how often
15 these happened. It's possible the partner moved out but
16 they were still in a relationship with them. Probably
17 not. But we didn't measure when the relationship ended.
18 We measured who entered the household and how long did
19 they stay.

20 **Q.** Why did you measure that?

21 **A.** It was actually upon the advice of one of our
22 consultants, I believe. And this is emerging family
23 studies. This is getting a household roster. Right?
24 Because there is a growing awareness of the complex
25 families that people have. So, and if you take a look

1 sort of saying I grew up in a step-parent family, when did
2 that start? Right? Obviously, if you are a step-parent
3 you are no longer with your biological father or mother.
4 When did your biological father or mother either leave or
5 one of the parents died?

6 I mean, so when did that start? Did it start at
7 age two or age ten? Are you on your second step-dad or
8 third step-mother? So the household roster was meant to
9 capture some of that complexity. And I think it did. I
10 mean, I don't lean very heavily on the household roster in
11 the first article because it's very complex. The first
12 article is intended to be an overview of what we learned.
13 But a household roster data was there and for people to
14 analyze, make the data public and people can analyze it.

15 **Q.** I want to follow up on a question or a point that
16 the Judge made earlier. Did you include respondents --
17 include in your results respondents that never lived with
18 their parents, same sex romantic partner?

19 **A.** Yes. And then the November followup I distinguished
20 the moms who did from the moms who did not, the kids whose
21 mothers lived in the same household as a partner from the
22 mothers who didn't. But I did in the July article, yes.
23 It was about split roughly fifty fifty. I think 90 said
24 they had not lived with their mother's partner. 85 did.

25 **Q.** Why did you include those people?

1 **A.** For a couple reasons. One is that I have to be
2 sensitive to sample size. I was -- having looked at the
3 household rosters, we were aware that stability was not
4 profound. So, I mean, unless I wanted to create ten
5 categories of a group that is only 175 large to begin
6 with, and then your statistical power goes down to very
7 little and then you are in the same boat that everybody
8 else had been in except for the census. Right? And the
9 census didn't ask about orientation or behavior.

10 So it was a judgment call with respect to sort
11 of both sample size and the reflection of how long a lot
12 of those relationships had lasted or so far as we could
13 tell in terms of household. Not very many years. So they
14 had a lot in common that those whose -- the mother had
15 been in a relationship with another woman weren't
16 reporting extensive household experience with that person.

17 **Q.** Were there any respondents of the NFSS that lived
18 with their parent and the parent's same sex partner
19 through age 18?

20 **A.** Who? From the beginning?

21 **Q.** Uh-huh.

22 **A.** Yes. Two. There were some people for whom the
23 relationship started later and was still ongoing at age
24 18.

25 **Q.** I mean, any respondents that lived with their parent

1 and same sex partner from birth to through age 18?

2 **A.** Yes. Two.

3 **Q.** Two. Okay. And what were the outcomes like for
4 those two children?

5 **A.** Right. On average they looked pretty good.

6 **Q.** Are you aware of any other research regarding the
7 stability of same sex couples?

8 **A.** Yes, I mean, Michael Rosenfeld attempted to tackle
9 it in the census. And that's where Professor Allen and
10 Professor Pakaluk and Professor Price sort of contest how
11 he deals with residential stability in the census. And he
12 lops it off at sort of as to the last five years. And I
13 think Professor Allen and company say, why do you do that?
14 You are then giving a false sense of the instability. I
15 mean, so there is a debate going on among them about that.

16 I mean, I also know in the Early Childhood
17 Longitudinal Study, The Kindergarten Cohort, which Daniel
18 Potter published articles in the Journal of the Emerging
19 Family, July of 2012. Controlling for instability, he
20 doesn't find any differences. I think it's some sort of
21 academic progress outcome.

22 But if you dig deeper into those cases, and
23 that's public data, you find that there were no cases
24 where the gay couple stayed together for eight years, I
25 think through kindergarten through eighth grade and

1 70 percent of the lesbian couples had broken up by eighth
2 grade. So it was extensive instability in that data set.
3 Right? But once you control for it there is no
4 differences. Right?

5 So a lot of this debate and a lot of the
6 criticism around this revolves around what you do you do
7 with instability, right? If you control for it, are you
8 saying, oh, well, we realize that it matters but our focus
9 is on this other variable. But it's a live question. Is
10 there, you know, something -- is there something, you
11 know, systematically unstable about that kind of
12 arrangement? So, and one could say if you control for it
13 you are not shedding light on it. You are just sort of
14 pushing that out of sight. So I had I assessed that as
15 being an overview portrait of what is going on,
16 instability and all. Right? So --

17 **Q.** You mentioned that NFSS shows evidence of
18 instability within same sex couples. And you mentioned
19 the ECLS. Are you aware of the study by Anderson?

20 **A.** The Norwegian Sweden study, right.

21 **Q.** Did that inform your decision or your opinion with
22 regard to the stability of same sex couples?

23 **A.** Right. And I think Norway and Sweden might have
24 slightly different definitions of union and marriage. But
25 in their study, that was, I think it was in Demography,

1 and they actually mapped sort of predictions for estimates
2 for what they would expect in subsequent years. I think
3 they said we should expect lesbians, lesbian couples,
4 lesbian marriage -- I'm not sure if they are marriages or
5 unions -- to break up at a rate of 30 percent over six
6 years. Gay couples, 20 percent over six years. And
7 heterosexual couples, I want to say 12 percent over six
8 years. So 30, 20, 12.

9 Q. Thank you.

10 A. That was -- I think that was Norwegian data.

11 Q. Did you also --

12 A. I think that might have been the Swedish data.

13 Sorry.

14 Q. Did Rosenfeld also have some research with regard to
15 the stability of same sex couples?

16 A. In the How Couples Meet And Stay Together project
17 which also used Knowledge Networks, and he presented that
18 at the Denver American Psychological Meeting in 2012. And
19 he documented, I mean, he called it a lesbian effect on
20 instability in relationships. So after a variety of
21 controls, he still found lesbian unions were more apt to
22 break apart.

23 Q. And what about the NLFSS?

24 A. NLFSS, National Longitudinal Lesbian And Family
25 Study. It's not a national study so I did not focus as

1 much on that. That's interesting to look at. So it's
2 94 percent college educated, overwhelmingly white, and in
3 Boston, Washington and San Francisco, it's like you would
4 say it's a privileged sample. Right? In terms of
5 opportunities. And yet by wave five when the kids were on
6 average 17 years old, 40 of the 71 couples they had
7 tracked since the birth of the child had broken up. So
8 it's 56 percent I think it is. Which struck me as higher
9 than I would have expected in a sample of sort of
10 privileged folks. Right? So, 56 percent by the time the
11 kid was 17.

12 **Q.** I want to go back for a minute to --

13 **THE COURT:** Why are they privileged? I don't
14 get it.

15 **THE WITNESS:** Overwhelmingly college
16 educated. Eighty-seven were white, etc.

17 **MS. HEYSE:** Thank you.

18 **BY MS. HEYSE:**

19 **Q.** I want to go back to your response to my question
20 about how many of the children, the respondents from the
21 NFSS had lived with their parents and same sex partner
22 from birth to age 18. So the two that actually --

23 **A.** Right.

24 **Q.** In your opinion, Doctor Regnerus, are two children
25 enough to make any judgment on outcomes for -- let me

1 finish the question -- outcomes for children of same sex
2 parent as a whole?

3 **A.** Right. I mean, two comes from 175, right? Or some
4 share of those did not fill out the household calendars.
5 But most of them did. So, it's just long odds, right? I
6 mean, to get, to be those two kids who turned up fine, on
7 average, it's just sort of the odds were against them
8 compared to the odds against -- I think, 40 percent of the
9 sample was -- said their mothers and father were married
10 and still married today. Right? So, much taller odds to
11 succeed and to witness that kind of stable union.

12 **Q.** So, in the NFSS, there were, if I understand you
13 correctly, there were two respondents that came from a
14 stably coupled same sex household?

15 **A.** Correct. From the household roster that is what we
16 mapped.

17 **Q.** Did your screening protocol somehow prevent these
18 stably coupled same sex households from appearing in the
19 NFSS?

20 **A.** Not that I recall. No. If it had, there wouldn't
21 be two, right? And I remember after the first criticism
22 starting rolling in, I went right back to the screener
23 questionnaire and I tried to map out all of the
24 permutations possible and I didn't see any problem.

25 **Q.** So you were surprised by the fact that there were

1 only --

2 **A.** I was.

3 **Q.** -- two?

4 **A.** I didn't know what it expect really. But you would
5 think there would be more than two.

6 **Q.** All right. I'm going it a turn here now and talk to
7 you a little bit about some of the criticisms that
8 plaintiff's experts had lodged against the NFSS. We have
9 mentioned names a couple times. I just want to make it
10 clear for the record. Are you familiar with plaintiff's
11 expert witness, Doctor Michael Rosenfeld?

12 **A.** Yes.

13 **Q.** Are you familiar with his work?

14 **A.** Over the last several years, yes. I mean, with
15 respect to this area, yes.

16 **Q.** Doctor Rosenfeld has criticized the NFSS because you
17 did not control for instability. Do you have a reaction
18 to that criticism?

19 **A.** He criticized the data or my article?

20 **Q.** The results.

21 **A.** Okay. So the article?

22 **Q.** Correct.

23 **A.** Yes, I mean, I understand his complaint. I don't
24 think that was the purpose of that original overview
25 article which was to map, rather than explain away some

1 things. And it intended to bring up the subject of why
2 such instability, right? So, as I point out, I already
3 had seen like the instability was endemic in the sample on
4 average and not just the instability of the same sex
5 relationships, but the households in which the mother had
6 had a same sex relationship. There was -- most of them
7 had come from a heterosexual group, right?

8 So there was relationship instability of all
9 sort, not just same sex. And I think it's an active
10 social scientific debate about what to think about that
11 and what to do about that, right? But in the -- for this
12 case, Michigan is thinking about what it out to esteem in
13 the household of its average children. So, I think, it's
14 helpful to see how children fare when mom and dad stay
15 together. I stated I think it was in the followup article
16 or in my report, there may be a gold standard, same sex
17 household of stably coupled mothers or fathers, but no
18 population based data that I have seen is yet able to
19 widely consistently confirm evidence of it, right? It may
20 exist. Just maybe we have not collected large enough data
21 or over time data or -- so, it might exist but we are not
22 seeing it consistently in the population based data that
23 we have and that's been collected in the last several
24 years.

25 And, you know, you bump from mine up to like --

1 you have to go up to the Census to start talking about --
2 it doesn't get much bigger than that, right? I mean,
3 talking about -- to document more stable relationships.
4 But the Census does not ask about orientation or behavior.
5 So they do their own estimation. I think they do a good
6 job. But you can't figure out like how long mom and her
7 partner have been together.

8 **Q.** When you are referring to, they do a good job, are
9 you referring to --

10 **A.** People who use the census to analyze relationships.

11 **Q.** Any, in particular, you are referring to --

12 **A.** I mean, both Gary Gates and Mike Rosenfeld used the
13 census and Joe Price used the census and Doug Allen has
14 used the Census. They have a lively debate about this
15 subject. And it all seems to hinge around household
16 instability and what to make of it. To control for it
17 makes it disappear and go out your mind and say, it
18 doesn't matter. I mean, or are you giving the impression
19 it doesn't matter. It matters profoundly. And I think we
20 to people and to the public to sort of describe social
21 reality any all its complexity.

22 **Q.** So given these questions surrounding stability and
23 the limitations with regard to studying same sex couples
24 that you mentioned earlier, do you think it's just too new
25 to make definitive conclusions?

1 **A.** Absolutely. You think about all of the data
2 collection projects that ought to be done before one
3 settles a scientific question like this. I mean, you can
4 go back 20 to 30 years ago when people starting dabbling
5 in this area. Most of it was convenient samples. The
6 probability based sample discussions have been, I am
7 thinking, the last three years, four years, maybe at the
8 most. Right?

9 And then to say we settled this No Differences
10 question back in 2005 or 2006 when the APA thing came out,
11 we weren't even working with probability based large
12 samples at that time really. I mean, Ad Health Study had
13 44 cases, I guess, right? Of same sex couples. But 44 is
14 not that large of a number, right? Of the statistical
15 power to detect genuine difference that might exist in the
16 population is limited.

17 So, it is very new. So it's intellectually
18 usually it was frustrating to see social science close off
19 a debate by claiming that it doesn't -- your screen has
20 changed -- closing off a debate by saying this is settled
21 when we haven't even corrected the ideal kind of data yet,
22 right? And assess its limitations, census limitations.
23 Let's get some more before making wide scale changes of an
24 institution that has been around for time immemorial.

25 **Q.** Those experts have also criticized the NFSS as not

1 being a study of children actually raised by same sex
2 couples.

3 **A.** Right.

4 **Q.** Do have you a reaction to that criticism?

5 **A.** Sure. I am aware of the tension around this. To
6 say one is raised, does that mean you have spent your
7 entire household, your growing up years in the same
8 household with the same person? Increasingly American
9 family lives are complicated. So you have got more people
10 coming and going. More people experiencing step-parents.
11 More people experiencing single parenthood and things like
12 that.

13 Who is doing the raising in all these? If you
14 primarily live with your mother but see your father on the
15 weekend, is your father not raising you? I mean, I assume
16 the father is raising you to some extent. So, raising, we
17 have got this mentality that it's consistent, stable
18 presence, right? And that's optimal, I'm sure, as the
19 data suggests. That may be different than influence,
20 right? And whereas all sorts of parents can be influencing
21 children. Parental relationships can be influencing
22 children.

23 I mean, one of the things we noticed in the
24 data, we didn't make a whole lot about it, is one of the
25 next best parenting structures to when mom and dad are

1 married and stayed married, are that if mom divorces and
2 never recouples, right? Never recouples until the kid is
3 out of the house. I mean, because the child only
4 experienced this one transition, right? Which is better
5 than experiencing -- can often be better than experiencing
6 a second or third transition. Subsequent marriages fail
7 at rates greater than first marriages. So instability
8 snowballs, really. So I maybe I'm getting away from your
9 original question.

10 **Q.** You're fine. Previous expert have also criticized
11 your use of stably in tact biological parents as a
12 comparison group saying you're comparing apples to
13 oranges. Do you have a reaction to that?

14 **A.** Right. Really, it's -- everything except in stably
15 intact parents would be -- it's a kinship reduction, to
16 some extent. So, I mean, even as I said earlier, like
17 figuring out, so what counts s a step-family? How long do
18 they have to live with their step-dad before he counts?
19 As raising, I mean -- so there is a lot of subjective
20 judgment calls in this stuff where you want to be clean
21 and clear about it. And we have eight categories. But
22 even in those comparison categories there is a lot -- it's
23 not just that the category of mom and her partner is
24 complex. It is. I mean, a mother and her stepfather is
25 complex. Stepfather, dad and a stepmother, is when did it

1 occur? Did they break up again? So, the apples and oranges
2 suggests there is -- it's kind of dualist or binary when
3 the household rosters are complicated and people's lives
4 are complicated. And with respect to the mothers who have
5 had relationships with men of the same sex, the rosters
6 are all over the place. There is a lot of household
7 movement.

8 **Q.** Plaintiff's experts also criticized the NFSS as not
9 revealing anything about the well-being of children being
10 raised in families created by gays and lesbians. So in
11 other words, ART or by donor insemination. Do you have a
12 response to that?

13 **A.** Well, the point was of that was to map social
14 reality in the United States population based sample,
15 right? And that era -- there were clearly was probably not
16 too many people who had children by artificial means, or
17 Assisted Reproductive Technology or insemination.

18 What we don't know is how many, as of today,
19 everybody assumes it's a lot more. We know that Assisted
20 Reproductive Technology accounts for one and a half
21 percent of all births today. And so, donor insemination
22 or artificial technology, to say lesbian couples, what
23 share of that 1.5 percent are theirs? I mean, it's
24 certainly not half because they are not that numerous in
25 the population. It's some small share of 1.5 percent, so,

1 right. For that you kind of, the NLFSS gives information
2 even though it's not a probability sample. You really --
3 to map sort of how the children who grew up who were donor
4 inseminated, their origin, you want that, and you want
5 that in a big survey. You want it to get a national
6 portrait of what that looks like and that doesn't exist.
7 Right? A lot of things in this domain do not exist yet.

8 **Q.** Previous experts have testified that essentially
9 putting together a group, a collection of these small
10 convenient sample studies over time is just as good as one
11 large population based study. Do you have an opinion on
12 that?

13 **A.** They can be illuminating about certain dynamics.
14 They not telling of what one should expect across the
15 population. I mean, it's a strange calculation to say,
16 you know, ten baseballs make a football. They are
17 different kinds of studies.

18 So, when we are dealing with questions of wide
19 import, I will always think we should privilege these
20 nationally representative studies of which they exist.
21 They are not cheap to do, but I think there is pressing
22 interests in it so they ought to be conducted.

23 So I don't usually say that or think about like
24 five of one thing equaling one or another. They are just
25 very different. They have their own strength and

1 weaknesses. But in the case of something like some
2 significant policy things at stake, I think you ought to
3 error on the side of large data collection efforts
4 underlying representative samples.

5 **Q.** Thank you.

6 **A.** We do this when elections come up, right? CNN poll,
7 plus or minus 2 percent, who is voting for this or that
8 candidate? You want that to be representative of a state
9 or a country. You don't want to say CNN poll of the
10 people working in our office. That is not going to tell
11 us anything about what to expect in terms of what is
12 probable among the collective.

13 **Q.** When was your article published in Social Science
14 Research, the NFSS results?

15 **A.** July 2012. And followup was in November 2012.

16 **Q.** And what was the time line for publication of that
17 article?

18 **A.** Tag line. I'm not sure what you're saying.

19 **Q.** Do you recall when the Social Science Research
20 actually received that article?

21 **A.** When I submitted it to them?

22 **Q.** Correct.

23 **A.** Okay. Late January, early February.

24 **Q.** Okay. And do you recall when it was accepted by the
25 journal?

1 **A.** I would say sometime in the middle of March. Prompt.

2 **Q.** And would you agree that that time frame is
3 unusually fast?

4 **A.** It was unusually fast.

5 **Q.** Do you know why that happened?

6 **A.** I can only speculate. But the part that I
7 contributed to was that I was prompt in once I got reviews
8 back, I was prompt in returning, you know, the edited
9 manuscript or a revised manuscript to the Journal. So I
10 didn't keep it with me for very long. I could have kept
11 it for months. I mean, one of my mantras that I learned
12 in graduate school, when you revise and submit a decision,
13 you hurry up and you clear your desk and that's what you
14 focus on because that's your job is publishing. So, that
15 was my part.

16 When I first contacted the editor of the journal
17 to -- I knew this was a sensitive subject. Wanted to know
18 if he would consider it. And I had asked for a speedy
19 review under the logic that I was still writing this
20 report, this larger report. I was going to try to get an
21 overview study in. Maybe we could squeeze it in before
22 the large report that is due. And it's only due in my
23 head, right? Like March. And I pushed it back to May and
24 I pushed it back to -- it was going to be September of
25 2012. So I asked him for a speedy review of which an

1 editor is not under any obligation to do.

2 **Q.** You mentioned that you had asked him to do that
3 because you knew this was going to be sensitive. What do
4 you mean by that?

5 **A.** I asked him if he would consider it because some,
6 you know, quite often when I will submit an article I will
7 check in first with the editor like, would you even accept
8 a submission on this topic? Sometimes they don't take
9 literature reviews. I have written one or two of those
10 before, or studies -- if you are wondering, you just write
11 the editor and say, are you accepting stuff like this?
12 But social science research typically, historically has
13 been known for publishing things that involve some sort of
14 novel methodology or novel approach to a research
15 question. So, that's why I thought of them. Right? And
16 I had been a reviewer for them at various points in the
17 past and I found them easy to work with.

18 **Q.** What was the reaction to your article?

19 **A.** It was severe and swift. Surprised me. I knew it
20 would stir the pot and some people would be upset. But it
21 was clear that draft copies of the article had been
22 circulating for quite some time, from whatever source. I
23 don't know. And so people had developed extensive
24 critiques. One of the weird things, it felt like all a
25 sudden everybody turned into a methodological purist with

1 this study when they left all sorts of methodological
2 challenges go in previous studies. So, I know a lot of
3 people were unhappy with it or unhappy with what it
4 implied or something.

5 **Q.** Sure. You said that it was severe and swift. What
6 do you mean by that? What happened?

7 **A.** Well it came out in June 12, a few weeks early.
8 That's why the on-line version. And, man, within a day I
9 was, you know, receiving complaints and there was stuff on
10 the web trying to take down this, the analyses, and we
11 learned nothing from this article, etc. You learned
12 nothing from this article? Seems unlikely.

13 **Q.** Was there an effort to get your article retracted?

14 **A.** Yes. Probably at a couple different times.

15 **Q.** And do you know who led that effort?

16 **A.** Well, there was a blogosphere effort to do so, but I
17 know Gary Gates, I think, it was Gary Gates had got 200
18 people, a little over 200 people signed the letter. Only
19 a handful of them were family demographers. I went and
20 looked and read their list and who that was. I mean,
21 family demographers, I think know better what this kind of
22 data collection challenge is.

23 **Q.** Somebody once said creation is difficult.
24 Destruction is easy. There is a list, a letter of 200
25 people complaining to the editor. I don't recall if they

1 asked for outright retraction. Retraction is only in the
2 case of outright fabrication. So that is not -- has not
3 happened. But they complained about different aspects of
4 the study including the time line, including the use of
5 the acronyms for which I definitely wanted to make that
6 right in the November followup. So, some legitimate
7 criticisms of which there always are in studies, some that
8 I thought were a little over the top.

9 **Q.** Was there an audit conducted?

10 **A.** There was, which is a very strange experience, very
11 unusual experience with respect to a social science study.
12 I never heard of such a thing. I don't know why the
13 editor agreed to do that. He was getting a lot of flack
14 from what I could tell and that he did not expect. And
15 decided, okay, I think it was an editorial board member of
16 his who had -- who did not like me and has not liked me
17 for years, for whatever reason. I'm not really sure. Had
18 agreed, who basically volunteered to do an audit and the
19 editor seemed to say, well, you can't -- we can't -- we
20 can't --

21 **MS. COOPER:** Objection. Hearsay.

22 **THE COURT:** It's not for the truth of the
23 matter. It's for the state of mind.

24 **THE WITNESS:** I should continue?

25 **THE COURT:** Do it from your perspective.

1 **THE WITNESS:**

2 **A.** Sure. Can't be construed as being friendly. I mean,
3 and he wasn't friendly, nor was he neutral. This is a
4 person who has ranted in blogs for years about me and some
5 other people, some other friends of mine, and gave the
6 audit job to him which, you know, that doesn't seem to
7 compute.

8 So, he and the editor turned over, so far as I
9 can tell, the correspondence around the article. And he
10 solicited University of Texas for all my grant
11 expenditures on it and audited the process and concluded
12 that he didn't think the article should be published. He
13 thought it was deeply flawed, etc. And I'm not sure if
14 it's just because I didn't control for instability or not.
15 But, deeply flawed, etc. But concluded -- he could
16 foresee why the editor would have made the decision. He
17 had three reviews in hand that all said, publish. So, he
18 seemed to exonerate the editor and then took off on a rant
19 on the article itself which did not seem to be part of the
20 audit. The audit is to review process, not to review the
21 article. So that was done, I don't know, late summer of
22 2012. All very prompt. I mean, cooler heads would say
23 let science work this out another time, right?. And I was
24 still intending to release my data which I did in
25 November, October.

1 Q. Who conducted that audit?

2 A. Darren Sheraat (ph), Professor of Sociology at
3 Southern Illinois.

4 Q. In your opinion, that was not an objective audit?

5 A. I think that is an understatement.

6 Q. Was your article every retracted?

7 A. It was not.

8 Q. Did all -- well, strike that. Baking up a little
9 bit. Was there also some allegation of misconduct that
10 resulted from the publication of the article?

11 A. Let's see. June 12 had come out. By July 5th,
12 University of Texas Research Integrity Officer said, Mark,
13 we are opening a scientific misconduct review of your
14 case. And I'm like, you're kidding me.

15 THE COURT CLERK: Can you speak into the mike
16 a little bit?

17 A. By early July, the scientific integrity officer at
18 the University of Texas said, Mark, we have to open a
19 scientific misconduct review of you which stunned me. And
20 it was a lie. We have had these allegations brought by
21 someone who is claiming scientific misconduct. We are
22 bound to do them. This was from a blogger in New York who
23 had made outlandish accusations of me. Successfully got
24 the university to put me under misconduct review, took all
25 of my lap tops, hard drive, my computer, all records, that

1 sort of thing. They looked through my e-mail, and then I
2 have to go in front of a little tribunal of four or five
3 department chairs and the scientific misconduct officer
4 reading the eight charges of a blogger from New York who
5 is not an academic. Strange stuff.

6 **Q.** What was the ultimate result of that scientific
7 misconduct?

8 **A.** There are two processes to this. Misconduct review,
9 and if they find ample evidence, they ask for a scientific
10 misconduct investigation. The whole thing is supposed to
11 operate in where both parties are going to be quiet. The
12 blogger was not quiet. Right? So, but the end result is
13 I appeared before this little tribunal and told them my
14 side of the story. They evaluated it and recommended it
15 to the Provost to dismiss the case and not open the
16 scientific misconduct investigation. And the Provost
17 accepted their decision.

18 **Q.** It was dismissed at that first stage of the process?

19 **A.** It was.

20 **Q.** Did all of this controversy surrounding the release
21 of your article, did that leave you to ultimately write
22 that followup article.

23 **A.** That was -- not inherently, but that was a request
24 from the editor of the social science research. He said,
25 Mark, you know, you're getting a lot of criticism. I

1 think I better open up some space in the November issue or
2 whatever issue he had in mind for critics and for you to
3 respond to your critics. So that is what he did.

4 **Q.** And was it November that that follow up was
5 published?

6 **A.** It was.

7 **Q.** And what did that followup say?

8 **A.** I went back to the data and I looked at -- I sliced
9 the pie some different ways. I had added seven different
10 categories that makes it more complex in some ways, but
11 one of the key things I did was sort of split the children
12 whose mother had a same sex relationship into these two
13 groups. Ones who lived with mom and her partner and ones
14 who did not. That makes sense. On average they look
15 quite similar over the outcomes. But it has more clarity
16 in our mind about what the child -- what kind of situation
17 they are in.

18 But even once where mom lived with the partner,
19 as I said, their relationship durations were not lengthy
20 on average. I think it's 22 percent is the statistic
21 for -- of whom the mom's relationship was ongoing when
22 they left the household at age 18. Otherwise they had,
23 their household relationship had started, then stopped.
24 78 percent.

25 **Q.** You started touching on this earlier?

1 **A.** I'm sorry. There is more to that question. You
2 asked about the response. So there was that split. Then
3 there is also addressing the apples and oranges thing
4 which I had done a few minutes ago, talking about foster
5 care because some critics said same sex couples are more
6 likely to adopt from foster care. Went back to the data,
7 to the household rosters, because we had foster care as an
8 option. And so far as I could tell, there was only seven
9 out of 21 cases where the child either left foster care to
10 go with mother's partner and mother or else they went into
11 foster care from that. I mean, otherwise foster care
12 looked like randomly distributed across experiences in the
13 household. So I didn't think the foster care story was
14 what we were after. If you let me look, and I can briefly
15 summarize the other criticisms I addressed.

16 **Q.** Sure, if that helps you recall.

17 **A.** In number seven. So I addressed the LM and GF thing
18 where I said I shouldn't have done that. Classification.
19 Addressed the apples and oranges thing where it's like not
20 as easy as you might think. They are complex household
21 structures. I addressed instability. Is it a controlled
22 variable or a pathway of analysis, right?

23 Other people would suggest a path analysis
24 approach which I did not do. One could do it with the
25 data, so forth. This maternal same sex relationship, does

1 it predict instability which then predicts poorer outcomes
2 rather than mapping a direct influence from a maternal
3 same sex relationship? I addressed the subject of what do
4 you do with controlling for this thing?

5 I mean, and then the issue of instability, is it
6 a thing of the past or what do we know about it? And
7 that's where he talked about the Swedish data and
8 Norwegian data. I mentioned Bidlars (ph) and Stacey in
9 2010 when they did the literature review said they noted
10 mostly this was from the convenience studies that lesbian
11 parents face a, quote, somewhat greater risk of splitting
12 up due in part to their, quote, high standards of
13 equality.

14 I addressed that subject and people had said the
15 emphasis it is not a representative sample. This is -- we
16 should pay attention to Rosenfeld and the census, etc.
17 This is garbage. And I said, it's not garbage. And it
18 looks quite a bit like census estimates, NSFG
19 characteristics, etc.

20 And the subject of mixed orientation marriages,
21 which I don't know -- I don't always know, was this a
22 marriage that ended. In the graph I showed and that is
23 from the November followup, what people were basically
24 born in and what happened after that. But mixed
25 orientation marriages. Some are, yeah. Plenty are. I

1 didn't ask whether -- I just asked if the parents, the
2 biological parents were divorced. Anyways, bisexuality
3 was the subject -- I'm sure of these women are bisexual.
4 Right? But one thing I did say in here, most of the time
5 when in the cases of when the respondent lived with mom or
6 partner, she had exited an opposite sex union, entered a
7 same sex union, either exited that -- or basically saying
8 they didn't know, man, woman, man. So it looked more like
9 a former heterosexual union, now a same sex union.

10 I addressed the subject but said it would be
11 impossible to tell. Those are the things that I sought to
12 address in that.

13 **Q.** Thank you. So, again, turning now, you touched on
14 this earlier and I want to circle back to it, in talking
15 about the topic of this area being a new area of social
16 science.

17 In your opinion, Doctor Regnerus, what has the
18 social science of same sex parents based on convenient
19 samples taught us to date?

20 **A.** I think it taught us about the dynamics going on
21 within same sex households. It's also shown us it's
22 possible to be stably raised in lesbian couple households.
23 And if it's possible, it doesn't show it's probable. I
24 mean, these convenience samples are not -- you can get
25 what is possible from them. I think Paul Amato (ph)

1 brings this up in his response in the July article, you
2 know. He said if it would have been terribly destructive
3 we should have seen it by now, these convenience studies.
4 We see it's possible. We don't get a sense of what the
5 most likely outcome is. And you don't get that unless you
6 use probability based studies.

7 **Q.** Are you aware of other probability based studies
8 that have found sub-optimal outcomes for children raised
9 in same sex homes?

10 **A.** I mean, in Rosenfeld's assessment of the census, he
11 disputes this with Price, Allen, Pakaluk. But you look at
12 the raw numbers, the children who grow up in heterosexual
13 stably coupled heterosexual households fare better. It's
14 comparable. Nothing statistically significantly
15 different. That's one outcome. Academic progress in
16 school. Potter's longitudinal studies, that is also an
17 academic progress thing. This was 40 outcomes. So that
18 was lot to chew on. But the science really is young here.
19 Think about this. This is the study that has come out
20 with the most outcomes, right? Don't you think we should
21 have more of these kinds of things?

22 One of the kind of mantras of responses to
23 critics didn't come from me, but from some people, said if
24 you don't like the study, go field your own population
25 based national representative study and ask the questions

1 you like. I really think it's too early to tell a lot of
2 these things. And until we have more data I think it's
3 rational and prudent of states to be very careful and to
4 privilege what we already know to be true about the stably
5 coupled married opposite sex households and tread very
6 carefully what we don't know to be true.

7 **Q.** Would Doug Allen's study of the Canadian census be
8 another probability study that showed sub-optimal
9 outcomes?

10 **A.** It is. I read it and I wrote a brief thing about
11 it. It's not -- that kind of thing other people can
12 analyze because you had to apply to the Canadian
13 Government to look at it and he no longer has access to it
14 himself. But he found less optimal outcomes. So people
15 pushing back and forth on that study too.

16 **Q.** And just to make it clear for the record, when you
17 are talking about this debate between Doctor Rosenfeld and
18 Doctors Price, Allen, Pakaluk, we are talking about the
19 study of the United States census data regarding
20 children's progress in school, correct?

21 **A.** Correct.

22 **Q.** Okay. And do you have an opinion regarding that
23 debate?

24 **A.** A modest opinion, you know, back to this sort of,
25 what are you going to do about instability? Is it

1 relevant? Is it a controlled variable or is it something
2 to wrestle with? And I have some doubt on the side that
3 it's something to be open about and wrestle with rather
4 than to control for and mask probably because I'm not
5 making a claim that same sex orientation causes something,
6 right?

7 But to say, you know, the experience of parental
8 same sexual relationship was associated with, correlated
9 with greater household instability. And when you control
10 for it and say there is no differences, you know, people
11 do that, but I don't think it has -- that certainly has
12 not shed light on the social reality of the children in
13 those circumstances.

14 **Q.** You used the terminology, privilege, several times?

15 **A.** Privilege samples? That sort of thing?

16 **Q.** You just mentioned we should privilege what we have
17 known.

18 **A.** Right.

19 **Q.** I want to make sure it's clear what you mean that we
20 should privilege something?

21 **A.** I mean, in this case, you know, I think the State of
22 Michigan should tread carefully and privilege the
23 definition of marriage as between a man and woman because
24 historically, and still in this data set, you see that
25 it's the optimal child development environment for kids

1 into adulthood even. Right? Not just in their growing up
2 years. So I think we should privilege what we can learn
3 from especially -- from these large data collection
4 projects in our decision making about what is prudent and
5 what is best to do.

6 **Q.** Doctor Regnerus, do you believe that this issue is
7 settled? So, in other words, there are no difference in
8 outcomes between --

9 **A.** No.

10 **Q.** -- children of same sex couples and children of
11 opposite sex couples?

12 **A.** Nothing -- it's not that nothing can ever be
13 settled, but we are definitely sort you in the novel
14 period of social science on relationships. I highly
15 recommend more data collection efforts, prudence going
16 forward with respect to large scale social changes. But
17 we have not settled anything. I think is what we have
18 learned is that it's possible to grow up in a same sex
19 household and the children be fine. You will only learn
20 if it's probable until you really track kids over time
21 with a lot of cases, far more cases than we have seen to
22 this point.

23 **Q.** Doctor Regnerus, are you affiliated with any
24 particular religion?

25 **A.** I am Roman Catholic.

1 Q. So that's a yes?

2 A. Yes.

3 Q. Does that affiliation affect your research in any
4 way?

5 A. I would say people think it does in this stuff but I
6 don't see it, frankly. I mean, there is no Catholic way
7 of doing statistics or sampling strategy. I think, if
8 anything, it shapes research questions I am interested in.
9 But I'm not afraid of what data has to say. So I think it
10 shapes the kinds of things I study but not like the
11 process of studying them.

12 Q. Do you have a belief about marriage, what it is or
13 what it means?

14 A. I do.

15 Q. What is that?

16 A. I think that marriage is essentially a union between
17 a man and a woman. It's intended to be permanent.

18 Q. Are there specific norms of that relationship or
19 requirements of that relationship that you believe in?

20 A. I mentioned permanence. On average, marriage is,
21 among younger people, is to expect to welcome children. I
22 think partners expect sexual fidelity. I don't think
23 people who marry want to or expect to cheat or leave. So
24 I think it's built into the fabric of marriage, this sort
25 of permanent you and me, and baby makes three kind of

1 mentality. And I think it's been true for a long time.

2 Q. So that I am clear, so, three, for lack of a better
3 term, requirements of marriage in your opinion are
4 permanence, fidelity or exclusivity --

5 A. Requirements?

6 Q. Components. Is that a better term?

7 A. Components. Historically, generally speaking,
8 stable components. I mean, we can error on polygamy. But
9 I think we moved away from that era. And I don't think
10 people on the average wish for that.

11 Q. I apologize for the terminology. So, again, three
12 main components in your estimation are permanence,
13 exclusivity and an expectation of producing children?

14 A. Right. That's not always the case with people but
15 that's historically been part of the arrangement. And,
16 you know, you see in the data, I didn't create that in my
17 mind, but when you see permanence, I don't have a measure
18 of fidelity among the intact biological families.
19 Permanence and, you know, children, I mean, the children
20 flourish in that environment.

21 Q. What is your basis for that opinion or definition of
22 marriage?

23 A. I don't know. It's a pretty historically stable
24 basis. I don't think -- I mean, the Catholic Church likes
25 that argument. But I don't think it's uniquely religious

1 in origin. It's fairly stable over time. It's
2 cross-religion, cross-culture.

3 **MS. COOPER:** Objection. It's beyond the
4 scope.

5 **THE COURT:** Sustained.

6 **BY MS. HEYSE:**

7 **Q.** Do you have an opinion about redefining marriage to
8 include same sex couples?

9 **A.** I don't think it's a good idea.

10 **Q.** And did that opinion affect your research in any
11 way?

12 **A.** No. Not in how I conducted the research. I mean,
13 it was -- the research question is a curiosity about how
14 children fare in same sex households but it didn't affect
15 the conduct of it. I mean, if it did, then I wouldn't
16 have gathered together a group of diverse consultants and
17 have different people weigh in on how we are going do
18 this. So, which I did those things.

19 **Q.** Doctor Regnerus, your testimony and your work places
20 a lot of emphasis on population based or probability
21 studies. Would that be accurate?

22 **A.** Yes. I have done other things, but I always like
23 doing things with large probability based studies.

24 **Q.** And you've been critical at least in your testimony
25 today to the extent that non-probability studies can

1 actually be used, correct?

2 **A.** Not used in general, but used -- in this particular
3 case, to settle an intellectual dispute about No
4 Differences, I think it's unwise to lean on so many of
5 those or at least not exclusively. And the case in
6 general, I think you can learn about stability in same sex
7 couples households, but you don't want -- so I think you
8 should privilege larger non-probability samples to get
9 information about what is going on in the public and the
10 underlying population of both opposite sex and same sex
11 couples as a whole.

12 **Q.** So let me ask you this. If there were population
13 based studies that showed equivalent outcomes for children
14 raised by same sex couples and opposite sex biological
15 parents, would you reconsider your position with regard to
16 same second marriage?

17 **A.** Can you say that again?

18 **Q.** Sure. If there were population based studies that
19 show equivalent outcomes for children raised by same sex
20 couples and opposite sex biological parents, would you
21 consider your position about same sex marriage?

22 **A.** I mean, there are probability based studied that do
23 this. And even the NFSS in all fairness, 25 out of 40
24 outcomes where there are differences, it's not 40 out of
25 40. It's -- and even on the outcomes are there kids that

1 fare just fine and kids of opposite sex couples that are
2 not faring fine. So it's a likelihood of occurrence. I
3 would want to see, certainly want to see more cases or
4 more studies. I think what is most likely to be changed
5 is my opinion about the No Differences thing, I mean, that
6 until we get a lot more evidence from probability based
7 studies I think we should be skeptical about that.

8 **Q.** So kind of up to wrap up your testimony from today,
9 Doctor Regnerus, based on the NFSS and your knowledge of
10 the research in this area, have you formed any opinions
11 relative to this case?

12 **A.** Right. I mean, I think the NFSS data together with
13 the disputes that go on around instability in the census
14 data and things like that suggest that it's prudent to --
15 for the state to retain its definition of marriage which
16 was the will of the people as between one man and one
17 woman. I think there is a wisdom in the people's
18 assessments here. And it's wisdom borne out in the data.
19 As I mentioned earlier, it's possible that there is a
20 stably coupled lesbian, you know, household type that just
21 doesn't show up in sufficient number of cases in
22 probability based data to make claims, and certainly not
23 to make major changes on it, right?

24 I mean, two kids, and those two kids are okay.
25 Well over a hundred. The odds are against it, right? And

1 nothing is preventing people from having unions and having
2 children. But the state has to consider the entire
3 population of people, not just one group or not just sort
4 of the most stable of a group. I mean, they have to
5 consider the children as a whole and what is good for
6 them. And that's why I think with respect to the
7 population based data that is available, some of it
8 highlighted here, the most prudent thing to do is wait and
9 evaluate some of these changes over time before making any
10 radical moves around marriage. Marriage has been around a
11 long time. We are in the process of overhauling it very
12 rapidly on modest information.

13 **Q.** And is that opinion -- let me back up. I want to
14 make clear the opinions that you are expressing here
15 today. Okay? In your opinion, Doctor Regnerus, what is
16 the ideal environment for raising children?

17 **A.** When you are born into your married mother and
18 father's life and they stay together, ideally, and into
19 adulthood, right? I mean, that's the zero transitions,
20 right? And kids fare best when they experience zero
21 transition. Some transition can't be helped. Some
22 transitions, the parent gets violent. Things like that.

23 But the states usually recognize it's a
24 concession when we take a kid out of the household or a
25 parent decides to leave a household or the parent dies.

1 That's not optimal. Right? So, I think the idea of
2 esteeming a kinship structure that by its very definition
3 reduced in terms of a biological connection between child
4 mother and father, I don't see why states would do that.
5 I mean, it's not the optimal context for flourishing for
6 children. It's a concession. I think states are prudent
7 when they say, this is what is best. This is what we want
8 for our children.

9 **Q.** In your opinion, Doctor Regnerus, can same sex
10 couples raise children?

11 **A.** Sure.

12 **Q.** In your opinion, is there any conclusive evidence
13 that shows that there are no differences in outcomes for
14 children growing up in households with same sex
15 relationships?

16 **A.** Say that again.

17 **Q.** Is there any conclusive evidence that there are no
18 differences in outcomes for children growing up in a
19 household with same sex relationships?

20 **A.** I don't think there is too many conclusive, too much
21 conclusive evidence that there are no differences. I
22 think there are some outcomes or some measures,
23 relationship with the mother. But on average, I don't
24 think we are anywhere near saying there is conclusive
25 evidence that there is no difference. APA disagrees,

1 right? But APA, they wrote this years before we started
2 really focusing on some of these population based broad
3 nationally representative studies. And I think you should
4 privilege those kind of studies because they tell you what
5 is going on among the people, not just one small group.

6 **Q.** In light of that fact, that you don't believe there
7 is research and data to definitively answer that question
8 about child outcomes, do you have any opinion as to the
9 wisdom of making decisions on these questions without that
10 critical information?

11 **A.** I think in any business, they don't make critical
12 decisions based on lack of information. I think nor
13 should governments. We have started adding to a new
14 science. I mean, a new field, so to speak. Some
15 interesting information. Didn't know what I would find.
16 I think it's prudent to collect more data before one makes
17 any major conclusions on this. That doesn't seem to be
18 the movement of what is going on in the country. I mean,
19 people are asking for change prior to ample information.
20 I think it would be prudent and wise to be patient and map
21 this out. Map it out in multiple data over time before
22 you jump in.

23 **Q.** So is it your opinion until we have that research
24 and data, it's prudent for the State of Michigan to define
25 marriage as between a man and a woman in order promote

1 what you believe is the ideal environment for raising
2 children?

3 **A.** I do, yes.

4 **MS. HEYSE:** I have no further questions.

5 **THE COURT:** Thank you, very much. I think we
6 will start Cross-Examination tomorrow. Tell me, what
7 witness do you have, the state has lined up?

8 **MS. HEYSE:** We have Doctor Joseph Price
9 coming tomorrow.

10 **THE COURT:** Tell me what is his science.

11 **MS. HEYSE:** He is -- economics, yes.

12 **THE COURT:** Okay. And good. So in terms of
13 timing, we will do Cross-Examination and then you will
14 call Doctor Price?

15 **MS. HEYSE:** Correct.

16 **THE COURT:** Okay. Any questions?

17 **MS. NESSEL:** I have a question regarding
18 Doctor Price. I was told by counsel there is a power
19 point presentation to accompany his testimony. We have
20 not received it and I was wondering if we could get a time
21 line.

22 **THE COURT:** Soon to have that.

23 **MS. HEYSE:** Sure. I am happy to do that. We
24 had some similar incidents with plaintiff's counsel. We
25 are happy to provide it to them. We are just doing some

1 finalization.

2 **THE COURT:** As soon as you get it, e-mail it
3 to them.

4 **MS. HEYSE:** I got Ms. Nessel's e-mail address
5 to make sure I can get that to her.

6 **THE COURT:** Perfect. See you in the morning.

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C E R T I F I C A T I O N

I, Lawrence R. Przybysz, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/Lawrence R. Przybysz
Official Court Reporter

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