

How Gays Tricked the Supreme Court

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The "Trojan Couch": How the Mental Health Associations Misrepresent Science

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Fairytales remind us of those simple truths that, as adults, we no longer wish to accept. “The Emperor’s New Robes” shows us that in every generation, on certain matters, a whole society — its experts, its most admired, respected, and trusted leaders and counselors — will adopt as authoritative *a complete illusion*. Some of my psychiatric and psychological colleagues have woven for themselves their own set of illusory robes of authority, and for the past thirty -five years have been proclaiming doctrines in the public square that depend upon the authority that derives from the public’s belief that these robes exist. In particular, they have claimed to the Supreme Court that the scientific data show that homosexuals form a “class” whose boundaries are defined by a stable “trait.” This presumption is false, yet the recent Supreme Court decisions pertaining to same-sex marriage have taken it for granted.

Part I of the paper reviews the history of the diagnostic change that in 1973 removed homosexuality as a formal disorder from the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders* (DSM), a change that many now accept as simply indisputable in spite of the fact that it was based wholly on fiction.

Parts II and III analyze the psychiatric guilds’ massive misrepresentation of the scientific record in the Supreme Court’s *Lawrence v. Texas* and *Romer v. Evans* cases. Part IV examines a key section of the two briefs used to define homosexuality as a “class,” a claim which (under precedent jurisprudence) depends upon homosexuality being an innate and immutable trait. (Racial “class” status is dependent upon “race,” a parameter that is relatively static with fixed meanings across studies.)

Part I. The APA, the DSM, and Homosexuality

The Campaign Begins. A lifelong hard-left political activist, the psychologist Evelyn Hooker is more than anyone else credited by believers with having demonstrated that homosexuality is normal. Even today, almost fifty years after its publication in 1957 in *Projective Testing*, her “The Adjustment of the Male Overt Homosexual” is the only paper referenced in detail on the main website of the American Psychological Association in its discussion of Gay and Lesbian issues,

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as it attempts to make the case that there is no evidence for an association between homosexuality and psychopathology.² Crucially, her study was one of the two upon which in 1973, the APA decided to remove homosexuality from the list of disorders in the DSM and the one study discussed in the APA's brief in 2003 in the *Lawrence* case. It claims to show that "homosexuals [are] not inherently abnormal and that there [is] no difference between the pathologies of homosexual and heterosexual men."³

Eight years after her landmark study, she found herself chair of a newly established National Institute of Mental Health (NIMH) Task Force on Homosexuality, hand-picked by Judd Marmor, an influential psychiatrist at UCLA. The only other "mental health" representatives were Alfred Kinsey's close colleagues Paul Gebhard, and John Money, the latter a psychologist from Johns Hopkins and an early (but recently discredited and fired) proponent of transsexual surgery. In 1969 the Task Force issued its report. It claimed, parroting the Kinsey reports almost word-for-word, that sexuality was a continuum from exclusive homosexuality to exclusive heterosexuality, and that some degree of *bisexuality* was the human norm. Without evidence, it stated that any homosexual suffering was caused by societal prejudice. (It avoided mentioning, however, that in Kinsey's view, human sexual taste was almost infinitely malleable.) Thus, there was nothing problematic with homosexuality *per se*.

Within a few years, Marmor, who was active in anti-war, pro-abortion, and other "New Left" causes, became Vice-President of the APA. With Hooker and Marmor in such prominent roles, agitators outside the professions could count on their collaboration in organizing protests aimed at radicalizing an organization which until then, held to a tacit ethical creed of professionalism that prohibited them from using the public's trust in their presumed scholarly expertise in circumscribed domains to exercise influence over general matters of civics. One can see the beginnings of a coordinated effort to corrupt this ethos at the APA's 1970 annual meeting, when a most eminent and respected psychiatrist and psychoanalyst (and later a founder of NARTH) presenting a paper on "homosexuality and transsexualism" was interrupted by an outside agitator who had been secretly bought into the meeting.⁴ Acceding to pressure, the organizers of the 1971 conference agreed to sponsor a special panel—not *on* homosexuality, but *by* homosexuals: (N.b.: *The state of sexuality constituted their sole purported expertise to speak professionally*, just as though being tall made one an expert in the mechanisms of cell growth, or having cancer.) The program chairman had been warned that if the panel was not approved, homosexual activists would ruin the entire convention. The APA caved. The only psychiatrist at this presentation would be the moderator, Robert Spitzer of Columbia University, a sympathizer in large measure on "civil rights," not scientific grounds, in his later recollection.

After this quick capitulation, the activists decided to seek more. Progressive psychiatrists, gay psychiatrists, and outside activists planned a disruption and sought the services of leftwing activist Frank Kameny, who turned for help to the New Left and non-accommodationist Gay Liberation Front. Kameny's cadre, with forged credentials provided by allies on the inside (some at the very top), broke into a special lifetime service award meeting. They grabbed the microphone, and Kameny declared "Psychiatry is the enemy incarnate. Psychiatry has waged a relentless war of extermination against us. . . . We're rejecting you all as our owners. You may take this as our declaration of war." Regardless, a few hours later, the promised panel discussion—presented by the same group of protesters—proceeded without objection by the APA.

² See www.psychologymatters.org/hooker.html.

³ Hooker, E., "The Adjustment of the Male Overt Homosexual" (*Journal of Projective Techniques*, 1957, 21, 18-31)

⁴ R. Bayer, *Homosexuality And American Psychiatry: The Politics Of Diagnosis*. Princeton: Princeton University Press (1987), p. 104.

The activists soon secured an appearance before the APA's crucial Committee on Nomenclature and Statistics, responsible for publishing the *Diagnostic and Statistical Manual of Mental Disorders*. Loosely coordinated with the international classification of medical diseases, the enormously influential *DSM* had defined homosexuality medically, on a par with many other sexual "deviations" because homosexuals did not have an adult person of the opposite sex as their primary object of sexual interest. The APA was now being pressured—both from within and from without—to change its classification, and created a special task force comprised almost entirely of the same people from the Kinsey Institute who had packed the NIMH committee. Judd Marmor was now APA Vice-President, while the President-elect was a homosexual who would keep that fact secret (see below for more details).

Spitzer, who would become the pre-eminent expert in the classification of mental disorders on a statistical basis and the overall director of psychiatry's official classification system, was then a consultant to the Nomenclature Committee. He did not believe homosexuality so intrinsically and self-evidently a "bad thing" that it warranted being listed in a manual of disorders alongside, say, schizophrenia—an evident truth, especially for a profession struggling to find empirical grounding in biological science and turning a gainst the dominance of psychoanalysis and a threatening increase in competing, purely psychological theories and professions. He arranged a meeting between the Committee and a group of outside activists and gay psychiatrists and psychologists. The Committee was impressed, writes Bayer, by the "sober and professional manner" in which Charles Silverstein, Ph.D., (who would later author *The Joy of Gay Sex* and *The New Joy of Gay Sex*) presented the homosexual case. And, crucially, "Since none of the Committee members was an expert on homosexuality, there was considerable interest in the data that had been presented, much of which was new to those who would have to evaluate the issues raised by the call for a revised nomenclature" (my emphasis, on the fact that such a crucial decision, affecting so many in society, and so much, was going to be made by so few knowing so little about the subject matter being presented to them, and in so poor a position to judge the scientific quality of the representation).

Silverstein led off with Hooker's work. He also introduced some of Kinsey's arguments—but only some. He emphasized Kinsey's claims about the frequency of homosexuality, but like the NIMH committee before him, passed over in silence the fact that Kinsey considered sexuality to be mutable. Wardell Pomeroy, co-author of the first Kinsey volume and (like all his male colleagues) one of Kinsey's lovers, argued that the Kinsey data found that homosexuality was not associated with psychopathology and that all other studies of homosexuality were intrinsically flawed because they were based on "clinical" samples rather than samples from the regular population—as though this were not precisely what a quantitative comparative pathography would require. Even so, both statements were flat falsehoods, especially outrageous in that the Kinsey data itself—for which he himself was largely responsible—was fraudulently skewed by blatant population sampling biases, and the badgering and even bribing of its imprisoned and largely otherwise institutionalized subjects, which were not reported as such. Pomeroy admitted this in a book published shortly before this very meeting—which even so, he neglected to mention.⁵

Spitzer presented NIMH's official position on homosexuality. According to *Psychiatric News*, it was "essentially upon the rationale of Dr. Spitzer's presentation that the Board made its decision." In it, he argued for normalizing homosexuality because:

1. "Exclusive homosexuality" was a normal part of the human condition, a claim based on Kinsey's data.

⁵ Wardell. B. Pomeroy, *Dr. Kinsey and the Institute for Sex Research.*, New York: Harper and Row (1972)

2. Homosexuality did not meet the requirements of a psychiatric disorder since it “does not either regularly cause subjective distress or is regularly associated with some generalized impairment in social effectiveness or functioning [sic].”

3. Marcel T. Saghir and Eli Robins’ recently published *Male and Female Homosexuality* showed that homosexuality was normal. (Their research—which was astoundingly shoddy—was roundly criticized by colleagues at the time, but no critique was addressed by the presenter or the committee.)⁶

Although Spitzer did not say so then, in later correspondence he has said that another important component of the case was the work of Evelyn Hooker.⁷ The APA committee, however, failed to reference critical studies, such as Robins’ and Saghir’s suicide studies, and their study that found differences in the behavioral patterns and psychology of homosexuals and heterosexuals. These differences would have complicated Hooker’s findings—at least in the grossly oversimplified and misrepresented form in which Hooker’s findings were presented.

Nonetheless, quickly following the advice of the new homosexual advisors, two-thirds of the APA’s Board of Trustees (barely a quorum) voted to remove homosexuality as a psychiatric disorder, with only two abstentions. A few voices formally appealed to the membership at large—scarcely a scientific *modus operandi*, either. Countering this appeal, every psychiatrist (tens of thousands) received a mailing urging them to support the change, purportedly for legitimate data-based reasons and apparently “from” the APA, but in fact surreptitiously financed entirely by the National Gay Task Force. Two-thirds of those members who did subsequently vote, voted to support the change—but only one-third of the membership responded (and far from all psychiatrists belonged to the APA to begin with). Four years later a survey in the journal *Medical Aspects of Human Sexuality* showed that 69 percent of psychiatrists disagreed with the vote, and still considered homosexuality a disorder. Bayer remarks that the APA:

... had fallen victim to the disorder of a tumultuous era, when disruptive conflicts threatened to politicize every aspect of American social life. A furious egalitarianism ... had compelled psychiatrists to negotiate the pathological status of homosexuality with homosexuals themselves. The result was not a conclusion based upon an approximation of the scientific truth as dictated by reason, but was instead an action demanded by the ideological temper of the times.⁸

Two years later the American *Psychological Association*—which is three times larger than the APA—voted to follow suit, and soon the National Association of Social Workers did likewise.

The seventh printing of the *DSM* in 1974 placed a special note that announced that the APA had “voted to eliminate **Homosexuality** *per se* as a mental disorder and to substitute therefor (sic) a new category titled **Sexual Orientation Disturbance.**”⁹ The new entry read as follows:

302.0 Sexual Orientation Disturbance [Homosexuality]

This is for individuals whose sexual interests are directed primarily toward people of the same-sex and who are either disturbed by, in conflict with, or wish to change their sexual orientation. This diagnostic category is distinguished from homosexuality, which by itself

⁶ Robins, E. and Saghir, M.T. Male and female homosexuality: natural history. *Comprehensive psychiatry* [0010-440X] 6,12:503 (1971)

⁷ E.g., Personal E-mail to Kathleen Melonakos, M.A., R.N., dated February 5, 2002.

⁸ *Ibid.*, pp. 3-4.

⁹ *Ibid.*

does not constitute a psychiatric disorder. Homosexuality per se is one form of sexual behavior, and with other forms of sexual behavior which are not by themselves psychiatric disorders, are not listed in this nomenclature.¹⁰

In other words, it had become defined as a disorder for one to wish that the way he expresses his instincts be in concord with the physical organs that do the expressing, as though a fish who thinks itself a bird should be thought ill for hoping one day to be happy in the water. A pure political compromise, this peculiar category would last but a few years before being dispensed with altogether.

What hung in the balance? By the time this struggle ended, “what Frank Kameny had been referring to for years as *the* major ideological prop of society’s antihomosexual bias had been shattered,” notes Bayer.¹¹ Twenty years later all the sodomy statutes in America would be close to being found unconstitutional and five years after that, the Supreme Court of Massachusetts would find marriage itself unconstitutional. Moreover, in 1997, the APA would make a subtle change in how it diagnosed all the paraphilias (the new term for “deviations” like sadomasochism, pedophilia, fetishism) in a revised edition of *DSM IV*. The Nomenclature Committee rewrote its criteria so that such diagnoses would apply *only if the impulses or activities in question interfered with other functioning or caused distress to the individual himself*. By 2002, the “sexology” community was fiercely debating whether all the “paraphilias” should be removed from the *DSM*, and the American Psychological Association had published an article arguing that pedophilia was not harmful. In 2003 the American Psychiatric Association held a symposium debating the removal of the paraphilias, pedophilia included, from the *DSM*, on the same grounds as homosexuality had been removed.

Part II. Homosexuality as a Disorder in the Guilds’ Lawrence Brief

The APA’s decision to remove homosexuality from the *DSM* was presented to the public as based upon a solid scientific foundation, though this foundation was in fact lacking as we’ll see. The APA and others have so often repeated the same falsehoods that the public and even the Supreme Court now take for granted that science has demonstrated that homosexuality is a perfectly normal variant of human sexuality if it is fixed early in life and does not change: that it is a matter of “orientation” or “identity.” In political contexts, the bulk of the literature is passed over with a wave of the hand in the form of reviews and reviews of reviews that never characterize the full picture; certain studies, lacking in scientific merit, are presented again and again, no matter how hoary (Hooker in particular, as we will see).

In the *Lawrence* brief, the first point the mental health guild amici (friends) make, for example, is that “Decades of research and clinical experience have led all mainstream mental health organizations in this country to the conclusion that homosexuality is a normal form of human sexuality.” The footnotes offer no support for this claim. Moreover, the sources they do use do not represent the literature as a whole. For example, although the brief uses the nearly half-century old Hooker study, the only study from which it offers any details, it studiously ignores even the Saghir and Robins studies, which according to Spitzer, were previously presented as crucial.

In fact, however, within the somewhat substantial if scientifically loose literature on homosexuality, few studies on homosexuality fail to assert the very strong intrinsic association between homosexuality and psychological distress—far beyond that which could be attributed *solely* to the genuine and additional distress caused by social stigma and prejudice. No literature has succeeded in demonstrating that this excess psychological distress is in fact attributable to stigma and prejudice. Recently, some studies do ask and examine the attribution

¹⁰ Ibid.

¹¹ Bayer, op. cit., p. 138

question carefully, and answer it—but not as the activists assert: Social stigma, bigotry and prejudice *cannot* account for all the increase in psychopathology found in this population. (See below for details).

Before moving to examine some relevant studies, a few other problems with the brief should be noted. A detail-less review monograph by John Gonsiorek forms a major foundation, being cited 17 times in its 63 footnotes, and with no attempt to validate the review's accuracy or to use instead primary sources. The brief's apparent co-author Gregory Herek's own publications are referenced 48 times, making him by far the single largest "authority" to whom the authors as a group "turn" to support their arguments. Indeed, when all the explicit self-referencing is tallied up it amounts to 33% of all cited references (including a substantial percentage of reviews), with Herek himself constituting by far the single largest source of "outside" substantiation of the claims being made (by, *inter alia*, himself).

The authors do refer to a universally respected study by Laumann et al. nine times, calling it (as have many others) "the most comprehensive survey to date of American sexual practices," but do not, as we shall see when discussing the *Romer* brief, admit its real findings.

Study No. 1: The Eli Robins and Marcel Saghir Studies

Eli Robins and Marcel Saghir, whose study "Male and female homosexuality: natural history" was one of the two direct sources upon which the APA seemed to depend upon to reach its conclusion to drop homosexuality from the *DSM*, have published other studies of both male and female homosexuals. It would have been natural for the authors of the brief to have referenced them, but they did not. Note this, however: While in their book and final research monograph, Robins and Saghir stated as a *conclusion* that between homosexuals and heterosexuals there were no differences in psychopathology, their own studies in fact demonstrate:

Differences in the behavioral patterns and psychology of homosexual and heterosexual males and females.

A markedly greater prevalence of alcoholism among female homosexuals as compared to female heterosexuals.¹²

No difference in completed suicides between homosexuals and heterosexuals, a fact they attributed to the very low percentage of homosexuals in the population, but a markedly greater incidence of suicide *attempts* by male homosexuals compared to male heterosexuals.¹³

But here's the subtlety. The purpose of the particular study presented to the APA was to determine, using a self-administered questionnaire, relative rates of psychopathology in homosexual and heterosexual populations. The problem was the sample. First, the questionnaire was given to male and female homosexuals from so-called "homophile" organizations, including some of the most radical in the "gay liberation movement," and

¹² Lewis CE, Saghir MT, Robins E., Drinking patterns in homosexual and heterosexual women. *J Clin Psychiatry*. 1982 Jul;43(7):277-9. Their findings have been repeatedly confirmed. E.g., Hughes, Tonda L., Wilsnack, Sharon C., Research on Lesbians and Alcohol, *Alcohol Health & Research World*, 1994, Vol. 18, Issue 3.

¹³ Lewis CE, Saghir MT, Robins E., Drinking patterns in homosexual and heterosexual women. *J Clin Psychiatry*. 1982 Jul;43(7):277-9. ; Saghir MT, Robins E, Walbran B, Gentry KA. Homosexuality. IV. Psychiatric disorders and disability in the female homosexual. *Am J Psychiatry*. 1970 Aug;127(2):147-54.; Saghir MT, Robins E, Walbran B, Gentry KA. Homosexuality. III. Psychiatric disorders and disability in the male homosexual. *Am J Psychiatry*. 1970 Feb;126(8):1079-86; Saghir MT, Robins E, Walbran B. Homosexuality. II. Sexual behavior of the male homosexual. *Arch Gen Psychiatry*. 1969 Aug; 21(2):219-29; Saghir MT, Robins E. Homosexuality. I. Sexual behavior of the female homosexual. *Arch Gen Psychiatry*. 1969 Feb;20(2):192-201.

heterosexuals from the general population. A (n immediately earlier) 1972 study on homosexuality published by Siegelman found higher levels of “neuroticism” among “joiners” of “homophile” organizations than “non-joiners”—that is, Siegelmann was studying the very people who were in the midst of radicalizing the APA.

Second, the authors *chose to study only individuals who had never previously been in a psychiatric hospital*, the population that actually contained the largest proportion of the very condition they claimed to be studying, i.e., psychopathology. 14% of the male and 7% of the female homosexual responders had prior psychiatric hospitalizations. Among the heterosexual responders, none had. All these were excluded in advance from the study! By a very conservative estimate, the number of homosexuals reporting hospitalization is at least five times as high as it should have been, if the hypothesis that there is “no difference” between homosexuals and heterosexuals were true.

In short, the study indicated exactly the opposite of what its authors claimed it did—even ignoring a recruitment bias that worked to suppress such evidence (excluding a-priori any subjects with the strongest among indicia for psychopathology—psychiatric hospitalization). It is consistent with other studies they published before and later, all demonstrating a strong association among homosexuality, suicidality, and alcoholism in both males and females, statistically significant and significantly greater than in matched heterosexual populations. And yet, none of these facts were reported or discussed by the authors of the brief—perhaps because to reference them outside of indirect review articles (e.g., Gonsiorek’s, where the actual data is not just two steps away from potential scrutiny but three or more) might draw attention to its less palatable findings.

Study No. 2: The Evelyn Hooker Study

Evelyn Hooker claimed that her study, “The Adjustment of the Male Overt Homosexual,” showed that “homosexuals were not inherently abnormal and that there was no difference between homosexual and heterosexual men in terms of pathology,” and that such tests could not distinguish homosexual from heterosexual psychology. In fact, the study was too poorly performed to demonstrate either. It should have (but did not):

Formulated the hypothesis (purportedly) to be tested, to wit: “Those male homosexuals who do not disproportionately demonstrate any casually observable psychological maladjustment will be indistinguishable in their performance on standard projective tests from a similarly-selected group of male heterosexuals.” Even were this hypothesis to have been support by her research, from it one may not conclude that projective testing would be unable to distinguish homosexual from heterosexual psychology, nor to distinguish a bias in psychopathology (of type or frequency) characteristic of homosexuals, let alone that there *are* no differences in psychopathology between homosexual and heterosexual men. Indeed, such a study could not even *verify its own hypothesis, but merely provide one small bit of evidence for it*, and that meaningless since the hypothesis is on its face trivial.

Identified a set of projective tests adequate to screen for psychopathology and normative differentiation. If larger, pre-existing controls exist for the tests then the standardized norms can be used as they are vastly superior to ad-hoc or norms based even on control groups of matched size. She rather abandoned the larger standardized norms and invented her own.

Selected two groups of men, one homosexual, the other heterosexual, and matched them for age and other demographic characteristics.

Had a group of expert administrators and test interpreters blind to the subjects’ sexuality administer the tests to each group.

Tabulated and scored the results for statistical significance with respect to the original hypotheses.

Subjected the paper to peer-review and cross-checked for major and minor errors of fact, method, or calculation before publication.

In fact, Hooker failed to follow even the most basic tenets of the scientific method. She *deliberately* had her associates recruit participants to obtain a pool of subjects who understood what the “experiment” was about and how it was to be used to achieve a political goal in transforming society. As she wrote many years later, “I knew the men for whom the ratings were made, and I was certain as a clinician that they were relatively free of psychopathology.”¹⁴ In other words, she lacked a random sample and tinkered with the composition of both groups to conform to whatever she defined. Indeed, she selected them in collaboration with “activist” organizations¹⁵ — i.e., the “homophile” groups that in 1972 Seligmann (op.cit.) would identify as having a disproportionate number of “neurotic” members. In addition, individuals with certain signs of “instability” and those in therapy she simply screened out, insuring in advance that, to the best of her ability (as research psychologist of mice, not men, as she was) neither group would display pathological symptoms in projective testing in which she was inexperienced. The relative proportion, the presence and relative seriousness of signs of instability in fact remaining in each group were all documented by Hooker but not published in the study -- an unacceptable absence, and the data was hastily destroyed by two of her disciples after her death. Nor was information provided on how many unscreened individuals were initially found and subjected to screening, it presumably being much easier to find heterosexual than homosexual individuals, yet Hooker claims finding somehow exactly and only 40 of each.

She asks us to trust that her judgment is accurate and objective even though she had no clinical experience in the field of study, in the experimental measures employed, nor in clinical experimentation; did not have even the qualifications to perform projective testing in a mundane clinical situation beyond her Ph.D., had an obvious bias, and provides no details at all about her procedures. As we will see, the inadequacy of her research was openly acknowledged by the journal that published it.

In performing her experiment, she used the Rorschach test (ROR), the Thematic Apperception Test (TAT), and the Make a Picture Story Test (MAPS). All these tests had national standardized norms—the baseline response of a normal sample—to serve as a control with which to compare the test group. These national standardized norms arise from samples of many thousands of individuals and are vastly more reliable than anything a single researcher, even if an expert, can create if the sample size is small. However, she designed her own heterosexual control group to compare to the homosexual test group on the three standard tests she chose to administer. In other words, “normal” would be defined in her study by how the individuals in her control groups performed rather than by the national standardized norms. Hooker managed to find only 40 adequate heterosexual volunteers and eliminated ten of these, leaving a final control group of thirty (the same as with her homosexual group).

Did Hooker need to create a heterosexual control group? Perhaps she believed the Kinsey data that claimed that more than 1/3 of men had had homosexual experience, so a mere random sample of the “normal” male population would be too heavily weighted by a “homosexual” or bisexual component. The answer is still “no.” The sample in the national norms is so huge that any such uncertainty or bias would be a vastly smaller problem than the imprecision and statistical uncertainty—to the point of complete meaninglessness—associated with Hooker’s procedure. Hooker simply should have *administered* her tests, in a controlled

¹⁴ *American Psychologist*, April 1993 Vol. 48, No. 4, 450-453

¹⁵ Bruce Shenitz, “The Grande Dame of Gay Liberation,” *Los Angeles Times Magazine*, June 10, 1990, pp. 20-34

setting, to a representative sample of homosexuals and compared the results to the pre-existing matched norms for her test group.

No that's not correct either: Someone else, an expert in projective testing, should have done so. But apart from that evident fact, by creating her own norms, she indeed created an artificial setting from the outset in which the experimental parameters lacked any objective criteria—other than that the norms of both groups must end up identical—or ought to have unless some difference between the groups was nonetheless so great as to overwhelm the enormous lengths she went to in advance, blur any possibility of the tests' detecting it.

One other fatal problem with the study: Hooker did not even maintain the initial experimental procedure she designed herself but altered it when her test (homosexual) group actually *disproved* her hypothesis and did display a difference she hypothesized wouldn't exist. One of her original hypotheses was that sexual orientation could not be determined by the ROR, TAT and MAPS. But in the course of the established TAT and MAPS test procedures, the homosexual group subjects were unable to refrain from a very high degree of homosexual fantasizing in their imaginary accounts. Not so the heterosexuals. Both the nature and *degree* of sexual fantasy was different in the homosexual group from the heterosexual group, an especially striking fact given that the subjects knew that this "controlled experiment" was supposed to demonstrate that homosexuals were in no way different than heterosexuals. Once it became evident that the TAT and MAPS identified which subjects were homosexual, Hooker dropped these two tests from the experimental design—post hoc.

That such a study was considered for publication is bizarre—were one to assume that the peer-review and editorial decision-making process was itself scientific in nature and not purely political. The editors of *Projective Testing* themselves make clear, however, that it was not scientific and they were not acting as scientists. In a footnote on page 18 they explain: "If some of Dr. Hooker's comments, as cautiously presented as they are, seem premature or incompletely documented, the blame must fall on the editors who exercised considerable pressure on her to publish now." In sum, in spite of its being the lynchpin for the APA's decision to de-list homosexuality as a disorder, and the only study offered with any details in the *Lawrence* brief, Evelyn's Hooker's 1957 "scientific research" on homosexuality is the American equivalent of Trofim Denisovich Lysenko's scientific research on the inheritance of acquired characteristics in plant seed left to "germinate" in the Siberian Arctic.¹⁶

Homosexuality and/as Psychopathology: The Evidence to Date

What is the *actual* scientific status of homosexuality as a "disorder" as provided by the sources used by amici? Or, to phrase the question properly, "In the authorities referenced by amici, what evidence is there, if any, for an intrinsic association between homosexuality and psychopathology, an association beyond that attributable to stigma, bias, prejudice, 'internalized homophobia', etc. or any other extrinsic, socially determined factors?" As noted above, judging from the website of the American Psychological Association, the answer is "none," but only a single study is offered to buttress this claim—Evelyn Hooker's, now almost fifty years old. Yet Susan Cochran, apparently also both a co-author (along with Gregory Herek) and self-cited authority of the brief, has performed a linked series of very careful, extensive large-scale controlled field studies addressing precisely this question. (In my judgment, Cochran is herself a

¹⁶ See Hooker, Evelyn, Reflections of a 40-Year Exploration: A Scientific View on Homosexuality *American Psychologist*, April 1993 Vol. 48, No. 4, 450-453. In spite of the title, there is nothing at all scientific in this article's contents. Hooker simply muses as a leftist in the McCarthy era about how she spent her career hoping that someone would eventually find evidence to support the claims she published in her infamous 1957 article. Apart from that she rails at the McCarthy Committee who did terrible things to the gay artistic community in Los Angeles to whom she was personally committed, much of which, between the lines is inarguably heart-rending even if four decades later. She died three years after this "scientific view" was published.

careful scientist when acting as a researcher, even if citing herself is inconsistent with the high quality she shows in her research.) Though the *Lawrence* brief references her studies five times, it does not quote them. It is well worth tracking them down in detail.

All of Cochran et al.'s findings were published before the due -date for submission of briefs in the *Lawrence* case. I now cite directly from these articles (the first is taken from Cochran's & May's [2000], the second through sixth from S. E. Gilman et al. [2001], and the last three from Mays & Cochran [2001]):

"These data provide further evidence of an increased risk for suicide symptoms among homosexually experienced men. Results also hint at a small, increased risk of recurrent depression among gay men, with symptom onset occurring, on average, during early adolescence."

"Homosexual orientation, defined as having same -sex sexual partners, is associated with a general elevation of risk for anxiety, mood, and substance use disorders and for suicidal thoughts and plans. Further research is needed to replicate and explore the causal mechanisms underlying this association." [N.b., at this point in the research sequence, Cochran et al. indicate that the increased association of "having same -sex partners" with various psychopathologies *cannot* be attributed to extrinsic social factors—rather, the cause is as yet *unknown*]

"[same-sex] respondents had higher 12-month prevalences of anxiety, mood, and substance use disorders and of suicidal thoughts and plans than did respondents with opposite-sex partners only....elevated same-sex 12-month prevalences were largely due to higher lifetime prevalences."

"numerous clinical and community samples have found that lesbians and bisexual women are at greater risk for poor mental health than are other women" (the study cites many other studies).

"self-identified lesbians and bisexual women reported significantly lower mental health" (here they are identifying a particularly accurate study).

"In a more recent study...bisexuals had the highest scores for anxiety, depression, and a range of mental health risk factors, lesbians fell midway between bisexuals and heterosexuals" (here they are identifying a particularly recent study).

"elevated prevalence of psychiatric morbidity in lesbian, gay and bisexual respondents as compared with their heterosexual counterparts (1 -9)" (here they are reviewing nine studies with these results).

"Homosexual and bisexual individuals more frequently (76%) than heterosexual persons (65%) reported both lifetime and day -to-day experiences with discrimination. 42% attributed this to their sexual orientation, in whole or in part."

"Controlling for differences in perceived discrimination attenuated [but did not eliminate] associations between psychiatric morbidity and sexual orientation." [N.b., following up properly on their earlier findings, the authors now *do* find at least a partial allocation of causal factors, though not an explicit chain of causality: discrimination *alone* does not account for the association between psychopathology and homosexuality.]

In sum, the latest and best conducted research, performed by one of the very authors of the brief, directly, extensively, assert the opposite of what *amici* (among them Cochran herself) claim.

Part III. Homosexuality as a Disorder in the *Romer* Brief

The *Romer* brief presents many of the same problems of the *Lawrence* brief. Its authors make a series of assertions which they try to substantiate by footnoting references —without including damaging direct quotations—to high quality modern research that contradicts the factual claims

they are supposed to support. Moreover, almost one out of every nine of the references from the *Romer* table of authorities consist of the same detail-less Gonsiorek review monograph that forms a major foundation of the *Lawrence* brief.

I will focus on two points. The first is the high value the authors give to a 1994 landmark study, *The Social Organization of Sexuality: Sexual Practices in the United States* (hereafter, “Laumann”), but whose results they misrepresent.¹⁷ The second is the value the authors give, somewhat less visibly, to the work of Alfred Kinsey, and to a cluster of less well-known individuals in the field of sex research more or less closely associated with him and/or his ideas: John Money, Wardell Pomeroy, Paul Gebhard, John De Cecco, and Richard Green. These researchers have been engaged in a thirty-year process of using the mental health guilds to subvert fundamental societal standards. In particular, many have a long history of advocating the casting aside on principle—that same principle by which homosexuality was originally removed from the *DSM*—traditional restrictions not only on homosexuality, but on pedophilia, sado-masochism, incest, and bestiality.

Study No 1: The Laumann Study

The Laumann study, written by Edward O. Laumann, John H. Gagnon, Robert T. Michael, and Stuart Michaels and published by the University of Chicago Press, was based on a survey of a statistically representative sample of American adults between the ages of 18 and 60, and conducted by the National Opinion Research Center at the University of Chicago. The *Romer* brief refers to it two-thirds as many times as it does Gonsiorek, deems it “renowned,” and cites its data—albeit in a most peculiar fashion, carefully avoiding quoting it. Laumann is universally recognized as definitive. Since its publication, numerous large-scale epidemiologic surveys, conducted in all the English-speaking and many other industrialized nations, have repeatedly confirmed and strengthened its findings. One of the major points of the Laumann study, which the authors themselves did not expect, is that “homosexuality” as a fixed trait *scarcely even seems to exist*.¹⁸

“[E]stimating a single number for the prevalence of homosexuality is a futile exercise,” Laumann declares in the first paragraph of an entire chapter devoted to the subject. It is futile not because of bias, underreporting, methodological difficulties, or complexities of behavior, but “because it presupposes assumptions that are patently false: that homosexuality is a uniform attribute across individuals, that it is stable over time, and that it can be easily measured.”¹⁹ All the evidence points to the fact that homosexuality is not a “stable trait.” Furthermore, the authors found to their surprise that its instability over the course of life was one-directional: declining, and very significantly so. Homosexuality tended *spontaneously* to “convert” into heterosexuality as a cohort of individuals aged, and this was true for both men and women—the pull of the normative, as it were.

So striking and unexpected was this finding that it led researchers all over the world in subsequent years to see if it was really true. Their research involved hundreds of thousands of people and strongly confirmed Laumann. Most of that work had been completed, published, and discussed extensively in the scientific literature long before the *Lawrence* brief experts began their writing, yet they fail to mention any of it. In fact, they claim the scientific literature supports the opposite finding. After making a welter of complex statements about “sexual orientation” admixed with a large number of references and footnotes that appear to sustain each of the individual statements, the authors claim that “sexual orientation” or “identity” is well-defined

¹⁷ Edward O. Laumann, John H. Gagnon, Robert T. Michael and Stuart Michaels, *The Social Organization of Sexuality: Sexual Practices in the United States* Chicago: University of Chicago (1994).

¹⁸ Laumann EO, Michael RT, Gagnon JH, A political history of the national sex survey of adults. *Fam Plann Perspect.* 1994 Jan-Feb;26(1):34-8.

¹⁹ Laumann et. al., The Laumann Study, Chapter 8, p. 283

enough to be meaningfully spoken of and in particular used legally to establish homosexuals as a class, following a program laid out years before in a legal paper by Green. They then assert that both Laumann and the other footnoted authorities support the following set of claims (I am paraphrasing sections A through C of the brief):

- 1) That there are basically three general orientations: heterosexual, homosexual, and bisexual, though their boundaries blend somewhat to form a continuum;
- 2) That such uncertainties as exist in current estimates for the different orientations are due to methodological problems, and in particular the underreporting caused by societal bias;
- 3) That research has established that “sexual orientation” is comprised of sexual behavior, feelings of attraction to the same or the opposite sex, self-concept, public image, and identity with a community of others;
- 4) That it is fixed by adolescence; and
- 5) That it is in significant measure an innate condition.

Looking specifically at Point 3, for instance, the brief’s references provide sharply limited support. Only sexual behavior, feelings of attraction to the same or the opposite sex, and self-concept (but not public image and identity with a community of others) have proven to be consistent, reliable, and quantifiable measures of “sexual identity.” (The support for the claim that public image and identity and community with others help constitute sexual identity comes only from Herek—these are statistically unsupported “dimensions” that he coined and on which he has published extensively. He is, of course, one of the brief’s co-authors.)

Furthermore, sexual behavior, feelings of attraction, and self-concept have not proven to form a stable, consistent, integrated definition of “sexual identity” or “homosexuality” *per se*. In fact, Laumann’s authors were forced by the data to the conclusion that “homosexuality” scarcely exists. To claim to “be gay” is in effect an almost utterly meaningless scientific statement. “Sexual identity” is too unstable to be labeled “identity.” Reputable scientific reference provides overwhelming evidence that contradicts the amici’s claims. The labels “homosexual,” “bisexual,” and “heterosexual” provide nothing more than a convenient short-hand, because the dynamism of sexual “identity” over time frustrates any such static classification system.

Moreover, the authors of the brief allege that “[c]urrent professional understanding is that the core feelings and attractions that form the basis for adult sexual orientation typically emerge by early adolescence. For some people, adult homosexual orientation is predictable by early childhood.” They do not mention the contradictory evidence in Laumann, which provides the most careful and extensive database ever obtained on the childhood experiences of matched homosexual and heterosexual populations. Indeed, later, the authors will cite a paper that Laumann et al. wrote using the same data to analyze the impact of childhood sexual trauma on later life, but will ignore what that study has to say about homosexuality.

They also claim that “Few generalizable estimates exist of the prevalence of homosexual orientation in the United States [their footnote refers to Laumann]. Among existing surveys on sexuality, estimates differ substantially.” Laumann actually says: “[O]verall we find our results remarkably similar to those from other surveys of sexual behavior that have been conducted on national populations using probability sampling methods.”²⁰

In summary, the meaningful findings about sexual identity in the scientific references amici provide are: first, that behavior, reports of attractions and feelings, and/or self-definition can be used alone or in combination, to define sexual identity on a study-by-study basis; second, that sexual identity is not in the least fixed at adolescence but continues to change over the course of life; and third, that there is no evidence whatsoever for its being innate.

²⁰ Laumann, et al. op. cit., p. 297

Study No. 2: The Kinsey Reports & the Kinsey Associates

The brief's references to Kinsey and his colleagues at the Kinsey Institute as authorities on sexual orientation are striking for a number of reasons: First, because they considered sexual orientation mutable (a point they carefully avoided making out of certain contexts); second, because Laumann gives an extensive, utterly damning critique of Kinsey's research (though mild by comparison to other critiques in the scientific literature); third, because Laumann's extensive and widely accepted standards for the definition and statistical characterization of sexual orientation have been completely ignored; and fourth, because a reference to Byne and Parsons, the most recent and most scientific review in the lot, completely undercuts the argument.

Kinsey's Colleague: Richard Green

The first of Kinsey's associates cited in the brief that we will consider is Richard Green. One of the three articles of his that the brief cites (alluded to above)—though it is not a scientific article (while referenced as such) and does *not* intelligibly address the scientific validity of any of the arguments—asserts that “growing research evidence exists for an innate origin of homosexuality.” But the statement is false. Evidence of any kind was then sparse, but all evidence as of the date he wrote was consistent with the opposite conclusion. Since then, evidence has grown more robust and contrary to the “it's genetic” claim with every passing year. Laumann says in explicit terms: “The recent period of rapid change in sexual practices should be seen, not as a result of unleashed biological proclivities confronting attenuated cultural proclivities, but as an active process of social construction and transformation.”

But note how the authors give the opposite idea. They cite two careful reviewers of the scientific literature on the biology of homosexuality, Byne and Parsons, and leave the impression that they claim the opposite of what they actually mean. Byne and Parsons — referenced repeatedly by the authors, but as usual, never quoted — flatly state:

Critical review shows the evidence favoring a biologic theory to be lacking. In an alternative model, temperamental and personality traits interact with the familial and social milieu as the individual's sexuality emerges. Because such traits may be heritable or developmentally influenced by hormones, the model predicts an apparent non-zero heritability for homosexuality without requiring that either genes or hormones directly influence sexual orientation *per se*.²¹

Amici failed to present this information in their brief, nor did they cite Laumann directly. This is rather the brief's summary: “Another study has suggested an ‘interactionist’ model, under which ‘genetic factors can be conceptualized as indirectly influencing the development of sexual orientation.’” (The Byne and Parson's paper isn't a study, it's a review of over one hundred research studies.)

Kinsey's colleague: John Money

John Money, referenced three times in *Romer*, was the director of the now defunct “Psychohormonal Research Unit” of the Johns Hopkins University School of Medicine and perhaps the world's most effective promoter of “transsexuality” and transsexual surgery. Although Hopkins was once one of the major centers in the world for such surgery, the university abandoned it in 1979, having had the most—and therefore worst—experience with it. The school even stopped performing sex-change surgery on infants with ambiguous genitalia,

²¹ Human sexual orientation. The biologic theories reappraised. Archives of general psychiatry [0003-990X] Byne yr: 1993 vol: 50 iss: 3 pg: 228

because they found that psychological sex was clearly determined by chromosomal structure , and that the appropriate treatment was to help the psychology conform to the underlying biology, not the reverse.

Writing in *First Things*, Paul McHugh, Chairman of Psychiatry at Johns Hopkins, noted that scientific studies convinced him and his colleagues:

... that human sexual identity²² is mostly built into our constitution by the genes we inherit and the embryogenesis we undergo. Male hormones sexualize the brain and the mind. ... I have witnessed a great deal of damage from sex -reassignment. The children transformed from their male constitution into female roles suffered prolonged distress and misery as they sensed their natural attitudes....We have wasted scientific and technical resources and damaged our professional credibility by collaborating with madness rather than trying to study, cure, and ultimately prevent it.”²³

Kinsey's Colleague: Wardell Pomeroy

One of Kinsey's co-authors, referenced with him, was Wardell B. Pomeroy, who had served on the 1973 Nomenclature Task Force. In his book *Boys and Sex: Wardell B. Pomeroy Co-author of the Kinsey Reports*, he writes that having sex with the male animal,

... whether it is a dog, horse, bull or some other species, may provide considerable erotic excitement for the boy...Psychically, animal relations may become of considerable significance to the boy who is having regular experience...[and] in no point basically different from those that are involved in erotic responses to human situations...

In *Variations* magazine, Pomeroy offers this advice:

We find many beautiful and mutually satisfying [sexual] relationships between fathers and daughters. These may be transient or ongoing, but they have no harmful effects ... Incest between adults and younger children can also prove to be a satisfying and enriching experience ... When there is a mutual and unselfish concern for the other person, rather than a feeling of possessiveness and a selfish concern with one's own sexual gratification, then incestuous relationships can and do work out well. Incest can be a satisfying, non-threatening, and even an enriching emotional experience, as I said earlier.²⁴

Kinsey's Colleague: Paul Gebhard

The authors of the amicus brief likewise reference Kinsey's other co -author, Paul Gebhard, another member of the NIMH Homosexuality Task Force, and a presenter at the crucial Nomenclature Committee meeting in 1973. He is also a co-founder of SIECUS and Planned Parenthood, and a former head of the Kinsey Institute. The following is from a transcript of a taped phone conversation in 1992 between Gebhard and J. Gordon Muir, editor of Judith Riesman's *Kinsey, Sex and Fraud*, about the report in the male volume (table 34) supposedly

²² McHugh is here referring to "sexual identity" as it would be sensibly understood pre -gay activism: Male and female, not homosexual and heterosexuality. It is ironic that in the world view of the modern left, significant differences between homosexuals and heterosexuals (which science shows to be extraordinarily difficult to characterize and wholly unstable) are argued to be innate, while significant differences between men and women (which are enormous, self-evident and permanent) are argued to be at once trivial and socially constructed.

²³ McHugh, Paul, *Surgical Sex, First Things*, November 2004 (147), 34-38

²⁴ Wardell Pomeroy. "A New Look at Incest." *Variations Magazine*, 1977, pages 86 to 88, and *Forum Magazine*, November 1976, pages 84 to 89.

demonstrating multiple orgasms in children and infants as young as six months old. The question as to how this “data” was obtained has been a subject of intense secrecy. Nonetheless:

Muir: “So, do pedophiles normally go around with stopwatches?”

Gebhard: “Ah, they do if we tell them we're interested in it!”

Muir: “And clearly, [the orgasms of] at least 188 children were timed with a stopwatch, according to....”

Gebhard: “So, second hand or stopwatch . OK, well, that's, ah, you refreshed my memory. I had no idea that there were that many.”

Muir: “These experiments by pedophiles on children were presumably illegal.”

Gebhard: “Oh yes.”

Kinsey's Colleague: John DeCecco

John De Cecco, who teaches at San Francisco State University, is Editor of the *Journal of Homosexuality*, whose articles are often referenced in these briefs as though it were a dispassionately scientific journal with reasonable standards of peer -review. It is tendentious, politicized, and self-referential. But, more importantly, De Cecco is a board member of *Paedika: The Journal of Paedophilia*. In a “Statement of Purpose” published in the journal's first issue, the editors wrote:

The starting point of *Paedika* is necessarily our consciousness of ourselves as paedophiles. ... we understand [paedophilia] to be consensual intergenerational sexual relationships ... Through publication of scholarly studies, thoroughly documented and carefully reasoned, we intend to demonstrate that paedophilia has been , and remains, a legitimate and productive part of the totality of human experience.

De Cecco also was editor of *Journal of Homosexuality's* special 1990 issue devoted to the “debate” over the relationship of homosexuality and paedophilia. This “debate” focuses on two major questions: First, are male homosexuality and paedophilia intrinsically related phenomena, albeit in any given individual they may be differentiated in varying measure, or are they essentially unrelated, even though it is clear that they overlap to a degree that cannot be coincidental? Second, as a matter independent of the first question, is it wise for “the movement” to acknowledge the relationship or overlap between paedophilia and homosexuality, and to seek rights for pedophiles (based on “orientation”) similar to those that have been won for homosexuals, or would it be damaging to the gay rights movement to do so, even if it is ultimately the proper thing to do?

Returning to Romer

On its own, of course, the Kinsey associates' support of sexual deviance is not evidence of the falsity of their research on homosexuality. Yet the fact that they are activists, promoting such causes as paedophilia and incest, at least undermines their independence and credibility, weakening the basis for their inclusion in the *Romer* brief. Rather than scientists seeking truth, the evidence suggests they are partisans of paedophilia, incest, and the undermining of sexual norms. As I have tried to show, moreover, the authors of the *Romer* brief, in addition to relying on dubious sources of credibility, tried to support their brief with references that contradicted the very claims the brief sought to make. Mixed in with these references are references —though no direct quotations—to high quality modern research that contradicts the factual claims they are supposed to support.

There are other notable discrepancies in the brief relating to its use and misuse of the Laumann data. For example, the authors cite Laumann directly (a rare instance) in footnote 31

of the brief: “[T]he measurement of same-gender practices and attitudes is crude at best, with unknown levels of underreporting for each” truncating the citation as shown. However, the full sentence in context is as follows:

“While the measurement of same-gender practices and attitudes is crude at best, with unknown levels of underreporting for each, this preliminary analysis provides unambiguous evidence that no single number can be used to provide an accurate and valid characterization of the incidence and prevalence of homosexuality in the population at large. In sum, homosexuality is fundamentally a multidimensional phenomenon that has manifold meanings and interpretations, depending on context and purpose.”

This kind of ambiguity undermines the goal of using “sexual orientation” as a condition to define membership in a well-characterized “suspect class.” Hence, this definition is suppressed by the authors of a brief designed to define homosexuality as a class endowed with rights. In fact, on the pages referenced, the Laumann study only incidentally addresses the fact that “sexual orientation” is at best a multi-dimensional construct. And where Laumann does address this fact, it is to make the central point of the study: that homosexuality is so imprecisely multi-dimensional as to be *essentially meaningless* when understood as a defining “trait.” This, of course, is not at all what the authors want the Court to conclude and so they are careful never to mention it.

The un-cited, confounding findings of Laumann and colleagues in these pages are that the great majority of people (both men and women) are exclusively heterosexual throughout their lives. Only a small minority of people will ever consider themselves homosexual or have same-sex experiences, and of these most will eventually change and stop having such experiences. But of those people who *do* consider themselves homosexual or have same-sex experiences, the reciprocal is not true. There is no symmetry. In fact, *just the opposite is true*. For them, the vast majority also have heterosexual experience—less than 1% do not—and the majority undergo a complete transformation.²⁵

The point is subtle and powerful, and addresses a confusing false symmetry that activists attempt to create between heterosexuality and homosexuality, as though they were somehow two equivalent poles or ends of a spectrum, the numerically minority status of one being an incidental and trivial fact. In other words, the data illustrates “just how normative heterosexuality is,” *even for homosexuals*. The converse—“just how normative homosexuality is, even for heterosexuals”—is false. *Heterosexuality exerts a constant, normative pull throughout the life cycle upon everyone*. (There is no parallel with race: One cannot say, “Findings indicate just how normative whiteness is, but not blackness,” nor its converse.) Laumann attributes this reality with regard to “sexual orientation” to “our society,” but it’s not just our society—it’s every society in which it’s been studied. A much simpler explanation lies closer at hand: Human physiology, including the physiology of the nervous system, is overwhelmingly sexually dimorphic, that is, heterosexual. It should come as no surprise that the brain self-organizes behavior in large measure in harmony with its own physiological ecology, even if not in wholly deterministic fashion.

Part IV. The Changeability of Homosexuality in *Romer* and *Lawrence*

The authors of both briefs take care to argue that homosexuality is a stable trait, completely ignoring the major finding of Laumann. And so the authors of the *Lawrence* brief argued that “once established, sexual orientation is resistant to change” and specifically, that “there is little evidence that treatment actually changes sexual attractions, as opposed to reducing or eliminating same-sex sexual behavior.” But the only references amici provide are to two

²⁵ Laumann et al., p. 311

activists, Richard Isay and Douglas Haldeman. Isay, head of the Gay and Lesbian Task Force of the American Psychiatric Association—who spearheaded a failed attempt to make such treatment an ethical violation—has proposed that “homophobia” be classified a mental disorder. Haldeman, an author of the *Lawrence* brief, tacitly acknowledges what the brief as a whole is at such pains otherwise to deny: That homosexuality is not the immutable condition the authors are determined to make it out to be. Nevertheless, the brief makes no mention of the Laumann study’s finding, nor of other studies, including those actually conducted under the auspices of the Kinsey Institute itself, that claim very substantial success in reversing homosexuality.²⁶ The authors did not even bother to critique a study by the Kinsey-developed Masters and Johnson program, published in the *American Journal of Psychiatry* that reported a 65% success rate, but did reference second hand reviews by non-researchers.

The authors suggest that “conversion” therapy is actually harmful and that programs might even be needed to undo the harm. As evidence they cite “research” on “reparative therapy” sponsored by the National Gay and Lesbian Task Force. The NGLTF used the following advertisement to recruit subjects:

You can be of help in the long process of getting the message out that these conversion therapies do not work and do the opposite of healing by informing your l/g/ b communities of our search for participants to be interviewed. Please announce our project in any upcoming lesbian and gay community meetings and spread the word. Help us document the damage!

In contrast, by the time of the *Lawrence* brief, Robert Spitzer had begun to suspect that homosexuality was in fact “not stable” and that the increasingly large number of claims of change he had been hearing might in many cases be true. Upon completion of a pilot study, he presented his findings privately to the Association of Gay and Lesbian Psychiatrists (a group within the APA) expecting his results to be met with scientific objectivity. As he told me, he was urged to suppress his findings on the grounds that, whether true or not, they would harm the civil rights of gays and lesbians. He later received a letter from Wayne Besen, then President of the Human Rights Campaign, warning him not to attempt to perform and publish a full-fledged study. As he wrote me: “the intimidation was in the form of telling me that if I did such a study I would be exposed as doing fraudulent research in front of my colleagues.”²⁷

In spite of Spitzer’s reputation as one of the most highly-regarded quantitative researchers and bio-statisticians in psychiatry and as the man who had shepherded homosexuality out of the *DSM*, he faced enormous difficulty in getting his study published. Initially presented at the APA annual convention in May, 2001, the results were not published until November, 2003, but the journal of the very organization of which he was the chief editor refused its publication. It was a remarkable slap in the face for someone of his stature, and an indication of the astounding power of political correctness and lack of scientific integrity within the organization.²⁸ Considering the significance of the study, the numerous comments by eminent names in the field published with it, Spitzer’s eminence, and the care he took to approach the Gay and Lesbian interest groups within the APA before proceeding, it is truly remarkable that this study did not even merit a mention in the brief.

²⁶ M. F. Schwartz and W. H. Masters, “The Masters and Johnson Treatment Program for Dissatisfied Homosexual Men,” *American Journal of Psychiatry* 141, pp. 173—81

²⁷ Besen is well-known for his unrestrained use of invective and distortion. A recent reference of his to me, for example, from the January 5-11, 2006 *Falls Church News-Press*, XV: 44 reads, “... Dr. Jeffrey Satinover, a quack that [sic] says Prozac may “cure” homosexuals.” [sic]

²⁸ Robert L. Spitzer, M.D., *Archives of Sexual Behavior*, Vol. 32, No. 5, October 2003, pp. 403—417 (2003) Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation.

The Epidemiology of Change

It would be a mistake to think that the point of this section of the essay is to debate the merits of *therapeutic change of “sexual orientation”* in the fashion of almost all public argument to date. A far more important point was made once again by the authors’ own cited authority, Laumann — though they hid it carefully. Laumann concluded that quite apart from therapeutic change, all the evidence points to the fact that homosexuality is not a “stable trait.” Furthermore, as was already evident in the data concerning prevalence of homosexuality —however measured, whether by action, feeling, or identity—before age eighteen and after age eighteen, Laumann et al., found to their surprise that its instability over the course of life was one -directional: declining, and very significantly so. “Sexual orientation” wasn’t just *not* a stable trait, homosexuality tended *spontaneously* to “convert” into heterosexuality as a cohort of individuals aged, and this was true for both men and women—the pull of the normative, as it were. (See Laumann et al., chapters eight and nine.)

So striking and unexpected was this finding that it led researchers all over the world in subsequent years to see if it was really true by performing even larger -scale studies. Their research has so far involved literally hundreds of thousands of people and it only strongly confirms what Laumann et al., had found.

Most of this work had been completed, published and discussed extensively in the scientific literature long before the *Lawrence* brief experts began their writing. Yet, they fail to mention any of it. In fact, they claim the scientific literature supports the exact opposite. A review of portions of that literature now follows, showing the findings of the Laumann study itself as well as some of those that followed in subsequent years. I urge the reader to consult the remainder. To make reading a bit easier, I have provided the main citation once and have added additional individual page numbers only for very lengthy publications in parentheses following the extract proper.

Spontaneous Instability of Sexual Orientation with Age in Laumann et al. ²⁹

“[T]he rate for men [having any kind of same gender sexual experience ever]...is 9.1 percent. *[Men who report same-gender sex only before they turned eighteen, not afterward, constitute 42% of the total number of men who ever report having a same -gender experience. [3.8% of all men have same-gender sexual experience before age eighteen and never again]* Our final measure has the lowest prevalence...only 2.8 percent of the men report identifying with...same-gender sexuality” (p. 296-297, emphasis added)

“[O]verall we find our results remarkably similar to those from other surveys of sexual behavior that have been conducted on national populations using probability sampling methods. In particular two [earlier] very large large -scale surveys in France (20,055 adults) and Britain (18,876 persons)” (p. 297).

Spontaneous Instability of Sexual Orientation with Age in Other (Later) Studies

1. New Zealand Study³⁰: The Effect of “Social Influences.” Direct citations with emphasis added in italics:

²⁹ Laumann et al., op. cit.

³⁰ Nigel Dickson, Charlotte Paul, Peter Herbison, Same -sex attraction in a birth cohort: prevalence and persistence in early adulthood. *Social Science & Medicine* 56 (2003) 1607–1615

“Investigation of prevalence, continuities, and changes over time among young adults growing up in a country with a relatively accepting climate to homosexuality is likely to illuminate this debate.”³¹

“10.7% of men and 24.5% of women reported being attracted to their own sex *at some time*.”

“This dropped to 5.6% of men and 16.4% of women... report[ing] *some* current same-sex attraction.”

“Current attraction *predominantly* to their own sex or equally to both sexes was reported by 1.6% of men and 2.1% of women.”

“Occasional same-sex attraction, but not major attraction, was more common among the most educated.”

“Between age 21 and 26, slightly more men moved away from an exclusive heterosexual attraction (1.9% of all men) than moved towards it (1.0%)”

“[F]or women, many more moved away (9.5%) than towards (1.3%) exclusive heterosexual attraction.”

“These findings show that much same-sex attraction is not exclusive and is unstable in early adulthood, especially among women.”

“The proportion of women reporting some same-sex attraction in New Zealand is high compared both to men, and to women in the UK and US.”

“These observations, along with the variation with education, are consistent with a large role for the social environment”

This study specifically contradicts amici's claim that change might affect *behavior* but not *attraction*. To the contrary, large, dramatic drops in homosexual attraction occur spontaneously for both sexes. Furthermore, not only does this study demonstrate the extraordinary influence of the social and cultural milieu in general, it demonstrates specific effects (e.g., higher education) whose desirability needs to be considered dispassionately and *not* automatically presumed positive, especially as it is being misattributed to biology.

That is, the typical college education in New Zealand almost certainly includes many falsehoods such as, “Homosexuality should be accepted because it is probably innate, which helps explain why it is stable.” The above study suggests that such statements—typical of what college students are being erroneously taught here, too, as authors of the briefs are themselves college professors—could plausibly slow the spontaneous decline in homosexual identification in a college-age population, especially among women, thereby increasing its cross-sectional prevalence.³² Furthermore, the study provides actual evidence for a specific causal mechanism (a social environmental influence) that contributes to its prevalence, whereas no evidence for any biological mechanism exists. Indeed all the present biological evidence points only toward

³¹ The authors specifically identify New Zealand as a country whose more welcoming attitude toward homosexuality (over against the United States where the Laumann study was conducted and whose findings they are addressing) ought to lead to an attenuation (or perhaps elimination) of the effect Laumann et al. found.

³² In fact, studies done many years ago demonstrated that merely showing people a phoned-up paragraph purporting to offer a biological explanation instantly altered their attitudes. K. E. Ernluf, S. M. Innala, and F. L. Whitam, “Biological Explanation, Psychological Explanation, and Tolerance of Homosexuals: A Cross-National Analysis of Beliefs and Attitudes,” *Psychological Reports* 65 (1989), pp. 1003–10 (1 of 3).

“heritability” levels of roughly 30 to 35%, which geneticists recognize as the signature for behavioral traits in human beings that are essentially *non-genetic* and almost completely determined by environmental influences—to the degree that any human trait enmeshed in a body can be.³³ Hence, if the results of this study were to replace the erroneous explanations provided by the mental health guilds, then without introducing value-judgments it could be expected over time to reduce the prevalence of homosexual identification—sans “therapy.”

Here’s why: The ages between 21 and 26 constitute a distinct demographic group and New Zealand is a country not only with “a relatively accepting climate toward homosexuality,” that social climate is merely one component of its well-known, social-political atmosphere as a whole. One should not pretend, therefore, that attitudes, including attitudes toward homosexuality, are formed in a vacuum, nor that attitudes have no effect on behavior. Thus, for both men and women *in New Zealand*, more so *for those with higher education* there was a small but statistically significant net movement toward homosexuality and away from heterosexuality (that is, immediately following that education, temporarily). Given that *all* the evidence, when accurately presented, points toward the influence of environment, and the association with education, it is likely that the content of higher education in a politically liberal environment is contributory for the differential effect in this educated cohort of twenty-somethings. This is especially the case given that this *increase* in homosexuality follows a much larger *decrease* that would have had to have taken place in the years before age 21 in order to account for the above numbers. Once the educational effect becomes more temporally remote (wears off), however, the typical decline in homosexual identification resumes.³⁴

Second, studies on AIDS in New Zealand show the same hierarchy of risk factors as in the United States. In 2002, the most common transmission risk was male homosexual contact (56%), followed by heterosexual contact (28%)³⁵, intravenous drug use (3%) and mother to infant transmission (1%)³⁶. In 1995, of 11 industrialized nations studied and reported on by the International Epidemiological Association, New Zealand had the lowest cumulative AIDS incidence rate—1.4 cases per 100,000 population, versus a U.S. rate of 15.2.³⁷ At the time, using the figures from that particular study, these cumulative incidence rates would have

³³ This statement does not contradict the presence of “indirect genetic factors” influencing homosexuality. Most people mistakenly presume that an indirect genetic influence refers to a mere technical distinction. In fact, the distinction is crucial. Basketball playing shows a very strong, arguably stronger than homosexuality, indirect genetic influence, but there are no genes for basketball playing—it is a wholly “environmentally” influenced behavior subject to a high degree of choice—much higher than same-sex attraction. The crucial point is that genes that indirectly influence a trait *have nothing at all to do with the trait itself and therefore can’t possibly “cause” it*. The genes that influence the likelihood someone will become a basketball player are self-evident: Those that code for height, athleticism, muscle refresh rate. There are, at present, even strong racial genetic associations to basketball playing. These *associations* are almost entirely socially-determined while the genes themselves are biological (and evolved in an era before basketball playing even existed), and the associational degree (i.e., with race) fluctuates over time as basketball spreads across the globe.

³⁴ This phenomenon was actually first recognized not by sociologists, epidemiologists, psychiatrists, or any other kind of “ist,” but by savvy Smith College students who first called themselves SLUGs: Smith Lesbians Until Graduation. Elsewhere, the eponym mutated into Selectively Lesbian Until Graduation.

³⁵ The common pathway of high-risk infection shared by homosexual contact and heterosexual contact is anal sex. Vaginal intercourse has a much lower transmission probability.

³⁶ Mills G, et al, New Zealand’s HIV infected population under active follow up during 2000. *N Z Med J* 2002 Apr 26;115(1152):173-6

³⁷ KV Heath, et al., HIV/AIDS mortality in industrialized nations, 1987-1991, *International Journal of Epidemiology* 1998;27:685-690. Even though much of the paper is devoted to an analysis of *trends* in the years stated, the paper also reports static cross-sectional data from later years.

translated into projected morbidity and mortality rates (at 95% confidence intervals) such that in the U.S. one would have projected that if at age 20 a young man considered himself “gay” then the odds that he would be either HIV+ or dead of AIDS at age 30 would be just under 15% and in New Zealand his odds would be just under 4%. One would have turned out to be mistaken in these odds, since in both cases they turn out to have been severe underestimates. None - theless, given the actual instability of homosexual identity, wouldn't it rather make greater ethical sense *to emphasize that fact rather than to misrepresent it as the opposite*, as has universally been done instead? In any event, in 1995 the median age of death for an HIV+ individual in the U.S. was 38; in New Zealand, the same. In Italy it is 29 for men and 28 for women. Of additional note is the fact that an independent study performed in 2003 in New Zealand—a country already remarked upon as having an especially open -minded attitude toward homosexuality—provides evidence of a “*link between increasing degrees of same-sex attraction and higher risks of self-harm in both men and women.*” Men who identified themselves as homosexual were 3.1 times more likely and women 2.9 times more likely to have suicidal ideation than were those who did not.³⁸

2. Australia Study³⁹: Homosexuality as a Phenomenon of the Epoch

- Nearly 7,500 Australian adults
- Three 5-year wide cohorts at ages 20, 40, 60
- Large, consistent declines in homosexual/bisexual identification for women but not (less marked in) men
- Consistent with other Australian studies
- Inconsistent with other non-Australian studies

This study has a number of subtle implications when understood in the context of the other studies to which its authors compare it, namely (a) other studies on age -cohort variation in sexual orientation conducted in Australia that it confirms and (b) non -Australian studies on age cohort variation in sexual orientation from which it differs.

To make a point, let me first paraphrase their findings, and then quote the research exactly: In their large study, the authors discovered a marked decline with age in homosexual/bisexual identification among women in Australia, consistent with the direct citations of the results from other non -Australian studies, for both women and men. However, the Australian researchers pointedly *do not* express their results so simply as I just have. They add a rather strikingly different -*sounding* conclusion (I emphasize “sounding”). They do so because their results were apparently found to be true with respect to women only.

I have paraphrased their findings before quoting them directly for two independent reasons. First, merely as a general reminder of *how much critical information can be deliberately added, removed or distorted by an entirely accurate and truthful paraphrase*; second (but more importantly), to draw attention to (at least) *one specific* environmental influence on sexual orientation that is necessarily implied by this differential finding (decline among women, but not men), a specificity that is obfuscated in my otherwise correct paraphrase. I will explain how the specificity involved is likely to be “culture” (what the New Zealand researchers deemed “demographics”). Such terms must take into account not only the *place* one lives (and its effect on a person), but the *epoch* (and its effect) as well. Not only do people age over time, the era ages as well, and people age within an aging era.

³⁸ K. Skegg et al., Sexual Orientation and Self-Harm in Men and Women, *Am J Psychiatry* 2003; 160:541–546

³⁹ Jorm, AF, Dear, KB, Rogers, B, Christensen, H. Cohort difference in sexual orientation: results from a large age-stratified population sample. *Gerontology*. 2003 Nov-Dec; 49(6)392-5

This complicates analysis considerably, for it is difficult enough to study a poorly -defined behavioral trait that is static in a cohort of individuals. It is more difficult to study a poorly -defined behavioral trait in a cohort of individuals that mutates as they age, and yet more difficult when that mutation is variable, inconsistent and itself hard to define. It is then extremely hard to study that trait when the aging cohort is embedded in various location -dependent cultures that clearly have a large—indeed statistically the largest—effect on the age-correlated prevalence of the trait, such that location itself influences prevalence. This was shown to be the case when the erstwhile “gay gene” researcher Dean Hamer was pressed by his fellow scientists and forced to admit, contrary to his sworn testimony in the Colorado “Proposition 2” case that ultimately led to *Romer*, “The relationships among genes and environment probably have a somewhat different effect on someone in Salt Lake City than if that person were growing up in New York City.”⁴⁰ Matters become extraordinarily tricky when it is found that *only in certain location-dependent cultures, there is a sharp sex-related partitioning* such that for half the individuals in the cohort, one thing is true, and for the other it isn’t. Thus, in this Australia study, the authors’ findings *and conclusions* in their own words are:

A strong age cohort difference was found for women, with younger women more frequently reporting a homosexual or bisexual identification. By contrast, no age cohort difference was found for men...These findings suggest that a heterosexual orientation may have become less common in younger cohorts of Australian women. This finding is consistent with data from other recent studies.

If one hasn’t actually tracked a specific group of individuals over time, checking periodically on their sexual orientations, but, instead, assessed people of different ages, taking a snapshot in time, then indeed, one can legitimately argue that any changes that correlate with age might have nothing to do with individual development, *but instead are caused by the changing culture*. Thus, the process of mutability over time that the authors implicitly point to is taking place not so much in the individual as collectively; in this view, “sexual orientation” is not so much a true characteristic of an individual (like height, weight, sex, or even stable, measurable personality traits – recall Laumann et al.’s warning that homosexuality is *neither* easily measurable *nor* stable), but rather a collective trend or fashion that waxes or wanes with the times.⁴¹

⁴⁰ As quoted in an interview by C. Mann, “Genes and Behavior,” *Science* 264 (1994), pp. 1686–89.

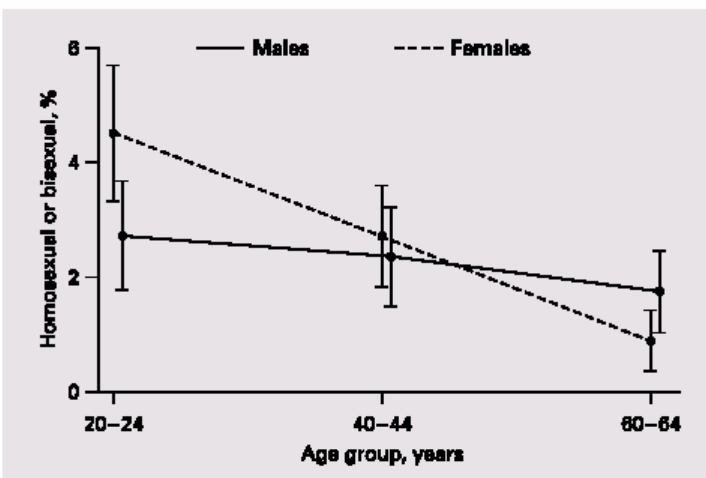


Fig. 1. Percent of each age group describing themselves as homosexual or bisexual. Error bars are 95% confidence intervals.

Common sense tells us that there is nothing to prevent both processes from occurring at the same time and affecting each other, especially since “the culture” is simply another way of talking about what many interpenetrating cohorts composed of people do. But until such time as a great many carefully designed explicit longitudinal studies are performed, we will be unable to tease out the exact contribution of personal maturation from external cultural fashion in the dramatic decrease over time that is universally confirmed in the prevalence of homosexuality.

Conclusions

In both the *Romer* and *Lawrence* briefs, the mental health guilds take great pains to emphasize that homosexuality is an early-established, fixed and stable condition—thus suitable for suspect class status. The authors buttress this claim by footnoting a selected pool of authorities whom they rarely directly quote, and by citing themselves in other places where they have offered the same opinions in different words (and even when their own findings are contradictory). Additionally, they refer to the study of Laumann et al. whose work they completely misrepresent. They do this by extracting portions of his sentences so that his meaning is turned into its opposite, by citing page numbers not relevant to the statements they make, and primarily by simply not reporting the vast bulk of the Laumann study, whose conclusions in every area with respect to homosexuality are explicitly opposite to what the authors hold, and also opposite to the formal positions of the mental health guilds with respect to the stability of homosexuality and to its very definition and *definability*.

Furthermore, the briefs’ authors completely ignore a very large body of follow-up research that has been conducted since the Laumann study was published, specifically to confirm or disconfirm its findings. This follow-up research has not only repeatedly confirmed the essential findings of the Laumann study, including its conclusion that homosexuality is absolutely *not* a stable trait, but deepened and extended those findings, providing more specific understandings as to the nature and dynamism of that instability. In particular, while a scientist will always approach any statement as a hypothesis and never an absolute truth, to date all the available evidence—the same evidence carefully ignored by the mental health guilds—confirms a view of “sexual orientation” as a trait whose instability has a direction, namely, it tends in general toward normative heterosexuality over the course of life. Furthermore, the extent to which it does or does not do so, shows clear evidence of being directly influenced by “demographics,” and “the environment,” even the era one lives in—and no evidence of being directly influenced by genes. To the extent one may be specific about the nature of this “environment,” all evidence points towards early and continuing sexual activity and later cultural

The above figure is taken from page 393 of the article. The authors report that the decline for males has a $p=.12$ which is not statistically significant ($p<=.05$ is the conventional cutoff that is used). To be scrupulous, I have reported everything exactly as the authors have, and it is important to make the point that it is impossible wholly to disaggregate “collective mutability” effects from “individual mutability.” However, to whatever weight is added to the “collective mutability” component by the possibility that male homosexual identification remained fixed is weakened by the fact that it is far more likely that male homosexual identification did not remain fixed than that it did. This weakening was simply not strong enough—after age twenty—to “pass the statistical bar” even though, as the authors do note, the trend is clear. Of greater importance, however, is the fact that in all other studies elsewhere, e.g., in the United States, the greatest drop in male homosexual and bisexual identification occurs *before age eighteen*. For instance, the Laumann study (p. 296 *passim*) discusses a drop from 10% of men, possibly well more than that, with some form of homosexual-related characteristic before age eighteen, to 3.8% of men who have had sex with men before age eighteen, but never again after, to 2.8% with a final homosexual identification. Compare to the above chart that only begins at age twenty. Furthermore, it would take very little reduction in error in a larger cohort for the male trend to achieve statistical significance. In any interpretation, additional research of so complex, dynamic and multivariate a subject is clearly warranted prior to major overhauling of fundamental social structures.

and demographic reinforcement, even education.

The mental health guilds in their many public pronouncements about “reparative therapy,” and the authors of the brief in their selective use of references and in their discussion of change exclusively in a therapeutic setting, appear to want nothing more than to draw the public and the Court into an esoteric debate between which group of psychotherapists is right. But the reality is that since 1994—for ten years—there has existed solid epidemiologic evidence, now extensively confirmed and reconfirmed, that *the most common natural course for a young person who develops a “homosexual identity” is for it to spontaneously disappear unless that process is discouraged or interfered with by extraneous factors.* We may now say with increasing confidence that those “extraneous” factors are primarily the “social milieu” in which the person finds himself. Ironically, this “social milieu” is the family setting and culture being created by, inter alia, the decisions enforced by the Justices of the Supreme Court of the United States acting in coordination with the misrepresentation of scientific evidence provided to it by the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers.

“It's a matter of fashion. And fashions keep changing.”

—John Spiegel, M.D.

on the diagnosis of homosexuality
Omni magazine, p. 30, November, 1986