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COMING OUT FOR KIDS: RECOGNIZING, RESPECTING, AND REPRESENTING LGBTQ YOUTH

Barbara Fedders*

I. INTRODUCTION

While they may have kept them secret, adolescents have always had same-sex romantic and sexual relationships. They have always transgressed gender norms. And beginning thirty years ago,[1] increasing numbers of young people have "come out"[2] —at ever younger ages[3]—as lesbian, gay, bisexual, transgender, or queer. Still others question their sexual orientation and gender identity. Yet even the most thoughtful and conscientious child advocates traditionally have not acknowledged these young people or addressed the unique stressors they face.[4]

Building on the pioneering advocacy of attorneys from Legal Services for Children, the National Center for Lesbian Rights, and the Lambda Legal Defense Fund, I seek in this article to respond to that omission.[5] I argue here

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* Clinical instructor at the Harvard Law School Criminal Justice Institute. I wish to thank Randy Hertz, Shelley Mains, Jody Marksamer, Peter Wagner, Angela Wessels, and especially Jennifer Bills for their helpful suggestions and support.

[1] The first-ever empirical study of gay adolescents was published in 1972. *See* RITCH SAVIN-WILLIAMS, THE NEW GAY TEENAGER 50, 52 (2005).

[2] I mean for this phrase, here and in the title, to connote an open declaration of self-identification.

[3] *See, e.g.*, CAITLIN RYAN & DONNA FUTTERMAN, LESBIAN AND GAY YOUTH: CARE AND COUNSELING 10 1998 (summarizing studies showing that the average age of self-identification as lesbian or gay has dropped); Stacey D'Erasmo, *Getting Out Early: They're Here. They're Queer. They're Thirteen*, NERVE, Aug.-Sept. 2000, at 100 *available at* https://www.nerve.com/Dispatches/Derasmo/gettingOut/; Laura Kiritsy, *Young Gay Activists Making a Difference*, BAY WINDOWS ONLINE, Nov. 3, 2005, http://www.baywindows.com/media/paper328/news/2002/07/11/LocalNews/Young.Gay.Activists.Making.A.Difference-258108.shtml (last visited Jan. 13, 2006) (quoting lesbian organizer Sue Hyde: young people are coming out earlier and coming out stronger and more proudly, so to speak, certainly than almost everyone I know in my own age bracket, in my own generational slice of the community").

[4] *See, e.g.*, ABA & NAT'L BAR ASS'N, JUSTICE BY GENDER: THE LACK OF APPROPRIATE PREVENTION, DIVERSION AND TREATMENT ALTERNATIVES FOR GIRLS IN THE JUSTICE SYSTEM (2001) (omitting any reference to sexual orientation or gender identity in report arguing for "special cognizance of those gender-specific issues surrounding girls"); *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 1301 (1996) (calling for further study of ways in which differences in race, ethnicity, culture and class may affect lawyer-client communications but making no mention of differences in sexual orientation or gender identity).

[5] My thinking on these issues has been particularly influenced by Shannan Wilber of Legal Services for Children and Jody Marksamer of the National Center for Lesbian Rights. *See*

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that zealous advocacy for children and adolescents mandates an acknowledgement of[6] and explicit engagement with the realities of the lives of young people who publicly identify as lesbian, gay, bisexual, transgender, queer, or questioning ("LGBTQ"), as well as those whose sexual behaviors and attractions, and/or feelings about their gender identity, place them outside the heterosexual and gender-conforming norm, no matter how they publicly identify. Specifically, lawyers should acquire basic information about these young people; understand the ways in which they are uniquely vulnerable to abuse, violence, and discrimination; and support them through sensitive advocacy strategies.

Part One addresses what might be thought of as the threshold issues of this topic: How do we know which young people are LGBTQ, and what causes them to be that way? I note the lack of consensus among experts and youth on how to define these terms. This Part then discusses the fact that fewer young people embrace LGBTQ identities than engage in associated behaviors and suggests reasons for this phenomenon. I conclude that we lawyers cannot always know with certainty which clients are lesbian, gay, bisexual, transgender, queer or questioning. This Part therefore urges lawyers to focus less on ferreting out the LGBTQ clients for special treatment—an impossible task—than on adopting practice strategies sensitive to and supportive of youth of all sexual orientations and gender identities.

Part One then considers the debate over what causes people to be gay, lesbian, bisexual, or transgender, which has loomed large in the public imagination. I trace the development of the various theories of etiology and the implications of each. This Part then steps back and reflects on the nature and effects of the debate about the causes of alternative sexual identity and considers why some groups and individuals appear to be fixated on determining the root of minority, non-mainstream sexual orientation and gender identity. I conclude that, although there may be a variety of effects at work, at least some of these efforts appear to stem from an underlying belief that being lesbian, gay, bisexual or transgender is bad or wrong. I suggest in this Part that this underlying pejorative message is apparent to the young people themselves, and that accordingly even the very act of engaging in this debate can be harmful to LGBTQ youth.

Part Two fleshes out the concrete manifestations of negative and hostile attitudes toward homosexual and transgender identities, describing the

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SHANNAN WILBER, THE MODEL STANDARDS PROJECT: CREATING INCLUSIVE SYSTEMS FOR LGBTQ YOUTH IN OUT-OF-HOME CARE (on file with the author); JODY MARKSAMER & DYLAN VADE, TRANSGENDER AND GENDER NON-CONFORMING YOUTH RECOMMENDATIONS FOR SCHOOLS, http://www.hawaii.edu/hivandaids/Transgender_and_Gender_Nonconforming_Youth_Recommendations_for_Schools.pdf; *see also* Jenny Casciano et al., *Client-Centered Advocacy on Behalf of At-Risk LGBTQ Youth*, 26 N.Y.U. REV. L. & SOC. CHANGE 221, 231 (2001); Colleen A. Sullivan, *Kids, Courts, and Queers: Lesbian and Gay Youth in the Juvenile Justice and Foster Care Systems*, 6 L. & SEXUALITY 31 (1996); AM. COUNCIL OF CHIEF DEFENDERS, NAT'L JUVENILE DEFENDER CTR., TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS (2005), http://www.njdc.info/pdf/10_Principles.pdf.

[6] For an argument that adults deny the existence of—or ignore—lesbian and gay youth, see Teemu Ruskola, *Minor Disregard: The Legal Construction of the Fantasy that Gay and Lesbian Youth Do Not Exist*, 8 YALE J.L. & FEMINISM 269, 323 (1996).

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problems LGBTQ youth most typically face at home and in school. I examine the ways in which the adaptive—if sometimes self-destructive—behaviors engaged in by LGBTQ youth in the face of conflict and stress render them vulnerable to involvement in the child welfare and juvenile justice systems. I then focus on their unique struggles in those systems.

In Part Three, I argue that lawyers must overcome any personal anxiety we may have about LGBTQ youth and move beyond ambivalence and mere tolerance toward genuine acceptance and respect. I offer guidelines for effective and zealous representation of LGBTQ youth.

II. THE ABCs OF LGBTQ

A. *Definitions*

How do we know that a young person is lesbian, gay, bisexual, transgender, queer, or questioning? It is often impossible to be certain. While some young people will reveal to lawyers their sexual orientation[7] or gender identity,[8] many will not, leaving us to make educated guesses. Lawyers would do well, therefore, to focus less on determining who is, and who is not, LGBTQ than on developing sensitive advocacy strategies.

B. *Sexual Orientation*

In considering sexual orientation, we might ask how we would categorize a thirteen-year-old girl who has persistent crushes on and fantasies about her girl friends, doesn't like boys, and is sexually inexperienced. Is she a lesbian? What of a sixteen-year-old girl who is romantically—but secretly—involved with another girl, while her friends think she wants to date boys? Is she a lesbian, bisexual, straight, or just questioning? What about a seventeen-year-old boy who has oral sex with a football teammate but was elected prom king, with his girlfriend by his side? Or an eighteen-year-old who self-identifies as a lesbian but who unintentionally becomes pregnant?[9]

Sexuality researchers do not agree about whether sexual attraction, sexual behavior, or self-identification is most relevant in assessing sexual orientation. Adolescents have their own viewpoints, which do not necessarily coincide with those of any researchers.[10] When asked in one study for their opinions on

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[7] In this article, I use "sexual orientation" to refer to one's understanding of his or her emotional and sexual attractions and behaviors: specifically, whether one is primarily attracted to people of the same biological sex (gay or lesbian), of the opposite sex (straight), or to both sexes equally (bisexual).

[8] In this article, I use "gender identity" to refer to one's understanding of oneself as being either male, female, a combination of both, or neither. This identity may or may not be consistent with the sex that one has been assigned at birth. Gender identity is typically understood as being separate from sexual orientation.

[9] Girls who self-identify as lesbian, bisexual or questioning have been found to be at increased risk of unintended pregnancy as compared with heterosexual peers. Elizabeth M. Saewyc et al., *Sexual Intercourse, Abuse and Pregnancy Among Adolescent Women: Does Sexual Orientation Make a Difference?*, FAM. PLANNING PERSP., May-June 1999, at 127, 127-131, http://www.guttmacher.org/pubs/journals/3112799.html.

[10] *See, e.g.*, SAVIN-WILLIAMS, *supra* note 1, at 37 ("Estimating a single number for the prevalence of homosexuality is a futile exercise because it presupposes assumptions that are

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which factor is most relevant, young people responded that attraction to someone of a particular gender, and a desire to be in a relationship with that person, were more significant in determining sexual orientation than sexual behavior or self-labeling.[11] Owing in part to the absence of agreement on which are the most salient factors in measuring sexual orientation, studies of the numbers of lesbian and gay youth reveal results from as low as one percent to as many as twenty percent of young people.[12] Typically, the number of young people who identify as lesbian, gay or bisexual is lower than the number of young people who report same-sex sexual desire and experiences.[13]

This discrepancy exists for several reasons. Young people may be unsure of whether their same-sex desires and sexual behaviors are indicative of a fixed identity as opposed to a temporary or experimental phase.[14] They may be actively fighting their same-sex desires and in denial about their sexual behavior. Alternatively, they may be sure that they are sexually oriented toward people of the same sex but nevertheless feel culturally alienated from the terms "gay," "lesbian," and "bisexual."[15] They may also feel that identifying as gay, lesbian, or bisexual does not adequately account for the fact that they understand themselves, relate to the world, and experience oppression on the basis of a multiplicity of identities, including their race, class, age, ethnicity or relig-

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patently false: that homosexuality is a uniform attribute across individuals, that it is stable over time, and that it can be easily measured.") (citation omitted); Elizabeth Saewyc et al., *Measuring Sexual Orientation in Adolescent Health Surveys: Evaluation of Eight School-Based Surveys*, 35 J. ADOLESCENT HEALTH 1 (2004), *available at* http://www.mcs.bc.ca/SaewycMeasOrient.pdf. The desire for clearly delineated categories is a peculiarly contemporary obsession; only in the last one hundred years or so has sexual behavior constituted a discrete identity. *See, e.g.*, JOHN D'EMILIO, MAKING TROUBLE: ESSAYS ON GAY HISTORY, POLITICS AND THE UNIVERSITY (1992); MICHEL FOUCAULT, THE HISTORY OF SEXUALITY (1978).

[11] SAVIN-WILLIAMS, *supra* note 1, at 26.

[12] In Vermont, a 2003 study revealed that three percent of the more than 8000 eighth- through twelfth-grade respondents reported engaging in "same-sex sexual intercourse." VT. DEP'T OF HEALTH DIV. OF ALCOHOL AND DRUG ABUSE PROGRAMS AND DEP'T OF EDUC. COMPREHENSIVE SCH. HEALTH PROGRAMS, THE 2003 VERMONT YOUTH RISK BEHAVIOR SURVEY, http://www.healthyvermonters.info/adap/pubs/2003/yrbs2003report.pdf. In the 2003 Massachusetts Youth Risk Behavior Survey, four percent of the 3,624 ninth- through twelfth-grade youth surveyed described themselves as gay, lesbian, or bisexual, and six percent described themselves as gay, lesbian or bisexual and/or or reported same-sex sexual contact. MASS. DEP'T OF EDUC., 2003 YOUTH RISK BEHAVIOR SURVEY RESULTS (2004), http://www.doe.mass.edu/hssss/yrbs/03/results.pdf. The 1991 National American Indian Adolescent Health Survey found that, of more than 13,000 seventh- through twelfth-grade respondents, 1.6 % identified as gay, lesbian, or bisexual; 1.3 % reported a same-sex sexual experience, and 4.4 % reported same-sex attraction. THE SAFE SCH. COAL. OF WASH., EIGHTY-THREE THOUSAND YOUTH: SELECTED FINDINGS OF EIGHT POPULATION-BASED STUDIES (1999), http://www.safeschoolscoalition.org/83000youth.pdf. A long-time researcher of gay/lesbian youth estimates that between 15 and 20 percent of all adolescents have "some degree of same-sex orientation." SAVIN-WILLIAMS, *supra* note 1, at 44. The actual numbers, of course, are only valid if one accepts the premise of these studies: namely, that young people are completely honest when asked about some of the most intimate and private matters about which it is possible to imagine being asked.

[13] *See supra* note 12.

[14] RYAN & FUTTERMAN, *supra* note 3, at 9.

[15] *See* SAVIN-WILLIAMS, *supra* note 1, at 215 (notion that a "gay identity" remains constant in all contexts is distinctly Western idea).

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ion.[16] Finally, they may want to claim a gay, lesbian, or bisexual identity but fear rejection and discrimination if they do so.

C. *Gender Identity*

Universal agreement on what "transgender" means is similarly lacking. Most would describe as transgender a fourteen-year-old whose biology led doctors to declare him a boy at birth, but who insists on wearing dresses; refuses to use masculine pronouns to self-describe; wants to be and identifies as a girl; and plans to take medication and undergo surgical procedures as soon as medically possible in order to more closely physically resemble a biological female. Less clear is the status of a fifteen-year-old who was born with female genitalia, has always looked, dressed, and acted "like a boy," who doesn't want to take hormones or have surgery but who doesn't feel comfortable as a girl. Is she a girl because of her female genitalia? Do the appearance, clothes and behavior traditionally associated with maleness make him a boy? Is s/he someone who is simply gender non-conforming? Or is this person transgender, either because her gender doesn't match her physiological characteristics, because s/he feels literally between genders, or because s/he feels himself/herself to be a gender other than male or female?

Consensus on this question is elusive. Nevertheless, transgender activists, feminists, and gender-studies scholars would insist that the fifteen-year-old be allowed to claim whatever gender identity—girl, boy, transgender, or some other gender entirely—feels most comfortable.[17] They would urge us further, as we seek a label for this fifteen-year-old, to critique what they view as a polarized and oppressive system of gender, which creates an unreasonably narrow range of acceptable public expressions of "male" and "female"[18]—to consider the possibility of a gender that is neither exclusively "male" nor "female," but some of both, or something else—such as a third gender—entirely.[19] They would encourage us to re-assess the fact that we traditionally have vested exclusive decision-making power about a person's gender in doctors, who

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[16] *See, e.g.*, Audre Lorde, *Age, Race, Class, and Sex: Women Redefining Difference*, *in* SISTER OUTSIDER: ESSAYS AND SPEECHES 114, 120 (1984) ("As a Black lesbian feminist comfortable with the many different ingredients of my identity, and a woman committed to racial and sexual freedom from oppression, I find I am constantly being encouraged to pluck out some one aspect of myself and present this as the meaningful whole, eclipsing or denying the other parts of self."); Francisco Valdes, *Queer Margins, Queer Ethics: A Call to Account for Race and Ethnicity in the Law, Theory and Politics of "Sexual Orientation"*, 48 HASTINGS L.J. 1293, 1338-40 (1997) (urging scholars to analyze the relationship between racism, sexism and heterosexism as one of mutually-reinforcing oppressions).

[17] Dylan Vade, *Expanding Gender and Expanding the Law: Toward a Social and Legal Conceptualization of Gender That Is More Inclusive of Transgender People*, 11 MICH. J. GENDER & L. 253, 287 (2005) ("Gender should be self-determined, period.").

[18] *See, e.g.*, RIKI ANNE WILCHINS, READ MY LIPS: SEXUAL SUBVERSION AND THE END OF GENDER 67 (1997) ("I'd also like us to investigate the means by which categories like *transgender* are produced, maintained, and inflicted . . . . It is only within a system of gender oppression that transgender exists in the first place.") (emphasis added).

[19] *See, e.g.*, Unitarian Universalist Association, Office of Bisexual, Gay, Lesbian, and Transgender Concerns, *Transgender 102*, http://www.uua.org/obgltc/resource/tg102.html (last visited Feb. 12, 2006).

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decide a person is "male" or "female" based entirely on examination of genitalia at birth.[20]

Most doctors would likely describe this person as transgender, having been assigned the sex "female" at birth but now apparently identifying most closely with a male gender.[21] Some legal scholars interpret "transgender" more narrowly, including in the category only individuals who are uncomfortable with their outward appearances and have a strong desire to medically and/or surgically alter them.[22] Others interpret the term more broadly, "in its most inclusive sense, as an umbrella term encompassing the following: pre-operative, post-operative and non-operative transsexual people; cross-dressers; feminine men and masculine women; intersexed persons; and more generally, anyone whose gender identity or expression differs from conventional expectations of masculinity or femininity."[23]

To date no one has completed a study assessing the number of transgender youth.[24]

D. *Making it Queer*

For many people who use the term to describe themselves, "queer" is intended to be a term inclusive enough to overcome the thorny theoretical problems surrounding the labels of lesbian, gay, bisexual, and transgender. Beginning only in the last twenty years, a growing number of activists and scholars have used "queer" as an all-encompassing term to describe sexual ori-

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[20] *See, e.g.*, Vade, *supra* note 17, at 281 ("The baby's genitalia are measured by a ruler, and different doctors use different rulers. If the clitoris/penis is below a certain length, it is a clitoris and the child a girl; if the clitoris/penis it [sic] is above a certain length, it is a penis and the child a boy. If the clitoris/penis falls between the two marks, the child is called intersex, a medical emergency [which] must be 'corrected' immediately, 'corrected' with a knife, for the child's own good."); *see also* Katherine Franke, *The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex From Gender*, 144 U. PA. L. REV. 1, 52 (1995) (providing examples of how the custom of allowing the medical attendant at a birth to declare a baby's sex deprives transgender people of right to determine their own gender). An estimated 1 in 100 babies are born with reproductive or sexual anatomy that does not conform to standard definitions of male and female. Doctors quite literally assign gender, through hormone treatments and/or genital surgeries, to a portion of these babies each year. *See* Intersex Society of North America, *Frequently Asked Questions*, http://www.isna.org/faq/frequency (last visited Feb. 12, 2006); see also ANNE FAUSTO-STERLING, SEXING THE BODY: GENDER POLITICS AND THE CONSTRUCTION OF SEXUALITY (2000).

[21] Barbara L. Frankowski, *Sexual Orientation and Adolescents*, 113 PEDIATRICS 1827, 1827-32 (2004), *available at* http://pediatrics.aappublications.org/cgi/content/full/113/6/1827 ("Transgendered individuals feel themselves to be of a gender different from their biological sex; their gender identity does not match their anatomic or chromosomal sex.").

[22] *See, e.g.*, Victoria Neilson, *Uncharted Territory: Choosing an Effective Approach in Transgender-Based Asylum Claims*, 32 FORDHAM URB. L.J. 265, 289 n.1 (2005) (defining "transgender" as "those 'who desire to change their gender, are in the process of changing their gender, or have completed the process of changing their gender'") (citation omitted).

[23] Paisley Currah & Shannon Minter, *Unprincipled Exclusions: The Struggle to Achieve Judicial and Legislative Equality for Transgender People*, 7 WM. & MARY J. WOMEN & L. 37, 37 n.1 (2000).

[24] HUMAN RIGHTS WATCH, HATRED IN THE HALLWAYS: VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER STUDENTS IN U.S. SCHOOLS (2001), http://www.hrw.org/reports/2001/uslgbt/toc.htm.

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entation, gender identity, and personal politics.[25] They mean for the term to constitute a celebratory reclaiming of a historic epithet,[26] as well as a theoretical move. Queer theorists reject the view that there is a discrete group of people who are, at their essence, gay or lesbian; dispute the idea that an unchanging homosexual or heterosexual identity has existed over time and in every culture; argue that sexuality and gender are social constructs instead of biological givens; and suggest that these categories are more fluid than the straight/gay divide would allow.[27] Some people who are only attracted to, and intimate with, members of the opposite sex even identify as queer, because they reject the dichotomous categories of "straight" and "gay." Many of those who self-identify as queer are drawn to the term because "it's the one that leaves the most for discovery . . . . It's not really limiting. I can date a woman or a man. I can date someone who's transgender."[28]

How do we know that a young person is lesbian, gay, bisexual, transgender, queer, or questioning? We don't know, not with certainty. Lawyers for children and adolescents will represent all of the following: young clients who are open and out as LGBTQ in all facets of their lives; young people who experience same-sex desire, engage in same-sex sexual behaviors and diverge from, defy, and reject gender norms, but do not personally identify as LGBTQ; young people who identify as LGBTQ but do not disclose those identities to their lawyers; young people who come out as LGBTQ to their lawyers but ask that they not reveal those identities to anyone else; young people who are not LGBTQ but are perceived to be so by their peers, families, or communities; and young people who are questioning their sexual orientation or gender identity. As elaborated in Part Three, *infra,* since *any* of their clients may be experiencing the stressors typically faced by LGBTQ young people, good lawyers should focus less on ferreting out clients for special treatment than on practicing in such a way that is sensitive and supportive to clients of *all* sexual orientations and gender identities.

E. Causation

The causation question is as confounding and complex as the definitional one. What makes people gay, lesbian, bisexual or transgender—nature, nurture, some of each, or something else entirely? Doctors, lawyers, activists, and LGBTQ individuals disagree passionately on the answers to this question. The intense interest in causation, I argue below, stems at least in part from the widespread underlying belief that being lesbian, gay, bisexual or transgender is bad. I suggest in this Part that this underlying pejorative message is apparent to

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[25] A useful history of the development of queer theory, politics and identities is contained in Brent Pickett, *Homosexuality*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2002), *available at* http://plato.stanford.edu/archives/fall2002/entries/homosexuality.

[26] *Id.*

[27] *See id.*; *see also* Janet Halley, *Sexuality Harassment, in* LEFT LEGALISM/LEFT CRITIQUE 80 (Wendy Brown & Janet Halley eds., 2002).

[28] Rona Marech, *Nuances of Gay Identities Reflected in New Language: "Homosexual" is Passé in a "Boi's" Life*, SAN FRANCISCO CHRON., Feb. 8, 2004, *available at* http://sfgate.com/cgi-bin/article.cgi?f=/C/a/2004/02/08/MNGKO4RNJP1.DTL&hw=Homosexual$+Pass$+Bois+Life&sn=009&sc=312.

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young people themselves. Accordingly, even the very act of engaging in this debate can be harmful to LGBTQ youth.

1. *Etiology of Sexual Orientation*

The mainstream mental-health establishment advises that while the exact cause is unknown, a person's sexual orientation is likely formed through an interaction between environmental and biological factors.[29] In 1973, the American Psychiatric Association abandoned its earlier position that a gay or lesbian sexual orientation results from an underlying mental illness, removing homosexuality from the Diagnostic and Statistical Manual of Mental Disorders.[30] The current position of mainstream mental-health organizations is that psychological distress lesbian, gay and bisexual youth and adults experience relative to heterosexuals arises not because homosexuality is psychopathological, but because a social stigma still attaches to lesbian, gay, and bisexual identities.[31]

Partly in response to this stigma, many gay men and lesbians and their allies have seized on studies reporting a difference in the hypothalamus of gay men—a "gay brain"[32]—and a similar genetic marker on the X chromosome of gay brothers—a "gay gene"[33]—to argue that gay and lesbian people are biologically different from heterosexuals.[34] While these studies are inconclusive,[35]

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[29] *See* Frankowski, *supra* note 21 ("Sexual orientation probably is not determined by any one factor but by a combination of genetic, hormonal, and environmental influences."); APA Online, *Answers to Your Questions About Sexual Orientation and Homosexuality*, http://www.apa.org/pubinfo/answers.html (last visited Feb. 12, 2006); American Psychiatric Association, *Gay, Lesbian and Bisexual Issues*, http://healthyminds.org/glbissues.cfm (last visited Feb. 12, 2006) ("No one knows what causes heterosexuality, homosexuality, or bisexuality.").

[30] The APA deleted homosexuality from the DSM after extensive internal debate, prompted by studies showing no significant differences in the psychological functioning of adult homosexuals relative to heterosexuals. *See, e.g.*, Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, J. PROJECTIVE TECHS. 18 (1957), *cited in* APA Online, Guidelines for Psychotherapy with Lesbian, Gay and Bisexual Clients, http://www.apa.org/pi/lgbc/guidelines.html (last visited Feb. 12, 2006). Gay and lesbian activists who recognized the link between the classification of homosexuality as a disorder and their own oppression had lobbied intensely for this move. ELISE CHENIER, AVERSION THERAPY, GLBTQ: AN ENCYCLOPEDIA OF GAY, LESBIAN, BISEXUAL, TRANSGENDER AND QUEER CULTURE, http://www.glbtq.com/social-sciences/aversion_therapy.html.

[31] *See, e.g.*, AM. PSYCHOLOGICAL ASS'N, PROMOTION AND PROTECTION OF HUMAN RIGHTS, WRITTEN STATEMENT SUBMITTED TO THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS (2004), http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.2004.NGO.259.En?Opendocument.

[32] Simon LeVay, *A Difference in Hypothalamic Structure Between Homosexual and Heterosexual Men*, 253 SCIENCE 1034 (1991).

[33] Dean Hamer et al., *A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation*, 26 SCIENCE 320 (1993).

[34] For a good overview of recent scientific research on a biological basis for homosexuality, see Neil Swidey, *What Makes People Gay*? BOSTON GLOBE, Aug. 14, 2005, *available at* http://www.boston.com/news/globe/magazine/articles/2005/08/14/what_makes_people_gay/.

[35] *See, e.g.*, Frankowski, *supra* note 17 (noting "controversy and uncertainty" about genesis of sexual orientation); Matthew Brelis, *The Fading Gay Gene*, BOSTON GLOBE, Feb. 7, 1999, at C1 (citing Dean Hamer's admission that "there is a lot more than just genes going on," after extensive criticism that the link between a gene and the complexity of sexual behavior was overly simplistic); *"Gay Gene" Theory Is Second-Guessed: New Study Finds No*

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the many proponents of the biological view believe that it best explains their own sexual identities.[36] They also recognize the strategic value of the biological view. For if lesbian and gay people are born that way—if they literally can't help being gay—they believe they can more convincingly make the case that it is anti-gay discrimination, rather than homosexuality itself, that is morally wrong.[37] Gay and lesbian civil rights lawyers could also use evidence of the immutability of homosexuality to make more persuasive legal claims under the Equal Protection Clause of the U.S. Constitution.[38]

Other LGBTQ people oppose the search for proof of a biological basis of homosexuality for several reasons. First, contemporary technological advances make real the possibility that a gay gene, if found, could lead toward a new quest to prevent, or cure, homosexuality through selective abortion, genetic

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Maternal Link, NEWSDAY, Apr. 27, 1999, at C3; Council for Responsible Genetics, *Do Genes Determine Whether We Are Lesbian, Gay, Bisexual, or Straight?*, http://www.genewatch.org/programs/privacy/gene-sexuality.html (last visited Feb. 12, 2006) (critiquing studies by LeVay and Hamer). Interest in finding a biological basis for homosexuality persists. The National Institutes of Health is currently funding a five-year, $2.5 million genetic study of gay brothers. The Gay Gene: On-going Studies, http://members.aol.com/gaygene/pages/studies.htm (last visited Feb. 12, 2006).

[36] *See* Swidey, *supra* note 34 (quoting a gay Massachusetts man: "I think it's important for the public—especially the religious right—to know it's not a choice for some people . . . I feel I was born this way"). In one of the presidential debates, Senator John Kerry expressed this view when referencing Mary Cheney, daughter of the vice-president: "I think if you were to talk to Dick Cheney's daughter, who is a lesbian, she would tell you that she's being who she was, she's being who she was born as," Kerry said, "I think if you talk to anybody, it's not choice. I've met people who struggled with this for years, people who were in a marriage because they were living a sort of convention, and they struggled with it." Ex-Gay Watch: News and Analysis of Exgay Politics, Ex-gays Claim Kerry 'Born Gay' Remark Insults Them, http://www.exgaywatch.com/blog/archives/2004/10/exgays_claim_ke.html (last visited Feb. 12, 2006). *But see* Sheryl Swoopes, as told by LZ Granderson, *Outside the Arc*, ESPN THE MAGAZINE, Oct. 26, 2005, *available at* http://sports.espn.go.com/wnba/news/story?id=2204322 (quoting Houston Comets basketball standout Sheryl Swoopes upon her coming out as a lesbian: "I didn't always know I was gay. I honestly didn't. Do I think I was born this way? No. And that's probably confusing to some, because I know a lot of people believe that you are.").

[37] *See, e.g.*, Neela Banerjee, *Methodist Court Removes Openly Lesbian Minister*, N.Y. TIMES, Nov. 1, 2005, *available at* http://www.nytimes.com/2005/11/01/national/01methodists.html (discussing efforts by California-Nevada conference of the United Methodist Church to discourage bias and discrimination against gay men and lesbians in the Church by persuading the Church's Judicial Council to rule that sexual orientation is innate); Jeff Walsh, *Queer Science: Is it in Your Genes?*, OASIS, Apr. 1997, *available at* http://www.oasismag.com/Issues/9705/cover.html (quoting gene researcher Simon LeVay: "There is no question that people who think sexuality is inborn are, in general, much better disposed towards gay people and gay rights than people who think it's some kind of lifestyle choice . . . . Since I've published my work, I've run into many people whose minds have been changed due to the science").

[38] The federal courts have never found the equal-protection claims of gays and lesbians to merit strict or heightened scrutiny; their claims have always been evaluated pursuant to the lower, rational-basis standard. *See, e.g.*, Romer v. Evans, 517 U.S. 620 (1996); High Tech Gays v. Def. Indus. Sec. Clearance Off., 895 F.2d 563, 570-571 (9th Cir. 1990); Ledesma v. Block, 825 F.2d 1046, 1050 (6th Cir. 1987); Cervantes v. Guerra, 651 F.2d 974, 979 (5th Cir. 1981); *see* Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 876-77 (2002) ("Two criteria the courts employ when determining whether a classification merits heightened scrutiny are the immutability and the visibility of the trait on which the classification is based.").

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engineering, and the like.[39] Second, the long history of discrimination and bias based on other biological traits that their owners "can't help"—sex and skin color, for example—undercuts the notion that a proven biological basis for fundamental difference would suffice to eliminate prejudice.[40] Third, the discovery of a biological basis for homosexuality is by itself unlikely to persuade conservative and religious opponents of equal rights for LGBTQ people that they are wrong. Such individuals believe same-sex sexual *behavior* is immoral and must be suppressed. For them, the biological origins of same-sex sexual impulses would be irrelevant and would in no event justify a gay person acting on his desires.[41] Finally, when made by lesbians and gay men, the biological argument appears at least somewhat rooted in self-hatred. As one activist argues, "To justify a behavior by saying 'I can't help it' is to imply that if you *could* help it, you would. *Who cares* what causes it? Homosexual relations should be accepted for the same reasons as any other consensual form of sexual expression: as an affirmation of our human freedom."[42]

Ultimately, a collective re-appraisal of why the etiology of gay and lesbian sexual orientation seems so endlessly fascinating is more important to the nurturance of LGBTQ youth than arriving at a definitive answer to the question of what causes people to be lesbian or gay. For the question of what causes people to be lesbian and gay simply would not seem so interesting or significant if LGB sexuality were normalized. No one ever considers what makes people straight, because heterosexuality is seen as normal, natural, and a given. Yet as a society, thirty-two years after the de-classification of homosexuality as a mental disorder, we remain intrigued by the etiology of gay and lesbian sexuality and identity. Why? Because in spite of unprecedented visibility of lesbians and gay men,[43] legal victories in the realm of gay and lesbian civil rights,[44] and

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[39] *See, e.g.*, Chandler Burr, *Why Conservatives Should Embrace the Gay Gene*, THE WKLY. STANDARD, Dec. 9, 1996, http://members.aol.com/gaygene/pages/standard.htm; COUNCIL FOR RESPONSIBLE GENETICS, DO GENES DETERMINE WHETHER WE ARE LESBIAN, GAY, BISEXUAL OR STRAIGHT?, http://www.gene-watch.org/programs/privacy/gene-sexuality.html; Katha Pollitt, *It's a Bird, It's a Plane, It's . . . Superclone?*, THE NATION, July 23, 2001, *available at* http://www.thenation.com/docprint.mhtml?i=20010723&s=POllitt.

[40] COUNCIL FOR RESPONSIBLE GENETICS, *supra* note 39.

[41] *See* Joe Sartelle, *Rejecting the Gay Brain (and Choosing Homosexuality)*, BAD SUBJECTS, May 1994, http://bad.eserver.org/issues/1994/14/sartelle.html (last visited Feb. 12, 2006).

[42] *Id.*

[43] Popular culture is awash with LGBTQ characters and themes. On television, there are "Queer Eye for the Straight Guy," "The 'L' Word," "Queer as Folk," "Will and Grace," MTV's "Real World," "Road Rules," and "True Life," along with the cancelled "Buffy the Vampire Slayer" and "My So-Called Life." *The New York Times* features same-sex couples in its wedding announcements section; the September-October 2003 issue of *Bride* included its first feature on same-sex weddings.

[44] *See, e.g.*, Lawrence v. Texas, 539 U.S. 558 (2003) (finding that a Texas statute criminalizing same-sex sodomy violated the Due Process Clause of the Fourteenth Amendment); Romer v. Evans, 517 U.S. 620 (1996) (ruling a Colorado amendment prohibiting the inclusion of homosexuals in antidiscrimination laws unconstitutional because it bore no rational relationship to a legitimate governmental purpose, as required by the Equal Protection Clause); Goodridge v. Dep't. of Pub. Health, 798 N.E.2d 941 (Mass. 2003) (holding that the refusal of the Commonwealth of Massachusetts to issue marriage licenses to same-sex couples was unlawful because the same-sex marriage ban had no rational basis under either the due process or equal protection guarantees of the state constitution); State v. Limon, 122

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growing acceptance—particularly among young people—of legal protections for same-sex unions,[45] homosexuality is still viewed as deviant, unnatural, and an aberration. LGB youth internalize this society-wide view, as do their peers, parents, teachers, doctors, coaches, and religious leaders. It creates the stage for a uniquely difficult adolescent drama.

2. *Etiology of Transgender Identity*

How does a young person's gender identity develop? As with gay and lesbian sexual orientation, the question of etiology of gender identity provokes at least two, sometimes conflicting, sets of opinions. One, medical perspective posits that gender identity derives from biology; specifically, from brain structure, hormones, and the interaction between the two.[46] Some young people whose sense of their own gender identity varies from the gender that others ascribe to them are diagnosed with "gender identity disorder" ("GID"). This diagnosis—created after the removal of homosexuality from the DSM in 1973—is to be given by psychiatrists to those children and adolescents who experience "a strong and persistent cross-gender identification . . . persistent discomfort with [their] sex or sense of inappropriateness in the gender role of that sex . . . [and] clinically significant distress or impairment in social, occupational, or other important areas of functioning."[47]

The conceptualization of transgender identity as manifestation of a psychological disturbance has allowed some transgender people to obtain important benefits.[48] For example, attorneys for transgender youth diagnosed with GID have relied on the diagnosis to win for their clients the right to wear the clothes of their choice when state actors had prevented them from doing so. In *Doe v. Bell*,[49] a New York trial court ruled that the Administration for Children's Services (New York's child-welfare agency) could not lawfully prohibit a seventeen-year-old in a residential facility designated for males from wearing

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P.3d 22 (Kan. 2005) (holding unconstitutional under equal-protection provisions of the federal and state Constitutions statute that punished sodomy between adults and children of the opposite sex less severely than sodomy between adults and children of the same sex).

[45] Charisse Jones, *Poll: Young Adults Back Gay Marriages*, USA TODAY, June 30, 2003, *available at* http://www.usatoday.com/news/nation/2003-06-30-gaypoll-usat_x.htm (detailing results of a poll that showed that more than sixty percent of Americans between eighteen and twenty-nine support the legalization of same-sex marriage).

[46] *See, e.g.*, ANNE VITALE, NOTES ON GENDER ROLE TRANSITION: RETHINKING GENDER IDENTITY DISORDER TERMINOLOGY IN THE DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS IV (2005), http://www.avitale.com/hbigdatalkplus2005.htm (summarizing studies of "physiological data that propose that much of an individual's gender identity may depend on biological events outside of anyone's control").

[47] AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 576 (4th ed. 2000).

[48] For example, the diagnosis is typically considered by doctors to be a prerequisite before they will perform sex-reassignment surgery for transgender people who wish to more closely anatomically resemble their chosen gender. *See, e.g.*, THE HARRY BENJAMIN INTERNATIONAL GENDER DYSPHORIA ASSOCIATION'S STANDARDS OF CARE FOR GENDER IDENTITY DISORDERS 18 (6th ed. 2001), *available at* http://www.hbigda.org/soc.htm. For a thorough and thoughtful exploration of the strategic usefulness yet theoretically problematic nature of using GID as a basis on which to make claims for transgender people, see Dean Spade, *Resisting Medicine, Re/Modeling Gender*, 18 BERKELEY WOMEN'S L.J. 15, 34-37 (2003).

[49] 754 N.Y.S.2d 846 (2003).

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skirts or dresses.[50] The plaintiff had been designated a boy at birth, but identified as a girl and had been diagnosed with GID.[51] Two doctors deemed by the court to be experts in transgender issues testified that the plaintiff's treatment plan was consistent with being allowed to dress in "feminine" attire.[52] The court ruled that because GID is a disability, allowing Doe to dress in "girls'" clothes was a reasonable accommodation mandated by the state's disability anti-discrimination statute.[53] In *Doe v. Yunits*,[54] a Massachusetts trial court similarly ruled that a transgender girl[55] considered a boy by her school could proceed with a disability claim against the school in challenging the dress-code policy that prohibited her from wearing "girls'" clothes.[56] Again, a GID diagnosis was crucial to the court's ruling.[57]

Many transgender people and their allies offer an alternative conceptualization of transgender and gender non-conforming identities. In its most basic form, this perspective is that, whether or not transgender identity has some physiological basis, it should not be treated as a psychological disorder.[58] Under this view, being able to live according to one's own sense of gender identity is an essential form of expression. Transgender theorist and attorney Dean Spade elaborates: " I reject the narrative of a gender troubled childhood. My project would be to promote sex reassignment, gender alteration, temporary gender adventure, and the mutilation of gender categories, via surgery, hormones, clothing, political lobbying, civil disobedience, or any other means available."[59]

While it has allowed for favorable judicial rulings for some transgender people, the model of transgender identity as a manifestation of a psychological disorder can create many problems. A GID diagnosis can provide a basis on which parents can enlist unscrupulous mental health professionals in their efforts to enforce gender conformity in their children.[60] As attested by trans-

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[50] *Id.* at 856.

[51] *Id.* at 848.

[52] *Id.* at 848-49.

[53] The plaintiffs' attorneys had also argued that Doe's first amendment right to free expression was violated by the clothing policy; the court did not reach that claim. Sylvia Rivera Law Project, *Victory for Trans Teen in Foster Care*, http://www.srlp.org/newsletter/v1n1/fostercare.html (last visited Feb. 12, 2006).

[54] 15 Mass. L. Rptr. 278, 2001 WL 664947 (Mass. Super. 2001).

[55] A "transgender girl" is a transgender individual who identifies as female; a "transgender boy" identifies as male.

[56] *Doe*, 2001 WL 664947 at *1.

[57] *Id.* at *5.

[58] Katherine G. Wilson, *The Disparate Classification of Gender and Sexual Orientation in American Psychiatry*, http://www.priory.com/psych/disparat.htm (last visited Feb. 12, 2006).

[59] Spade, *supra* note 48, at 21.

[60] *See, e.g.*, Ellen K. Feder, *Regulating Sexuality*, *in* HAVING AND RAISING CHILDREN: UNCONVENTIONAL FAMILIES, HARD CHOICES, AND THE SOCIAL GOOD 163-76 (Uma Narayan & Julia J. Bartkowiak eds., 1999) (critiquing subjection of young people diagnosed with GID to psychiatric intervention, including hospitalization); GID Reform Advocates, http://www.transgender.org/gidr/index.html#what (last visited Feb. 12, 2006) (asserting that the creation of GID has meant that "a widening segment of gender nonconforming youth and adults are potentially subject to diagnosis of psychosexual disorder, stigma and loss of civil liberty"); *cf.* CATHERINE TUERKE ET AL., IF YOU ARE CONCERNED ABOUT YOUR CHILD'S BEHAVIORS: A GUIDE FOR PARENTS (2003), http://www.dcchildrens.com/dcchildrens/about/subclinical/

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gender adults subjected as young people to doctors and therapists who counseled them to be more "feminine" or "masculine," efforts to force a child to alter gender identity are experienced by the young person as painful and oppressive.[61] Second, GID is often used by parents and mental health practitioners alike as a subterfuge for what is really at stake—prevention of homosexuality. A member of the DSM-IV Subcommittee on Gender Identity Disorders concedes that parents who bring children to doctors for treatment of gender disorders do so, in the main, "because they don't want their kid to be gay."[62] Third, the GID diagnostic criteria do not allow for the possibility that a transgender or gender non-conforming young person experiences "clinically significant distress or impairment" *not* because of his or her gender transgression per se, but because of discrimination and abuse from people who object to divergence from—and defiance and rejection of—strict gender categories. Fourth, when GID is a necessary prerequisite for the attainment of legal rights and sensitive medical care for transgender people, those individuals who identify as transgender, but who do not experience "clinically significant" resulting impairment or distress, will face the dilemma of having to either misrepresent their experiences or find themselves without recourse in their quest for equality and proper medical treatment.[63] In other words, transgender youth can be forced to identify as sick in order to have the right to express their gender identity in their own way. Finally, medical sanctioning of the notion that deviation from extremely narrow gender roles is a sickness ultimately reifies those narrow roles, thereby limiting the full and free development of all children, LGBTQ or not.

Part Two fleshes out some of the concrete manifestations of the still-prevalent negative and hostile attitudes about homosexuality and gender non-conformity revealed in the above consideration of causation. It describes problems

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subneuroscience/subgender/guide.aspx (providing guidance to parents on how to find mental-health providers who will support children with "gender-variant behaviors" without trying to change those behaviors or adding to the stigma and isolation they already feel).

[61] Describing the commitments to multiple psychiatric hospitals and residential treatment facilities that subsumed most of her adolescence, Daphne Scholinski (who now uses the name Dylan) states:

> I still wonder why I wasn't treated for my depression, why no one noticed I'd been sexually abused, why the doctors didn't seem to believe that I came from a home with physical violence. Why the thing they cared the most about was whether I acted the part of a feminine young lady. The shame is that the effects of depression, sexual abuse, violence: all treatable. But where I stood on the feminine/masculine scale: unchangeable. It's who I am.

DAPHNE SCHOLINSKI, THE LAST TIME I WORE A DRESS 197 (1997).

[62] PHYLLIS BURKE, GENDER-SHOCK: EXPLODING THE MYTHS OF MALE AND FEMALE 100 (1996) (quoting Dr. Kenneth Zucker, who runs "childhood gender identity clinic" in Canada); *see also* Feder, *supra* note 60, at 169-70 (citing GID researchers and proponents who describe one of the treatment goals for GID as "prevention of . . . homosexuality"). In 1995, Richard Green, psychiatrist and author of *The Sissy Boy Syndrome and the Development of Homosexuality*, pithily described the putative link between early gender nonconformity and later homosexuality: "Barbies at five, sleeps with men at twenty-five," in BURKE *supra*, at 59.

[63] Dean Spade explains this dilemma: "The medical approach to our gender identities forces us to rigidly conform ourselves to medical providers' opinions about what 'real masculinity' and 'real femininity' mean, and to produce narratives of struggle around those identities that mirror the diagnostic criteria of GID." Spade, *supra* note 48, at 28-29.

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LGBTQ youth face at home and in school. I then examine the ways in which the adaptive—if sometimes self-destructive—behaviors engaged in by LGBTQ youth in the face of conflict and stress render them vulnerable to involvement in the child welfare and juvenile justice systems. I conclude this Part with a focus on their unique struggles in those systems.

III. LGBTQ LIFE: INTERNAL AND EXTERNAL STRUGGLES

Many LGBTQ young people come of age in homes[64] and schools where their sexual orientation and gender identity create enormous conflict. They must contend with unsupportive parents and teachers and bullying classmates. At least half of LGBTQ adolescents experience negative reactions from family members upon coming out; one study found that approximately thirty percent of them are physically abused.[65] Many parents compare the sense of loss and devastation they feel upon learning their child is gay or lesbian to mourning a death.[66] Their child feels lost to them, and they become estranged.[67] While LGBTQ youth might in theory find nurturing role models in adults whose sexual orientation and gender identity are the same as their own, LGBTQ adults historically have shied away from young people. With the myth[68] of the homosexual predator dominating our collective consciousness, we LGBTQ adults have worried that any good intentions we may have will be misinterpreted, and that we will be accused of trying to "swell the ranks," or, worse, of eyeing

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[64] Gay academic Wayne Koestenbaum refers to "home" as having "grim meanings for the gay kid or the kid on the verge of claiming that ambiguous identity. Home is the boot camp of gender; at home, we are supposed to learn how to be straight." WAYNE KOESTENBAUM, THE QUEEN'S THROAT: OPERA, HOMOSEXUALITY, AND THE MYSTERY OF DESIRE 47 (1993).

[65] COLLEEN SULLIVAN ET AL., YOUTH IN THE MARGINS: A REPORT ON THE UNMET NEEDS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ADOLESCENTS IN FOSTER CARE (2001), http://www.lambdalegal.org/binary-data/LAMBDA_PDF/pdf/25.pdf.

[66] RYAN & FUTTERMAN, *supra* note 3, at 68 (summarizing national study of parents of lesbian and gay people). For some, their children are effectively dead to them when they come out. Teemu Ruskola recounts two examples. One nineteen-year-old gay youth said, "My parents couldn't deal with it. My mother said, 'You are dead to me. How can you be queer?'" Another mother nursed her son, who had AIDS, along with his lover. His lover's own parents had abandoned him, saying "You made your own bed; now go lie in it." Ruskola, *supra* note 6, at 322 nn. 254-255 (citation omitted).

[67] Reflecting on the early years of ACT-UP, the grass-roots direct-action group that erupted in the early 1980s to fight the AIDS epidemic, activist and author Sarah Schulman writes:

> I remember feeling accountable to others and responsible to intervene on their behalf. I felt this way as a person who doesn't have a family in a community of many gay people of my generation who don't have families or institutions of permanence. I felt that I needed such institutions, and I felt deeply responsible to other gay people who needed me—especially because they had no one else.

Artery: The Aids-Arts Forum, Gentrification of the Mind, http://www.artistswithaids.org/artery/symposium/symposium_schulman.html (last visited Feb. 12, 2006).

[68] *See, e.g.*, Carole Jenn et al., *Are Children at Risk for Sexual Abuse by Homosexuals?*, PEDIATRICS 1 (July 1994) *cited in* Appellant's Reply Br. on Reh'g, Kansas v. Matthew R. Limon, No. 00-85898-A, at 2 (on file with author) (finding risk that a child will be molested by a relative's heterosexual partner is over 100 times greater than risk of molestation by someone gay).

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young people as sexual prey.[69] Deprived of parental and family support, and guidance from the adult LGBTQ community, lesbian, gay, bisexual, transgender and questioning young people must learn to negotiate their stigmatized minority identities entirely on their own. Unlike heterosexual young people of racial and ethnic minorities who can often draw on love from their families and access rich traditions of culture and history,[70] LGBTQ youth of all races and ethnicities tend to experience isolation from their families.

Conflicts at home over sexual orientation and gender identity can lead to disastrous results for LGBTQ youth. Some parents actively seek to change their children's gender identity and/or sexual orientation, by sending them to gender clinics or "reparative" therapy, the aim of which is to convert people from gay to straight.[71] Despite the fact that every major mental health organization has condemned this therapy,[72] its practice survives, fueled by religious conservatives.[73] Other parents force their LGBTQ children from the home, or make life so difficult that they feel they have no choice but to leave. Still others abuse or neglect their children, leading to their removal by child-welfare agencies. As a result, as shown by numerous studies, the homeless youth popu-

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[69] When WNBA basketball star Sheryl Swoopes came out publicly as a lesbian in an interview with ESPN Magazine, she stated, "My biggest concern is that people are going to look at my homosexuality and say to little girls—whether they're white, black, Hispanic—that I can't be their role model anymore." Granderson, *supra* note 36. In a good example of activism aimed at debunking the myth of the recruiting LGBTQ adult in order to provide accurate information on LGBTQ lives to young people, the New York-based Lesbian Avengers in 1992 distributed three hundred lavender balloons emblazoned with the message "Ask About Lesbian Lives" to elementary-school students in Queens. The impetus for the action was the growing influence of religious conservatives over curriculum. Letters from CAMP Rehoboth, *PAST Out: The Fire-Eating Lesbian Avengers*, http://www.camprehoboth.com/issue06_13_03/pastout.htm (last visited Feb. 12, 2006). For a more detailed discussion of the tendency of LGBTQ adults to avoid LGBTQ young people, see LINNEA DUE, JOINING THE TRIBE (1995).

[70] *See* RYAN & FUTTERMAN, *supra* note 3, at 14.

[71] For a discussion of the therapeutic practice of working to change a person's sexual orientation, see generally JOSEPH NICOLOSI, REPARATIVE THERAPY OF THE MALE HOMOSEXUAL (1991); Joseph Nicolosi, *Let's Be Straight: A Cure Is Possible*, INSIGHT 24, Dec. 6, 1993; National Association for Research and Treatment of Homosexuality, http://www.narth.com/docs/consequences.html (last visited Feb. 12, 2006); *see also* Eartha Melzer, *Tenn. Probes 'Ex-Gay' Camp*, WASHINGTON BLADE ONLINE, June 24, 2005, http://www.washblade.com/2005/6-24/news/national/tennprobe.cfm (discussing Tennessee's investigation of allegations of child abuse at "ex-gay" camp run by Love in Action, which runs a Memphis facility aimed at converting young people from gay to straight). For a critical perspective on the practice, see generally David Cruz, *Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and Law*, 72 S. CAL. L. REV. 1297 (1999); Laura Gans, *Inverts, Perverts, and Converts: Sexual Orientation Conversion*, 8 B.U. PUB. INT. L. J. 219 (1999).

[72] Gay, Lesbian & Straight Education Network, *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators & School Personnel*, http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/123-1.pdf (last visited Feb. 12, 2006) (quoting statements by the American Academy of Pediatrics, the American Counseling Association, the American Psychiatric Association, the American Psychological Association, and the National Association of Social Workers critical of the tenets of reparative therapy); *see also* Yoshino, *supra* note 38, at 800 n.147 (listing organizations that oppose conversion therapy).

[73] *See, e.g.*, Mark Benjamin, *Turning off Gays*, SALON.COM, July 18, 2005, http://www.salon.com/news/feature/2005/07/18/ungay/ (last visited Feb. 12, 2006) (exposing links between the movement of "ex-gays" and the religious right).

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