



NLA BRIEF

National Lawyers Association ♦ Vol. 7, No. 4 ♦ January-March 2011

MILITARY

Exemplary Conduct Standard vs. 'Don't Ask, Don't Tell'

By Colonel Ron Ray, USMC (Ret.)

America should not abandon its first military principles of virtue, honor, subordination and patriotism, officially known as Exemplary Conduct

President Obama called for repeal of the so-called Don't Ask, Don't Tell statute during his January 2010 State of the Union Address. Likewise, Secretary Robert Gates has expressed his full support. However, it's the Congress—not the judiciary, the executive branch or the Pentagon—that makes military rules and regulations for the land and naval forces. Under the Constitution, the Congress: "Shall have Power to make Rules for the Government and Regulation of the land and naval Forces." (Art. 1, Sec. 8).

Exemplary Conduct Standard, 1775 to Present

On behalf of First Principles Press, I have spent 18 years promoting a return to teaching and enforcing Exemplary Conduct in the U.S. Armed Forces. This military standard of conduct,

more than 200 years old, is diametrically opposed to any promotion of homosexuality among those serving in the military.

Long before Don't Ask, Don't Tell appeared in 1993, Exemplary Conduct was the guiding American military standard, first adopted by John Adams and our Founding Fathers in 1775 for the Navy and Marine Corps. In 1956, Congress codified the standard in Title 10, United States Code § 5947, as follows:

"All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them..."

Sexual Misconduct Crisis

In 1997, Congress passed the Code of Exemplary Conduct for the Army and Air Force (10 U.S.C. §§ 3583 & 8583) after publicity surrounding a sexual misconduct crisis in the ranks.

"Today's military in combat cannot afford non-military social experiments that focus primarily on the individual to the peril of the good of the unit and military mission...."

The Exemplary Conduct statutes hold all military leaders, from the level of NCO to the Joint Chiefs, to the highest standards of responsibility and conduct while on and off duty (10 U.S.C. § 933).

The only military solution to sexual misconduct is found in *(Continued on page 6)*

The Myth of the Gay Gene

By Rev. Nicanor Pier Giorgio Austriaco, O.P.

NOTE: This is the first of two installments. The second part of the essay will be published in our next newsletter.

In the past year, the clergy pedophilia scandal has reignited the debate over homosexuality. The Catholic Church's millennia-old teaching is clear: Homosexual activity is immoral because it is contrary to nature.

Not surprisingly, however, this counter-cultural position has come under much criticism in recent decades not only within the Church but also within other ecclesial communions. One popular argument that is often put forward by revisionists is that the Church's stance should be re-evaluated in light of new scientific evidence which suggest that homosexuality is a genetically inherited condition that is a permanent state. Thus, it is claimed, homosexuality should be accepted as a natural variant within a wide spec-

trum of gender identities and sexual orientations, a manifestation of the richness of God's creation.

This essay will respond to this revisionist argument in three ways. First, it will critically examine the scientific evidence that has been used to argue for the genetic origins of homosexuality. In recent years, the scientific reports that originally proposed the existence of the so-called gay gene have been seriously questioned and discredited.

Thus, today, the widely held belief that a

single human gene exists that determines homosexual orientation remains a myth. Next, it will investigate the claim that homosexuality is both permanent and nonpathological by reviewing four recent studies that suggest that this may not be the case.

First, a study authored by Robert Spitzer, a leading figure in the 1973 American Psychiatric Association (APA) decision that removed homosexuality from the official diagnostic manual of mental disorders, *(Continued on page 7)*

SCIENCE

IN THIS ISSUE

- 1..... Don't Ask, Don't Tell Controversy
- 1..... Myth of the Gay Gene
- 2..... Musings on the ABA's Role
- 2..... NLA Bookshelf

- 3..... Conscience Clause Protections
- 4..... Marriage Law Digest Highlights
- 5..... Law As Society's Teacher
- 6..... Welcome New Board Members
- 10..... Children of Same-Sex Couples

President's Message

Musings on the ABA's Role

By John G. Farnan

This past August, during a meeting held in San Francisco, the ABA adopted a resolution in support of gay marriage which urged an invalidation of all contrary laws, rules and regulations as well as centuries of societal norms.

The vote was no surprise. Most who would have opposed the ABA's position likely left the organization in the years since it abandoned a neutral position on abortion policy and adopted a political position in favor of abortion

abortion, can the ABA have any legitimacy in evaluating judicial candidates for the federal bench? The answer is a resounding "No." The ABA and its media cohorts likely will continue to portray people who believe in the right to life for the unborn—or in the right of society to continue to define marriage as a union between a man and a woman—to be narrow-minded, unenlightened or hate-mongers.

What is next? Redefining marriage yet again to allow polygamy, or to embrace marriage between an adult and a child? Most would cringe at such notions, just like most would have cringed to support gay marriage only 10

What is next? Redefining marriage yet again to allow polygamy, or to embrace marriage between an adult and a child?

rights. That position—as well as this latest salvo in the war—amongst a plethora of other "political" positions adopted by the ABA in the last 20 years or so.

That truth is demonstrated if one considers that the true "liberal" position should be "when there is doubt as to life, then protect it." Instead, the mantra now seems to be, "when life is inconvenient, or unwanted, then it is okay to destroy it as a matter of personal choice."

In light of its positions on gay marriage and

to 20 years ago. Fortunately, there is a silver lining to all these attempts to upend traditional marriage and the right to life as well as norms that have served society for centuries. Specifically, as the November elections proved, there is a rising tide in this country of ordinary, yet truly extraordinary citizens taking back the country from those individuals, politicians and organizations who have trampled on the rights of all in the name of a few. Increasingly, many

Americans are seeing through the attempts of elites to water down our laws, our beliefs, and our traditional values.

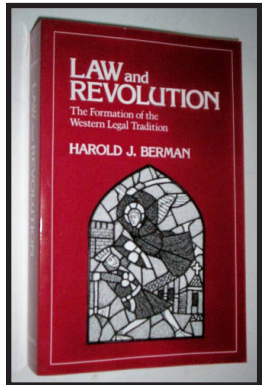
Is this just a momentarily, aberrant reaction, fueled by economic woes and the feelings of some that their government or representatives no longer represent them—or even care about their values? Maybe. Could this be an onset of a gradual and ongoing cultural awakening of the heretofore "silent majority"? Perhaps. What is definitely clear, however, is that lawyers will be called upon to take leading roles in such movements, either out front or behind the scenes. The question for you, then, is if you—and your national bar association—will lead, follow or get out of the way? The National Lawyers Association awaits your answer. As John Donne once wrote: "Send not to know for whom the bell tolls, it tolls for thee!"

NLA President John G. Farnan is an attorney with the Cleveland law firm of Weston Hurd LLP, and specializes in litigation and appeals.



NLA Bookshelf

Law and Revolution, The Formation of the Western Legal Tradition | Harold J. Berman | \$33.50 | Harvard University Press

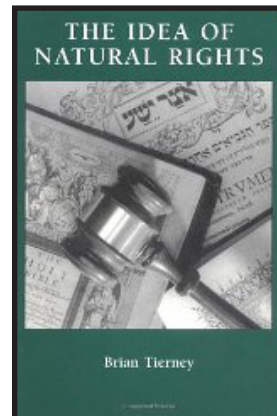


"A magnificent volume, broad in scope and rich in detail; this may be the most important book on law in our generation." —American Political Science Review

"This is a book of the first importance. Every lawyer should read it...Clearly written and well-organized, it is a work of immense scholarship." —Los Angeles Daily Journal

"Superb....A tour de force of insight and erudition The principal text divides into two parts, the first dealing with the papal revolution and its distinctive legal system of canon law and the second describing the emergence of secular legalism through its roots in feudal, manorial, mercantile, urban, and royal systems....A magnificent topping-off to the conventional [law school] curriculum." —The Benchmark

The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law 1150 – 1625 | Brian Tierney | \$32 | Wm. B. Eerdmans Publishing Company



"...a compelling historical account of natural rights....That Tierney brings to his historical task a thorough acquaintance with major contemporary theories of moral and legal rights gives his work additional value for ethicists." —Religious Studies Review

"...a tour de force of integration and learning....It is a synthesis that will become the required starting point in all future efforts to write about the history of rights." —Studia canonica 32, 1998

'Little Shop of Horrors' Chart

Below is a 1970 chart sometimes described as the "little shop of horrors" for reducing population. Encouraging homosexuality in society (see left-hand column) is listed as a way to reduce population. The chart was included in a special supplement to *Family Planning Perspectives*, a journal published under Dr. Alan Guttmacher, then-head of Planned Parenthood-World Population. For year-end 2009, the Guttmacher Institute reported total assets of \$40.3 million in investments and property. Tax-exempt U.S. foundations supplied about 70% of its financial support, while the United States, other governments and global organizations provided 20%. See www.guttmacher.org/about/2009AnnualReport.pdf

Table 1. Examples of Proposed Measures to Reduce U.S. Fertility, by Universality or Selectivity of Impact

Universal Impact	Selective Impact Depending on Socio-Economic Status		Measures Predicated on Existing Motivation to Prevent Unwanted Pregnancy
	Economic Deterrents/Incentives	Social Controls	
Social Constraints			
Restructure family: a) Postpone or avoid marriage b) Alter image of ideal family size	Modify tax policies: a) Substantial marriage tax b) Child tax c) Tax married more than single d) Remove parents' tax exemption e) Additional taxes on parents with more than 1 or 2 children in school	Compulsory abortion of out-of-wedlock pregnancies Compulsory sterilization of all who have two children except for a few who would be allowed three	Payments to encourage sterilization Payments to encourage contraception Payments to encourage abortion Abortion and sterilization on demand
Compulsory education of children	Reduce/eliminate paid maternity leave or benefits	Confine childbearing to only a limited number of adults	Allow certain contraceptives to be distributed non-medically
Encourage increased homosexuality	Reduce/eliminate children's or family allowances	Stock certificate-type permits for children	Improve contraceptive technology
Educate for family limitation	Bonuses for delayed marriage and greater child-spacing	<i>Housing Policies:</i> a) Discouragement of private home ownership b) Stop awarding public housing based on family size	Make contraception truly available and accessible to all
Fertility control agents in water supply	Pensions for women of 45 with less than N children		Improve maternal health care, with family planning as a core element
Encourage women to work	Eliminate Welfare payments after first 2 children Chronic Depression Require women to work and provide few child care facilities Limit/eliminate public-financed medical care, scholarships, housing, loans and subsidies to families with more than N children		

Source: Frederick S. Jaffe, "Activities Relevant to the Study of Population Policy for the U.S.," Memorandum to Bernard Berelson, March 11, 1969.

CONSCIENCE PROTECTION

Have U.S. Conscience Clause Protections Been Eviscerated?

By James S. Cole

An American nurse who was forced to participate in a late-term abortion has effectively nowhere to go to lodge a grievance

Can an American nurse refuse to participate in a medical procedure repugnant to her conscience? It appears that the answer is "No." A federal court has ruled that a nurse who was told to assist in a late-term abortion or lose her job cannot file a grievance.

Here is the legal background.

A federal statute known as the "Church Amendment" prohibits an institution that receives federal money under certain programs from discriminating against an individual who either participates or refuses to participate in an abortion. (The statute is named for its sponsor, the late Senator Frank Church, not for any religious organization.) On Nov. 23, 2010, the United States Court of Appeals for the Second

Circuit ruled that individuals cannot file suit to vindicate their rights under the Church Amendment. (*Cenzon-DeCarlo v. Mt. Sinai Hospital*, no. 10-556 (2d. Cir. 11/23/10)).

Catherina Cenzon-DeCarlo worked as a nurse at Mount Sinai Hospital in New York City. She sued the hospital in July 2009, alleging that its management forced her to participate in a late-term abortion, despite her written conscientious objection that she had provided on the hospital's personnel form when she was hired. Furthermore, she claimed that when she filed a personnel grievance after the abortion, Mount Sinai attempted to coerce her into signing a consent to participate in abortions in the future.

The federal appellate court dismissed Ms Cenzon-DeCarlo's case without a trial. It said that Congress had not provided a "private cause of action" for enforcement of the statute. In other words, Congress had not allowed an individual to file a lawsuit in federal court when his or her rights were violated. So, if Ms. Cenzon-

DeCarlo's has a legal remedy at all, it lies in the courts of New York State. This is not a surprising result, for in the past 30 years or so, the U.S. Supreme Court has turned remarkably hostile to allowing private parties to file suit in federal courts to protect rights granted under federal statutes, if the statutes do not explicitly allow it.

This attitude shifts responsibility for protection of individual rights onto the federal government, including the conscience-rights protections under the Church Amendment. This is exactly what the Bush Administration attempted to do when it promulgated regulations in Dec. 2008 to enforce federal conscience clause rights. The enforcement mechanisms would have begun with the Office for Civil Rights, which was designated in the regulations "to receive complaints of discrimination and coercion based on the healthcare conscience protection statutes . . . [and to] coordinate handling of complaints with the staff of the Departmental programs from which (Continued on page 4)

Conscience Clause Protections *(continued from page 3)*

the entity, with respect to whom a complaint has been filed, receives funding....” Annual certifications of compliance by the funded hospitals and other institutions would be required under the Bush regulations. HHS could ultimately withhold federal money from institutions that violated the conscience rights of protected individuals.

Contrary to some rather histrionic claims from pro-abortionists, the 2008 regulations did not enact any new rights or restrictions. They simply provided the means to initiate federal administrative enforcement remedies for the rights which had already been guaranteed in the Church Amendment.

Within 60 days of taking office, the Obama Administration effectively cut off the enforcement of conscience clause rights by announcing an intent to rescind the Bush regulations. The new management of HHS asserted the need to give further consideration to the issues and “to review this regulation to ensure its consistency with current Administration policy.”

True to its habit of making grandiose announcements and then waffling or reversing course, the Administration has not actually carried out its announced intent, much to the chagrin of some pro-abortionists. In fact, the President told Catholic journalists in 2009 that he intended to leave “robust” conscience clause

protections in place that would “certainly not be weaker” than the Bush regulations. No official rescission of the Bush regulations has appeared in the Federal Register, although no replacement regulations for the Bush regulations have been issued, either.

However, now there is no need for the Obama Administration to alter the old regulations. The Bush regulations are just as dead as if they had been officially rescinded, as the Obama Administration obviously intended. They have not been printed in the Code of Federal Regulations for the years 2009 and 2010, where they should have appeared under 45 CFR part 88. We can be certain that if Ms. Cenzon-DeCarlo were to send a complaint to the Office for Civil Rights of HHS under the Bush regulations, it would probably be unacknowledged and would certainly be ignored.

As a result of the federal courts’ jurisprudence and the current Administration’s unwillingness to enforce the Church Amendment, federal conscience clause protections are dead letters.

Nor is success likely for complaints pursued in State Courts. They are not likely to provide remedies based on federal conscience rights, not only because of the general antipathy toward the pro-life side of abortion issues within the legal profession, but also because all American state

courts are being overwhelmed by sheer numbers of pending cases in a time of stringent budget cuts. Expanding the possible number of lawsuits is not a favored position in current American jurisprudence.

Until the new Congress enacts specific legislation to allow individuals to vindicate the conscience rights Congress has given them (and overrides a Presidential veto), or until a new Administration is inaugurated that will live up to its duty of enforcing the laws on the books, federal conscience clause protections might as well not exist.

There is an old legal maxim, “Where there is a right, there is a remedy” (“Ubi jus ibi remedium”). The converse applies, too: Where there is no remedy, there is effectively no right.

This article appears courtesy of Mercatornet.com, publisher of articles "promoting human dignity on the Internet." It was originally published online Nov. 29, 2010.

NLA member James S. Cole graduated from Harvard Law School in 1978 and practices law in St. Louis, MO.



Marriage Law Digest Case Summary Highlights

The following information was selected from the Nov. 2010 issue of The Marriage Law Digest, edited by William C. Duncan. It is jointly published by the Marriage Law Foundation (www.marriagelawfoundation.org) and the Institute for Marriage and Public Policy (202.216.9430). To access Web links showing detailed documentation about each case, go to the online Nov. 2010 Digest at www.marriagedebate.com.

CASE SUMMARIES

MILLER-JENKINS V. MILLER-JENKINS, 2010 VT 98, Vermont Supreme Court, Oct. 29, 2010 (visitation dispute involving same-sex partners)

A couple in a Vermont civil union raised a child conceived by artificial insemination. On separation, a Vermont Family Court granted the former partner visitation and interjurisdictional appeals ensued involving courts in Vermont and Virginia. The mother refused to comply with the court order

of visitation so the Vermont Family Court “awarded [the partner] sole physical and legal custody” of the child.

On appeal, the Vermont Supreme Court said “a mother disappearing with a child, apparently to defeat a lawful court order, is destructive to the best interests of that child.” The court rejected all of the mother’s claims and affirmed the custody order of the Family Court.

HALDEMAN V. DEPARTMENT OF REVENUE, TC 4837, Oregon Tax Court, Sept. 21, 2010 (constitutionality of rule allowing the subtraction of health care costs for domestic partners from taxable income)

An Oregon administrative rule allowed the value of health insurance benefits given to a same-sex partner to be subtracted from taxable income. A taxpayer challenged the rule because it did not apply to opposite-sex

unmarried couples.

The tax court said the purpose of the law is to give benefits “to persons who would marry, if Oregon law permitted.” Although the classification of “unmarried persons” was a “true class” because “it involves characteristics or status existing apart from the regulation itself,” marital status was not a suspect class since it is not “defined by an immutable trait” and has not been subject to historical “prejudice or stereotyping.”

The court said the policy has a rational basis of avoiding “litigation regarding violation of” the Oregon Constitution which presumably would be implicated if same-sex couples were not granted the benefits of married couples.

(Continued on page 9)

Law as Society's Teacher

By Msgr. Edward Buelt

NOTE: This is the first of two installments on religious principles undergirding legal philosophy.

Saint Paul wrote to Timothy: "We know that the law is good, if one uses it legitimately. This means understanding that the law is laid down not for the innocent but for...whatever... is contrary to the sound teaching that conforms to the glorious gospel of the blessed God" (I Tim. 1:8-11). While Paul was referring to the Torah, his teaching is applicable to all law, religious and civil.

Paul affirms that law is a tool; in fact, it's a tool used in the service of the gospel of God. But what exactly is that gospel? The gospel of God is the revelation that "God is love, and those who abide in love abide in God, and God abides in them" (1 John 4:16). Moreover, Paul instructs Timothy that the law is intended for certain persons, not for others. Those who are "innocent" have no need of the law. The innocent love and so live by love's law, which in fact is no law at all but love itself: Love is its own law.

To the contrary, the law is intended for whomever does not abide in love and for whatever is contrary to love. Law is meant to protect the "sound teaching" of the gospel of love; it is meant to teach love to those who do not love and to those who do not know how to do so. The legitimate purpose of the law is to teach love. Law that does not teach love cannot be considered legitimate law.

Therefore, if the legitimate purpose of the law is to teach love, then its illegitimate use is the opposite; that is, the determination of whatever in the ordering of the relationships of individuals and society that is not love.

Paul also teaches that law is "laid down" as teaching and to confront that which is not sound. Law, therefore, is laid down by a teacher. To say that law is laid down by a teacher and as teaching is to affirm that of its nature, law is free and law abides in freedom.

Good law, and those who make law, interpret, and even enforce it, therefore do not compel or command. They are teachers, and in the "laying down" of the law they neither compel nor command. A teacher proposes what is taught, and it is precisely because it is proposed (not commanded) that it is considered an invitation—never an order or imperative. Good law, then, proposes; and what it proposes is love. Love is love precisely because it is freely given and freely received.

An illustration may help. A driver approach-



es an intersection controlled by a stop light. Why has the municipality erected a stop light at that intersection? It has done so not to just regulate traffic, a good thing in itself. The municipality has an even higher interest in mind, as only regulated traffic can protect drivers, passengers and pedestrians from those who do not self-regulate their approach and use of that intersection. The stop light exists to protect people from people, specifically from drivers who would approach the intersection not with love for others, but only with the intent to continue on their way without regard for anyone else.

In truth, if everyone who approached the intersection did so with love, then a stop light would be unnecessary. Drivers who live by the law of love would demand of themselves and expect of others that the intersection should be regulated by love and approached cautiously with love as the public space was "owned" by all. (From a Christian perspective, what should/could be hung over the intersection would not be a stop light but the cross of Jesus, which symbolizes love.)

We live in a society which Christ has redeemed, but which still falls to temptation and into sin. It is not governed by love. Still, we yearn and strive to build up such a society of love in this life and to participate fully in one in the next; that is, in the kingdom of God lived in the communion of the Most Blessed Trinity.

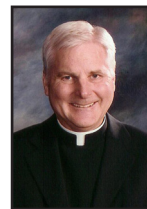
In that kingdom, since there is "no need for sun or moon...for the glory of God is its light, and its lamp is the Lamb" (Rev. 21:23), so, too, there will be no need for law as "the nations will

walk by its light...and there will be no night there" (Rev. 21:24-25).

In this life we should not resign ourselves to temptation and sin and so govern our social and ordered lives simply by passing or enforcing laws so as to protect ourselves from one another. Such laws, in fact, simply establish social hierarchies between citizens: the wealthy vs. poor, men vs. women, sick vs. healthy, unborn vs. the born, prisoners vs. victims, heterosexuals vs. homosexuals, etc.

Rather, because law is a teacher and teacher, we must enact and enforce laws teaching that God is love, and those who abide in love abide in God. We must enact and enforce laws through which we are governed by love. We must be a people of the law of love in this life precisely because we are called to be a people of the Kingdom of love in the next. We hold these laws to be self-evident.

Since 1998, Msgr. Edward Buelt has served as the (founding) pastor of Our Lady of Loreto Parish near Denver. He earned a B.A. degree from St. Thomas Theological Seminary and a Bachelor in Sacred Theology degree from the Gregorian University in Rome, and was awarded the License in Canon Law (J.C.L.) from the Catholic University of America. After serving in various administrative positions for the Archdiocese of Denver, he was nominated Vice President for Logistics and organized the 1993 World Youth Day event in Denver. In 1996 Pope John Paul II named him an honorary prelate, and that same year through 1997 he served in the Pontifical Council for the Laity as secretary to Archbishop (now Cardinal) J. Francis Stafford. His forthcoming book, A New Friendship: The Spirituality and Ministry of the Deacon, will be published in March by Liturgical Press.



Exemplary Conduct *(continued from page 1)*

teaching and enforcing the Congressionally mandated and battle-tested Exemplary Conduct military standard. To do otherwise threatens the good order and discipline of our Armed Forces, creating a lax attitude among those entrusted with defending our nation.

Subordination to the Unit, Not Individual Rights or Autonomy

To accomplish its mission, our military must foster instinctive uniformity and subordination requiring obedience, unity, commitment and *esprit de corps*. See, e.g., *Chappell v. Wallace*, 462 U.S. 296, 300 (1983); *Greer v. Spock*, 424 U.S. 828, 843-844 (1976); *Parker v. Levy*, 417 U.S. 733, 744 (1974). The essence of the military service “is the subordination of the desires and interests of the individual to the needs of the service.” *Orloff v. Willoughby*, 345 U.S. 83, 92 (1953).

Congress Relies Upon Military Judgment in Decision Making Re: Armed Forces

“Within the military community there is simply not the same [individual] autonomy as there is in the larger civilian community.” *Parker* at 751.

When evaluating whether military needs justify a particular restriction, courts must give great deference to the professional judgment of military authorities. See *Chappel*, at 305; *Orloff* at 93-94.

The United States Supreme Court has acknowledged that military regulations inherently demand uniformity, restrict individuality and require personal sacrifices, characteristics which form the heart of the profession of arms and military life. Military personnel experience firsthand, on a daily basis, how these regulations build cohesion and combat effectiveness, and properly subordinate individual desire, expression and preference to military necessity. For these members of the Armed Forces no proof is required—no scientific studies, no historical examples, no exhaustive arguments are necessary to make this fact apparent. Even expert testimony to the contrary is inadequate to challenge senior military’s considered professional judgment, gained through more than two centuries of experience.

Flag and general officers, regular, reserve and retired (from 1993 to 2010), consistently and overwhelmingly (90% to 96%) oppose homosexuals openly serving in the military. Today’s combat forces cannot afford social experiments that elevate the

individual’s personal preferences above the success of the unit, good order and the military mission.

Sensitivity, victim advocacy, care-taking and counseling services are all laudable practices to protect the individual in civilian society. However, where national security, combat readiness, winning battles and life and death are daily realities, the commander—with so great a responsibility to the nation and the troops—must be vigilant to inspect the conduct of persons under his command. He must set the highest standards of virtue and honor, and correct all persons guilty of immoral and dissolute behaviors. National survival, liberty and justice for all are at stake. Our military’s 235-year record of Exemplary Conduct speaks for itself.

Colonel Ronald D. Ray, USMC (Ret.), was a Deputy Assistant Secretary of Defense during the Reagan Administration and Presidential Commissioner during George H.W. Bush. Now a practicing attorney in Kentucky, he also is a volunteer for First Principles Press, publisher of works of enduring significance about our nation and its founding principles. www.firstprinciplespress.org; 502.241.5552



NLA Welcomes Board & Advisory Council Members



New NLA Board of Directors member **Edward (“Ned”) J. Currie, Jr.** obtained his undergraduate degree from the University of Mississippi in 1973, and a JD Degree from the University of Mississippi School of Law in 1976. Throughout his career he has been engaged in the handling of personal injury defense, insurance coverage, and bad faith insurance defense. He has written and lectured on insurance coverage issues for the past 20

years in the state of Mississippi and tried numerous coverage cases.

Currently Mr. Currie serves on the Mississippi Supreme Court Advisory Committee for the Rules or Civil Procedure. He is a Fellow in Litigation Counsel of America, and a member of the International Association of Defense Counsel, the Mississippi Bar Foundation, and Council on Litigation Management.

Mr. Currie is a former adjunct professor of law at the Mississippi College School of Law and has served on the faculties of the International Association of Defense Counsel Trial Academy and the National Institute for Trial Advocacy. He is the former President of the Mississippi Defense Lawyers Association and the Mississippi Chapter of the Federal Bar Association. He also has served as a member of the Mississippi Board of Bar Commissioners and the Mississippi Judicial Model Civil Jury Instructions Committee, and as Chairman of the General Practice/Litigation Section of the Mississippi Bar Association.

He has been a member of the board of directors of the National Lawyers Association Foundation since 2004, and a member of NLA since 1999.



New NLA Advisory Council member **Helen M. Alvaré** is an Associate Professor of Law at George Mason School of Law. Previously she was an associate professor at Catholic University’s Columbus School of Law, and a visiting professor at the John Paul II Institute for Marriage and Family.

Ms. Alvaré received her law degree at Cornell University in 1984 and a master’s degree in systematic theology from The Catholic University of America in 1989. She practiced with the Philadelphia law firm of Stradley, Ronon, Stevens & Young, specializing in commercial litigation and free exercise of religion matters.

For three years, Professor Alvaré worked at the Office of General Counsel for the National Conference of Catholic Bishops, where she drafted amicus briefs in leading U.S. Supreme Court cases concerning abortion, euthanasia and the Establishment Clause. For the next ten years, she worked with the Secretariat for Pro-Life Activities at the NCCB. There, she lobbied, testified before federal congressional committees, addressed university audiences, and appeared on hundreds of television and radio programs on behalf of the U.S. Catholic bishops. She also assisted the Holy See on matters concerning women, marriage and the family, and respect for human life.

Professor Alvaré chaired the commission investigating clerical abuse in the Archdiocese of Philadelphia. She is an advisor to Pope Benedict XVI’s Pontifical Council for the Laity and an ABC News consultant. Her scholarship regularly treats current controversies about marriage, parenting and the new reproductive technologies.

The Myth of the Gay Gene *(continued from page 1)*

has now shown that with some form of reparative therapy, a few persons whose sexual orientation had been predominantly or exclusively homosexual became predominantly or exclusively heterosexual. Thus, it appears that at least in select cases, the homosexual orientation is not as permanent a state as it has been touted to be.

Second, three independent studies published in the past four years have also shown that homosexual and bisexual men and women are at greater risk of suicide and overall mental health problems than their heterosexual counterparts. These studies suggest that contrary to claims advanced by gay activists, homosexually active persons as a group appear to be less psychologically healthy than the general population.

Finally, this essay will review the ethical argument that used the flawed scientific data to justify homosexual behavior. This argument is flawed, because it endorses too much. In fact, the same argument could be used to excuse many human behaviors that are immoral. Not insignificantly, one of these behaviors would include rape.

Is There a Human Gay Gene?

Revisionists often cite three scientific studies published in the early 1990s to prove that homosexuality is a genetically inherited condition. It is now clear that there were scientific problems with each of these reports that undermine the validity of their conclusions.

First, in August of 1991, Simon LeVay, a scientist at the Salk Institute in San Diego, reported that a group of neurons in the hypothalamic region of the brain appeared to be twice as large in heterosexual men than in homosexual men. Previous studies had suggested that the hypothalamus is a region of the brain involved in the regulation of sexual behavior in non-human primates. Furthermore, other studies had shown that these neurons are larger in men than in women. Thus, LeVay concluded that sexual orientation had a biological basis.

There are three problems with LeVay's paper. First, LeVay compared the brain structures of 19 homosexual men with the brain structures of 16 men whom he presumed were heterosexual. However, he was unable to confirm the hetero-

sexuality of the men in his control group. Significantly, six of these 16 presumed heterosexual men had died from AIDS, a disease whose transmission is often associated with homosexual behavior! Thus, it would not be surprising if some of LeVay's presumed heterosexual men were in fact, homosexuals, a possibility which would seriously discredit the conclusions of his study.

Second, LeVay obtained his brain samples from homosexual men who had all died from AIDS. In contrast, for his control group, he obtained brain samples from men who had died not only from AIDS (6 subjects) but also from a diversity of other causes (10 subjects). As LeVay himself acknowledged, however, this raises a legitimate scientific question: Could the differences in the sizes of the neurons have been caused not by sexual orientation but by AIDS? This certainly is a possibility that was not definitively ruled out the study.

Finally, LeVay concluded that the differences in neuronal size could explain homosexuality. In other words, they could be linked to a biological cause for a homosexual orientation. This, however, is an illegitimate conclusion arising from faulty logic. One alternative explanation for the differences in the sizes of the neurons in the hypothalamus is that homosexual behavior is the cause for rather than the effect of the difference in neuron size.

To illustrate this, let us say that a scientist tells you that he has discovered that there is a difference in the size of the bicep muscles between weight lifters and pianists. Furthermore, he concludes that the large muscle mass is the cause for these men becoming muscle builders. What would you say? Would you not respond by pointing out that it is more likely to be the case that the large muscle mass was in fact not the cause for but the effect of muscle training? In the same way, LeVay's study was unable to rule out the possibility that homosexual behavior was not caused by, but rather, caused the differences in neuronal cell size.

In sum, in light of these significant problems, it is difficult to conclude with any certainty that homosexual orientation is caused in any way by the neurons of the hypothalamus.

Second, in December of 1991, John M. Bailey and Richard C. Pillard, reported that it was more likely for both identical twins to be homosexual than it is for both fraternal twins or for both adopted brothers. They found that 52% (29 pairs out of 56) of the identical twins were both homosexual; 22% (12 pairs out of 54) of the fraternal twins were both homosexual; and 11% (6 of 57) of the adoptive brothers were both homosexual. Thus, Bailey and Pillard concluded that there is a genetic cause for homosexuality.

Again, there were significant problems with the study. First, if homosexuality is genetically determined, why did only 52% of the identical twins share the same sexual orientation? How about the other 48% of the twins who differed in their sexual orientation? How do we account for them? Second and more importantly, the study was based upon a sample of twins which was not random. As critics have pointed out, Bailey and Pillard did not rule out the possibility that they had preferentially recruited twins were both brothers were gay by advertising in homosexual newspapers and magazines rather than in periodicals intended for the general public.

Indeed, it now appears that preferential recruitment did occur in the 1991 study – a more recent 2000 study by Bailey and his colleagues, using volunteers recruited, not from the gay community but from the Australian Twin Registry, revealed that only 20% and not 52% of identical twins share the same homosexual orientation. This is not as significant a difference between identical and fraternal twins as earlier reported. Thus, as the authors of the 2000 paper conclude, it is very difficult to distinguish the genetic from the environmental influences on sexual orientation.

The third and most publicized study suggesting a genetic link for homosexual orientation was a paper published by Dean Hamer and his colleagues at the National Institutes of Health. The researchers studied 40 pairs of homosexual brothers and concluded that some cases of homosexuality could be linked to a specific region on the human X chromosome (Xq28) inherited from the mother to her homosexual son.

This study has come under much criticism—the Office of Research Integrity of the Department of Health and Human Services even investigated Hamer for alleged fraud in this study though it eventually cleared him—and most significantly, has never been reproduced. In fact, two subsequent studies of other homosexual brothers have since concluded that there is no evidence that male sexual orientation is influenced by an X-linked gene. *(Continued on page 8)*

“[L]aw cases can turn almost entirely on an understanding of the underlying technical or scientific subject matter.” --Stephen Breyer, *Assoc. Justice, U.S. Supreme Court, Science Magazine, April 24, 1998*

The Myth of the Gay Gene *(continued from page 7)*

In sum, all the scientific evidence to date has not conclusively proven that genes determine homosexual orientation in human beings. The existence of a human gay gene remains a scientific myth. Thus gay activists are incorrect when they insist that science has proven that an individual with homosexual inclinations is "born that way."

Is Homosexuality a Permanent Orientation?

Another claim often associated with the revisionist position that challenges the Church's teaching is that homosexuality is a permanent state. A recent study, however, has challenged the truth of this belief.

In a paper to be published in the journal, *Archives of Sexual Behavior*, Dr. Robert L. Spitzer, Professor of Psychiatry at Columbia University and chairman of the 1973 APA committee which recommended that homosexuality be removed from the official diagnostic manual of mental disorders, interviewed men and women who had experienced a significant shift from homosexual to heterosexual attraction and had sustained this shift for at least five years.

To his surprise, he discovered that contrary to his own expectations, some highly motivated individuals, using a variety of change efforts, were able to make a substantial change in multiple indicators of sexual orientation and achieve good heterosexual functioning.

In his study of 200 individuals, Spitzer reported that after their change efforts, 17% of the men and 55% of the women interviewed claimed that they were now exclusively heterosexual in their orientation. Furthermore, 66% of the men and 44% of the women also reported that they had achieved good heterosexual functioning defined in the study as being in a sustained heterosexual relationship within the past year, rating emotional satisfaction from the relationship a seven or higher on a 10-point scale, and having satisfying heterosexual sex at least monthly.

The study concluded that some change in sexual orientation is possible. It is the latest and the most sophisticated study that has shown that some change in sexual orientation is possible after therapy.

Finally, two points should be made here to put the findings of the Spitzer study in a proper context. First, it is important to note that the subjects in the Spitzer study were not chosen at random from among homosexuals who had gone through therapy. Thus, the results should not be considered typical.

As Spitzer himself remarked, a significant majority of his subjects were "highly motivated" to change. Second, given the difficulty he had in finding volunteers for his study, Spitzer has

acknowledged that a complete change in sexual orientation is probably uncommon. Rather, according to Spitzer, a better way to conceptualize "sexual reorientation" is to see it as the diminishing of unwanted homosexual potential with a concomitant increase in the heterosexual potential of a particular individual.

Since the study was made public at the annual meeting of APA on May 9, 2001, the conclusions of Spitzer's report have been heavily criticized both in the media and on the Internet. Typically, there are two main objections.

First, critics charge that the study did not include data on the subjects' original sexual orientation. Thus, they assert that the study could not rule out the possibility that all the individuals interviewed were not true homosexuals, who by definition are persons who are sexually attracted exclusively to members of the same sex. Hence, these critics assert that the study was probably limited to individuals who had had a bisexual orientation and had previously engaged in at least some homosexual activity. After therapy, these critics propose that the subjects remained bisexual though they now feel that they have successfully developed a relationship with a person of the opposite gender. Thus, they conclude that the sexual orientation of the subjects really did not change.

To respond to these critics, we should note that the study did report that 42% of the men and 46% of the women interviewed said that they were exclusively homosexual before they engaged in the reparative therapy. Furthermore, only 9% of the men and 26% of the women had opposite sex masturbatory fantasies before their treatment. Together, both these results do indicate that prior to therapy a significant number of the subjects were probably not bisexually orientated as the critics charge.

Second, critics charge that the study was limited to a very select group of individuals that is not representative of the gay community. The subjects were predominantly Evangelical Christians associated with groups who condemn homosexuality: Of those who participated in the study, 78 percent had spoken publicly in favor of efforts to convert homosexuals to heterosexuality; 93 percent said religion was "extremely" or "very" important in their lives.

Critics conclude that these subjects were atypical and thus cannot be compared to the majority of persons in the gay community. To support their claim, critics contrast Spitzer's study with another study reported by psychologists, Ariel Shidlo and Michael Schroeder, who found that the vast majority of the subjects in their group, individuals recruited through the Internet and direct mailings to groups advocating reparative

therapy, reported failure in their efforts to change through reparative therapies. As one commentator has noted, the members of this second study were probably not Christian since the study was supported by a pro-gay advocacy group.

Hence, these critics conclude that the Spitzer study is biased and thus, unreliable. Some even charge that the subjects of Spitzer's study, given their anti-gay sentiments, probably lied about their behavior and exaggerated their success stories by constructing elaborate self-deceptive narratives.

To respond to these critics, Spitzer points out several things. First, if there was significant bias, one might expect that many subjects would report complete or near complete change in all sexual orientation criteria after therapy. Only 11% of the males and 37% of the females did so. One might also expect that many subjects would report a rapid onset of change in sexual feelings after starting therapy. In fact, subjects reported that it took, on average, a full two years before they noticed a change in sexual feelings. Next, if systematic bias was present, one would expect that the magnitude of the bias for females would be similar to that for males.

However, marked gender differences were found. These gender differences are consistent with previously published literature suggesting greater female plasticity in sexual orientation. Thus, Spitzer concludes that it is reasonable to believe that the subjects' self-reports in this study were by-and-large credible and that probably few, if any, elaborated self-deceptive narratives or lied.

Finally, we should not neglect to point out that the importance of Christian faith in those subjects who were capable of reorientating their sexual behavior, rather than pointing to bias, may be proof that grace is a necessary element for any successful reparative therapy.

As the Sacred Congregation for Doctrine of the Faith correctly noted, "As in every conversion from evil, the abandonment of homosexual activity will require a profound collaboration of the individual with God's liberating grace."

The second and final installment answers the questions "Is the homosexual lifestyle a healthy one?" and "Can homosexuality ever be considered natural?"

Rev. Nicanor Pier Giorgio Austriaco, O.P., is a molecular biologist, Dominican friar, and priest of Jesus Christ. He teaches at Providence College (Providence, RI) as an Assistant Professor of Biology and Adjunct Instructor of Theology.



^[1] This essay was original published in *Homiletics and Pastoral Review* 104 (3): 28-31; 48-53, but has been updated here to reflect developments in the ongoing effort to understand the basis of homosexuality. For further discussion also see my essay, "Understanding Sexual Orientation as a

Habitus: Reasoning from the Natural Law, Appeals to Human Experience, and the Data of Science, in *Leaving and Coming Home: New Wineskins for Catholic Sexual Ethics*, ed. David Cloutier (Eugene, OR: Cascade Books/Wipf & Stock, 2010), pp. 101-118.

^[2] As the task force of the Catholic Medical Association on homosexuality has pointed out, the clergy pedophilia scandal is really a homosexuality scandal since 90% of the cases of priestly sexual abuse of males are with adolescents. See Task Force on Homosexuality of the Catholic Medical Association, "A Contribution to the Debate About the Ordination of Homosexuals," *Linacre Quarterly* 69 (2002): 190-197, p. 191. A study of sex abuse cases carried out by *The New York Times* reports that for 80% of the cases where the information is available, it is clear that the abuse victims were male. This percentage is nearly opposite for laypeople accused of abuse. Their victims are mostly female. See Laurie Goodstein, "Trail of Pain in Church Crisis Leads to Nearly Every Diocese," *The New York Times*, January 12, 2003, p. 20.

^[3] "Basing itself on Sacred Scripture, which presents homosexual acts as acts of grave depravity (cf. Gen. 19:1-29; Rom. 1:24-27; 1 Cor 6:10; 1 Tim 1:10), tradition has always declared that homosexual acts are intrinsically disordered. They are contrary to the natural law. They close the sexual act to the gift of life. They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved." *Catechism of the Catholic Church*, no. 2357. Also see the magisterial document, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* published by the Sacred Congregation for the Doctrine of the Faith, *Origins* 16 (1986): 377-382.

^[4] For discussion, see Keith Hartman, *Congregations in Conflict: The Battle Over Homosexuality* (New Brunswick, NJ: Rutgers University Press, 1996). For a recent and extensive review of the debate among Catholic moral theologians, see James F. Keenan, SJ, "The Open Debate: Moral Theology and the Lives of Gay and Lesbian Persons," *Theological Studies* 64 (2003): 127-150.

^[5] For example, Chandler Burr has written: "Five decades of psy-

chiatric evidence demonstrates that homosexuality is immutable and nonpathological, and a growing body of more recent evidence implicates biology in the development of sexual orientation. Some would ask: How can one justify discriminating against people on the basis of such a characteristic? And many would answer: One cannot." See his "Homosexuality and Biology," in *Homosexuality in the Church*, ed. Jeffrey S. Siker. (Louisville: Westminster John Knox Press, 1994), p. 132.

^[6] As psychotherapist and former Jesuit priest, John J. McNeill has stated: "I proposed instead that God so created humans that they develop with a great variety of both gender identities and sexual-object choices. [...] Always and everywhere, a certain percentage of men and women develop as homosexuals or lesbians. They should be considered as part of God's creative plan." See his "Homosexuality: Challenging the Church to Grow" in *Homosexuality in the Church*, ed. Jeffrey S. Siker. (Louisville: Westminster John Knox Press, 1994), p. 50. Also see his often cited book, *The Church and the Homosexual* 4th edn. (Boston: Beacon Press, 1994).

^[7] For an insightful critique of these studies written before some of the newer scientific papers mentioned in this essay were published, see Jeffrey Satinover, "The Biology of Homosexuality: Science or Politics?" in *Homosexuality and American Public Life*, ed. Christopher Wolfe (Dallas: Spence Publishing Company, 1999), pp. 3-61.

^[8] Simon LeVay, "A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men," *Science* 253 (1991): 1034-1037.

^[9] J. M. Bailey and R. C. Pillard, "A Genetic Study of Male Sexual Orientation," *Archives of General Psychiatry* 48 (1991): 1089-1096.

^[10] J. Michael Bailey, Michael P. Dume, and Nicholas G. Martin, "Genetic and Environmental Influences on Sexual Orientation and Its Correlates in an Australian Twin Sample," *J. Personal Social Psychology* 78 (2000): 524-536.

^[11] D. H. Hamer et al., "A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation," *Science* 261 (1993): 321-327. Also see the follow-up paper, S. Hu et al., "Linkage between sexual orientation and chromosome Xq28 in males but not in females,"

Nat Genet 11 (1995): 248-256; and Dean Hamer's book, *The Science of Desire: The Search for the Gay Gene and the Biology of Behavior* (New York: Simon & Schuster, 1994).

^[12] "No Misconduct in 'Gay Gene' Study," *Science* 275 (1997): 1251.

^[13] J. M. Bailey et al., "A Family History Study of Male Sexual Orientation Using Three Independent Samples," *Behavior Genetics* 29 (1999): 79-86; and G. Rice et al., "Male homosexuality: absence of linkage to microsatellite markers at Xq28," *Science* 284 (1999): 665-667.

^[14] Robert L. Spitzer, "Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Subjects Reporting a Change from Homosexual to Heterosexual Orientation," *Archives of Sexual Behavior*, forthcoming.

^[15] For a comprehensive and recent overview of reparative therapy for male homosexuality, see Joseph Nicolosi, *Reparative Therapy of Male Homosexuality: A New Clinical Approach* (Northvale, NJ: Jason Aronson, Inc., 1997). For case stories of reparative therapy, see Joseph Nicolosi, *Healing Homosexuality: Case Stories of Reparative Therapy* (Northvale, NJ: Jason Aronson, Inc., 1993).

^[16] For a review of the literature, see Warren Throckmorton, "Initial empirical and clinical findings concerning the change process for ex-gays," *Professional Psychology: Research & Practice* 33 (2002): 242-248.

^[17] For a typical critique of the Spitzer study, see B. A. Robinson, "Analysis of Dr. Spitzer's Study of Reparative Therapy" at http://www.religioustolerance.org/hom_spit.htm. Last accessed on February 19, 2003.

^[18] Ariel Shidlo and Michael Schroeder, "Changing sexual orientation: A consumer's report," *Professional Psychology: Research & Practice* 33 (2002): 249-259.

^[19] See B.A. Robinson, "Studies of Reparative and Similar Therapies: An Overview" at HYPERLINK http://www.religioustolerance.org/hom_exod2.htm. Last accessed on March 7, 2003.

^[20] CDF, *On the Pastoral Care of Homosexual Persons*, no. 11.

Case Summary Highlights *(continued from page 4)*

CITIZENS BUSINESS BANK V. CARRANO, B216632, California Court of Appeal, Second Appellate District, Nov. 5, 2010 (inheritance right of child born out of wedlock)

A man fathered a child through rape. The child was raised by the mother and the mother's husband but never formally adopted by the husband. A trust created by the biological father's parents left money to the biological father's children. A trial court ruled that the child could not take under the trust because it was intended for children who were both biologically and legally the biological father's children and, here, the child was legally presumed to be the child of the mother's husband.

The appeals court held "the term 'issue'" in the trust was defined "as a class of people who were lineal descendants of" the biological father. Here, the evidence suggested that the biological father's parents and the biological father knew the son's parentage. The court also said the lack of a legally recognized relationship between the biological father and son did not prevent the son from being the biological father's "issue" as contemplated by the trust.

FEIGENBAUM V. NEW YORK STATE DEPARTMENT OF HEALTH, Index No. 09-19430, New York Supreme Court, Suffolk County, Oct. 22, 2010 (parentage of child born to gestational surrogate)

Genetic parents of a child sought to be listed on the child's birth certificate after the

child was born to a surrogate. The father was declared such by a court order of paternity but the Department of Health said it did not have authority to declare the genetic mother the child's legal mother.

The court held that the determination of legal motherhood is a matter for the legislature. The court noted there are two mothers in a surrogacy arrangement as acknowledged by the state's law. Since the constitution requires equal treatment of people similarly situated, there is no constitutional violation where men (who are identified as legal fathers for support purposes) and women (who are seeking legal motherhood to get custody) are treated differently by the law. If the genetic mother is allowed to be the legal mother, the surrogate is placed in an unequal position.

The court also noted that the genetic mother could adopt the child instead of seeking a declaration of maternity.

RECENT LAW REVIEW ARTICLES

Special Note: A new journal, the *International Journal of the Jurisprudence of the Family*, began publication Winter 2010. The journal "will seek to promote a deeper understanding of the principles upon which families are based and of the standards of law and the governmental policies through which family life can be recognized and promoted."

Pamela S. Karlan, "Let's Call the Whole

Thing Off: Can States Abolish the Institution of Marriage?" 98 *California Law Review* 697 (2010). Argues that doing away with marriage would probably be unconstitutional because it would be aimed at harming same-sex couples and would interfere with long-settled expectations about the availability of marriage.

Martha C. Nussbaum, "A Right to Marry?" 98 *California Law Review* 667 (2010). Argues against the idea that marriage ought to be defined as the union of a husband and wife.

Maggie Gallagher, "Why Accommodate? Reflections on the Gay Marriage Culture Wars" 5 *Northwestern Journal of Law & Social Policy* 260 (2010). Provides four reasons lawmakers should accommodate the views of religious people who support marriage.

Taylor Flynn, "Clarion Call or False Alarm: Why Proposed Exemptions to Equal Marriage Statutes Return Us to a Religious Understanding of the Public Marketplace" 5 *Northwestern Journal of Law & Social Policy* 1 (2010). Argues that religious exemptions from sexual orientation discrimination laws would result in gays and lesbians being refused services in all aspects of their lives.

Mark P. Strasser, "DOMA and the Constitution" 58 *Drake Law Review* 1011 (2010). Argues that the federal Defense of Marriage Act is vulnerable to a variety of constitutional challenges.

Researcher Says Children of Same-Sex Marriage Couples More Likely to be Homosexual

By Catholic News Agency

Social scientist Walter Schumm doesn't think this paper ought to be provoking the outraged responses he has received. For years, researchers have admitted the possibility that he says he has now confirmed—that children raised by homosexual parents are more apt to become homosexual themselves.

Nevertheless, Schumm's article, published in the November edition of the *Journal of Biosocial Science*, has triggered a firestorm since it began circulating online this summer. Irate advocates for the "normalization" of homosexuality accused him of ideological bias and shoddy research.

But Schumm, a professor of family studies at Kansas State University, said he rigorously tried to disprove his own theory. Ultimately, he reached a conclusion that mainstream sociologists, and even a prominent gay activist, have described as common sense.

In new research and an analysis of more than two dozen earlier studies, Schumm found that 27 percent of lesbian parents' children identified themselves as homosexual, and 19% of the children of gay men; by contrast, 5 to 10 percent of the children of heterosexual parents self-identify as homosexual. Furthermore, Schumm observed gay parents' children increasingly identifying as homosexual as they emerged from adolescence. His analysis of families with older children showed that one-third of gay fathers' families, and 58 per-

cent of families of lesbian mothers, included at least one gay or lesbian child.

"Most scholars actually agree with the concept that gay people ought to be more likely to have gay children," he told CNA in an Oct. 19 interview. "Even people on the liberal side of things actually pretty much agree with the idea that there are going to be social influences."

He noted that prominent gay activist Jim Burroway has criticized proponents of the "parental influence" theory but has also said that such findings would not be surprising. In a column published on a gay and lesbian website in 2006, Burroway noted that virtually every theory about the origin of homosexuality would likely predict a higher incidence in children of gay parents.

Schumm wanted to test that prediction, and to improve on previous research he said was too limited and not sufficiently rigorous. He analyzed data obtained from 26 studies of gay parents and their children. He noted that many of the studies' authors had dismissed the idea of a parental influ-

ence on children's homosexuality.

Those researchers, Schumm believes, chose to ignore or downplay the significance of their own findings. Even when attempting to disprove his hypothesis—for instance, by classifying the significant number of respondents who showed no clearly defined sexual preference as "heterosexual" in the analysis, or assuming that up to a third of those identified as homosexuals could have been erroneously categorized—Schumm consistently confirmed the hypothesis among 218 families.

His paper makes no assertions as to the exact origin of homosexual behavior. But the professor has indicated some of the "pathways" through which he believes homosexual parents may influence children. These include parents' attitudes toward adolescent sexual experimentation, and ideas about men and relationships that Schumm said tended to prevail in some lesbian households.

This article was originally published by CNA on Oct 22, 2010, at www.catholicnewsagency.com.



Graphic courtesy of CNA

ARE YOUR NLA DUES CURRENT?

If not, join today at one of the full membership levels (\$200 and above) and receive our new membership perk: a one year's subscription to *Human Life Review*, the country's premier pro-life journal.



NLA BRIEF

The *NLA Brief*, the official newsletter of the National Lawyers Association, is published four times a year. Publisher/NLA CEO: Rebecca Messall. Editor: Lisa A. Bastian, CBC. Headquarters address: National Lawyers Association, 44 Cook Street, Suite 100, Denver, CO 80206. Phone: (303) 398-7030; (800) 471-2994. Fax: (303) 398-7001. Web site: www.nla.org.

BOARD OF DIRECTORS: Tom Brejcha, *Chicago, IL*; Denis V. Brennan,* *Philadelphia, PA*; Richard E. Browning, *Mobile, AL*; Edward J. Currie, Jr., *Jackson, MS*; Willam P. Daniel, *Flint, MI*; John G. Farnan,* *Cleveland, OH*; William Maywhort,* *Denver, CO*; Rebecca Messall,* *Denver, CO*; William D. Olson, *Grinnell, IA*; Ronald D. Ray, *Crestwood, KY*; Mark C. Rohlena, *Denver, CO*; Tracey L.F. Trigillo, *Springfield, IL*; Philip S. Walker, *Hartford, CT*; Joe Wusinich, *Downingtown, PA*.

* = NLA past president.

ADVISORY COUNCIL: Prof. Frank Covey, Jr., *Loyola Univ. of Chicago*; Dean Robert D'Agostino, *John Marshall Law School*; Prof. Joseph Dellapenna, *Villanova Univ.*; Assoc. Dean Robert Destro, *Catholic Univ. of America*; Prof. Joseph L. Falvey Jr., *Ann Arbor, MI*; Prof. Scott Fitzgibbon, *Boston College Law School*; Prof. David Forte, *Cleveland State Univ.*; Edward Gaffney, *Valparaiso Univ.*; Prof. Lino A. Graglia, *Univ. of Texas Law School*; William F. Harvey, *Prof. Emeritus of Law, Indiana Univ.*; Prof. Raymond Marcin, *Catholic Univ. of America*; Prof. Charles Rice, *Notre Dame Univ.*; Prof. Richard T. Stith, *Valparaiso Univ.*; William Valente, *Prof. Emeritus of Law, Villanova Univ.*; Prof. Lynn Wardle, *Brigham Young Univ.*; John C. Buckley III, *Colorado Springs, CO*; Eugene S. Bulso, Jr., Esq., *Nashville, TN*; James S. Cole, Esq., *St. Louis, MO*; David C. Drury, Esq., *St. Louis, MO*; Mary Ann Johaneck, Esq., *Cleveland, OH*; Darwin Johnson, Esq., *Kansas City, MO*; Denish Mackura, Esq., *Cleveland, OH*; Thomas E. Maxwell, *Birmingham, AL*; William R. Mikos, Esq., *St. Paul, MN*; Thomas Spencer, Jr., Esq., *Miami, FL*; Helen M. Alvaré, *George Mason School of Law*.