

“The Law’s the Law, Right?” Sexual Minority Mothers Navigating Legal Inequities and Inconsistencies

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Abstract LGB parents face a number of legal inequities and confront a legal landscape that not only varies drastically by state but also quickly changes. Research has shown that some LGB parents and prospective parents have inaccurate knowledge about the laws relating to parenting. Drawing on data from 21 interviews, I ask how sexual minority mothers gain knowledge about the law. I found that people were very aware of the legal inequities they face and sought to become knowledgeable about the law before they had children. Sexual minority mothers reported using four primary methods to learn about the law: doing independent research, relying on friends, relying on LGBT organizations, and hiring an attorney. The method upon which they relied was shaped by class. Notably, people received conflicting and at times inaccurate legal information depending on the method upon which they relied. Throughout the process of learning about the law, parents experienced anger, stress, and fear. These findings shed light on some of the inequities that sexual minority parents face insofar as they must expend added effort to gain knowledge about the law. The findings can also help efforts to ensure that legal knowledge is disseminated effectively, which is especially important given how quickly the legal landscape for LGB parents is changing.

Keywords Sexual minority parents · Law · Legal knowledge · Parenting · Second-parent adoption

The composition of families in the USA has always varied, yet laws often assume that families consist of a married different-sex couple raising biologically related children (Cherlin 2010; Coontz 2000; Powell et al. 2010). Indeed, for different-sex couples that have a child, laws pertaining to their recognition as legal parents are “well established” and “reasonably uniform” (Shapiro 2013, p. 292). Both are assumed to be the parents and are immediately able to be listed on the birth certificate and thus are legally recognized as parents (Joslin 2005; NOLO Law for all 2014). In contrast, the laws pertaining to same-sex couples that have a child are not well established and vary dramatically by state (Shapiro 2013). In the case of the family form that is the focus of this article—female same-sex couples that have a child via donor insemination—the biological mother is immediately listed on the birth certificate and legally recognized as a parent. However, the non-biological mother¹ is not immediately legally recognized as a parent in all states. These families must pursue a second-parent adoption, which allows for the non-biological parent to be added to the birth certificate and legally recognized as a parent, all while maintaining the legal status of the biological parent (Dalton 2001; Federle 2005; Richman 2008; Shapiro 2013; Sterett 2009).

Yet, state laws vary with regard to whether female same-sex couples can pursue a second-parent adoption (Dalton 2001; Sterett 2009): in seven states, appellate courts have ruled that same-sex couples cannot pursue a second-parent adoption, and thus, the non-biological parent is unable to

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¹ Sexual minority parents raising children to whom their partners gave birth, like all LGB-parents, use many different terms to describe their parenting role, including non-biological mother, non-gestational mother, and non-birth mother (Aizley 2006) as well as terms that are not feminine gendered such as “mather” (Padavic and Butterfield 2011). Here, I use the term “non-biological” mother to reflect that in terms of birth certificates, the biological mother who gives birth is immediately legally recognized. Moreover, all of the participants used this language in the interviews.

create a legal tie to her child (unavailable access); in 23 states, appellate courts or statutes explicitly allow same-sex couples to pursue a second-parent adoption, and thus, the non-biological parent is able to create a legal tie to her child (guaranteed access); in the remaining 20 states, there is not an explicit court ruling or statute that either prohibits or allows same-sex couples to pursue a second-parent adoption, and thus, whether the non-biological parent is able to create a legal tie to her child is uncertain and depends on which county she lives in and which judge presides over the case (uncertain access) (National Center for Lesbian Rights 2014). Such uncertainty and the fact that judges can have varied interpretations of what constitutes the “best interests of the child” in child-custody decisions, including second-parent adoptions, are an example of what Richman (2008, p. 3) referred to as the “indeterminacy” of family law. The varied and indeterminate legal landscape appears to create confusion for sexual minorities, as existing research showed that some LGB individuals have inaccurate information or report being confused about the law pertaining to parenting in their state (Goldberg et al. 2007; Kinkler and Goldberg 2011; removed for review).

In order to assess the processes that could result in such confusion or inaccurate knowledge, in this article, I ask how sexual minority parents gain information about the law. I focus on one family form (female same-sex couples raising children conceived through donor insemination) and one law (second-parent adoption). Drawing on data from interviews with parents in three states with different laws (unavailable, guaranteed, uncertain), I address whether and when parents have an awareness of the law, how they gained such an awareness, as well as their reactions during the process of becoming aware of their state’s law. Analyzing these processes is important insofar as the legal information and advice they receive could impact their subsequent legal decision-making. As Oswald and Kivalanka 2008 asserted, it is important to understand the meaning that legal options have for sexual minorities; here, I assess an initial step involved in making such meaning: getting information about what the legal options are. Moreover, given that the legal landscape is changing so quickly (Shapiro 2013), knowing how sexual minorities gain knowledge about the law can aid efforts to ensure that legal knowledge can be disseminated effectively. This work illustrates that changes in the legal landscape that occur at larger level with appellate court rulings do not just neatly “trickle down” to ordinary citizens. Finally, focusing on the processes that sexual minority parents go through to gain information about creating a legal tie to their child, something required of them solely because of their sexual orientation, addresses the inequalities that currently exist for LGB parents in the USA (Butterfield and Padavic 2014).

Literature Review

As sexual minorities are increasingly having children after coming out (Biblarz and Savci 2010; Patterson and Riskind 2010), the legal system is forced to reconcile with new family forms and demands for recognition (Richman 2008). For instance, (2008, p. 177) argued that the increasing “institutionalization” of second-parent adoption for female same-sex couples reflects the fact that planned same-sex families are gaining increased legal recognition. Indeed, historically, “lesbian” and “parent” were assumed to be incompatible identities. In custody disputes following a heterosexual marriage, identifying as a lesbian or being in a same-sex relationship could be grounds for being deemed to be “unfit” as a parent and being denied custody of your child (Joslin and Minter 2011). Despite increasing legal recognition of LGB parents, it is not complete (Seidman 2002). For instance, the fact that both parents in female same-sex couples having a child via donor insemination are not immediately legal parents of their children reflects one of the inequalities facing these families (Hopkins et al. 2013; Moore and Stambolis-Ruhstorfer 2013). Being recognized as a legal parent carries tremendous rights and responsibilities not rendered to social parents (Shapiro 2013). The inequality of not having both parents legally recognized negatively impacts familial well-being (Butterfield and Padavic 2014; Shapiro et al. 2009). Further, that the ability for female same-sex couples to pursue a second-parent adoption varies by state means that parents’ experiences will vary across legal contexts. Parents living in states where access is uncertain (insofar as there have been no appellate court decisions or statutes explicitly allowing or denying access) rely on knowledgeable lawyers to guide them through the process (Sterett 2009). Often, these lawyers do not publicly advertise that they work with same-sex couples, and thus, parents have to rely on word of mouth to find one (Dalton 2001; Sterett 2009). Other barriers exist to doing a second-parent adoption, even in states where access is available, including cost and the fact that it places families under exceptional scrutiny (Boggis 2001; Dalton 2001).

Finally, the different legal landscapes that different-sex and same-sex couples face when having a child underscore how the law is salient for LGB parents in a way that it is not for heterosexual parents (Connolly 2002). As Connolly (2002, p. 328) stated, for heterosexual parents, the law is “simultaneously centered and invisible.” Yet, because of the inequities, the law is not so invisible for LGB parents. Indeed, prior research focusing on parents who have done a second-parent adoption showed that these parents are very knowledgeable about the law and are active and successful in pursuing litigation (e.g., Connolly 2002; Hequembourg 2004; Richman 2008). Less is known about the experiences of those LGB parents who have not done a second-parent adoption. Are they equally as knowledgeable about the law? One existing study

that focused on planned same-sex families formed via donor insemination that have not done a second-parent adoption suggested yes; Butterfield and Padavic (2014) found that these parents are also knowledgeable about the law insofar as they are painfully aware of the legal inequity created within their family as a result of only one parent being legally recognized. Following Butterfield and Padavic (2014), the current study adds to our knowledge about the experiences of those who have not done a second-parent adoption. It asks how they, as well those who have done a second-parent adoption, gain knowledge about the law. Thus, it captures the processes that occur for LGB parents before they even hire a lawyer or enter a courtroom. It draws attention to if and how LGB parents become cognizant of and navigate a varied, uncertain, and quickly changing legal landscape.

Method

Data Collection and Analysis

Data come from 21 interviews with sexual minority parents who are from 12 different families. All participants had a child within the context of a same-sex couple. For nine of the families, both parents were interviewed (in five cases, both parents were interviewed together; in four cases, each parent was interviewed separately). For the remaining three families, only one parent was interviewed (in two of these cases, the participant was no longer with the person with whom she had a child; in one case, the participant was with the person with whom she had a child, but that person did not participate in the study). The majority of the interviews were conducted in the fall of 2012 (September–November); four were conducted in 2013 (April–October). Interviewees were recruited from Iowa, Missouri, and Nebraska. I recruited in these three states because they have different legal climates with regard to the availability of second-parent adoption for same-sex couples: Iowa has guaranteed access²; Missouri has uncertain access; and Nebraska does not have access. These laws reflect the legal landscape that participants were living in when their child(ren) were born and/or when considering second-parent adoption, with the exception of two families. One couple who was living in Nebraska had moved to the state after having had children and having done a second-parent adoption in another

state. Another parent was living in Iowa but had children before the current law granting same-sex couples access to second-parent adoption was in effect.

I recruited participants through a purposive, convenience sample with several starting points so as not to over-rely on particular social networks. My starting points included regional LGBT organizations in each state (such as PFLAG, pride groups, and parenting groups) as well as churches with welcoming LGBT-friendly stances. I also recruited through national LGBT organizations (such as Equality Resource Council, National Black Justice Coalition, Gay Parent, a magazine targeted to LGBT parents, and LGBT parenting groups on websites such as Babycenter.com). Finally, I created a public page for the study on Facebook and posted a request for participants on that site that anyone could share.

I conducted all of the interviews in person, over the phone, or over Skype. Ten participants were interviewed together with their spouse/partner (i.e., five couples were interviewed together). Eleven participants were interviewed separately. Prior to the interview, I asked people to complete a short survey that included demographic questions (e.g., gender, race, family income, age of their child, etc.). The survey also included questions about their relationship with their child (e.g., questions about how close they feel to their child) and their experiences with the law (e.g., when they first became aware of the law regarding second-parent adoption and whether they were recognized as a legal parent). For all of the questions on the survey, participants were asked to report information for each of their children if they had more than one (i.e., they were asked to list the age of each of their children, how close they felt to each of their children, whether they were legally recognized as a parent for each child, etc.). The interviews were semi-structured and covered questions about how they gained information about the legal climate in which they were living, their decision-making process about whether or not to do a second-parent adoption (or other forms of legal recognition for those who did not pursue a second-parent adoption), and their experiences regarding the law in both interpersonal interactions (within their own family, with other family members and friends) and institutional interactions (with child care providers, teachers and school administrators, and doctors and pediatricians).

Once the data were collected, the interviews were transcribed in full and coded using QSR-Nvivo software. I began analyses by reading through the transcripts and taking notes on interesting emerging themes. Some of the topics relevant to this article that emerged in this process (referred to by Emerson et al. (1995) as “open coding”) include the variety of ways participants discussed getting information about the law, the varied and conflicting advice people received, and the different feelings people had about the law (anxiety, fear, relief, security). After generating these topics, I trained two graduate student research assistants to code the interviews

² For female same-sex couples who are married and living in Iowa, the current law is that both parents are able to be immediately listed on the birth certificate. The possibility emerged after the interviews had been conducted, following an Iowa Supreme Court Case decision (Mello 2013). Yet, even for these families, the non-biological parent is advised to create a legal tie to her child that does not rest on the recognition of the legal tie to her spouse.

using them. After the interview data were coded, I wrote analytic memos that linked themes, which were developed into the findings below. The memos allowed me to assess whether variation among the participants existed with regard to each topic (e.g., were there class differences in terms of how people gained knowledge about the law). In order to ensure confidentiality, I used pseudonyms. The quotes were edited for the sake of both confidentiality and clarity, but the meaning and words have not been otherwise changed.

Profile of Participants

The sample includes participants from each state in roughly equal proportions (with a couple more from Nebraska and a couple less from Iowa). About half of the interviewees (52 %) described their place of residence as urban, 34 % as suburban, and 14 % as rural. The sample is racially homogeneous, with nearly everyone identifying as White and one participant identifying as biracial. There is more variation with regard to class: about 39 % of the sample reported a family income of less than US\$60,000. Of these participants, 19 % had a family income less than US\$30,000, 10 % less than US\$45,000, and 10 % less than US\$60,000. In terms of how they self-identified their class, about 24 % identified as working class, 67 % as middle class, and 9 % as upper middle class. Education levels also varied, with 19 % of the sample reporting some college or less as the highest amount of education they had obtained. In terms of the demographics related to their family composition, only one participant was single. For those with spouses or partners, most had been together for 4 years or longer (90 %). Just over half (62 %) of the sample had one child, 28 % had two children, and 10 % had three children. The age of children at the time of the interview ranged from 3 months to 19 years old, and about half of the children (57 %) were under the age of 5. All of the participants had become parents via donor insemination within the context of a same-sex relationship. In all but one family, one parent was biologically related and one parent was not biologically related to their children (in one family, each parent had given birth). With regard to legal status, half of the sample (10 participants) pursued a second-parent adoption, and half (11 participants) did not pursue a second-parent adoption (but one participant was in the process). Six people in the sample do not have a legal tie to their child(ren). This includes people who are together with their partner/spouse with whom they had children (and who have not done a second-parent adoption) and those who are no longer partnered (and did not do a second-parent adoption when partnered) as well as those who joined

the family after children were born (and have not done a second-parent adoption) (see Table 1).

Findings

Gaining Knowledge about the Law

Interviewees reported being very aware of the laws regarding the availability of second-parent adoption for same-sex couples (see Table 2). Only two respondents (Elizabeth and Tanya) stated that they did not know if second-parent adoption was available where they were living. For Tanya, despite being unaware of the law in her current state of residence, she had done a second-parent adoption in another state prior to moving. In the interview with Elizabeth, she explained that when her son was born nearly two decades ago, second-parent adoption “wasn’t really all that common then” and “wasn’t on the radar.” This could reflect in part the degree to which second-parent adoptions have become increasingly “institutionalized” for same-sex couples (Richman 2008, p. 177). Indeed, for every other participant, second-parent adoption was “on the radar” and was salient in their discussions of creating a family. Among the people who reported knowing about the law regarding the availability of second-parent adoption, the majority of participants ($n=17$, 81 %) had knowledge of these laws prior to having children, either before trying to have a child ($n=13$, 62 %), while trying to have a child ($n=3$, 14 %), or while pregnant ($n=1$, 5 %). A small number ($n=3$, 14 %) reported becoming aware about the law after having a child. In addition to second-parent adoption, eight of the families discussed having created other legal documents, including wills and power of attorneys, underscoring the saliency of the legal inequities in LGB individuals’ family experiences (Riggle et al. 2005). That people were so knowledgeable about the law also highlights the added effort that LGB parents must undertake to address the legal inequities their families face.

In terms of how participants gained information about the legal context in which they were living, interviewees described four main methods: doing independent research, relying on friends, relying on LGBT organizations, and consulting with an attorney.

Independent Research First, a majority of respondents ($n=15$, 71 %) reported that they did their own independent research, which often entailed seeking out information online. Online research was a first step for many respondents. As Kathy, Nikki, and Victoria indicated, respectively: “I looked up a lot of websites. I Googled” and “we did some research and used the Google machine” and “we’ve just been looking online.” Grace explained that she found “mommy blogs by people in my shoes, the non-bio mom” helpful for learning about the law. Yet, others found that their online research yielded

Table 1 Descriptive statistics for analytic sample

	<i>N</i>	%
State		
Nebraska	9	43
Iowa	5	24
Missouri	7	33
Area		
Rural	3	14
Urban	11	52
Suburban	7	34
Age		
25–30	2	10
31–35	6	30
36–40	5	25
41–45	6	30
46 and over	1	5
Sexuality		
Gay	2	10
Lesbian	15	71
Bisexual	4	19
Race/ethnicity		
White	20	95
Biracial	1	5
Family income		
US\$15,001–US\$30,000	4	19
US\$30,001–US\$45,000	2	10
US\$45,001–US\$60,000	2	10
US\$60,001–US\$100,000	9	42
US\$100,000 or more	4	19
Class		
Working	5	24
Middle	14	67
Upper middle	2	9
Years of education		
High school or less	1	5
Some college	3	14
College graduate	7	33
Graduate school or more	10	48
Relationship status		
Married	17	81
Domestic partnership	3	14
Single	1	5
Relationship duration		
Less than 1 year	0	0
1–2 years	0	0
2–4 years	2	10
4+ years	18	90
Number of children		
One	13	62
Two	6	28
Three	2	10

Table 1 (continued)

	<i>N</i>	%
Relationship to children		
Biologically related parent	9	43
Non-biologically related parent	10	48
Mix of biological and non-biological	2	9
In a relationship that pursued 2nd parent adoption		
Yes	10	48
No	11	52
Parental status		
Legally recognized as parent since birth	9	43
Legally recognized as parent through 2nd parent adoption	4	19
Not legally recognized	6	29
Mix of since birth and 2nd parent adoption	2	9
When aware of law		
Before we were trying to have a child	13	62
While we were trying to have a child	3	14
While I/partner/surrogate was pregnant	1	5
After I/partner/surrogate gave birth	3	14
I am not aware of such laws	1	5

Age is missing for one participant

little information. For instance, Grace said: “I’ve specifically tried to search Missouri but there must not be that many people successfully doing it because I’m not finding a lot of information about it.” Melanie expressed a similar sentiment. She said: “I did a bunch of research and I did a lot of looking online, which really had nothing about Missouri laws. There doesn’t seem to be a lot of information that I could find about second-parent adoption here. So that didn’t really help at all.” She described her online research as “confusing” and said that the one thing she did glean from the online research is that it is “unclear what the laws are [in Missouri].” Melanie also explained that: “I can’t find any lawyers who mention it on a website.” Her sentiment that it is difficult to find information, either about the law or about lawyers who might be knowledgeable about second-parent adoption, corroborates prior research that showed lawyers who do second-parent adoptions do not often advertise that fact (Dalton 2001).

Doing independent research also entailed looking up actual statutes and previous cases (i.e., not just looking at a website that summarized the state law) and contacting hospitals and county and state agencies that process birth certificates to ask about the possibility of listing two mothers on a birth certificate. Darcie and Linda spent a lot of time researching the law, including looking up statutes, the Iowa Code, and previous cases. Darcie described this research in the following way: “it was work, and consumed a lot of our time.” Others, including Shawna and Joyce, a couple in Missouri, called the hospital where they were giving birth to their first child to inquire if they could both be listed on the birth certificate. Likewise, Darcie and Linda also

Table 2 Participant profile

Name	Age	State	Biological/non-biological parent	2nd parent adoption?	When aware of law
Anne	47	NE	Non-biological	No	Before we were trying
Barbara	37	NE	Non-biological	Yes	Before we were trying
Tiffany	40	NE	Biological		While I was pregnant
Victoria	38	MO	Biological	No	Before we were trying
Grace	34	MO	Non-biological		After partner gave birth
Cathy	34	MO	Non-biological	Yes	Before we were trying
Harriet	34	MO	Biological		Before we were trying
Darcie	38	IA	Non-biological	Yes	While we were trying
Linda	43	IA	Biological		Before we were trying
Elizabeth	43	IA	Non-biological	No	Not aware
Melanie	29	MO	Biological	No ^a	Before we were trying
Jan	43	NE	Both	Yes	Before we were trying
Tanya	36	NE	Both		Before we were trying
Shawna	33	MO	Biological	No	While we were trying
Joyce	32	MO	Non-biological		Before we were trying
Pamela	44	IA	Biological	Yes	After I gave birth
Robyn	44	IA	Non-biological		After partner gave birth
Kathy		NE	Biological	No	Before we were trying
Phoebe	23	NE	Non-biological		While we were trying
Ellen	33	NE	Biological	No	Before we were trying
Nikki	36	NE	Non-biological		Before we were trying

^a She and her wife are planning to do a second-parent adoption

wondered if they could both be immediately listed on the birth certificate following Iowa's recognition of same-sex marriage given that they were married (paralleling what happens for married different-sex couples). To find out, they called the hospital where they would be giving birth, then the county, and then the department of health and human services. Darcie explained that they got conflicting answers in each place:

I called the hospital first, and they said “yep that’s fine, put both names on the application.” Then I called the county and they said “well that should be no problem, but because it’s at the state level at the department of health and human services, vital records, that approves all the birth certificates, you may want to call there just to make sure.” So I started calling the department of vital records and the people I talked to didn’t want to touch it at all. They said “we’ll you need to talk to this person,” but this person never seemed to be in the office

when I called. Finally I did get a hold of him, and it was a very short abrupt conversation,[he said] “nope your name can’t go on the birth certificate.” I started to ask for clarification like we’re married in the state, [but he said] “nope your name can’t go on that’s just how it is, thank you,” and he pretty much hung up on me.

Their story further underscores the amount of time they spent doing independent research to learn about the law. This research was especially paramount given that the legal landscape had dramatically changed (e.g., Iowa legalized same-sex marriage) while they were trying to get pregnant. It, coupled with Shawna’s and Joyce’s story, also points to the amount of inconsistent and inaccurate information LGB parents receive, which I expand upon in the second section.

Relying on Friends People also described the relying on their friends and others in their social networks to gain knowledge

about the law ($n=14$, 66 %). Barbara and Tiffany explained that their advice to other families in Nebraska regarding the law would be, as Barbara put it, to “talk to people.” Barbara elaborated: “I think the biggest thing we’ve done [is that] we’ve talked to a lot of people and we asked a lot of questions. I’ve seen people that are really good at searching on the internet, but we’re not very good at that.” She thought one of the biggest benefits to more same-sex couples raising children was that: “you can actually go and talk to different families and [ask] ‘what have you done?’” Shawna and Joyce also described learning about the law through conversations with two gay friends. Elaborating on one conversation, Joyce said that their friends “told us that it’s not like [being] a heterosexual couple in Missouri and [doing] a step parent adoption.” Rather, their friends told them that “[the biological mother] has to relinquish her rights as the mother in order for [the non-biological mother] to adopt them and then has to get [her rights] back. [The biological mother] has to stand up in court and say ‘I don’t want my children.’” Their story underscores that one way people obtain knowledge about the law is through the storytelling that occurs among friends. Notably, these were the only participants who raised the issue of the biological mother relinquishing rights.

Some participants were able to rely on friends or acquaintances with particularly useful professional credentials or connections. Victoria, for instance, explained that two of her partner’s “really good friends” are attorneys and that “we’ve been able to ask them some legal questions.” During their process, Darcie and Linda also reached out to a friend of a friend, who had served in a top position in state government. That person called a high ranking elected state official to inquire whether it would be possible for them both to be listed on the birth certificate as a married couple. Further, that person also gave them the contact information of a lawyer working with another married same-sex couple who had “just sent a letter to the attorney general on that couple’s behalf asking for verification of the interpretation of the Iowa Code for whether their names could be on the birth certificate.” It is unlikely that they would have gained access to such a contact through Internet research alone. Rather, it was through a friend of a friend that they were able to have direct contact with a high ranking state official and a lawyer working on a similar case who had requested clarification from the attorney general. Their story thus highlights the importance of one’s social networks in terms of learning about the law. It is also important to note that this couple reported the highest family income and highest class-status in the sample.

Relying on LGBT Organizations A third method interviewees used to gain knowledge about the law included relying on LGBT organizations and groups. A smaller number of respondents reported this method ($n=12$, 57 %). Jan and Tanya attended a 4-week class aimed at prospective parents sponsored by a local LGBT family organization, Rainbow Families, prior to moving to Nebraska. Jan described the benefits of the 4-week

class as follows: “there was a whole session on the legal aspects of [becoming parents]. That’s where we got the really good information about the legal aspects. The class was fantastic. It told us everything we needed from beginning to end. But here in [our town] in Nebraska, there aren’t resources.” Importantly, although Jan commented on how useful she found the class sponsored by an LGBT organization, she noted that those same sorts of classes and resources were not available in her current residence. Pamela and Robyn, who live in Iowa, also discussed learning about the legal context through a workshop sponsored by their gay-affirming church. Pamela said: “we had speakers come to our church and talk about adoptions.” Robyn explained that through a lawyer who spoke at the workshop, they “learned the ins and outs of what the laws meant.” The workshop also gave them a contact of a family attorney that they knew would be LGBT-friendly and knowledgeable. Others noted that they relied on specific websites geared to LGBT communities, including the Human Rights Campaign for Shawna and Joyce, the National Gay and Lesbian Taskforce for Melanie, and Lambda Legal and the National Center for Lesbian Rights for Darcie and Linda. Finally, through her participation in a local LGBT organization, Melanie was able to find a lawyer who could provide information about second-parent adoption. Recall that she was unable to find information online. She said: “the only reason I got that lawyer is because I met this guy with [LGBT organization] and I asked him randomly and he asked a bunch of people.” When she met him, she explained to him that: “I’m interested in second-parent adoption, but I’m really not finding anything online.” She said that “he talked to a couple of people and found a guy who would do it. So it wasn’t like anything even official.” As Melanie stated, her process of finding information about second-parent adoption did not rest on what she would consider to be a more systematic process. Rather, it resulted from her participation in a local LGBT organization. It was through this organization that she was able to meet someone who could then put her in contact with a lawyer who could provide her with information regarding second-parent adoption.

Consulting with an Attorney Indeed, the fourth way that participants gained knowledge about the law was from an attorney ($n=17$, 81 %). Melanie, discussing her lawyer, said, “he actually talked to me for quite awhile and just kind of explained what the legal situation would be and what the courts would want.” Reflecting on their lawyer that had been recommended by other lesbian moms, Cathy and Harriet said: “it seemed like he was pretty knowledgeable as far as the best easiest route [to do a 2nd parent adoption] in [city].” For these participants, a lawyer helped explain the legal context in which they were living. Darcie and Linda also noted that their lawyer was useful in providing explanations during what they described as a confusing and emotional process of doing a step-parent adoption. For instance, after learning that they would have to submit a record

from the sperm bank that their anonymous donor had signed away paternity rights, Darcie said she was “really upset” about this and thought it was “so ridiculous, so over the top.” She said that their lawyer helped her not be so angry: “the lawyer was actually good to explain the rationale and I wasn’t quite as angry then. Once he explained the rationale, I could kind of rationally understand it.” This was one of many instances for this couple when their lawyer was able to give them legal information that alleviated some of their frustration. They described feeling that their lawyer was very effective and knowledgeable. In fact, he even called the judge who would likely be presiding over the adoption a couple of times to inquire about what paperwork was needed to ensure that they were “doing everything to maximize the chance of it happening smoothly.” They had worked with multiple lawyers during the process and had already paid almost US\$6,000 in legal fees before hiring the lawyer who actually did the second-parent adoption, although they did not specifically reference the cost being something they considered in deciding which lawyer to use. In contrast, Ellen and Nikki, a couple in Nebraska, specifically hired a lawyer whose legal fees for executing documents like wills and power of attorneys (second-parent adoption was not available) were the cheapest they could find. They explained that the rates were lower in part because the lawyer was, as Nikki said, “new and starting her business.” Ellen speculated that the lower costs might have impacted the legal advice she was able to give them: “she’s new, which is one of the reasons we could afford her, and she is very supportive and we liked her a lot. But because she’s new, she also didn’t have some of that background knowledge and experience. Some of our questions she wasn’t 100 % able to answer.” Despite working with a lawyer they “love” and “would recommend to anyone” and who was “supportive,” Ellen still noted that their lawyer “just didn’t have as much experience as one we might have paid more for.” Further illustrating the role of class, Kathy and Phoebe, a couple in Nebraska who described themselves as “working class” and reported their family income to be below US\$30,000, noted that they did not hire a lawyer to execute documents such as power of attorneys; rather, Kathy said “we filled out all the legal paperwork and filed it ourselves.” Kathy did, however, “email a couple of family law attorneys that were around the area just to make sure that what I was finding [through my own research] was right.” Taken together, these stories exemplify that hiring and talking with lawyers is one method LGB parents use to gain knowledge about the law. Moreover, their stories illustrate that class might impact both the ability to hire a lawyer and the knowledge ultimately received from a lawyer.

Navigating Variation in the Law

In this section, I outline how, after gaining information about the law, participants described facing a legal landscape that is not only unequal but is messy, unclear, and varied.

First, every participant spoke about how much the laws varied by state with regard to the availability of second-parent adoption for same-sex couples. Those in Missouri and Nebraska, where access is uncertain and unavailable, respectively, imagined that if they were living in Iowa, where access is guaranteed, they would face a much clearer, easy process of establishing legal recognition for their family. As Ellen put it: “Oh my god, how much simpler would all of the legal stuff be in a different state, if we just moved across the river [to Iowa]? How much easier would it be?” This couple and others living in Nebraska could not do a second-parent adoption; as Nikki said during the interview in response to my question about whether they had done a second-parent adoption: “It’s Nebraska. It’s not available here.” Yet, two families in Nebraska had done a second-parent adoption; one had done it prior to moving to Nebraska (Jan and Tanya) and one had done it in Iowa after establishing residency there temporarily in order to be able to do a second-parent adoption (Barbara and Tiffany). Both of these families highlight the variation in state law insofar as second-parent adoption is available for same-sex couples in some but not all states.

Those living in Missouri also reflected on the variation that exists within their state with regard to second-parent adoption availability. As Victoria put it: “I don’t think there are second-parent adoptions here. I think we looked this up. I think there’s a way to get around it, but I’m not 100 % on that.” Her partner, Grace, had been the one doing research about second-parent adoption. In my interview with Grace, she discussed how even though she had been researching it for a while, “the information is really unclear in Missouri.” Her later comments underscore the indeterminate legal landscape they faced. She was told by an attorney that “you’re rolling the dice” when it comes to whether or not they could do a second-parent adoption. Explaining that advice further, she said: “You’re going to spend this money that’s astronomical for what it is and it may or may not work. You can [do] a home study and think it goes great you could have a lawyer who’s totally awesome and you could draw a judge who sucks and then you’re back to square one. So it was really discouraging.” Harriet’s comments echoed those of Grace. She talked about the laws in Missouri being “ambiguous” insofar as “it’s pretty much up to the judge’s discretion whether they are just like okay no problem or they have an issue with it.” Finally, when Cathy talked with an attorney, she was told that where they gave birth would determine whether or not they would be able to do a second-parent adoption. She explained: “we were also told that as long as you deliver in the county as opposed to the city, you can apply for second-parent adoption, but you can’t do that in the city. At least that’s my understanding. The law is different. It’s confusing.” In sum, all those participants living in Missouri discussed a “confusing,” “unclear,” and “ambiguous” legal landscape.

Even interviewees living in Iowa were not spared having to deal with ambiguity, confusion, and inconsistent legal

information, despite the “law on the book” being straightforward insofar as the availability of second-parent adoption is guaranteed for same-sex couples. This was particularly true for one couple, Darcie and Linda, who had children after Iowa legalized same-sex marriage. They assumed since they were married, they would be able to list both names on the birth certificate. As, Linda put it: “Well we thought, ‘we’ll be married, and married people go on birth certificates, so [my spouse] will go on the birth certificate. Done deal.’ Not so much.” Although they thought it would be a “done deal,” her comment “not so much” reflected the amount of ambiguity they encountered. Indeed, as noted in the first section, this couple spent a lot of time trying and pursued each method to decipher whether they could both be listed on the birth certificate. Recall that they received conflicting advice from different sources. Eventually their lawyer did receive a letter from the attorney general stating that they could not both be listed on the birth certificate, but that they could pursue a step-parent adoption.³ Although Darcie and Linda knew about the option of doing a second-parent adoption, this was the first time they had heard of step-parent adoption. After doing a lot of their own research about what it would entail, they found a different lawyer who Darcie said “would be willing to work with us for this step parent adoption.” They noted that they felt that their own research was crucial because, as Darcie put it, “I don’t know if he would’ve known we could do the step parent adoption.” Despite the step-parent adoption process being “cheaper,” “easier,” and “less onerous” compared to second-parent adoption, the success of it nonetheless was explained to them as being equally dependent on the presiding judge. When I asked if the step-parent adoption procedure depended on which judge oversees the case (which is how they had explained the second-parent adoption process), Linda said: “Our lawyer kind of made it sound like that, but we’re like ‘the law’s the law, right?’” This quote underscores the variation and indeterminacy facing sexual minority mothers regarding creating legal ties to their child, even in states with “guaranteed” access. Moreover, her assessment, “the law’s the law, right?” indicates that they expected the law to be straightforward and that the law would apply to each person in the same way. In other words, since step-parent adoption allows for a married person to adopt the child of their spouse, they believed that they would be able to use this procedure (and in fact they were). Yet, their lawyer had prepared them for the indeterminate legal landscape they would face insofar as a judge could have decided otherwise. This story thus helps illustrate that ordinary citizens often see the law as

more determinate than elites do (Tushnet 1996). In other words, although Darcie and Linda (“ordinary citizens”) asserted a sense that the law is/should be determinate: straight-forward, clear, and definitive (i.e., that since step-parent adoption applies to married couples and since they were a married couple, they should be able to do a step-parent adoption with no problem); yet, their lawyer (an “elite”) highlighted for them the fact that the judge could still decide otherwise.

Further, Darcie’s and Linda’s story hints at the fact that even people in the same state or city received different legal advice, insofar as they noted that their lawyer might not have known about step-parent adoption had they not gone in with that information themselves (and thus presumably would have recommended second-parent adoption). Stories from other interviewees corroborated that varied legal information and advice was given even within the same state and city. Moreover, the variation is not benign, as people at times received inaccurate legal information. One example came from Kathy and Phoebe. Kathy described the following exchange with one of the family lawyers that she had contacted:

I wrote her and first asked if second-parent adoptions were allowed in this state because that’s ideally what I wanted to happen. She said no. So I asked if we left the state for a few years, got a second-parent adoption, and then came back, would it be recognized then? She said that even if we were to come back to live [in Nebraska], they would not recognize a second-parent adoption that was performed in another state.

This was different and conflicting legal advice that Barbara and Tiffany were given. They did a second-parent adoption for their first child in Iowa (and did a step-parent adoption for the second child, also in Iowa, who was born after Iowa legalized same-sex marriage). Barbara explained they were told: “Nebraska won’t allow second-parent adoptions here” but that they could do one in Iowa and “then Nebraska will recognize that.” Importantly, the information that Barbara and Tiffany received is correct: Nebraska recognizes same-sex couples’ second-parent adoptions done in other states even though it does not allow them (National Center for Lesbian Rights 2014). That Kathy and Phoebe received inaccurate information is important insofar as it might have impacted their decision to not look into doing a second-parent adoption elsewhere. Had they known that Nebraska would recognize a second-parent adoption for Iowa, for instance, they might have made a decision to do that. Another example comes from Shawna and Joyce, who discussed an issue that no other couple in Missouri did: the biological mother having to relinquish her legal rights temporarily in order for the non-biological mother to do the second-parent adoption. Recall that they first were told that information from a friend. They, like

³ At that point, their lawyer advised that they could either pursue this option or that they list both names on the birth certificate and then sue the state after it was denied. Although they decided to do the former, another couple did indeed pursue the latter route and the state Supreme Court ruled that parents in same-sex marriages both had to be listed on the birth certificate of their child (Mello 2013).

Barbara and Tiffany, also did not hire a lawyer. But Shawna did speak to a “politician who had been a lawyer” at a workshop put on by an LGBT organization who confirmed what their friends had told them. Again, that no other participant in Missouri discussed this highlights the varied legal information circulating for sexual minority parents. It also illustrates that the kind of legal information LGB parents receive might depend on which method they use to gain information.

Reactions to the Law

By and large, people’s responses to the legal landscape that is characterized by inequity, uncertainty, and indeterminacy were not positive. Anger, stress, and fear were the three most common emotions that interviewees expressed when discussing the legal landscape.

First, participants described the anger they felt at the legal inequities facing their families. As Melanie put it:

I was angry that we had to go through jump through all these hoops. I felt really angry and I felt like my family wasn’t valued as a real family. [That] I had to put all these little pieces together to have any sort of legal recognition made me angry. We haven’t progressed far enough that you know we can just have our family and be protected by the law.

The sentiment of having to “jump through hoops” was echoed by other participants, including Tanya, Shawna, and Joyce. Tanya said that having to jump through hoops was “mindboggling” and “too political.” Explaining further, she said: “I just don’t think it should be so difficult. It shouldn’t be so hard [and we shouldn’t] have to go through so many hoops and paper work just to have a kid with the person you’re married to *when nobody else has to* [my emphasis added].” As her quote suggests, the anger felt by participant stemmed in part from the fact that they faced inequality because of their sexual orientation. Unlike married heterosexual couples, the married same-sex couples in this study were not able to be immediately listed as parents on the birth certificate. Rather, they had to “jump through hoops” to be legally recognized as a parent. Moreover, it is important to note that not all LGB parents are even able to jump through those hoops.

In addition to anger, interviewees detailed the large amount of stress that dealing with the law put on their families. They explained that the time spent having to learn about the law, dealing with the legal inequity and uncertainty, and the processes of doing a second-parent adoption were all stressful. Gaining legal information and deciphering it and navigating the legal system were seen as an “extra, really unpleasant layer and headache” as Linda put it. She explained that although she imagined that she and her partner would be “having a good

time and enjoying life” during the process of being pregnant and preparing for a baby, that was not the case as there was “all this out there” to deal with. Elizabeth’s narrative underscores the amount of stress she experienced when dealing with the legal inequity. Since she did not have a legal tie to her child, she was only able to see him at the discretion of her partner after they split up. At one point, her ex-partner would not allow Elizabeth to see their child. This led Elizabeth to see a lawyer. She described her experience with the lawyer as “frustrating, upsetting, and stressful.” Elaborating on those reactions, she said: “because he’d been part of my life so long and then all of a sudden, nothing” and because she realized “she didn’t have a legal leg to stand on.” For Elizabeth, the legal inequality translated into a huge source of stress in her life. Even those who did a second-parent adoption described the fact that they had to do it as being a “headache” (Barbara) and “gut-wrenching” (Linda). Barbara also noted that the process was stressful in part because of expenses associated with it. She said:

I would say the biggest thing was the money you have to put out to go through [something that] no one else has to [go through]. We put out thousands of dollars to adopt a kid when nobody else has to. And that was at a time when you’re first having kids you don’t have a lot of money. It’s hard to get all the cribs and stuff like that. So you’ve already got a lot of expenses, you get the medical bills for having the kids and so the money thing was just a big factor. It’s like another headache here and another headache there.

That this couple reported one of the highest family incomes in the sample suggests that the economic hardship that having to do a second-parent adoption places on families would only be exacerbated for lower-income families (Boggis 2001; Dalton 2001).

Finally, participants detailed the fear associated with learning about and navigating the law. This was especially true for people who had not done a second-parent adoption and for those who described the period of time before the second-parent adoption had been finalized. Darcie and Linda had a period of 4 months after their baby was born before the adoption was finalized. Reflecting on those 4 months, Darcie said:

I really was petrified. I was petrified that I was somehow going to lose my family during that four months, and I was petrified that I was not going to get information that I deserved and was entitled to. It was a really long four months waiting for that to happen. I was sick. It colored everything. It consumed a lot of me during those first four months [of my child’s life].

She described the fear as “consuming” a lot of her energy. Joyce also said that “every situation we went into was

terrifying, at least for me on my end. Not being the biological parent, [my wife] would have to fill out everything with her name on it.” That they have not done a second-parent adoption with their second child has produced “more fear” for Joyce. She explained that: “I have a lot of fear that somebody is going to, something might happen and somebody’s going to come and take my children away from me.” Others who did not do a second-parent adoption also discussed fear around the possibility of the biological mother’s parents having rights over the non-biological parent in the event of the biological mother’s death. Speaking of the legal documents they executed in lieu of being able to do a second-parent adoption, Ellen questioned: “if something happened to me and my parents really wanted to be jerks, would this really 100 % protect [partner]?” In sum, parents discussed the fear and worry introduced into their families as a result of the unequal legal landscape they faced.

Discussion

The findings illustrate that sexual minority parents are very aware of the laws pertaining to their rights as parents. Indeed, most were aware of their state’s law prior to having a child. To learn about the law, participants turned to a variety of sources, including the Internet, their friends, and legal professionals. The amount of time parents spent researching the law underscores that the unequal legal landscape results in the need for sexual minorities to expend added effort to gain knowledge about the law. Such effort, as they noted, is not required of heterosexual parents in the USA on the basis of their sexuality. Yet of course the law likely figures prominently for some heterosexual parents, including, for instance, those in prison (Enos 2001) or transnational families (Abrego 2014) or step-families (Stewart 2007). Likewise, LGB parents in any of those circumstances have unique concerns not represented here. Questions about the potential overlap between LGB-headed families and heterosexual-headed families with regard to the law warrant attention in future work. The findings presented here illustrate that class plays a role in the process of gaining knowledge about the law. Those who reported a higher-class identity and a higher family income were more likely to get information from a lot of different sources and were more likely to be connected to people who could help them navigate the legal system. Moreover, the knowledge that people had about their state’s law and the degree to which it was accurate depended on how they received their information. Those who only did Internet research or contacted a lawyer but did not hire one were more likely to report inaccurate information. One family who hired a lawyer whose fees were least expensive speculated that they might have received different advice had they hired a lawyer whose fees were more expensive. These findings illustrate how class can impact the

way in which individuals engage with the legal system, starting at the level of gaining knowledge about the law.

These findings also show that the changes in the legal landscape that occur at larger level with court rulings, for instance, do not just neatly translate to ordinary citizens. Rather, it is a lengthy, time-consuming, and confusing process for LGB parents to figure out what the law is and what it means for their family. Participants described receiving inconsistent and varied advice even within same state and city. Many in Missouri and Nebraska lamented that things would be easier if they were living in Iowa. Yet even participants living in Iowa, where the law is supposedly straightforward, described facing uncertainty and being given contradictory information. This is in part because of the enormous changes in the law that families are living through, in this case with regard to marriage equality. As court rulings happen, everyone (LGB parents, legal professionals) is involved in a process of translating the “law on the book” into practice, into “law in everyday life.” Much work has focused on the interpretations made by judges in their decisions (e.g., Connolly 1998). Yet, this article illuminates how “ordinary citizens” then interpret those decisions by gathering information from the Internet, their friends, and their lawyers and that these interpretations have consequences for their families. Much of what happens during this process is that parents rely on storytelling. Not all parents are able to or are interested in reading court cases; rather, they turn to their peers to try to decipher what consequences a certain court decision or law will have on their families. The narratives that get told in these storytelling moments, particularly if individuals do not seek out multiple sources for information, facilitate a sense that the law is more determinate than it might actually be (Tushnet 1996). Finding a knowledgeable lawyer who does second-parent adoptions might also be difficult, as many keep a low profile (Dalton 2001). Also, even when relying on a legal professional, individuals might receive inaccurate information. Thus, future work might address a similar question with lawyers: given that they are a key player in translating law on the books into everyday life for some people, how do they obtain the information that they then give to their clients? That at least one participant was given inaccurate information from a lawyer highlights the need for such an inquiry.

Along with being time-consuming, the process of learning about the law also adds additional stress and fear. By and large, participants did not view the indeterminacy of law in a positive way. Rather, they shared the amount of anger, stress, and fear that legal inequity and uncertainty caused their family. For many participants, this occurred as they were preparing for and dealing with the birth of their child. Thus, the legal landscape exacerbated the strain experienced by new parents (Nelson et al. 2014), which might have implications for the well-being of LGB parents and families. Indeed, work has shown that legal inequities created stress for couples

(Butterfield and Padavic 2014) and that parents living in less supportive legal contexts reported more symptoms of depression and anxiety (Goldberg and Smith 2011; Shapiro et al. 2009). This work importantly shows that even trying to gain knowledge about the law (even in states where there is “equality” insofar as parents can do a second-parent adoption) is a stressful, time-consuming process. In sum, even though the indeterminacy of the law may ultimately work in LGB parents’ favor insofar as it allows for an expansive interpretation of family (Richman 2008), in the everyday life, it is a source of stress and fear. Future work could address how parents and families aim to mitigate such stress and what strategies are effective. Such stress was particularly salient as people described their interactions with various medical professionals (doctors, nurses, pediatricians). Participants also described choosing where to give birth based on considerations of the law. Thus, another line of inquiry should focus particularly on LGB parents’ interactions in medical institutions and how the law matters to these interactions.

This study is not without limitations. It only addresses one type of family (LGB-identified women who became parents in the context of a same-sex relationship via donor insemination) and one law relevant to LGB parents (second-parent adoption). Thus, I am unable to address the impact of the law for other families, including transgender parents, LGB parents who are single or became parents in a prior heterosexual relationship, or same-sex couples who adopt or use a surrogate. The laws and legal challenges facing these families are different (for a discussion, see Goldberg and Allen 2013, especially Shapiro 2013). It is important that future work continue to study LGBT parents in all their manifestations not only so that the diversity of LGBT families are represented in research but so that researchers can identify the range of laws impacting sexual minority parents. With this project, however, limiting the focus to one type of family and one law does illuminate the variation that exists in terms of both how people gain knowledge about the law and the legal knowledge received. There are a number of limitations as well as strengths of the demographics of the sample. One limitation of the sample is that it is nearly all White. The lack of racial diversity mirrors a limitation with other work on sexual minority families and could reflect the fact that I recruited only people who had children within the context of a same-sex couple (and not people who had become parents in a heterosexual relationship or who had assumed a parenting role to members of their extended family, two common pathways to becoming a parent for racial minorities) (Moore and Brainer 2013). The experiences and reactions of sexual minority parents navigating an unequal legal climate might be different for Whites compared to racial minorities insofar as these groups may prioritize different

legal issues and be affected by laws differently (Moore and Brainer 2013). Such questions warrant continued attention in future research. Despite the lack of racial diversity, one strength of the sample is that it is diverse with regard to family income and class identification. Likewise, the focus on sexual minority parents in the Midwest brings attention to one of the regions where the proportion of same-sex couples raising children is the highest (Brewer 2005; Gates 2013). A limitation, however, is that the parents mainly reside in urban and suburban areas, thus leaving unaddressed experiences in rural areas, an understudied topic (removed for review). A focus on the Midwest also highlights the experiences of sexual minority parents who are unable to do a second-parent adoption, an important contribution to existing literature that has only focused on those who did do a second-parent adoption (e.g., Connolly 2002; Hequembourg 2004; Richman 2008). Focusing on parents who have not hired a lawyer or have not been involved in a custody case decision, for instance, highlights how these groups experience the law much differently. Another limitation of the study is that it only includes individuals who are already parents. Thus, I cannot speak to how the law matters for LGB parents who might want to become parents. Finally, although in most cases I was able to interview both partners for those who were coupled, for two families, I was only able to interview one parent. Also, I interviewed five (out of nine) couples together, which might have impacted the stories they were willing to share. Future work could explore whether there are differences within couples with regard to spending time learning about the law or how they view the law. Despite these limitations, this study sheds light on how sexual minority mothers learn about and experience the law in their everyday lives.

Ultimately, the findings in this article illuminate how sexual minority parents navigate and experience the unequal and inconsistent legal landscape in which they live. Additional important questions are not addressed here, including how parents make legal decisions (e.g. how do they decide whether or not to do a second-parent adoption), how a legal tie impacts family well-being outcomes, how parents navigate the disjuncture between their social status (“parent”) and legal status (“non-parent”), and how parents translate knowledge about the law or lack of legal recognition to their children. Nonetheless, it sheds light on an initial piece of the puzzle that might help address these other questions. Importantly, it shows that there will likely be variation in these other processes based on factors such as class and connection to LGBT organizations. For some respondents, LGBT organizations provided invaluable information and support in helping them understand the

legal context their families face. This highlights the importance of national organizations such as Family Equality Council and the National Center for Lesbian Rights as well as local LGBT organizations. With regard to disseminating legal information effectively to LGB parents and sexual minorities who want to become parents, these findings underscore that extra work might be needed to reach families with lower-income or families who might not be as connected to LGBT organizations.

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