

No. 67319-0-1

~~No. 64322-3-1~~

WASHINGTON STATE COURT OF APPEALS

DIVISION I

IN RE MARRIAGE OF:

DANIEL M CASEY
Appellant

and

SUZANNE E. NEVAN
Respondent.

REVIEW FROM THE SUPERIOR COURT
FOR KING COUNTY

The Honorable Judge Palmer Robinson

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STATE OF WASHINGTON
DIVISION I
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APPELLANT'S BRIEF

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APPENDIX

- 1.) Transcript of proceedings of Original Trial, under appeal #64322-3-1
- 2.) Narrative report of original relocation hearing heard on Thursday August 19th 2010.
- 3.) Comments and Transcript on the passage of ESHB 2884
- 4.) Mothers Pay stub and time sheet for Metropolitan Market
- 5.) Visa statements for time period while couple married
- 6.) Mothers, brothers businesses
- 7.) Objection to relocation- Not always a lost cause, by Laycoe and Bogdon.
- 8.) Relocation of Children after Divorce and Children's best interests, New evidence and legal consideration.
- 9.) Social Science and children's best interests in relocation Cases, Burgess Revisited. By Richard A. Warshak, Ph. D.
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Constitutional provisions

14th Amendment

8th Amendment Cruel and unusual punishment.

Statutes

RCW 26.09

RCW 26.09. 187

RCW 26.09 the whole relocation act
RCW 26.09.520

Any and all laws that apply to equality, equal protection, etc
Discrimination based on Marital Status

A. Assignment of error

- 1) Trial court erred by granting the mother relocation when the Mother has deliberately failed to apply for jobs that she was truly qualified for and thus has deliberately set herself up to relocate, their son. (see Job Log entered NR Pg9 Ln2, P76 – P89)
- 2) Trial court erred, Can a relocation be allowed when a mother has deliberately failed to reduce her household expenses, again setting it up so she could relocate
- 3) Trial court erred by allowing the mother to relocate when it was admitted in court that the mother was unable to care for their son on the times she was designated and relied on the father or her two children?
- 4) Trial court erred because RCW 26.09 is unconstitutional, in part or in whole.
Does the right to travel supersede the rights of the other parents, the rights of the child or the rights of the child to experience the other parent?
- 5) Trial court erred because there was an agreement between the parties for the mother not to move because by virtue of marrying the father that she would not relocate, both on the grounds that the father had just finished with his first wife divorce to stop her from relocating his daughter and that the mother in this case had to agree not to move to Eastern Washington to stay in Seattle and Marry the father of their son.
- 6) The trial Court erred because, the court abused its discretion by ignoring the fact that the mothers was not trying to get a job she was actually qualified for.
- 7) Should the court weigh the evidence of the lower court?

- 8) Did the trial court abuse its discretion
- 9) Is the parenting act unconstitutional either in part or in whole.
- 10) Trial court erred because it did not truly weigh the factors of RCW 26.09.520 as intended. Does factor 5 become mute or overrule the other factors if it is found that the relocating parent is not acting in good faith when they have admitted to lying to court, or search for jobs not qualified for.
- 11) Trial court erred by not appropriately weighing the mother's testimony. Should a witness's testimony be weighed differently if the witness has admitted to deceiving a previous court in the same party's action.
- 12) The trial court erred by forcing the father to travel/ move. If the court can allow relocation, then by default they are dictating that the other parent be required to travel which is contradictory to the argument behind relocation. The right to travel is not the right to dictate that a parent has to travel.
- 13) The trial court erred in not truly considering the cruel and unusual punishment. Does the fact that the parent act does not set up an assumption for a 50/50 shared parenting or close to it set up a cruel and unusual punishment standard.
- 14) Trial Court erred in allowing a relocation for a part time job.

B. Statement of the Case

The party's son Joe was born on June 15th 2002, the mother testified the father was involved ever week from after the christening of their son (NR Pg26 Ln6)(NR 35 Ln1),(this was contrary to her original testimony in the first trial, as concluded by the judge Ex 1 NR 64322-3-1). The parties were married On January, 2004. They were separated in August 2008 and the mother filed for divorce on October 7th 2008. At the time of trial their son was 7 years old. A trial was held in 2009, the father filed a motion for reconsideration and an appeal (No 64322-3-1) which were denied. Before the father could file for review of the Appellate Court decision by the Washington State Supreme Court the mother filed to relocate their son on August 3rd 2010. There was a temporary hearing within 3 weeks on August 19th and the mother was allowed to temporary relocate their son to Bellingham, so she could have a part time job. **The mother's grounds for relocation were, lack of employment, cheaper housing and possibility of finishing her degree.** A final trail was held on May 17th 2011 with the court giving full approval for the relocation. The parties have children

from prior marriages, the mother has two children a girl and a boy, and the father has one, a girl.

C. Summary of Argument

- 1) Can relocation be granted when the Mother has deliberately failed to apply for jobs that she was truly qualified for and thus has deliberately set herself up to relocate, their son? (see Job Log NR P76 –P89)
- 2) Can a relocation be allowed when a mother has deliberately failed to reduce her household expenses, again setting it up so she could relocate?
- 3) Can a relocation be allowed when it was admitted in court that the mother was unable to care for their son on the times she was designated and relied on the father or her two children?
- 4) Is RCW 26.09 unconstitutional, in part or in whole.
 - a. Does the right to travel supersede the rights of the other parents, the rights of the child or the rights of the child to experience the other parent?
 - b. Does the parenting act and thus the relocation act discriminate based on Sex of a parent.
- 5) There was an agreement by virtue of marrying the father that she would not relocate, both on the grounds that the father had just finished with his first wife divorce to stop her from relocating his daughter and that the mother in this case had to agree not to move to Eastern Washington to stay in Seattle and Marry the father of their son?
- 6) Did the court abuse its discretion by ignoring the fact that the mothers was not trying to get a job she was actually qualified for?
- 7) Should the Appellant court weigh the evidence of the lower court?

- 8) Did the trial court abuse its discretion?
- 9) Is the parenting act unconstitutional either in part or in whole?
- 10) Does factor 5 of rcw 26.09.520 become mute or overrule the other factors if it is found that the relocating parent is not acting in good faith when they have admitted to lie to court, or search for jobs not qualified for?
- 11) Should a witness's testimony be weighed differently if the witness has admitted to deceiving a previous court in the same parties action?
- 12) If the court can allow relocation, then by default they are dictating that the other parent be required to travel which is contradictory to the argument behind relocation. The right to travel is not the right to dictate that a parent has to travel?
- 13) Does the fact that the parenting act does not set up an assumption for a 50/50 shared parenting or close to it set up a cruel and unusual punishment standard?

D. Argument:

In considering this appeal the court should also review the original appeal before this court #64322-3-1, which is attached in appendix 1.

There are two issue related to the Job log which is the primary piece of evidence.

- 1) The authenticity of the log
- 2) The jobs that were actually applied for in the log. (legislative protection, Appendix 3)

Petitioners list of coincidences to get to relocation.

- 1) In 2009 Petitioners predicted on her closing statement in the original trial that she did not anticipate being able to getting a job for a year.
- 2) She petitioned to reduce the fathers time based on a work meeting that didn't exist on the day she petitioned for and Petitioning to reduce the time based on so called Joe being left unattended at work. When the mother never had a problem with Joe being at the fathers work when they were married if she needed to do something and Joe was no further away from his father than he would be if he was on the top floor of their house and the father was in the basement.
- 3) Mother did not sign Joe up for Summer camp in 2010, which should have been done February - March of 2010, because she knew then that she was relocating.
- 4) Mother got her new job in Bellingham just as 2010 school year ended. Thus eliminated the need for her to prove the detrimental harm Joe would go through having too move in the middle of school.
- 5) Mother need to relocate just as the father was starting his Vacation with Joe, so he could do nothing research wise.
- 6) Petitioner gave the Job log to my attorney minutes before the initial relocation hearing, so he would have no time to review it. (Appendix 2)
- 7) Petitioner refused to answer interrogatories both in the original trial and this trial, that related to the issues.

Abuse of discretion

Court ignored the petitioner's deliberate decision to not apply for jobs she was qualified for.

If the factors under RCW 26.09.520 are equally weighted, then, factor (5) then become mute, if a parent is manipulating the system,

Then if a petitioner is willfully creating the situation for relocation, the court cannot weigh them equally or the protections afford by the legislature then become mute. Protections that are specifically set out in the enactment of this bill, ESHB 2884(Appendix 3)

They can be weighed equally up to the point were it is evident that a petitioner is acting in bad faith.

By the mothers own testimony she had only 6 months experience working for a nonprofit organization. (NR Pg26, Ln 17) Yet her job log (Nr Pg 76-89)) of 112 jobs shows her applying for 71 jobs at nonprofit organizations, that's over 63%. The great majority of her life's work experience was for mortgage banking firms yet she applied for only one, in fact she told the original trial she had 20 years experience and this trial (NR Pg 20 Ln28). Her job log was designed not to get a job so she could use this as a reason

to relocate. Just like she did with her first marriage when she relocated from Texas to Boston and then to Seattle (NR Pg28 Ln3). Children need stability something this mother has never been able give her children let alone our son Joe. The mother has 2 ½ years experience as an apartment manager she never applied for even one job in this field. She has experience as a delivery person; she never applied for even one job in this field. She has 18 months experience as a cashier and she only applied for 10 jobs in that field, that's a little bit less than 9%. Of course if a parent can't get a job they are going to be looking to relocate, but if the parent is deliberately stacking the deck so they can't get a job they cannot be given the automatic authority to relocate their child. In fact they should be denied out right. Petitioner did everything to succeed in not getting a job. (NR Pg 21 Ln 1) Petitioner lied about the debt, (see original transcript exhibit1)

Petitioners job experiences were, mortgage banking (20 years), running a political champagne (NR Pg 28 Ln 24), working at Meryl lynch on wall street (4 years)(NR Pg 28 Ln 14), Mortgage banking in Seattle (6 months), pastries delivery (2 years), babysitting (4 Years), apartment manager (4 years), Non Profits (6 months)

The mother in the 10 plus Years I have known her has only once gotten a full time job and she only kept that for about 6 months. Why is it not

assumed that a couple will equally work as hard as they can to financially provide for their children. This court said that the father acquiesced in the mother being the primary parent.(NR#1 Pg3 Ln23) “ and trail ther was at least acquessints was the primary custodial parent”. If someone passes by an alley and gets mugged did they acquiesce? I say not. The same is true for entering into what was supposed to be an equal relationship. You can only ask a spouse to do something, you can even attempt to talk common sense to the persons, but one person cannot force another to do something. This is abuse on her part, not acquiescent on mine. Common sense would say that. A parent who is dropping to their knees and begging is not acquiescing but making a last ditch effort to have some commons sense. Jobs available cheaper housing available, none of which the mother went for and she claims to be the victim, (NR Pg63)

High point. She refused to reduce her monthly house expenses even though she was unemployed for over a year and there was cheaper housing available in West Seattle where she lived (NR Pg 62 Ln 21). The mother admitted to not applying for cheaper housing, (NR Pg 32 Ln16)

There were jobs available at the mother old work at Metropolitan Market and she never applied for them

Ms Nevan did not need to relocate to get a job, all she had to do was widen her search to include jobs that she was in fact qualified for and had

experience doing. A person truly looking for a job will use a wide variety of parameters to get a job, if they really want to get a job. It is clear that Ms Nevan narrowed her search so she could have a viable reason to relocate with their son.

Bona fide change of circumstances, is a standard put in place by the Washington State Supreme Court when it reviewed Pape, 139 Wn.2d 694, 989 P.2d 1120 (1999). It cannot be considered a bona fide change of circumstance if the parent petitioning to relocate has deliberately created the circumstance by limiting the scope of work being applied for and does little to nothing to reduce her household expenses. Then this is not a bona fide change, this part of the case still applies to what the legislature has referred to "Protections in the bill". (Appendix 3)

The mother's choice to relocate was a deliberate choice, a choice by design. At my work at The Kenney where the mother has repeated numerous times that she has volunteered at (NR Pg 56 Ln 16), where she never applied for any jobs. I have employees who work 2 fulltime jobs in order to support their families both males and females. Yet Suzanne doesn't want to get a fulltime job.

There were protections placed in this bill by the legislature.

The reason the mother gave for during the temporary hearing for the relocation was because she had no interviews and the first one she got was

in Bellingham. She got no interviews because she was not applying for Jobs she was qualified for.

Judge cannot impose their own belief on whether the Mother would have got a job in mortgage banking had she actually applied for one, since the mother testified that one was available.

Father's significant involvement

Trial court in the original trial in this matter ruled that there was significant involvement from the father. This was confirmed by their son when after the trial he repeatedly asked the father if he could spend more time with him and by the mother when she admitted to not being able to take their son to his boys scouts or his baseball games or practices. And not being home to receive their son when the father attempted to return him. She was also not able to attend a number of his soccer games when he was temporary allowed to move to Bellingham, yet the father was. The father continued this significant involvement after the original trial, by continuing to play soccer, golf, baseball, tennis etc with their son. Even the mother admitted knowing Joe built a small house and chair with his father.(NR Pg 56 Ln 20)

Agreements

There was no agreement that the mother would be the primary parent in fact the amount of time that the mother spent away from the house made it impossible for her to be what would be considered a primary parent. The

Mother:

- 1) Working fulltime a fulltime job in mortgage banking for 6 months.
- 2) Working Evenings as a real estate agent
- 3) Working days as a baby sitter for her brother, caring for his twins.
- 4) Working mornings delivering pastries
- 5) Working evenings for 18months at a supermarket.
- 6) Volunteering to raise funds for the parishes new project
- 7) Volunteering evening and nights to work at the women's shelter
- 8) Volunteering to work at her children school in Ballard even years after they had left the school.
- 9) Volunteering to Run the parishes clothes bank on week days and weekends
- 10) Spending time with her friends
- 11) Volunteering to run part of the West Fest, Festival in West Seattle

The mother refused to honor the parent agreement to work the first fulltime job she got making 60,000+ to support the now enlarged family of 6.

The lower court decision and this court's decision (#64322-3-1), as in all other decision regarding parental ship produces a subordinate parent. A parent that has not equal rights, is a slave to the system and a minority to his children. Nothing that parent says or does can be balanced, because of the minimum amount of time imposed on him with his children. When decisions are primary given to a parent and children are primary given to one parent. Then the other parent cannot, equal be able to seek an equal

love of another , because of the burden placed on the non-primary parent.

There cannot be equality without balance. Balance cannot exist without true equality, no matter what the subject.

*“Darkness cannot drive out darkness only light can do that,
Hate cannot drive out hate only love can do that” Dr Martin Luther King*

Abuse

The mother has been abusing the father and her children with her lies since they got married. She will lie about anything and everything.

Unconstitutional

If this court rules, the relocation statute to be constitutional, then by virtue of the fact that it hinges on the original parenting act encompassed under RCW 26.09, then RCW 26.09 is unconstitutional. The factors that are weighed do not create an equal opportunity for all involved. In order for the presumption standard to not be held unconstitutional, the parenting act needs to be modified to guarantee, that all parties are treated and weighed as equals. This is because it is a known fact that under the current standard mothers are primary declared as the primary parent. This is backed up by my life experience, the testimony of the legislature when passing the relocation act and the research that is attached on the Appendix 7 -10

Cruel and unusual punishment

It is more cruel and unusual punishment than a person who is being put to death. Because the person who is being put to death does not have to foot

the bill and does not have to live beyond the final throwing of the switch or injection when they are enithitized. Where in these cases the fathers have to live on through lie after lie. But the father who is unfortunate enough to be divorced is stuck with the bill. And they can be stuck with no child.

Society dictates that fathers of all people be held to a higher standard than mother. They must do all that is requested of them. The honey do list, the shopping the changing of the diapers (which by the way is no big deal) AND THEY MUST AT THE END BE WILLING TO WALK AWAY OR PAY THE psychological torment after wards.

Because a basic laymen is unable to prove something in a court of law doesn't mean it's not so. And because of this many children grow up thinking their fathers, left them, abandoned them, or don't care or love them. They are then left with this belief affecting their adult lives and their children's lives all this is intrinsically linked.

Split the child in half, time wise.

"The heritage of the past is the seed that brings forth, the harvest of the future"

In the early 1900 children were considered to be property of the fathers not there mothers , and then came the tender years doctrine, then that was replaced by what was supposed to be the best interests of the child. (Such a vague term). The states intrinsick right or vested right can only be

exercised to the minimum extent necessitated by the extent of each divorce case. (Privacy) RCW 26.09 assumes that all parties involved should be governed by the state solely because they are separating, divorces, single anything except married. Parties should have to prove that there is a need for the state to intervene and only then should the state set standards of equality as a determining fact in these types of cases.

Suddenly divorced parents where in the position of having to prove that they were capable of caring for their children. The states very position is creating what the state says it doesn't want. And now divorced parents are treated differently and have different rights and are in a discriminated position compared to married couples. Parent are equally entitled to have as much access to their children as the children are equally entitled to equal access to the parent, regardless if they are married or divorced.. They and all their rights are intrinsically linked.

The right to travel does not supersede, the rights of the other parents, the rights of the child or the rights of the child to experience the other parent.

Only when man develops the ability to develop the life images or movies of people's brains will the judicial system ever be able to truly weigh the evidence of what goes on in a married life. Even then it will be so

overwhelmed, it will not be able to have the time to analyze even one couple's life to have time to administer justice. Let alone do it for all. Cruel and unusual punishment. Case after case comes in front of the Appellate and Supreme courts of Washington these cases are being judged under the standard the couple be held to the same standard as an attorney. Yet it is clear from the three cases that I have had the unfortunate experience of being involved in. That the judge do not know the law, are not experienced enough in the law. Case number one the judge was sleeping during trial (Haley) he entered the final decision without notifying the petitioner is the case, Mr. Casey. For going on the standard of is denied the opportunity for an appeal. Because the judge did not notify me that the decisions had been entered, until after the 30 days for filing an appeal has expired. Even though I was in front of the judge the day after he entered his final ruling, to get the judge to sign an order allowing the respondent in that case to sell our house. Case number two, the original trial in this case, Judge Ponomarchuk cited the wrong version of the statute while making his decision, even though I pointed out to him that he was doing this. His response to me was that was a matter for an appeal. (a real Judge would have known that he was quoting the wrong law)(Kovacs). Upon filing a motion for reconsideration he acknowledges that Mr. Casey was correct. In this relocation new case I the respondent

was denied discovery by the court on important items such as, expenses in Bellingham, petitioners salary, petitioner travel costs, petitioners utility bill in Bellingham and Seattle, and most importantly her unemployment application and a copy of all document submitted to the unemployment office. All of which were denied at the request of the mother, on the grounds that they were not relevant to relocation. Yet these are the very criteria to be weighed under the statute.

If this court refuses to overturn this decision they are basically denying the protections that were put in place by the legislature. Petitioner does not have an automatic right to relocate, that right is rebuttable based on 10 factors, one of which is the reasons requested for the relocation. It is clear from the testimony petitioner's given reasons were a direct result of her refusal to search for the work that she was qualified to perform. **And this reason alone petitioner relocation request should have been denied.**

Cruel and unusual punishment. One may only look at the past cases put before the Appellate Court and the Supreme Court to determine that RCW 26.09 for each cruel and unusual punishment which is inflicted primarily on the fathers of divorced children and those children. Or another way to put it would be primarily on fathers and children who are divorced.

Society tells specifically fathers, both from the terminology used to reference the father such as deadbeat dad, or what it projects will from

Appellate Court decisions and from TV and social media the fathers should be fully involved with all children and all aspects of children's lives.

So when fathers do everything that is expected of them and they find themselves in a divorce situation, they are confronted with trying to overturn a bias. As trying to counteract what is considered professional opinion, legal opinion, legal precedent, all of which slants in the mother favor who can later completely remove the children by relocating them.

One of the major consequences of this is the fathers are stuck with having to make a choice, which is very often a limited choice, partly a choice of non-preference and the choice would be to not fight the legal system and attempt to spend the minimum allowed time with their children or to bow to the wishes of the ex-wife. The ex-wife who's been given full control of the children.

Specifically in dissolution cases with children, the fathers are under great disadvantage than the mothers. Given the bias of the system, a bias that is well known and documented and acknowledged by Attorney after Attorney. Even acknowledged by members of the legislature, specifically in this instance when enacting the relocation act, one of the legislature specifically references 70% of these cases are weighted in favor of the mother. Basically acknowledge that this law is unconstitutional.

Parents are expected to, and especially fathers are expected to know the local rules, civil rules, rules of evidence, case law. The expectation that would take a normal person four to five years to be trained at a school of law to understand these, and apply them, and argue that, and file motions based on them. It is clear from the three cases that I specifically have been involved in the two judges themselves cannot even apply the law correctly, or quote the law correctly.

Financially cruel and unusual punishment, as petitioner in this case keeps pointing out to the court I had \$50,000 (Rp) in debt when we got married from my first original divorce. Although I would argue that it was 35,000, and now I have another \$15,000 in debt from this case. This again is another decision that specifically fathers are left to make and that is, does one spend the money financially on an Attorney on the off chance of getting a decision in your favor or use it for the benefit of the children of this case.

Each of these cruel and unusual punishments intermingles with each other. Cruel and unusual punishment, petitioner tells lie after lie leaving the father to prove otherwise. Example original trial that it's her claim to know nothing about the debt the father accumulated during the marriage to feed the family and other expenses, some \$7,000+ in the first year (see appendix 5)

Courts do not like dealing with divisive comments such as compulsive liar (NR Pg25 Ln 9). This means /leaves as in this case, the respondent the inability to turn the party or defend the case. And also enables, as in this case the petitioner(mother) to continue the behavior and events regardless of the consequences to the other parties involved. This compulsive lying, then gives the petitioner the upper hand.

Parent's primary responsibility is their children, so it is the parents that should be weighed not the parents ability to have someone replace the other parent. Joe makes friends easily. Joe social network or Joe's availability of other items to do in Bellingham are irrelevant. (NR#2 Pg2 Ln 26). There are only two things that are relevant to Joe according to the court and that is the two parents. What is clear from the testimony both in this trial and the initial trial and in the appeal? The Fathers direct involvement with Joe, he was the parent, not just taken their son to an event. The father has been the one who's been interacting with their son, it is this interaction that develops and builds that attachment with the child. It is this relationship that is paramount no other. No defense or criteria or have the right to supersede that criteria. So when it comes to two parents which is in the best interests of the child. It is the parent who has the clear direct involvement with Joe i.e. the father.

Liars Court.

During the initial hearing for the motion to relocate our son. I sat in the court room while two additional female attorneys who had just finished argue their case. Called the King County superior Court, Specifically they said, no wonder they call this” liars court”. Referring to the fact the women all she had to do was lie, as in that case the woman was acknowledge to be under employed, Equal protection under the law, for both sexes and in the case of marriage, refusal to follow these and in conjunction with the Rules of the court has created a cruel and unusual punishment. What makes this worse is that these are civil case not criminal cases, that inflicts such punishments as with or as in this case the removal of a son.

Petitioner argument that their son suddenly cannot conduct conversations on the phone. Yet in the original trail he was described as MR Social, now she Says that now that their son has been moved to Bellingham that their son has now been deprived contact with his father, because he has an inability to conduct conversations on the phone. Which was another detriment to their son.

Petitioners lying creates a situation of continuous abuse, for the father. She has been abusing him and the system to her advantage, which leaves any father with a question of should they continued to be involved with their son in order to avoid the abuse?

Society the legislature and the court have all dictated that fathers should be required to be involved in their children's lives. The court, society and the legislature have all relied upon the natural attachment that a parent has for its children. The attachment is what gets the courts to have the parents do such things as paying child support, paying medical bills, and looking after the physical wellbeing of their children. But the relocation act is a reversal of this expectation, a reversal that dictates that the attachment the court and legislature have relied upon for parents to be involved, be terminated or at a minimum reduced to such an extent that it requires a parent, more specifically a father since the great majority of divorce cases the children become the responsibility of the mother, with the father having little to know say in the decision process. Requiring them to undergo a serious physiological transformation to accept their newly dictated role of relegated parent or even in some cases none existent parent (as in the mother of this case and the children of her first husband). All because the court and legislature have decided that one parents right to travel supersedes the other parent's right to be a parent. The court and the legislature as well as society have pushed for equality, or more specifically equal rights. Equal rights for women, equal rights for handicaps etc etc. they have also pushed to ban such things as sex discrimination with all sorts of various laws. Yet this law RCW 26.09.187 on the one very first

paragraph of the part that is suppose to allow the court to make a determination has a phrase or criteria that dictates that only women be the parent caring initially for their children and one that is encourage (NR Pg51 Ln5). Because it is well known that breast feeding a child is in the child's best interests, "breast is best" is the societal slogan that is used and for good reason because it is common knowledge that the anti bodies that breast milk produces is what is best for the health and long term wellbeing of any baby. But yet this breast milk is something the father cannot give to the child, hence this first criteria sets off the chain reaction of what is now a discriminatory process of denying equal rights to fathers

Provable presumption.

This means the relocation although presumed to be in the best interest still needs to be proved by the petitioner. In this case the petitioner blocked the respondent's attempts to argue his case but also blocked the petitioners own case to prove her case, by not answering the interrogatories requested, on the grounds that it was not relevant to this relocation. She still could have introduced any of the requested documents, regarding her unemployment, her job search, and her housing expenses, none of which she did.

Otherwise if the appellate court continues to allow its current standard of review, there is created a guarantee to relocate.

It is okay, it is accepted, it is expected, and it is even funny, women are supposed to take their x-spouse to the cleaners, demoralize them and throwing them to the side of the road and leave them for dead taking all of their possession, cash etc but especially their children. And this is exactly what the petitioner in this case did. And she was aided by the court system and its rules and regulations, acting like its hands are tied because of the way it chooses to interpret the various legislative acts.

Equality, we hold these truths to be self evident, we all are created equal.

She knew she didn't have a job and made no effort to reduce her household expenses including such as moving to cheaper accommodations, which were available only a couple of miles from her current location.

This court and the Supreme Court owe the non primary parents of this state an apology, for not ruling on an equal base for the last 20 some odd years.

Continued cruel and unusual punishment.

In my fist divorce case Casey v Gribben the x wife fought all the way to court to relocate our daughter to Belfast Northern Ireland. On the morning for the trial she withdrew this request. Judge sleeping during the trial the, and let's not forget that although Dr John Dunne wrote his evaluation in

favor of me (the Father) being the primary parent. But the x wife hired Dr Stewart Greenberg as consulting professional and Dr Gary Weider as her testifying expert. It is public knowledge why Dr Greenberg committed suicide

Justice delayed is not just denied for me and my son , it is justice denied for all non primary parents that come after me like the tens of thousands that have come since this act was enacted in 1987. And the tens of thousands that will come after if this court continues to bury its head in the sand.

Unconstitutional

In the 1800's children were primarily raised by their fathers and not by their mothers, then came the tender years when children were raised by the mothers only and in this state in 1987 this state introduced what is called “in the best interests of the child”. This best interest has never allowed fathers or their children an equal or balanced approach to allowing the father or children an equal opportunity for both father and children in these cases.

Unequal and Insurmountable burden

If this court chooses not to rule in my favor they will be ignoring the true intent of the protections placed in the relocation act and the protections

placed in the act by the legislature, and will have created a guarantee to relocate, or at least an unequal and insurmountable burden.

I have to believe that somewhere someone sees that this is wrong. Just like I believed that I could get a job I had no experience at, I could succeed when I came to America, I could be an excellent father.

Suzanne does not; believe in anything except that she can't make it. She has to believe in order to justify the decision for the last 6 years. What sort of environment is that to raise a boy in, a boy who may very well become a man who ends up getting divorced, in which case he should be given the skills by his father to help support himself and his children, not assume that he is a victim.

This law is not intended to be a carte blanche approach to relocation.

THIS IS WRONG

Equality is equality; you cannot have equality in a marriage and inequality outside a marriage

RCW 26.09 is unconstitutional for a great number of reasons a number of which have repeatedly come to this court and they have passed the opportunity over at every occasion since 1987 when the so called best interest standard was enacted. For decades people have known that mothers primary are appointed as the primary parent not the father. In some cases terminating the father contact all together through such things

as relocation, as the mother in this case did with the children of her first marriage. Relocation in my opinion does not trump the other actual constitutional rights laid out in the constitution. Such as equality for all, when it says we are all created equal. In the case of becoming a parent this sole decision is given to the mothers thanks to Row v Wade. Although it takes two to conceive a child, only one has the right to bring it into this world and after a divorce mothers are appointed to be primary parents on the fact that they have mammary glands which can provide nourishment, nourishment that a father cannot give. Hence in order to assure true equality there has to be an equal opportunity for both parent to be equally involved.

Thou shall be done on earth as it is in Heaven? I don't know anyone who believes in heaven to think that heaven would allow such actions or behavior or treat one person to be superior than another. Equal in ability and in opportunity,

We still live in the neadrith age or at least some two thousand years ago.

We still assume that splitting the baby up, is cutting the baby in half.

Verse the baby sharing the experiences and learning of both parents verse, giving the baby solely to one person.

At the end of September 2000, Rita Gribben my first wife filed a motion for discretionary review to her right to argue at trial the right to relocate

our daughter, Orla to Ireland (47344-1-1). The daughter lives here and the mother continues to take our daughter to Ireland every year.

One of the greatest insults\punishments, of this whole thing is that after having lied to do everything and positioned everything to take our son away. The court will now expect me the father to do everything to cooperate with the mother in the up bring of our son. But would the court ask an assault assailant to cooperate with the victim, or a person who has been raped by the rapist. There is no way my son and my relationship can last, given who is the primary parent.

She has paid nothing towards her own children's medical insurance her first x husband has always done that. She has made no effort.

She lied to the original court about her daughter substance abuse problem. Which she acknowledge to this court during the temporary hearing and the relocation trial.

She refused answer interrogatories in the original case and in this case, sighting they had nothing to do with the relocation. Even though they directly did.

The very fact that this court has refused to weigh evidence in an appeal case is why this type of case keeps coming before it. If this case as in the original case decree case of this the mother entered no actual testimony about what she was doing as a parent for her son, none. It is all assumed.

And the next generation and the next generation, this type of pain and suffering will continue because this court refuses to act. This court refuses to force its own court to weigh evidence in a balanced fashion or to guide the court how to weigh evidence.

One may only look at the gender and just commission of this court and how it's gender is primary female.

If I the father produced this job log I would have been imputed income, for not applying for jobs I was qualified to do.

People maintain attachment by contact, continuous contact. The same is true for children, especially children. Look only at the mother children from her first marriage that has almost no contact with their father who lives in Texas. Why because it is impossible to maintain relationships without meaningful contact, and part time on the weekends is not enough. Mother work experience, include running a political campaign, working on Wall Street, years of experience working in mortgage banking.

When it comes to the legal system one man like me cannot make a difference. But the appellate court itself can. They can choice to do what is **right** and define it in a way that it makes sense to all. They say men do not ask for direction, I am asking this court to set direction for every relocation that should come behind this one

Constant lies and manipulation.

Lied about not talking about my first divorce where the mother attempted to take our daughter out of the country, appellate case # 47344-1-1.

Suzanne refused to divulge very pertinent information related to the relocation in the interrogatories that were served her. Petitioning the court to block such things as her work history, Pay stubs, her current job, rental agreement and housing costs all of which are relevant. It is a provable presumption, not a guarantee. Petitioner should still have to prove with physical evidence, what she is requesting.

Quotes from my first divorce case

- 1) This is as close to 50/50 as I've ever seen. This quote is from the commissioner of the first hearing .
- 2) "Daniel seemed to be more in tune with Orla and Oral's interests""Generally had left the childcare sorts of things to Daniel, suggesting that by that time she. You know, had sort of abandoned those kinds of issues to Daniel". These two quotes are from Dr Dunne deposition by opposing counsel of Dr Dunne, because his recommendation was that Daniel be the primary parent, because the mother had left the child rearing to the father.

Despite the fact the father was doing more of the child rearing of their daughter, the father still petitioned the court for an almost 50/50 split of the parent time. Not because the father couldn't handle as would stereo typically be thought, but because he believes that the child needs both parents as all balance unobjeccted research would show.

The mother and father of this case had considerable conversation because she wanted someone who would be heavily involved in caring for all her

children not just Joe. And that is what she got. In fact she got a father who was always there even when she was not.

Tactics of the mother

- 1) Tried to say the father had an anger issue at work when he didn't
- 2) Tried to tell the court in the original trial I had an anger issue and punched holes in the basement wall of our rented house, when I didn't
- 3) Tried to tell the court I had an anger issue when she said I said "you're driving me crazy". She has quit her fulltime job making \$60,000+ I'm making about \$40,000 at this point and she is telling me she is sending our son to private school. Where is the logic, and she is already sending her two kids to private school/
- 4) Tried to tell the evaluator that I punch holes in the bedroom wall when I didn't.
- 5) Even told our next door neighbor the same and now the neighbor won't even talk to me, if I see her in the street or at the supermarket.
- 6) Implied that I was anti-gay to the original trial, and that she had an eye for this sort of thing because her brother was gay. Yet it was the father who would go round to her brother when he had items in the house that needed repaired.

This type of behavior is encouraged because the court, including this court will not review or weigh the testimony in a case. In this case (64322-3-1) there was a video tape of the original trial which was submitted to this court by Mr. Casey and it could have reviewed the actual trial, to make an unbiased decision, But it refused to, hence encouraging the continued litigation and the relocation of our son.

She mother refused to divulge any of her financial assets or answer questions directly related to her financial situation in the interrogatories.

Had a father taken the minuscule measures the mother took to find a job, he would have had income inputted to him.

Mother was aware that the father had been to the legislature at the time of his first marriage to petition the legislature to block the passage of the relocation act because it would mean that the mother of his daughter could relocate his daughter.

The King county rules have been modified to take into consideration this, which also shows the biasedness of the courts, when this was not the intent of the legislature. And this was part and parcel of marrying the father.

Har to the child evident in that the mother cannot singly take care of their son, and has not been able to take care of her other two children one of which development and alcohol problem before she was 16.

Mother petitioned the court for the father to be the one primary responsible for the medical insurance predicting she would not have any money. Even though in my first marriage that responsible was shared with both parents.

These presumptions given to what is supposed to be an evidentiary fact. But in this case it was not evident that the mother was even the primary parent when they were married.

If the current statute is interpreted the way it is, then every single mother could divorce the fathers of their children within the first 3 years of a child being born and father would never be a primary parents, and mother could always relocate their children away from their fathers. And this all because the mother has mammary glands and the father does not. Are we all created equal and should these laws be equally interpreted?

If it is a presumption that the natural parents acts in the best interest of the child, are shown not to be true, then the court has the right to immediately reverse a lower court decision to best protect that best interest of the child.

As clear as the nose on your face.

RCW 26.09 also unconstitutional on the grounds that it applies laws to some based on the married status or in this case divorce status. This means that these laws although designed for people who are divorced or divorcing they would not be able to apply them to people who are married or apply them to people who are married because it is assumed that in these cases they are doing what is in the best interests of the child. So when parents can't pay for all the needs of caring etc, it does matter the courts do not interfere in married relationships.

Of the last 11 years I have sent 5 of them litigating in some shape or fashion under Gribben v Casey and Nevan v Casey, fighting for what should be an equally protected right, to have equal access to your children

that's almost 50% of my last 11 years wasted, now tell me that's not cruel and unusual punishment. Equal protection does not stop just because you are unfortunately enough to have been divorced. Equality is equality in all its forms.

Cruel and unusual punishment. In this case the appellate court referenced in the first appeal, that the mother restrictions based on the father so called unattended of the child in the basement was. Even though the mother had no problems during the marriage of the son being with the father at his work, or the fact that the father was no further away from their son than he would have been if he was in the basement of their house and their son was on the top floor. But the mother did leave the new born son unattended with his 9 year old sister prior to the father and mother getting married. Or the fact that in the father first divorce he argued about the mother in that relationship taking the 18 months daughter to work were she would sleep on the floor under the desk of the mother's office even though the father was available to care for their daughter. There clearly are different standards for a mother than a father.

These were all effort to petition the court to reduce the father's amount of time with their son so that she would eventually have a better chance of relocating their son. This all because the son really wanted to spend more time with the father not the mother. (Attach the email from the father)

Washington State is one of the very few states that have the presumption standard another one of them is California which was enacted after Marriage OF Burgess, 13 Cal.4th 25,51 Cal.Rptr.2d 444, 913 p.2d 473 (1996). The professional who testified was Dr. Judith S. Wallerstien by filing an amicus curie brief. Her position was later found to be more on a public policy of allowing a parent to move verse the effects it has on the child. Her research has since been found to be contradictory to the “broad consensus of professional opinion”. Even contracting her own research. This presumption standard was put in place with specific protections as out lined by the two legislatures who sponsored the laws. One of them Dow Constantine, who was the fathers representative since he lived in his district.

The father has always contested the courts belief in its presumption that the mother was the primary parent.

It is well known that divorce has a detrimental effect on children. It is further known that relocating has an even longer detrimental effect on children. As well as that children are at a greater disadvantage after relocation and are even further disadvantaged when they are being raised by a parent who has issues. Such as alcohol and can project that issue on their child. Such as in this case when the daughter of the mother in this

case developed an alcohol issue one year after her step father, Mr. Casey moved out (respondent in this case).

Why would someone block the discovery of evidence that would in fact help prove their case? Unless it didn't help prove their case and proved the opposite. As in this case when the mother blocked the discovery by the father of her unemployment record when he served her with interrogatories, requesting a copy of her unemployment application and her official job history log.

I know what is right and what is wrong. And this is wrong so no matter what the end verdict is I know what is right, that will never change and what is wrong will never change. It will never change and although the professional may say that people should move on with their lives, the reality is that if they deny their own instincts and their own love for their children. Then their lives will never be the same, always on the path of living a lie every day of the week. Both from this case and from my first divorce. That is the most painful thing of them all. And the professional would say that you should move on with your life. But how can anyone be forced to live such lies.

Cruel and unusual punishment: shortly after being told to leave my own house by Suzanne on 08/27/08, I had a stroke (NR 64622-3-1). This stroke was a direct result of the stress place on me by the mother Suzanne. There

are many a reason for having a stroke such as, drinking, smoking, drugs, caffeine, over weight, and other things that create additional stress such as gambling etc, none of which applied to me.

Even though I had a stroke in 2008, I still continued to be the parent who cared for Joe in the things that mattered to him, such as all the sports that were named in the first appeal.

Cruel and unusual punishment. I have spent the 5 of the last 11 years litigating/begging for the right to have a 50/50 relationship with my children. In the first case the mother even applied for a British passport for our daughter who was born in Seattle. Our daughter does live here but every year the mother returns with her to Ireland for a vacation. She is making sure she can have the right at a later time to petition to relocate our daughter. This is a right no one should have to waste this much of their life on, it is a given under all sorts of provisions of the constitution. Equal protection, equal rights. What's even crueler is that my son will grow up as many more have since the enactment of the parenting act and will have his own children and if his wife decides to leave him she too will have the right to take away his children. Everything just perpetuates the problem. My daughter on the other hand I can only hope will never do that.

This is not the 1930's, or even the 1970's were it may have been argued that fathers did nothing for their children. We live in the year 2011 when

this case started it was...2002..... which was when Joe was born. Yet the courts are still assuming that the mother was the primary parent even if she entered no testimony to prove so. The court are still biased in favor of the mothers, the mother only has to say that she was the stay at home parent and they believe her even if the preponderance of the evidence when weigh we see that the mother was very rarely home. The mother talks about her supplementing the house hold income, because the father was designated the financial provider. When it was the agreement of the parties for both of them when they got married to work fulltime as it would be impossible for them to support all six of them without that joint income, which clearly became the case when the mother voluntary quit her high paying job making \$60,000plus. She tells lies and will continue to insist and lie about these things to our son, her relatives and even what was our neighbors. She told our next door Barbra that I had a temper that I punched holes in the walls in our house, this is what was written in the evaluators report. End result if I see Barbra she will not say hello.

She lies about the parties agreeing to letting her care for her brothers twins and it is this caring for her brothers twins that gives her the feeling that she was the parent caring for the kids, not reality. The parties came to no agreement, she came home and told the father this was what she was going to do, as she did with everything else. Why would any parents agree to

have one parent to work for another relative, who is well off when at that time the parent weren't even meeting their own financial responsibilities. They had no life insurance for each other, no medical or dental insurance for each other, no medical or dental for their son. Let alone all the other things couples plan to do such as have vacations, buy a house etc. Her brother was a well off business man and the older brother who lives in Oregon told her, according to her, that if she kept working for her brother it would destroy the marriage. The brother who's twins she baby sat was a real estate developer, who had two office one of which was in the Rainer Club in Seattle, which tells you how well off he was., he owns his own house and had other paid help helping him to raise his twins.

How the hell I'm I supposed to fight this, when I'm fighting a million lies. When the assumption is that if the trial went to court, the mother is the primary parent.

We are all equally capable of providing equal amounts of financial support for our children if we put our minds to it. In this case when the parties originally got married the mother was making in excess of \$60,000 and the father was making \$35,000 and had not made more than that prior to the marriage. The mother had 2.5 children she was financial responsible for and the father had 1.5 children he was financial responsible for. The mother tells the court that given this situation that it was the father who

was designated as the primary bread winner in this house. The mother may lie as many times as she wants I know the truth, and it is this that will bring this case all the way to the Supreme court if need be.

The parties where married for 4 years and 8 months prior to their separation, (the mother telling the father he had to leave the house.)For the first 3 years and 9 months the fathers income never exceeded \$45,000.

These is no way that any ration human being could come to the conclusion, that the father agreed to be the financial bread winner of the house. As is clear from Appendix 5, the parties had accrued \$6,000+ credit debt in household expense in the first year. Debt the mother swore she would pay for out of her new job making \$60,000 per year.

It is this type of decision that continues to allow abuser such as Suzanne Nevan and the belief that women are the victims. But what's worse is in order to come to such a conclusion we have to assume that the mother in this case is not capable of speaking up for herself, or standing up for herself, or financially supporting he self and is being dominated or controlled by the father in some way or fashion.. It is clear even from the mother testimony that it was the father who could not talk common sense into the mother. When she told the court that the father said to her "that she was driving him crazy", while he was on his hands and knees begging her not to sign our son up for private school. Acquess

The mother has told the court that after having racked up all these expense, that it was the father idea that she leaves a job which she makes lots of money, has loads of experience at and takes up a job she has no experience at and is paid on commission. In fact the mothers refusal to apply for a job is just a continuation of her pattern.

The mother lied continually throughout the marriage, the trials and when finished with her husband discarded him The mother said she knew nothing of the financial debt the family was collecting during the marriage to support the family. See attached 5 with her signature and comments. These visa receipts also show the father was the one buying the groceries. Because the mother was rarely home to do that and he was the one planning the meals.

The mother has little to no actual involvement with the child prior to and even after , it is the direct interaction. Playing sports that provided the attachment

She tells the court that I broke up with her, at the time of her pregnancy. In fact one day I showed up at her apartment for what I thought was going to be a date and when I pushed the intercom button I got no response. Normally the buzzer would have sounded, but within a minute I was greeted by her son Pasquale who then was ... 9 Years old. He opened the

door to the apartment complex just slightly, handed me the stuff that belonged to me and closed the door. I remember him turning and looking at me just before he headed up the stairs. I can only imagine what was going through his head at that time. But that was the last I heard from Suzanne for a long time and that was how Suzanne used her son to tell me the relationship was over. Other than for her to make it clear I wasn't to be coming to the ultra sound.

Suzanne has been abusing the system for a long time, in fact if what she says to the court is true that she was only supplementing the income of the house. This by legal definition is voluntary under employed when it comes to support issues. Then why did she still ask for and get child support payment increases from her first husband for her two other children.

Issue:" when a parent /witness or main witness acknowledges deceiving the original trial court on an issue of parenting. Then any subsequent court should be required to weigh that person's testimony, with a grain of salt or otherwise weigh it in an appropriate manor as the testimony or subject matter is fully recognized and analyzed by the court and it effect on the subject matter.

At the time of original relocation hearing the mother was unable to take care of the needs of their son Joe, either to boys scouts, baseball practice,

baseball games. Mother relied heavily on her other children to help care for their son.

This court and its nonchalant approach to not reviewing testimony has contributed to what has been affectionately called “Liars Court”. With the end result it gives an unscrupulous person a leg up. Because before a trial even begins, a person who is as unscrupulous as the mother in this case, has the upper hand. Appellate and Supreme court’s refusal to weigh evidence, has left the lower court, with the power to do whatever they wish. When cases are primarily ruled in favor of mothers, under a single statement such as in this case when the mother claimed to be “the primary parent” without supporting evidence. Hence allowing a mockery of the judicial system. This puts the other person in the predicament of needing to be able to predict what the other person is going to tell in order to get evidence to disprove it. But if the other parent throws enough lies there is no way for anyone to predict it.

Cruel and unusual punishment

Because of the court and legislature need for there to be a primary parent, instead of equal parents. As in the first case when MR Casey petitioned the court in his first divorce for an almost 50/50 parenting split. Unlike such states as Colorado that encourage 50/50 (Colorado Supreme Court

No. 04SC555 *In re the Marriage of Ciesluk*). . In this case and this state a parent is encourage to go for a full custody with the added benefit of later being able to relocate if they should want. When a parent asks for an almost 50/50parent split from the court they are in a great disadvantage, because the other parent then has nothing to lose by petitioning the court for full custody because they will get a minimum of 50 if the court rules against them. Its like sitting down at a card game with a guarantee that at a minimum you will get all your wager back, who wouldn't. The end result of this is what you see before you, move cruel and unusual punishment.

Mr. Casey petitioned for 50/50 because it is his belief and faith that children need both their parents. Which is why in both cases the judges saw heavy involvement from him, "as close to 50/50 " and "heavy involvement". This is not a reaction because of the divorces this is a reaction because of his full involvement with all his kids even the mothers kids in this case, from her first marriage. This courts and states actions forces people to fight no matter what the consequences, thus creating a cruel and unusual punishment for all involved including the children.

As a final note it should be noted that I am almost 50 years old. I have worked at Columbia Tower Club, Jake O'Shaughnessey's, Boeing, Different jobs, and now where I finally work a retirement home . I have meet many a customer and many a work employee, who were fathers, who

have been divorced. But I have never once meet a divorced father who was a primary parent. This law discriminates no matter what way you look at it and these courts have refused time and time again not to address this in equality. I am asking this court to do this once and for all. Save the children and save the money so it can be used for the children. Stop this insanity. You need look at how many relocations have been appealed this year.

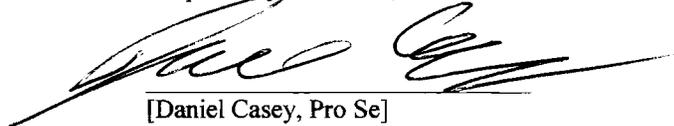
In order for a non-primary parent to maintain a relationship with a child who has moved with the primary parent, they are required to move back and forth or travel back and forth to see their child. Which is hence been dictated to travel in order to maintain that relationship. One parent does not have the right to force another to travel.

E. Conclusion

This court should reverse the lower court decision, order the child be returned to the father in Seattle and authorize the parenting plan proposed by the father for the protection of the child.

This court should also rule the parenting act and the relocation act unconstitutional either in part or in whole.

Respectfully submitted,



[Daniel Casey, Pro Se]

10/25/11

**FRONTIERO ET VIR v. RICHARDSON,
SECRETARY OF DEFENSE, ET AL.**

No. 71-1694

SUPREME COURT OF THE UNITED STATES

**411 U.S. 677; 93 S. Ct. 1764; 36 L. Ed. 2d 583; 1973 U.S.
LEXIS 153; 9 Fair Empl. Prac. Cas. (BNA) 1253; 5
Empl. Prac. Dec. (CCH) P8609**

January 17, 1973, Argued

May 14, 1973, Decided

While the Fifth Amendment of the United States Constitution, U.S. Const. amend V, contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process.

] Since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility

Any statutory scheme which draws a sharp line between the sexes, solely for the purpose of achieving administrative convenience, necessarily commands dissimilar treatment for men and women who are similarly situated, and therefore involves the very kind of arbitrary legislative choice forbidden by the United States Constitution

**BROWN ET AL. v. BOARD OF EDUCATION OF
TOPEKA ET AL.**

No. 1

SUPREME COURT OF THE UNITED STATES

**349 U.S. 294; 75 S. Ct. 753; 99 L. Ed. 1083; 1955 U.S.
LEXIS 734; 71 Ohio L. Abs. 584; 57 Ohio Op. 253**

**May 31, 1955, Opinion and judgments announced
May 31, 1955**

] In fashioning and effectuating the decrees holding that racial discrimination is unconstitutional in public schools, the courts are guided by equitable principles Brown V Board of Education.

Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs B v Ed

1 of 19 DOCUMENTS

**COKER, LAWRENCE, PETITIONER V. GEORGIA,
ET AL.**

93-6441

SUPREME COURT OF THE UNITED STATES

**510 U.S. 1009; 114 S. Ct. 598; 126 L. Ed. 2d 563; 1993
U.S. LEXIS 7815; 62 U.S.L.W. 3393**

Cruel and unusual punishment. "Coker v Georgia"

The death penalty is not invariably cruel and unusual punishment within the meaning of the Eighth Amendment; it is not inherently barbaric or an

unacceptable mode of punishment for crime; neither is it always disproportionate to the crime for which it is imposed

The Eighth Amendment bars not only those punishments that are "barbaric" but also those that are "excessive" in relation to the crime committed. A punishment is "excessive" and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. A punishment might fail the test on either ground.

Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices of the United States Supreme Court; judgment should be informed by objective factors to the maximum possible extent. Attention must be given to the public attitudes concerning a particular sentence; history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions are to be consulted.

No. 75-628. CRAIG ET AL. v. BOREN, GOVERNOR
OF OKLAHOMA, ET AL., *ante*, p. 190.

SUPREME COURT OF THE UNITED STATES

429 U.S. 1124; 97 S. Ct. 1161; 51 L. Ed. 2d 574; 1977
U.S. LEXIS 908

OUTCOME: The Court reversed the district court's order that dismissed the action filed by appellants, a male between 18 and 21 years of age and a liquor vendor, which challenged the constitutionality of two state statutes that prohibited the sale of beer to males between the ages of 18 and 20 years because the statute discriminated on the basis of gender and was not substantially related to the achievement of a legitimate government objective

Statutory classifications that distinguish between males and females are subject to scrutiny under the equal protection clause. To withstand constitutional challenge, previous cases establish that classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives

] U.S. Const. amend. XXI does not save invidious gender-based discrimination from invalidation as a denial of equal protection of the laws in violation of U.S. Const. amend. XIV.

U.S. Const. amend. XXI primarily creates an exception to the normal operation of the commerce clause. The Twenty-first Amendment does not *pro tanto* repeal the commerce clause, but merely requires that each provision be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case.

**ROE ET AL. v. WADE, DISTRICT ATTORNEY OF
DALLAS COUNTY**

No. 70-18

SUPREME COURT OF THE UNITED STATES

**410 U.S. 113; 93 S. Ct. 705; 35 L. Ed. 2d 147; 1973 U.S.
LEXIS 159**

**December 13, 1971, Argued
January 22, 1973, Decided**

The United States Constitution does not explicitly mention any right of privacy. A right of personal privacy, or a guarantee of certain areas or zones of privacy, however, does exist under the United States Constitution.

Only personal rights that can be deemed "fundamental" or implicit in the concept of ordered liberty are included in this guarantee of personal privacy. The right has some extension to activities relating to marriage, procreation, contraception, family relationships, and child rearing and education.

This right of privacy, whether it be founded in the U.S. Const. amend. XIV concept of personal liberty and restrictions upon state action, as the court feels it is, or, in the U.S. Const. amend. IX reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

The right of personal privacy includes the abortion decision, but this right is not unqualified and must be considered against important state interests in regulation.

Where certain "fundamental rights" are involved, regulation limiting these rights may be justified only by a "compelling state interest," and legislative enactments must be narrowly drawn to express only the legitimate state interests at stake.

] For the period of pregnancy prior to the end of the first trimester, the attending physician, in consultation with his patient, is free to determine, without regulation by the state, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the state.

GRISWOLD ET AL. v. CONNECTICUT

No. 496

SUPREME COURT OF THE UNITED STATES

**381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510; 1965 U.S.
LEXIS 2282**

Grisword V Connecticut 381 U.S. 479; 85 S. Ct. 1678; 14 L. Ed. 2d 510; 1965 U.S.
LEXIS 2282

The right of "association," like the right of belief, is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

The Fourth Amendment explicitly affirms the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. The Fifth Amendment in its self-incrimination clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides that the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

The Fourth and Fifth Amendments have been described as protection against all governmental invasions of the sanctity of a man's home and the privacies of life. The Fourth Amendment creates a right to privacy, no less important than any other right carefully and particularly reserved to the people

A governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

WISCONSIN v. YODER ET AL.

No. 70-110

SUPREME COURT OF THE UNITED STATES

**406 U.S. 205; 92 S. Ct. 1526; 32 L. Ed. 2d 15; 1972 U.S.
LEXIS 144**

**December 8, 1971, Argued
May 15, 1972, Decided**

OVERVIEW: The parents were convicted of violating the state's compulsory public school attendance law. The parents practiced the Amish and Mennonite religions and argued that sending their children to public school after the eighth grade violated their religious beliefs and threatened their religious way of life. The state supreme court reversed the convictions. On certiorari review, the Court found that the parents' fundamental religious belief that they should remain "aloof from the world" was endangered by the enforcement of the public education laws. Although neutral on its face, the compulsory school attendance law unduly burdened the Free Exercise Clause. The parents educated their children at home in practical pursuits and prepared them to become functioning adults in their communities. The court held that accommodating the parents' religious objections by forgoing one or two additional years of compulsory

education would not impair the physical or mental health of the child, result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from societal welfare.

**FRONTIERO ET VIR v. RICHARDSON,
SECRETARY OF DEFENSE, ET AL.**

No. 71-1694

SUPREME COURT OF THE UNITED STATES

**411 U.S. 677; 93 S. Ct. 1764; 36 L. Ed. 2d 583; 1973 U.S.
LEXIS 153; 9 Fair Empl. Prac. Cas. (BNA) 1253; 5
Empl. Prac. Dec. (CCH) P8609**

While the Fifth Amendment of the United States Constitution, U.S. Const. amend V, contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process.

Since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate the basic concept of our system that legal burdens should bear some relationship to individual responsibility.

Classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny

LOVING ET UX. v. VIRGINIA

No. 395

SUPREME COURT OF THE UNITED STATES

**388 U.S. 1; 87 S. Ct. 1817; 18 L. Ed. 2d 1010; 1967 U.S.
LEXIS 1082**

The Equal Protection Clause requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination. The clear and central purpose of the Fourteenth Amendment is to eliminate all official state sources of invidious racial discrimination in the states.

“The parent so seeking a divorce through an actual trial or hearing should have to show compelling interest as to why the state should be required to intervene in this case.” Or as in this case be able to eventual manipulate through the system to remove ac child from a perfectly healthy parent.

MEYER v. STATE OF NEBRASKA.

No. 325.

SUPREME COURT OF THE UNITED STATES

262 U.S. 390; 43 S. Ct. 625; 67 L. Ed. 1042; 1923 U.S.
LEXIS 2655; 29 A.L.R. 1446

The liberty guaranteed under U.S. Const. amend. XIV denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

The liberty guaranteed under U.S. Const. amend. XIV may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of a state to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts.

] A teacher's right to teach and the right of parents to engage a teacher to instruct their children are within the liberty guaranteed under U.S. Const. amend. XIV.

Headnote:

The liberty protected by the 14th Amendment to the Federal Constitution may not be interfered with, under the guise of protecting the public interests, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

[For other cases, see Constitutional Law, IV. b, 3, in Digest Sup. Ct. 1908.]

Courts -- determination of police power. --

Headnote:

Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts.

[For other cases, see Courts, I. e, 3, b, in Digest Sup. Ct. 1908.]

Parent and child -- duty to educate child. --

Headnote:

It is the natural duty of a parent to give his children education suitable to their station in life.

[For other cases, see Parent and Child, in Digest Sup. Ct. 1908.]

Constitutional law -- forbidding teaching foreign language in school -- violation of liberty. --

ORR v. ORR

No. 77-1119

SUPREME COURT OF THE UNITED STATES

**440 U.S. 268; 99 S. Ct. 1102; 59 L. Ed. 2d 306; 1979 U.S.
LEXIS 65**

To withstand scrutiny under the Equal Protection Clause, classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives.

A gender-based classification which, as compared to a gender-neutral one, generates additional benefits only for those it has no reason to prefer cannot survive equal protection scrutiny.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SUZANNE NEVAN,

Petitioner,

v.

DANIEL CASEY,

Respondent.

Case No. 08-3-07464-5 SEA
Court of Appeals No. 64322-3-I

TRANSCRIPT OF PROCEEDINGS

Before the HONORABLE Leonid Ponomarchuk on Wednesday,
September 16, 2009.

APPEARANCES:

Suzanne Nevan, Pro Se Petitioner
Daniel Casey, Pro Se Respondent

TRANSCRIBED BY:

CATHY L. SWANSON

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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1 BALIFF: Please rise. Superior Court
2 for the State of Washington, in and for the County of
3 King, is now in session, the Honorable Leonid
4 Ponomarchuk, Presiding.

5 THE COURT: Please be seated.

6 BAILIFF: We're here In the Marriage of
7 Nevan versus Casey, case number 08-3-07464-5 SEA.

8 THE COURT: Good morning.

9 MR. CASEY: Good morning.

10 MS. NEVAN: Good morning.

11 THE COURT: It's safe to assume you're
12 Ms. Nevan.

13 MS. NEVAN: Pardon me?

14 THE COURT: Safe to assume you're
15 Mrs. Nevan?

16 MS. NEVAN: Yes, I am. Thank you.

17 THE COURT: And you're Mr. Casey?

18 MR. CASEY: I am.

19 THE COURT: Okay. Have either one of you
20 participated in a trial before?

21 MS. NEVAN: No.

22 MR. CASEY: I have, yes.

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1 THE COURT: You have? What kind of trial
2 was it?

3 MR. CASEY: It was a divorce proceeding
4 nine years ago.

5 THE COURT: All right. Was it in this
6 county?

7 MR. CASEY: It was.

8 THE COURT: Okay, so you're familiar with
9 how trials are conducted?

10 MR. CASEY: Somewhat. Nine years - - a
11 lot gets redone.

12 THE COURT: All right. Well, I'll take a
13 few minutes to sort of give you a - - sort of a
14 blueprint. Give you a little background and give you
15 blueprint.

16 We're here because there was no agreement.
17 Meaning, the decisions that will be made today will be
18 made by me as the trier of the facts applying the law.
19 We use Washington state law. There are two forms of law.
20 There is the law that is developed by our legislature;
21 those are called statutes. We call them the Revised Code
22 of Washington, or RCWs, and they give us specific
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1 guidance. And then we have what's called case law which
2 is judges above me sitting as appellate or Supreme Court
3 judges interpreting aspects of those statutes. That's
4 what I have to rely on.

5 A great part of family law also includes
6 the benefit of experience and seeing many cases. This is
7 your second trial. This is your first trial. I can't
8 begin to count how many I've had in the form of hearings
9 and trials. This is the most important case for you. I
10 recognize that. And it's important for me to do a good
11 job in that.

12 On the other side of the coin, I'm coming
13 to this with no agenda other than I want to do a good
14 job. Now, what decides how I do a good job is really
15 what I believe the Court of Appeals wants. I'm not here
16 to please either one of you. I'm not here to please
17 anyone below me. My job here is to make sure that I
18 apply the facts that are given to me to the law.

19 I don't have biases that I think are
20 inappropriate. I like little kids. I really do. I'm
21 protective of older people. I don't think those are
22 inappropriate biases. I believe that a man can get
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1 custody. I believe a woman can be required to pay
2 maintenance. I believe that property division should be
3 based upon length of marriage, the circumstances of the
4 parties, without any kind of other agendas.

5 Now, I've just explained my role. Your
6 role in representing yourselves is to present the facts
7 that are necessary for me to make the determinations for
8 what you want. Quite often in our country, we think that
9 trials are conducted like they are on the Judge Judy show
10 where the person who screams the loudest or is the most
11 obnoxious gets to score the points, and they're wrong.
12 I need to know the facts and then I have to make the
13 decision. If you don't tell me those facts, I won't know
14 them.
15

16 Now, this is a trial, and your recourse is
17 to file an appeal with the Court of Appeals down the
18 street. Neither one of you are attorneys I presume?

19 MS. NEVAN: No.

20 MR. CASEY: Nope.

21 THE COURT: All right. The rules of
22 evidence apply in trials. Now, when a party objects,
23 they say "objection." We need to stop whatever we're
24

25

1 doing because I have to rule on that objection. Now,
2 these proceedings are recorded. That's what these
3 microphones are in front of you. They're not to amplify
4 your voice, they're to record what you're saying. So,
5 when there's an objection on the record, I have to make a
6 ruling. And what I'll do is, I'll listen to what the
7 objection is, then I'll hear a response to it and make
8 the ruling.

9
10 All right, now, I'm going to tell you
11 something that many attorneys don't seem to get. A
12 comment that you find distasteful is not a basis for an
13 objection. A comment that you believe is a lie is not an
14 objection - - basis for an objection. Objections are
15 actually based upon the rules of evidence. They include
16 the most appropriate one, and that is hearsay. A
17 statement made by someone out of Court with the truth of
18 the matter asserted. All right, so, objection "she's not
19 saying what I asked" is not how it works. Okay?

20 Now, other types of objections are "asked
21 and answered," "non-responsive." And you need to
22 understand that you will each have the right to cross-
23 examine each other. Answer the questions that are asked.
24
25

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Official Transcriptionist for the King County Superior Court
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1 You then have the right, in effect, to cross-examine
2 yourself, and explain what the answer that you gave
3 previously was. So it's best, actually, to go "yes" and
4 "no" when you're being cross-examined, and then you can
5 provide your fuller explanation as opposed to trying to
6 figure out what the other party is trying to do - - this
7 isn't a chess game from that standpoint.

8 We're going to - - the trial is broken up
9 into basically three parts. The first part is the
10 opening statement. An opening statement is your
11 explanation as to what it is that we're here for, what
12 you want, and what your testimony's going to show. Now,
13 I can - - usually I waive the opportunity for that if
14 either of the parties have submitted a trial brief, and
15 neither one of you submitted a trial brief, and so I
16 don't know, other than I'm gleaning from the paperwork
17 that's been submitted here, what the issues are. So
18 you're going to have to explain what those issues are in
19 your opening.
20

21 Then, the petitioning party will put on
22 their case. And that is where the facts come in. They
23 make their presentation, they are subject to cross-
24

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1 examination, they finish. When that party's done putting
2 on their evidence, they rest. And the responding party
3 puts on their case, and we go through the same process.
4 We don't have to repeat the (inaudible) testimony we had
5 the first time. But anything can be discussed.

6 The last part is the closing where the
7 parties summate, say, well, "now you've heard what's been
8 presented and this is why we want it." Often times
9 lawyers include the law. I don't expect you folks to
10 know the law. I'm happy to say I know it pretty well
11 anyway. And then I make my decision.

12 Now, depending on what you saddle me with,
13 that can be done pretty quickly, or it may take some
14 time. I can't guess, because I have no idea.

15 I don't allow profanity in my courtroom.
16 If you're going to make a quote that's particularly
17 vulgar, I - - let me know ahead of time. I don't really
18 need to have any of that. I expect you to treat each
19 other with respect in this courtroom. You don't have to
20 like each other; you don't have to like me. But we're
21 going to run this thing in a civilized way.

22 Do you have questions? Do you questions?
23
24
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1 MR. CASEY: No.

2 THE COURT: All right. The petitioning
3 party is Mr. Casey.

4 MR. CASEY: Petitioning party (inaudible).

5 THE COURT: Okay. Really? Why do the
6 pleadings have you on top? Oh, so who did that on the
7 Respondent's Parenting Plan? I just looked at the first
8 pleading - - all right. You're the Petitioner?

9 MS. NEVAN: I am.

10 THE COURT: Okay, then you go first,
11 ma'am, with your opening

12 MS. NEVAN: All right. Honestly, Your
13 Honor, I am - - I don't know why we're here. I'm - - it
14 - - we had a very short term marriage. Four years and
15 eight months before we separated and we really don't have
16 a whole lot to go over here. We have three outstanding
17 issues which are the residential time in the Parenting
18 Plan, determination of child support, and equitable
19 division of property, specifically a vehicle.

20 Additionally, I submitted an exhibit today
21 that you may or may not allow in, but I'm also
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1 petitioning the Court for Danny to pay my half of our
2 mediation fee as well and I'll discuss that later.

3 What I would like, Your Honor, is to
4 maintain Joe, who is the minor child. Maintain Joe's
5 life in a manner that's not going to be disruptive for
6 him. I would like Joe to be able to stay in the
7 environment that he's been in, surrounded by the family
8 that he has lived with, and basically not to change
9 things so drastically that it would have a negative
10 impact on him.

11
12 And my evidence is basically just what
13 I've submitted in the trial notebook and just to discuss
14 what Joe's situation has been for his seven years.

15 And by that opening statement, it's clear
16 I'm not a lawyer. I'm sorry.

17 THE COURT: Mr. Casey.

18 MR. CASEY: Obviously, the issues are just
19 the Parenting Plan, child support, and the vehicle, and I
20 don't really have an opening statement other than to say
21 that my Parenting Plan will be the better of the two for
22 our son.

23

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1 THE COURT: All right. Are you ready to
2 proceed?

3 MS. NEVAN: Yes.

4 THE COURT: Okay, I'm going to have you
5 stand up and raise your right hand. Do you swear or
6 affirm the testimony you are about to give is the truth,
7 the whole truth, and nothing but the truth?

8 MS. NEVAN: Yes, I do.

9 THE COURT: Now, I'll allow you to make
10 your presentation. But because you're neither attorneys
11 and I need certain facts presented to me, I'm going to
12 ask a few questions first or we could be here all day.

13 EXAMINATION OF PETITIONER BY THE COURT

14 Q: All right. What's your full name,
15 please?

16 A: My full name is Suzanne Meile Nevan.

17 Q: Your date of birth?

18 A: October 10, 1960.

19 Q: You were born where?

20 A: I was born in Washington D.C.

21 Q: And your current residence?

22 A: 3417 41st Avenue S.W., Seattle 98116.

23
24
25

1 Q: Your date of marriage?

2 A: January 24, 2004.

3 Q: Where?

4 A: In Seattle.

5 Q: Is this your first marriage?

6 A: No, it's my second marriage.

7 Q: What was the date of that marriage, if
8 you can remember?

9 A: January 18 of '92, and we were
10 divorced in May of '96.

11 Q: Were there any children born of that
12 marriage?

13 A: Yes. I have two children from that
14 marriage. Katie and Pasqually (phonetic), a 15 year old
15 and a 16 year old. And their last name is Sena, by the
16 way. S-E-N-A.

17 Q: Katie is 16?

18 A: Yes.

19 Q: Pasqually is 15?

20 A: 15, yes.

21 Q: And do they reside with you?
22
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1 A: Yes, they do. 100% of the time.

2 Their father is in Texas.

3 Q: Does the father pay child support?

4 A: Yes, he does.

5 Q: What does he pay?

6 A: \$1,300.

7 Q: Was there a child born of this

8 marriage?

9 A: Yes. Joseph Michael Nevan Casey.

10 Q: Date of birth.

11 A: 6/15 of 2002; obviously, outside of

12 the marriage.

13 Q: Is there a temporary Parenting Plan?

14 A: I submitted a temporary Parenting Plan

15 in October and we have had a residential schedule for the

16 last year.

17 Q: Did a Judge or Court Commissioner sign

18 that?

19 MR. CASEY: No.

20 A: No.

21 Q: So, there are no Court orders in this

22 case?

23

24

1 A: No.

2 Q: What was the date of final separation?

3 A: August 3, 2008.

4 Q: Is this marriage irretrievably broken?

5 A: Yes.

6 Q: Are you pregnant?

7 A: No.

8 Q: What's your educational background?

9 A: AA degree, and then two years beyond

10 that, but I never finished my BA.

11

12 Q: You have an AA degree?

13 A: Yes, sir.

14 Q: And some studies work.

15 A: Yes, sir.

16 Q: Your occupation?

17 A: I would say mostly mom. My recent job

18 was fundraising and community building. I lost my job in

19 March of this year, so I'm currently unemployed.

20 Q: All right. Thank you. You may go

21 ahead.

22

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1 PETITIONER PRESENTS HER CASE

2 MS. NEVAN: Okay, so, I don't know which
3 order - - we could probably just go down the exhibit
4 list, I guess. Would that be appropriate, Your Honor?

5 THE COURT: Whatever you wish.

6 MS. NEVAN: Okay. Um, the, the first five
7 exhibits are 2008 tax returns and W2 just to show
8 evidence of, of basically what our income has been and
9 what my income has been. My last pay stub from DNDA and
10 to prove that I'm also currently unemployed and receiving
11 benefits. Then, if I could skip to number six - -
12

13 THE COURT: Do you wish to admit these
14 exhibits?

15 MS. NEVAN: Um, yes.

16 THE COURT: Okay, so we'll - -

17 MS. NEVAN: Oh, may I please admit exhibit
18 one, two and three?

19 THE COURT: We can't - - we'll have to do
20 them one at a time.

21 MS. NEVAN: Okay.
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1 THE COURT: Okay, so, Mr. Clerk, mark
2 number one. And are you treating these as exhibit
3 numbers, or not really?

4 CLERK: I did number them.

5 THE COURT: You did number them? So, the
6 tax return is what?

7 CLERK: Their exhibits are numbered
8 (inaudible).

9 THE COURT: Okay, fine. So Petitioner's
10 exhibit one - -

11 MS. NEVAN: Yes.

12 THE COURT: - - has been marked for
13 identification which is the United States individual tax
14 return 2008.

15 MS. NEVAN: Yes, sir.

16 THE COURT: Do you have any objection to
17 that?

18 MR. CASEY: No objection, Your Honor.

19 THE COURT: Okay. Petitioner's exhibit
20 one is admitted. Next? Why don't you identify this.

21 MS. NEVAN: Okay, great. So, to identify
22 exhibit number two, which is my pay stub from DNDA.
23
24
25

1 THE COURT: DNDA is what?

2 MS. NEVAN: Delridge Neighborhood

3 Development Association.

4 THE COURT: Is there an objection?

5 MR. CASEY: No objection, Your Honor.

6 THE COURT: Exhibit two is admitted.

7 MS. NEVAN: Number two is my unemployment
8 - -

9
10 THE COURT: Number three, you mean.

11 MS. NEVAN: I'm sorry, number three is my
12 unemployment benefits letter.

13 THE COURT: Is there an objection to the
14 admission of number three?

15 MR. CASEY: No objection, Your Honor.

16 THE COURT: Number three is admitted.

17 MS. NEVAN: Exhibit four is just a copy of
18 the docket from Danny's previous divorce.

19 THE COURT: (Inaudible) Superior Court.
20 Is there an objection?

21 MR. CASEY: I don't see the relevance,
22 Your Honor. It's - - you know, is she going to call each
23 document or reference each document, in which case each
24

25

1 document would have to be submitted as an exhibit, so I
2 do object to it because I don't understand why it's
3 there.

4 THE COURT: So, your objection is on
5 relevancy?

6 MR. CASEY: Yeah.

7 THE COURT: The relevancy?

8 MS. NEVAN: The relevancy is I was just
9 using it to make a point of basically how Danny operates
10 in terms of dealing with conflict and coming to
11 resolution. Certainly, his first divorce was very
12 lengthy and debated greatly, and I just used it as - -
13 basically I wanted you all to consider it in that Danny
14 has proposed primary custody and has also said in other
15 conversations that he would like 50/50 as a second
16 option, and I just wanted to put this document forward to
17 show that communicating can be difficult with Danny, and
18 would put Joe in the middle of a back and forth that I
19 think just doesn't serve him well. And then, conversely,
20 the - - I guess I'll just have to wait for number five to
21 show you why I wanted to do that one.
22
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1 THE COURT: All right. The objection is
2 on relevancy, and on relevancy I can - - I'll overrule
3 the objection and admit the exhibit. The weight that the
4 Court is going to give such an exhibit is going to be
5 weighed on this Court's experience.

6 MR. CASEY: Can, can - -

7 THE COURT: I'm admitting it.

8 MR. CASEY: Can I, can I object for the
9 record and admit case law that says it shouldn't be
10 admitted?
11

12 THE COURT: Sure.

13 MR. CASEY: *Potter v. Potter* a finding of
14 fitness to have custody of a child may not be predicted
15 upon acts occurring prior to the marriage.

16 THE COURT: Okay. That in and of itself
17 is an argument for the decision as opposed to weight.

18 MR. CASEY: Okay.

19 THE COURT: That really doesn't address
20 relevancy. Okay.

21 MR. CASEY: So, if relevancy comes in - -
22 relevancy will come into effect whenever she's actually
23 talking about the document? Is that what you're - -
24

25

1 THE COURT: The document itself is a Court
2 record. Actually, I can admit it.

3 MR. CASEY: Okay.

4 THE COURT: Okay. What you're arguing is
5 how much weight I give this record. Okay?

6 MR. CASEY: Okay, yeah.

7 THE COURT: Next.

8 MS. NEVAN: And then the next exhibit is
9 the docket from my divorce. And I basically just put
10 that in there to show kind of the different way of
11 handling things - - that in my divorce we settled
12 everything outside of Court. We came to Court and we got
13 divorced. And additionally, you know, I was able to
14 negotiate a child support increase from my ex-husband,
15 Angelo, over the phone in a conversation without having
16 to go into Court. And I think it just foots into the way
17 that I behave, and my character in terms of, you know,
18 wanting to put the children first, and working with the
19 other party, and so I just submitted that just as a
20 contrast.
21

22 THE COURT: Is there any objection?

23 MR. CASEY: No objection.
24
25

1 THE COURT: Five is admitted - -

2 MS. NEVAN: Thank you.

3 THE COURT: - - as a Court record.

4 MS. NEVAN: Exhibit number six is simply
5 my proposed Parenting Plan. Do you want me to discuss
6 that now, or later?

7 THE COURT: Well, yeah, you know, I
8 presume you're going to be discussing your three points.

9 MS. NEVAN: Yes, sir. Yes.

10 THE COURT: Okay, so why don't we start
11 with the discussion because normally these are basically
12 given - - we don't usually admit proposed orders as an
13 exhibit.

14 MS. NEVAN: Oh, okay.

15 THE COURT: Okay. All right.

16 MS. NEVAN: Okay, um, so, with regard to
17 the Parenting Plan, Your Honor, we currently have been
18 operating under a reasonable residential schedule. And,
19 by the way - - I made notepads just so I wouldn't ramble,
20 so - - um, that has existed for over a year, and that we
21 can easily maintain with the least amount of disruption
22 to Joe.
23
24
25

1 What I, what I have submitted as my
2 proposed Parenting Plan is almost exactly what I
3 submitted in October of 2008, with a minor difference. I
4 think it's important that Danny has a full weekend with
5 Joe where he's able to spend time with Joe, he can travel
6 with Joe, and more importantly could exercise parental
7 duties with Joe on a nice chunk of time. And the only
8 difference that I made from October of 2008 to the one
9 that I have submitted to you now is, is the weekend in
10 October of '08 I put from "pick up from school on Friday
11 until Sunday at 5 PM," and on this Parenting Plan, I have
12 extended that till "Monday morning, drop off at school."
13 So Friday night, pick up at school, till Monday morning,
14 9 AM.

16 And then I have then withdrawn the Monday
17 3 o'clock till 7:30, which was an effort to mirror
18 Danny's residential time with his daughter Orla, from his
19 first marriage. But in looking at the plan and doing
20 research and talking to lots of people, I just felt that
21 if my goal is for Joe to have a primary residence, and to
22 have time to just be in one place and not be flopping
23
24
25

1 back and forth, that - - what would serve both Joe best
2 would be what I've proposed with the Wednesday overnight.

3 I think that what I've presented allows
4 Danny to have one-on-one time with Joe from Friday at 3
5 until Saturday at 4 o'clock when his weekend starts with
6 Orla, and I think the plan also allows him to have some
7 one-on-one time with Orla Mondays from 3 to 7:30.

8 Certainly, the relationship between Joe
9 and Orla - - it's one, that you know, I feel that I have
10 to be really diligent to foster because Danny only has
11 Orla 17% of the time, so his time with Joe is not going
12 to foster that relationship, and so I have communicated
13 and had talks with Danny's ex-wife Rita and we are both
14 determined that Orla and Joe, and also Orla and my kids -
15 - frankly, Orla's very close to Katie - - continue to
16 build those relationships.

17
18 But getting back to the Parenting Plan, I
19 think that what I've presented is in everybody's best
20 interest. I have been, and continue to be Joe's primary
21 parent. I believe that it would be emotionally
22 detrimental for Joe to be away from his mother and his
23 two older siblings. Joe's entire life he's lived with
24

25

1 us. I've taken Joe to all his dental appointments, to
2 all his doctor appointments, with the exception of one or
3 two.

4 Joe is acutely close to his brother,
5 Pasqually, who he shares a room with, and to his older
6 sister. Those bonds are established, they're strong, and
7 I - - Joe depends on them.

8 I also feel that with regard to the
9 Parenting Plan that Danny's work schedule and on-call
10 status could possibly cause, you know, conflict and
11 really does not provide an opportunity for interaction or
12 supervision of Joe. Certainly, he does have - - I
13 volunteer at The Kenney (phonetic) where Danny works, and
14 I'm aware, in talking to, you know, the development
15 director there, they just have a lot of management
16 meetings. And so on the - - in particular, on that
17 Monday schedule, there are times when Danny's not
18 available because of an on-call - - because of a
19 management meeting.

21 And so Joe and his sister are in Danny's
22 office in the basement of The Kenney unsupervised in
23 front of the computer. And I just don't - - I think that
24

25

1 if we can avoid that and have Joe home doing homework,
2 playing, and just being on a schedule that's consistent
3 would be more beneficial.

4 I believe that Danny loves his son, and I
5 believe that Danny is a good father. But I also believe
6 that Danny struggles with communication skills in that it
7 is difficult to come to consensus with Danny. He can be
8 argumentative and obstinate and non-responsive, and there
9 can be a long process for decision-making.

10 And one example I will give - - for
11 example is, Joe had expressed in the spring an interest
12 in joining the Boy Scouts at the school where he was
13 going, Holy Rosary. So I called Danny and said "hey, Joe
14 wants to join the Boy Scouts." And Danny said, "Well,
15 I've got to think about that." And then it was like a
16 week, and then he came back - - and I followed up - - you
17 know, Joe would like to join Boy Scouts, and I want to
18 let you know that I support that, so if the meetings are
19 on a day that Joe's with me, you can take him because I
20 think Boy Scouts would be good for Joe. And Danny's
21 first response was "the Boy Scouts hate gays." Now, my
22 brother is gay, and I think I'd have a little radar up
23
24
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1 about that. I think that that was a moot point, but that
2 caused another thought process.

3 And finally, on my third follow-up with
4 Danny he said "you research it, you get all the
5 information, and then come back to me." And I felt like,
6 you know, here's an opportunity for you to spend some
7 one-on-one time with your son, doing something that men
8 do - - it's Boy Scouts - - it's a very male affirming
9 environment - - and you're making me do the research and
10 following up with you.
11

12 And this is just indicative of what the
13 process can be. It's not always that way. I will not
14 paint you a broad brush, Your Honor, and say it's always
15 that way, but I think it's enough of that way that to
16 have Danny be the primary custodian of Joe, or even just
17 a 50/50 would just be really difficult for Joe.

18 I tend to be an accommodating, flexible
19 person and, for example, Joe's birthday is 6/15, and he
20 shares it with Danny's oldest brother, Emmitt. I did not
21 find out from Danny that Emmitt was coming to town from
22 Ireland, or that the family was having a big celebration.
23 I found it out from his sister. And I immediately called
24

25

1 Danny and suggested, why don't we change weekends so Joe
2 can be part of that family celebration. I'm just giving
3 that as an example.

4 I also just feel that - - I guess
5 basically that's, that's pretty much it.

6 THE COURT: Child support?

7 MS. NEVAN: Move on then?

8 THE COURT: Whatever you think.

9 MS. NEVAN: Thank you. May I submit then
10 into exhibit, the financial declaration? And the
11 financial declaration, we could probably discuss at a
12 later time. It's pretty black and white. However, there
13 - - I don't need to discuss it right now.

14 THE COURT: Why not?

15 MS. NEVAN: Um, I guess the only thing - -
16 the only thing I would like to point out, I guess - - I -
17 - there's nothing really to argue on it. Danny has some
18 assets that are his that I'm not disputing and I'm not
19 putting any - -
20

21 THE COURT: What I'm going to need from
22 you is your testimony as to what the number should be for
23 child support. Your testimony as to what you want
24
25

1 divided in this dissolution whether in the form of debts
2 or property.

3 MS. NEVAN: Okay. We're not disputing any
4 debts. We're not disputing any assets. We share no real
5 estate. So in terms of the financial declaration, I
6 guess the only thing I would like to discuss is the
7 equitable division of property.

8 During our marriage we bought a 1996 Dodge
9 Caravan. I believe the purchase price was \$3,600. At
10 the time that we decided to separate, Danny's suggestion
11 was that we should flip for the van. And it was really a
12 flip of the coin who would drive away with the van, who
13 would possess the van, but we did not discuss or agree on
14 any division of that asset. So, that would be the second
15 outstanding issue that I am just looking to ask Danny to
16 please give me half the purchase price of that van, which
17 is \$1,800.

19 THE COURT: Do you have a Bluebook value?

20 MS. NEVAN: Pardon me?

21 THE COURT: Do you have a Bluebook value
22 on this car?

23

24

25

1 MS. NEVAN: No, no I do not. I would - -
2 I would probably suggest that the Bluebook value of the
3 car is probably around \$1,500.

4 THE COURT: Is it owned free and clear?

5 MS. NEVAN: Say again?

6 THE COURT: Is it owned free and clear?

7 MS. NEVAN: Yes, it was. Yes. When Danny
8 left on that weekend in August, um, he did leave with the
9 vehicle which left me with three kids with no car. And I
10 was without a car for nine weeks, and I ultimately bought
11 a car that I could afford, which was a '97 Voyager with
12 175,000 miles on it and it's now broken again, so we ride
13 a lot of buses and walk to the grocery store and such.
14

15 At the time that Danny left, he had in
16 excess of \$30,000 in the bank. He had the resources to
17 buy a replacement vehicle and yet he felt it was fair
18 that we flip a coin for that vehicle. And, I just don't
19 feel that that was fair.

20 Additionally to the vehicle, this is where
21 that exhibit 11, that I just presented today, I'd ask
22 that that be submitted.

23 THE COURT: And what is this, ma'am?
24
25

1 MS. NEVAN: Basically, Danny and I entered
2 in King County mediation on June 10th and we came to an
3 agreement in mediation, but there was no response back
4 and when we were in our pretrial conference, Judge
5 Spearman said "Hey, I got notified by King County you
6 guys had an agreement. Why are we here?" And Danny said
7 that he had changed his mind. And then after the day we
8 were due to submit our trial notebooks and all of that, I
9 got this email from Danny, in the wee hours of the
10 morning, that basically he admitted here in the second
11 paragraph that "the Parenting Plan is not the same one
12 from the settlement. I only read it last night for the
13 first time." And to me, I'm like - - so we went through
14 mediation at \$750, \$375 of which is my obligation. I'm
15 unemployed. I could ill afford to pay for that, and yet
16 you're telling me here you never even bothered to open
17 the envelope and read what we agreed on in mediation.
18

19 And so, to me, that shows that he entered
20 that mediation not in good faith. In fact, in bad faith,
21 and I feel like he should have to pay that mediation fee.
22

23 So, do we need to rule on that exhibit?
24
25

1 THE COURT: You're offering this as
2 exhibit?

3 MS. NEVAN: Number 11.

4 THE COURT: Mr. Clerk, is that number 11
5 on your - - what is your mark? It would be number six,
6 wouldn't it? All right, Petitioner's Exhibit 11.

7 MR. CASEY: No objection.

8 THE COURT: Eleven's admitted.

9 MS. NEVAN: Okay, so exhibit number eight
10 is the Child Support Worksheet and the Child Support
11 Order. Um, with regard to this, I basically just wanted
12 to bring to the Court's attention - - I used an imputed
13 figure for my salary instead of my actual unemployment,
14 which is less. I used the larger of the two figures
15 because I wanted to err on the side of caution.

16 I also wanted to request that Danny - -
17 has - - pays for health insurance, but he pays for it,
18 and he has both Orla and Joe on it, so I believe that
19 that figure should really only be halved in terms of the
20 calculation - - that he should not get full credit for
21 what he's paying for the medical insurance.
22
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1 I believe that Orla's covered on her mom's
2 policy at work and that this is an extra policy. So, I
3 just feel that that should be - - half of that should be
4 used in the calculation.

5 And in terms of child support, Danny has
6 been paying child support for the last year. When I've
7 done the worksheet, I see that, in fact, that that child
8 support could actually - - it works out that it should be
9 higher than what he's been paying, and I'm willing to go
10 with whatever your decision is.

11
12 THE COURT: Why don't you tell me how you
13 came up with these numbers?

14 MS. NEVAN: My numbers?

15 THE COURT: The numbers in your proposed
16 worksheets.

17 MS. NEVAN: Thank you. Okay, so my
18 numbers on the worksheet is the imputed figure off of the
19 King County rules, the Calculator, imputed for a woman of
20 my age, what my imputed income is. And basically health
21 care - - Danny has it at his work and so I just used half
22 of that calculation and then whatever my responsibility
23 would be as part of that. I mean, 70/30, if you use the
24
25

1 Parenting Plan, that's what my percentage of custody of
2 Joe would be. And then, basically, 20 bucks in my bank
3 account. 20 bucks cash, that's about all I have. I
4 don't have any assets unfortunately.

5 And then on page four of the worksheet,
6 um, I do receive child support for Katie and Pasqually of
7 \$1,300.

8 And that's it.

9 THE COURT: Anything else?

10 MS. NEVAN: Um, Danny's been paying child
11 support of \$349, and it was a figure that he came up
12 with. And I guess, Your Honor, the Findings of Fact and
13 Conclusion and the Decree of Divorce, those are just
14 Court documents that I know - -

15 THE COURT: I know.

16 MS. NEVAN: I know you know.

17 THE COURT: All right. Anything else?

18 MS. NEVAN: Oh, yes. Okay, so, boy, my
19 little card thing is really failing me. I'm kind of all
20 over the place. Um, in terms of child support, I would
21 also request, Your Honor, that I get the tax write-off
22 for Danny - - instead of Danny - - for Joe in that
23
24
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1 looking at the child support worksheet, it looks like
2 Danny's getting a benefit of a deviation based on the
3 whole family calculation, so I felt that he's already
4 receiving a benefit, or a discount, and, and then I guess
5 that would be the last thing.

6 THE COURT: Would you repeat that again,
7 ma'am? Would you repeat that?

8 MS. NEVAN: That, in calculating, or in
9 deciding who gets the tax write-off for Joey, I would ask
10 that you would take into consideration that Danny will
11 most likely already get the benefit of the deviation
12 based on the whole family calculation since he's paying
13 child support for Orla and that I would like to get the
14 tax write-off for Joe.

16 And then to remind the Court that I used
17 imputed income instead of my actual because of my
18 unemployment. I used the higher of the two figures.

19 And then, just to wrap it up,
20 historically, I have made a conscious choice in my adult
21 life that once I had children to not pursue a career. My
22 career has been taking care of my children. And I have,
23 in my marriage with Danny, I had numerous jobs that
24
25

1 augmented our family income, but my primary focus was on
2 raising these kids. I was involved 100% with Joe staying
3 at home till he was school age, and I also was quite a
4 bit with Orla during school holidays, sick days, vacation
5 days, whatever the teacher - - what do they call those?
6 Curriculum days. That was my main function and I feel
7 that to change that routine for Joe would just simply be
8 - - it would rock his boat. It would really be
9 detrimental.

10
11 THE COURT: When did you start residing
12 with Mr. Casey?

13 MS. NEVAN: Um, in February of '04. I was
14 managing an apartment complex, and when we got married, I
15 finished out that job and we moved in in February of '04.

16 THE COURT: Anything else?

17 MS. NEVAN: No, Your Honor.

18 THE COURT: All right. Mr. Casey, this is
19 your opportunity to ask Ms. Nevan questions - -

20 MR. CASEY: Your Honor, I - -

21 THE COURT: - - based on her testimony.

22 MR. CASEY: Based on her testimony. Your
23 Honor, may I request a five minute potty break?
24
25

1 THE COURT: Excuse me, what?

2 MR. CASEY: Can I request a five minute
3 potty break?

4 THE COURT: Well, what we'll do, we'll
5 recess till 10:30 then, I guess, okay?

6 MR. CASEY: All right. Thank you, sorry.

7 MS. NEVAN: Thank you, Your Honor.

8 BAILIFF: Please rise. Court is in
9 recess.
10

11 (Court in recess.)

12 (Court reconvenes.)

13 BAILIFF: Please rise. The Court is again
14 in session.

15 THE COURT: Please be seated. I
16 apologize to the parties for the inconvenience. These
17 administrative matters are very important to take care of
18 so the trial can proceed appropriately. All right,
19 Mr. Casey.

20 CROSS-EXAMINATION BY RESPONDENT

21 Q: Thank you, Your Honor.

22 So it's my understanding you want \$750 in
23 exchange for the vehicle?
24
25

1 A: \$1,800.

2 Q: You said the current - sorry. \$1,800
3 would be half the price of the vehicle when we bought it
4 new correct?

5 A: Yes.

6 Q: What would be a fair half price at
7 today's market value?

8 A: I don't know what the current market
9 value is for sure.

10 Q: Would you take half of what the fair
11 market value is?

12 A: No.

13 Q: You testified that - - sorry, I'll go
14 back. So you wouldn't take half of what the fair market
15 value is of what the vehicle is now. What would you
16 take?
17

18 A: What I asked for was half of the
19 purchase price of the car.

20 Q: You testified that I had \$30,000 in
21 the bank at the time of our separation. Was that my
22 \$30,000?

23 A: Absolutely.
24

25

1 Q: Where did the \$30,000 come from?

2 A: Your mother's inheritance - - of you
3 mom's estate.

4 Q: And you were aware at the time when we
5 separated that the estate had not been finalized?

6 A: You - - I recall going to the basement
7 and you were on your bank account and I saw \$33,000, and
8 I said "oh my gosh, you used to have more than that in
9 there." And you said "No, I've paid off some of my debt
10 from my divorce with Rita." And I remember seeing on the
11 screen down there \$33,000. That was prior to you moving
12 out.
13

14 Q: I'll ask the question again. You were
15 aware that the - - my mother's estate had not been
16 finalized at the time of our separation.

17 A: I thought it had. You received a
18 check, so I thought it had.

19 Q: Your child support at the moment is
20 \$349?

21 A: Yes.

22 Q: At the time of the separation you
23 asked for \$250, is that correct?
24
25

1 A: Yep.

2 Q: And what was my reasoning for changing
3 it to \$349?

4 A: I have no idea.

5 Q: What was the - - do you remember the
6 statement I said when I changed it?

7 A: Nope.

8 Q: In your child support order you have -
9 - oh, wait. You have, I'm sorry. On the child support
10 credits, you have changed the monthly healthcare expenses
11 from \$275 to \$137.50. What was your reasoning?
12

13 A: Because you have both Orla and Joey on
14 your medical.

15 Q: Who else is on the medical?

16 A: I don't know.

17 Q: Your other two children, Katie and
18 Pasqually, are both on that medical.

19 A: I know that when you first got
20 employed with The Kenney you put them on there which was
21 not necessary. They're fully covered medically by their
22 father's insurance, and I've never utilized the insurance
23 at The Kenney for Katie and Pasqually. Ever.
24
25

1 Q: You are aware that there is a court
2 order for my previous ex-spouse to supply medical
3 insurance for my daughter, Orla?

4 A: That's what I understand.

5 Q: So the only person I pay for this
6 medical insurance for is Joe?

7 A: I think you pay medical insurance for
8 whomever you choose to put on your insurance plan,
9 whether it's necessary or not.

10 Q: Okay, we'll address that later.
11 Sorry, Your Honor. Give me one second. I would like to
12 admit another exhibit. Do I give it to the bailiff?

13 THE COURT: Now is this something that was
14 part the packet ahead of time?

15 MR. CASEY: Nope.

16 THE COURT: Okay, why don't you show it to
17 the Petitioner, and hand a copy to the Clerk. He'll mark
18 it.

19 THE CLERK: Respondent's exhibit number 60
20 is marked for identification.

21 THE COURT: What is this, sir?
22
23
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1 MR. CASEY: I'd like to admit this exhibit
2 please.

3 THE COURT: Okay, you need to identify it,
4 please.

5 MR. CASEY: Oh, sorry. This is my
6 employer's at Kenney's benefit cost guide and it shows
7 the medical costs for myself and children that may be on
8 that insurance policy.

9 THE COURT: Is there an objection to
10 exhibit 60?

11 MS. NEVAN: No.

12 THE COURT: Respondent's exhibit 60 is
13 admitted. All right, now I'd like to take a look at it.

14 Q: If I can direct your attention down to
15 the - - what looks like the third paragraph where it says
16 medical for employee and children. It says \$180.55. You
17 are aware that the cost I pay is the same whether I have
18 one child on the account or four?

19 A: I'm not sure what you want me to say.
20 It's here. So if this is what you're presenting, then I
21 accept this. I see it on your paycheck.
22
23
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1 Q: All right, I'll rephrase the question.
2 So the only person I pay this medical insurance for
3 child-wise is Joseph.

4 A: Okay, I can see that now, yeah.

5 Q: Okay. Um, how do I do this? You
6 reference exhibit 11, and are requesting the Court for
7 \$375 for your portion because you believe I did not enter
8 into good faith the mediation process?

9 A: Yes.
10

11 Q: If within a week I was to retrieve Joe
12 from - - I was returning Joe to you and I put him in your
13 car and I slammed the door after he got in the door, and
14 this is within a week of us doing a mediation process,
15 would you not have second thoughts about an agreement
16 that you may have come to?

17 A: I can't answer that question.

18 Q: Hypothetically? If you were in that
19 situation - -

20 A: I guess I object, Your Honor. Is that
21 relevant? I don't understand.

22 THE COURT: Well, the objection is not the
23 right titled objection - -
24
25

1 MS. NEVAN: Okay, sorry.

2 THE COURT: - - but hypotheticals are not
3 something that the Court would consider, so you can't ask
4 a hypothetical of a person that (inaudible) an expert
5 witness, so. You can ask a similar question, but not
6 that type of question. And it would be relevant.

7 MS. NEVAN: Okay.

8 Q: I'll pass on that and go on to
9 something else. Um, when we first got married you got a
10 job working for Mortgage Alliance?
11

12 A: No.

13 Q: Residential Alliance?

14 A: No.

15 Q: All right. Help refresh my memory.
16 You had a job down on Elliott Avenue. What was the
17 company?

18 A: Washington Financial Group.

19 Q: Washington Financial Group. And what
20 was your job there?

21 A: Um, head of underwriting operations
22 for a warehouse line.
23
24
25

1 Q: And what qualifications did you have
2 to get that job?

3 A: I had been in mortgage banking for 20
4 some years.

5 Q: And since we've been married, what
6 other jobs have you had?

7 A: Um, I attempted to be a real estate
8 agent, and at the same time I was doing that I had a
9 part-time job at Metropolitan Market as a cashier to try
10 to augment income while I was trying to be a real estate
11 agent. Um, for the last - - for three years I watched my
12 brother's twins, and that's it.
13

14 Q: You had a job delivering pastries, did
15 you not?

16 A: Oh, yeah, yeah. I had several band-
17 aid or part-time jobs. It's on the 2008 tax returns. I
18 delivered pastries early in the morning, and then I also
19 did some consulting work for the West Seattle Help Line.
20 Helped them organize some fundraising events. And then,
21 that was it until you moved out.

22 Q: Okay. No further questions, Your
23 Honor.
24

25

1 THE COURT: Thank you. Do you have any
2 additional testimony?

3 MS. NEVAN: Not at this time, sir.

4 THE COURT: Do you have any additional
5 witnesses?

6 MS. NEVAN: No, only me.

7 THE COURT: Do you rest?

8 MS. NEVAN: Yes.

9 THE COURT: Mr. Casey. Now we're going to
10 begin with your side of the case. Please stand and raise
11 your right hand. Do you swear or affirm that the
12 testimony you're about to give is the truth, the whole
13 truth, and nothing but the truth?
14

15 MR. CASEY: I do, Your Honor.

16 THE COURT: And I will ask you some
17 preliminary questions, then you can give me your
18 presentation.

19 EXAMINATION OF RESPONDENT BY THE COURT

20 Q: Your full name?

21 A: Daniel M. Casey.

22 Q: Your date of birth?

23 A: September 11, 1962.
24
25

1 Q: Where were you born?

2 A: Belfast, Northern Ireland.

3 Q: Current residence?

4 A: 2100 California Avenue S.W., #302,
5 Seattle, 98116.

6 Q: You've been married before?

7 A: Yes.

8 Q: What was the date of that marriage?

9 A: Don't remember.

10 Q: Know approximately?

11 A: Approximately, 15 years ago, I think.

12 Q: Marriage was dissolved in Washington?

13 A: Yes.

14 Q: Any children born of that marriage?

15 A: One.

16 Q: Name and date of birth?

17 A: Orla T. Casey. C-A-S-E-Y. Born
18 March 27, 1998.

19 Q: 19-what?

20 A: 1998.

21 Q: Where does the child reside?

22

23

24

1 A: Primarily resides with her mother in
2 West Seattle.

3 Q: In West Seattle? Is there a Parenting
4 Plan?

5 A: Yes.

6 Q: What was the date of your marriage?
7 Do you agree that it's January 24, 2004?

8 A: Yes.

9 Q: Is the marriage irretrievably broken?

10 A: Unfortunately, yeah.

11 Q: What's your educational background?

12 A: One year of college.

13 Q: What do you do for a living?

14 A: Sorry, Your Honor?

15 Q: What do you do for a living?

16 A: I'm a facilities director for a
17 retirement community.

18 Q: How long have you worked there?

19 A: Two years.

20 Q: All right. Thank you. Go ahead.

21

22

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1 PRESENTATION BY RESPONDENT

2 MR. CASEY: I don't know where to start.
3 Joe is our seven year old son. He's a very open person,
4 personable person, very personality, almost like
5 (inaudible). Very friendly, willing to talk to almost
6 anyone. Very talented (inaudible). I would actually - -
7 I would claim that the (inaudible) is true.
8 Unfortunately, my wife is the one who does the projecting
9 about who's got the issue with on being uncooperative.
10 She also does funny things in front of our son which I
11 don't believe are good for our son.

12 She takes funny moods. There was one
13 morning Joe and myself and Orla were at a tennis court
14 playing tennis prior to taking Joe to school, and Suzanne
15 happened to be driving by as we were leaving and Joe
16 noticed his mom, he waved and ran down the stairs. She
17 slowed down, and stopped for a split second to say "gotta
18 go, I got no gas, can't talk." And she drove away, left
19 Joe (inaudible) upset, and this was shortly after we had
20 done our separation.

21 I moved out of the house because I was
22 told to get out of the house. Suzanne had asked me about
23
24
25

1 three months prior to our final separation to - - for a
2 separation - - I said no. I thought we could work it
3 out. And since I've moved out I've made a concerted
4 effort, when the opportunity arise, for our son Joe to be
5 able to play with his friends in the existing
6 neighborhood that we have and to spend time with his
7 cousins. He has a number of friends, Anunu (phonetic)
8 and Uri (phonetic) being two of them, that he
9 specifically likes spending time with. And, uh, I've
10 taken them to - - Uri - - to the movies - - I've done a
11 number of things with Bernadette, and Joe has gone over
12 to his friends Anunu's for play dates.

14 When Suzanne - - let me see if I can start
15 at the beginning. I'm kind of jumping around. I
16 apologize.

17 When we sat down and announced our
18 separation to our two - - to all of our children, we did
19 it in the house and Suzanne is the one who did most of
20 the talking. And we were very clear that, when we did
21 the separation, that every effort was going to be made to
22 keep the children in as much contact as possible. Orla
23 has been around to Suzanne's house and I have invited
24
25

1 Suzanne and Katie and Pasqually around to dinner two
2 different occasions, and both times she said yes and then
3 later was unavailable.

4 My daughter from our first marriage has a
5 very close relationship with our son Joe. Joe obviously
6 has a very close relationship with Katie and Pasqually,
7 but Orla and Joe are way closer in age. Orla is 11 and
8 Joe is 7, and the two of them play together very, very
9 well. Orla has a very strong bond with Joe and, in fact,
10 the other week, I was amazed when I was - - I had left
11 the two of them in my office while I went to a meeting
12 and, you know, as I do. And if they've got homework,
13 they do homework first, then they sit in the office. And
14 if not, then they sit and do something on the computer.

15 And although Suzanne's right, they are
16 unsupervised, I work in a facility that requires all of
17 the staff be run through a security background because it
18 is a retirement community, and there are certain rules,
19 laws and regulations that require all staff go through a
20 security background check - - everybody who works there
21 has been vetted.
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1 But back to the point. When I came back,
2 Orla had made this great presentation - - taken a bunch
3 of photographs out of my computer with different
4 captions, funny captions, on how cute her brother Joe
5 was. And anyway, it just goes to show the sort of
6 relationship the two of them have.

7 Orla has - - both of them have had - - at
8 the beginning they had a hard time with the separation
9 and Orla still sometimes has somewhat of a hard time with
10 the separation; especially when we do our odd weekend
11 Sundays. It has an adverse effect on her, I'll be
12 honest.

13 So, I've - - I'm a pretty well parent, in
14 my opinion. I taught Joe how to ride his bicycle at
15 Hiawatha Park. I even taught Suzanne and - - or not
16 Suzanne, I'm sorry. Did you know how to ride a bike? I
17 taught Suzanne's son, Pasqually, when Suzanne and I first
18 started going out, how to ride a bicycle.

19 I went to - - I've been to all of Joe's
20 soccer games, most of his baseball games. I've even
21 helped coach one of her daughter Katie's baseball teams.
22 Assistant coach, not coach, assistant coach.
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1 MS. NEVAN: Soccer.

2 MR. CASEY: Soccer, thank you for
3 correcting. And I've been to Pasqually's baseball games
4 and soccer games and Joe - - when I was coaching Katie's
5 Joe was with us and he would hang out and he would
6 assistant coach. He got a little honor for doing that,
7 which is one of the reasons why Joe is a good soccer
8 player.

9 Education. I've had my daughter - -
10 obviously I have been my daughter's father since she was
11 born. I know this case is about Joe, but this just goes
12 to past history of - - I have encouraged Orla, when she
13 comes home, to do her homework immediately which is why
14 whenever we're in the office, the first priority is that
15 they do their homework. I read to Orla, I read to Joe.
16 I've read to Joe for ages. I help him do his homework.
17 And I emphasize the importance of doing it immediately
18 after you come home from work.

19
20 And just recently I've taught Joe how to
21 read the clock. When Suzanne and I lived together, I
22 cooked as many family meals as Suzanne did. I was the
23 one who was responsible for doing the laundry. I
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25

1 vacuumed the house, wash the dishes. Friday's laundry
2 issue was always trying to coordinate the kids and get
3 the laundry downstairs and get it finished for the
4 weekend.

5 My work schedule. On the day I have Orla
6 and Joe, I go in late because I drop them off at school.
7 And if I'm picking them up, I come home early, and the
8 days I don't have them, I go in early and I stay late.
9 My work is flexible enough that I can do that. If one of
10 them is sick, which I've done, I work from home. I have
11 a wireless network at the house that I can do work from.
12 As you can guess, as a facilities director, a lot of my
13 work is paperwork. It's not necessarily all hands-on
14 work, so I can get a fair amount of work done at home,
15 which is not inconsistent with what Suzanne had to do
16 with Katie and Pasqually. I mean she worked for a
17 company - - that I forgot.

18 Joe was born in 2002. He lived with his
19 mother until January 2004 when myself and Petitioner got
20 married. When we got married, Joe's daycare was - - for
21 one year, it was a place called "What a Child Becomes,"
22 and then the next year he started kindergarten school at
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1 Holy Rosary. He unfortunately had to repeat
2 kindergarten, which he did a second year at Holy Rosary,
3 and he is now at Lafayette Elementary High School which
4 is halfway between Suzanne's house and my house. We both
5 live in West Seattle.

6 And as I said earlier, unfortunately,
7 Suzanne's behavior swings up and down. I don't
8 understand why, but it does. Shortly after our
9 separation, I pulled into the Bartell Drug Store one day
10 with Joe and Orla, which is close to where we both live,
11 and Suzanne was about to go in. She spotted us and she
12 waited until we got to the door, said hello, and follows
13 us into the store with an angry look on her face. She
14 followed me around the store actually, argument
15 (inaudible) and yelling at me. I refused to engage and
16 got what I wanted from the shelf, walked to the cash
17 register. She followed and continued the same behavior
18 even while I was checking out. Joe and Orla went to the
19 toy lane like they normally do, and then we left. She
20 later apologized to Joe and myself for the incident.

22 About a month after I moved out, I had a
23 stroke. I hate to say that. I was in the hospital for
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1 two days, and two days after I get out of the hospital,
2 Suzanne called me up and starting yelling and screaming
3 at me on the phone. I don't know what it was, I just
4 wasn't engaging in it. The conversation ends and that
5 was it. And that is what her definition is of non-
6 cooperativeness is. And when she starts arguing and
7 fighting, I will - - I will shut down. I'm not going to
8 get into these issues because I don't want to be yelling
9 and screaming at somebody. And that's her definition of
10 me being the problem.

11
12 I hate to say this, but it goes to show
13 the character. I come out of the hospital after having a
14 stroke two days later and she starts arguing with me
15 during the phone. It's the same thing whenever Joe's
16 around. One afternoon when I dropped Joe off at
17 Suzanne's and told her we were going to Ireland for our
18 vacation, Suzanne asked if that was true. She stormed
19 back in the house and slammed the door while Joe was
20 there. She's done this on a number of previous
21 occasions.

22
23 In one of them, she slammed the door - - I
24 can't remember what the incident was - - and later sat
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1 down and talked to Joe and apologized and explained to
2 him that she shouldn't be doing this.

3 On the day I needed to meet her and Joe at
4 the passport office, she arrived angry. Was very angry -
5 - angry that I filled out Joe's address as my address.
6 You know, there was no determination at this point, and
7 she kept yelling "I'm the primary parent, I'm the primary
8 parent" in front of everyone. There weren't a lot of
9 people there admittedly, there was only like two people,
10 but she didn't really care about what anybody thought and
11 said, she just went ahead and did it.
12

13 Again, I did not engage. I have a
14 tendency to shut down is what I do. She has continued
15 this behavior for quite a while, without care to Joe. A
16 lot of times it's in front of Joe and Joe will be there.
17 About a month or so ago, I dropped papers off that were
18 due, something to do with the Court, and she happened to
19 see that I had dropped by the house, and she called me on
20 the phone asked me what I was doing. I explained to her
21 what I was doing. I then talked to Joe, said hello to
22 Joe. Then Suzanne came back on the phone and tried to
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1 start another argument, and Joe - - I can hear Joe in the
2 background - - again, end of conversation.

3 And the day I went to pick up Joe to go on
4 summer vacation, that was shortly after we came out of
5 our negotiation. Suzanne was ticked off about something,
6 put Joe in the van and slammed the door on him. That was
7 Joe's goodbye for three weeks from his mom. It would
8 give anybody second thoughts about what sort of agreement
9 somebody would come to.

10 I believe I'm a very cooperative person.
11 I believe I understand children. Suzanne has two
12 children, Katie and Pasqually, and unfortunately, they
13 don't have a lot of contact with their father, and it's
14 understandable; one of them lives in Texas, the other one
15 lives here. But when they've had instances to talk to
16 him on the phone, I've encouraged them to take the time
17 and go into a separate room and just talk to their dad on
18 the phone, without background noise and without anybody
19 saying well, that's not right, or this is not right, or
20 whatever it might be, so they could develop some sort of
21 relationship with their father.
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1 I do the same thing now with Joe. When
2 he's on the phone, I send him into the bedroom - - when
3 he's on the phone trying to talk to Suzanne. It's really
4 none of my business what they're talking about. They're
5 just trying to bond. There's nothing wrong with that.

6 When we lived in the house, I was the one
7 who was engaged with Joe. I was the one who would be
8 outside playing with Joe and his friends Jackson and
9 Austin, and there's one other boy, and I forget the
10 (inaudible) guy's name.

11 I think I'm a very cooperative person.
12 Suzanne - - unfortunately, she doesn't have a job and she
13 asks me for the child support early. I have no problems
14 giving it to her. If she asks for two or three weeks
15 early, I give it to her.

16 She's had some issues with things around
17 the house. Hot water heater didn't work. Asked me if I
18 could look at it. I went and looked it. She knows I'm a
19 very cooperative person because when we lived together my
20 ex-wife would apparently call up and say, you know, my
21 electric's not working, can you come around and have a
22 look at it. And I would go around and look at it. You
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1 know, I'll be honest, my first ex-wife and I had a major
2 divorce, but I still do my best to be cooperative.

3 As a matter of fact, after we left, after
4 I left the house, I had found out that Suzanne's vehicle
5 had broke down. I can't remember if she called me or I
6 called her. And it was stuck in the middle of the
7 street. So I went from where I was to where she was, got
8 some cardboard or something and we put it on the back
9 between the two vehicles and I pushed her vehicle home.
10 And it was - - it was actually - - there was a good joke
11 there - - but I won't - -

12 MS. NEVAN: It was comical.

13 MR. CASEY: That's what we need. One
14 other time, her car broke down outside my apartment. I
15 drove her home and spent a large portion of two days
16 outside in the cold and rain repairing the vehicle.

17 I'm sorry, Your Honor. It drives me nuts
18 where people try and do this.

19 You know, I believe my Parenting Plan - -
20 and I'll go over it here in a minute - - does best suit
21 the interests of all of our children. When Suzanne and I
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1 first got together - - oh, that's not right. Anyway,
2 I'll skip that for a second.

3 Suzanne is a good mom. She just has some
4 things that, I don't know, show up every now and then.
5 And she has two very good kids. Very intelligent
6 children, and intelligence is probably an understatement.
7 Pasqually, one of them, I've never met a kid who could do
8 a whole math year curriculum in three months. The kid's
9 a genius, in my opinion.

10 Katie is a very good artist, and when I
11 was in the house, I did my best to try and encourage them
12 to do the same thing I had the other children do - - to
13 do their homework, but I believe at times that Katie and
14 Pasqually can be a handful for Suzanne. And I think that
15 my Parenting Plan balances that. There are a number of
16 issues that Suzanne has in trying to get her two existing
17 children to do what she wants when she wants them to do
18 it.

19 I'll just give one example that shows
20 right up again. When I was there, time and time again, I
21 tried to get her son, when he's on his bicycle, to wear
22 his crash helmet. And just last Sunday I was driving
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1 down California Avenue and there he was, no bicycle
2 helmet.

3 Her daughter Katie - - obviously - -
4 they're 15 and 16, and you know kids go through these
5 stages, but still it's extra work for the parent, and
6 there have been issues with her daughter Katie actually
7 leaving the house - - I don't know if I'd say running
8 away - - but leaving the house and not reporting back for
9 a day or so.

10
11 As I say, I've been through a divorce
12 before and, in that process I spent a lot of time doing a
13 lot of reading books - - reading books on divorce, the
14 effects it has on divorce - - the effects it has on the
15 children. Different books on - - children's actual
16 stories on what they experience.

17 Sorry, Your Honor, can I ask a question?
18 Was I right in interpreting your response that we don't
19 have to admit these actual proposed Parenting Plans into
20 Court, we can just talk about them, is that correct?

21 THE COURT: The proposed Orders. Not your
22 proposed Parenting Plan or your financial declarations.
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1 Those are extraneous documents. Those are something I
2 will consider, but they won't be a formal exhibit, okay?

3 MR. CASEY: Okay. All right. So my
4 proposal is consistent with - - how did I miss that? Am
5 I missing a piece of paper?

6 My proposal I believe is consistent with
7 the conversation we had with all of the children whenever
8 we were separating. It's also consistent with the
9 existing arrangement that my daughter has with our son
10 Joe, and that is on a Monday and a Wednesday he spends
11 his time with me, and that's the same days that Orla
12 spends with me. And that's consistent with what we told
13 the children when we separated. We told them we were
14 going to keep them all together. We were going to let
15 you spend as much time together as possible. You're free
16 to come and go. And that is consistent with that.

17 So, on a Tuesday, Suzanne will have Joe
18 from 3 PM until Wednesday, returning Joe to school in the
19 morning. Every Thursday from 3 PM or after school,
20 whichever occurs first, until Friday, returning Joe to
21 school in the morning, and every other weekend from
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1 Saturday, 9 AM until Monday morning, returning Joe to
2 school.

3 I believe we're in the agreement
4 (inaudible). I believe I should be designated primary
5 parent or custodian - - I'm not quite sure which is the
6 proper true legal term - - for a number of the reasons
7 I've outlined already. I believe I do take into
8 consideration Joe, Orla, Katie, Pasqually.

9 I do not try - - I do not start arguments.
10 That's a pretty blanket statement. Everybody at some
11 point I suppose starts an argument. But, in this case, I
12 have not done any of the stuff that Suzanne has done.

13 I - - you know, I've been there since - -
14 I've haven't been there since gecko (phonetic) because
15 initially we weren't together, but since we got married,
16 I've been fully involved in our son's life. I truly
17 believe that our son has a greater attachment to me than
18 he does to Suzanne. There have been a number of
19 instances when we first started separated, and there were
20 recently - - in the last month or so there was one, and I
21 could hear there was one on the phone yesterday, where
22 Suzanne, or Joe, has a problem separating from Suzanne
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1 when - - when it comes time to switch from one parent to
2 the other. And I believe this separation - - Joe's not
3 sure of his relationship with his mom. Yeah, he needs
4 his mom, but he's not sure what that relationship is
5 going to be in any given point in time because of the way
6 Suzanne reacts. But I believe my Parenting Plan takes
7 that into consideration. I believe that it - - I believe
8 it's in the best interest of our son.

9
10 In Suzanne's - - all right, I'll stay with
11 mine. Never mind.

12 MS. NEVAN: Excuse me, Your Honor. Is
13 Danny still in the middle of his opening statement, or is
14 he presenting stuff now?

15 THE COURT: Presentation.

16 MS. NEVAN: Okay.

17 MR. CASEY: I'm sorry, Your Honor, I just
18 noticed something. I appear to have not filled out a
19 portion of the financial declaration. But I would submit
20 that the - - my portion of this financial declaration - -
21 that my portion of this financial declaration should be
22 exactly what Suzanne has submitted.

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1 If I could submit my Washington State
2 Child Support Schedule, please.

3 THE COURT: Again, you can argue off it
4 and use it as illustrative of your testimony, but I'm not
5 going to accept it as an exhibit.

6 MR. CASEY: Okay. Um, the only thing I
7 would say about the work schedule is that, as Suzanne has
8 said, what did I - -

9 MS. NEVAN: I'm sorry, Your Honor, which
10 document are we on now?

11 MR. CASEY: I'm sorry.

12 THE COURT: C, C in the trial notebook.

13 MS. NEVAN: The work sheet?

14 MR. CASEY: Uh-um. I suppose the only
15 thing I would put on the work schedule - - I don't see
16 how you could do it, but it seems like there's some sort
17 of method for doing it - - is that currently Petitioner
18 is unemployed and that when she gets a job that support
19 payment will change depending on who the payment is to.
20 There should be some sort of flexible clause that allows
21 for that to happen.
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1 Sorry, I'm moving on to - - I apologize,
2 I'm not organized here. D - - D in the folder.

3 THE COURT: I'm sorry, the what?

4 MR. CASEY: D in the folder. The Order of
5 Child Work Support. I'm just gonna - -

6 THE COURT: All right. Oh, okay.

7 MR. CASEY: I'm sorry - - I can submit
8 this one, or I don't need to submit this one, or - -

9 THE COURT: You can argue off of it.

10 MR. CASEY: - - argue off of it. Okay,
11 let's do the argument off of it. Okay, cause there's a
12 couple things in here. Um, let's see. No argument about
13 what age he is, that's for sure.

14 Paragraph 3.14, Payment for Expenses Not
15 Included in the Transfer of Payment - - Petitioner shall
16 pay 40%, Respondent shall pay 60%. Um, it is my belief
17 at this point in time that Petitioner is under-employed.
18 When Petitioner and I first agreed to get married, you
19 know, I had sat down and talked to her about my first
20 divorce. And one of the things I discovered in my first
21 divorce is that my wife declared at the end she wanted me
22 to take care of her. And I was very open about this that
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1 I wasn't going to be able to take care of Suzanne and
2 four kids. That both of us needed to go get a job.

3 And Suzanne did, when it came time, go get
4 the job that she said she was going to get, but within
5 three months, she voluntarily terminated that position
6 and has not tried to get back into what is her
7 profession, which is mortgage specialist. The company
8 she worked for she helped them set up the mortgage
9 company that she worked for for those three months, and
10 she has admitted she has 20 years experience in the
11 field, and you know, since we've been married, she, you
12 know, was doing this and then she voluntarily left the
13 job.
14

15 She tried to do real estate for a year - -
16 didn't work out. Took a job part-time at Metropolitan
17 Market - - came home one day and says, "you know, I've
18 committed to babysitting my brother's twins for the next
19 two years." No discussion, no involvement in it. That
20 was it. Decision made. And it's been like that since
21 then. That wasn't something I agreed to. That wasn't
22 something that was part of our original arrangement.
23 That's one of the reasons we're in this situation.
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1 Medical insurance. Currently I have
2 medical insurance and Joe should stay on the medical
3 insurance. But I believe that right now I'm paying four
4 hundred some odd dollars for medical insurance, and I
5 believe that when the time comes that Suzanne may get
6 better medical insurance - - because right now, at this
7 point in time, I do have good medical insurance, but my
8 company's going through, as a lot of them are, a
9 reshuffling of finances, and within the next month we're
10 going - - dropping from Providence to Group Health, and
11 my coverage will be nowhere near what is, which means our
12 expenses will be more, which means the cost will be more.
13 And I believe that the - - I believe that, you know, when
14 Suzanne gets a job - - if her medical insurance is
15 better, that there should be a mutual agreement to move
16 it and, if it's not at such a point in time that it
17 should be an equal distribution.

19 Paragraph 3.19, Extraordinary Healthcare
20 Expenses - - same thing, same reasoning.

21 Clearly, Your Honor, my wife is unemployed
22 and I wouldn't expect her to pay 40%, and I - - I just
23 think there needs to be some sort of clause or balance in
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1 there that when that point in time comes that she gets a
2 job that there is a balancing of the facts - - or the
3 issue.

4 It seems like I'm missing something.

5 DVR ENDS JAVS 1 at 11:51:37

6 DVR BEGINS JAVS 2 at 1:35:23

7 (Court in recess.)

8 (Court reconvenes.)

9 BAILIFF: Please rise. Court is again in
10 session.

11 THE COURT: Please be seated. All right.

12 At the recess, Mr. Casey finished his testimony and - -

13 MR. CASEY: Your Honor, sorry to interrupt
14 you. I realized while I was out I missed a couple of
15 things. Do you mind if I continue since Petitioner
16 hasn't started yet?

17 THE COURT: All right then, you can do
18 that.

19 MR. CASEY: Thank you. Suzanne stated in
20 her testimony that she was the primary parent and, as she
21 also stated, she also had a number of jobs. The reality
22 is that when Suzanne was available after work and I was
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1 available, I was generally the one that was in the house.
2 Suzanne is a very social bud - - and there's nothing
3 wrong with that - - and spent a lot of time outside the
4 house doing other volunteer work or just spending time
5 with her brother or going to the neighbors and chatting
6 with people. She always seemed to have something to do.

7 On - - let's see - - Petitioner's
8 Parenting Plan, paragraph 3.22, Petitioner has requested
9 that - -

10 THE COURT: What provision is that in the
11 Parenting Plan?

12 MR. CASEY: Oh, let's see - - Order on
13 Child Support. My apologies. Order of Child Support.
14 Sorry, Your Honor. Paragraph 3.22, Petitioner has
15 requested that I - - that I carry a life insurance
16 policy. Currently, I have a life insurance policy
17 through my work that my work pays for. It's only for one
18 year's annual salary, and that's all it is. But what I
19 really object to this is, you know, Petitioner is aware
20 that I have a daughter and in this she makes herself sole
21 beneficiary of it - - obviously for the purpose of Joe.
22 And she's totally negated my other daughter, Orla, and
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1 I'm sure my other wife would have something to say about
2 a statement like this in an account it seems unfair one
3 person could petition the Court to ask for sole
4 beneficiary when there are other children involved.

5 Suzanne - - Petitioner also testified
6 about a Monday meeting that I apparently have. And I'm
7 not aware of any Monday meeting I have that - - whenever
8 I go to pick up my kids. It's generally a Wednesday that
9 I have to do something, and it's only once every month.

10 Also, Petitioner said that I was on an on-
11 call basis. I am the Facilities Director at the facility
12 that I work at, and if issues come up, I am the one that
13 is called first. That does not mean that I am the one
14 that responds. I can designate two of two other
15 employees to go do it. Generally, what I do is - - when
16 I don't have the kids, I respond; which is what I did
17 last night. 12 o'clock at night. When I do have the
18 kids I will call one of the other gentlemen to go
19 respond.
20

21 The Boy Scout issue that Petitioner
22 brought out - - I'll just simply say that, yeah, she's
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1 correct. I did ask her to do it only because I didn't
2 want to be getting into another argument with her.

3 Petitioner references the \$30,000 that was
4 in my bank account at the time of our separation. And
5 I'd like to enter this into evidence.

6 THE CLERK: Respondent's exhibit number 61
7 is marked for identification.

8 THE COURT: What is the document?

9 MR. CASEY: The document is the - - the
10 document is the original documentation that was sent from
11 O'Hare Solicitors in Belfast, Northern Ireland where my
12 mother resided. She passed away in Northern Ireland, and
13 that's where her estate was. This references that money
14 that Petitioner was talking about.
15

16 As you can see half way down, there's a
17 paragraph that says - -

18 THE COURT: (Inaudible). Objection to
19 admission of Respondent's exhibit number 61?

20 MS. NEVAN: No, I don't have any
21 objection.

22 THE COURT: Sixty-one is admitted. Okay,
23 now - -
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1 MR. CASEY: Thank you, sorry. As you can
2 see, half way down, there's a paragraph that says "there
3 is also an outstanding indebtedness due to Social
4 Security Office concerning an overpayment in relation to
5 your mother's late pension." So, this is the letter
6 distributing the money, but the money was in fact not
7 sent out because there was an outstanding debt unknown to
8 us as to how much it was, so there - - this was actually
9 divvied among - - sorry, let me rephrase that - - make
10 sure I say it right. This was my portion of eight
11 portions that - - I have eight brothers and sisters - -
12 and this is my portion of - - so, one-eighth of my
13 mother's estate, and at the time this happened, my older
14 brother who was the one doing this, made rough
15 calculations as to how much we may owe the estate. May
16 owe the Social Security Department in Northern Ireland,
17 and it was determined that \$30,000 was roughly what we
18 may have to pay back, so that money was set aside because
19 the estate was not finished as it clearly states in here.
20

21 Suzanne has requested - - or Petitioner
22 has requested for distribution of half the value of the
23 vehicle. At the time Petitioner requested I leave the
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1 house, I took very little possessions with me and I
2 basically had to buy everything - - not everything, but
3 quite a lot. Um, I left the microwave there, I left the
4 DVD there, I left the large TV there, I left the sofa
5 there. I had to buy new beds, new sofas, not new sofas,
6 sorry. New beds. I had to buy chest of drawers, all the
7 basic essentials for a kitchen. I had some of the stuff,
8 but barely any of it. I left most of it there.

9
10 I also had to pay for the \$1,600 to repair
11 the Dodge Caravan because the gear box had gone out.

12 Not again. Sorry, Your Honor. I'd like
13 to enter one more exhibit. Maybe I won't. I don't have
14 a copy.

15 At the time Petitioner and I separated, we
16 had a joint VISA account. Close to about the time we
17 departed, there was \$2,466 left in that VISA account.

18 MS. NEVAN: Objection, Your Honor. I - -
19 I am unaware of us having a joint anything. I've never
20 had a VISA card that I had signing on anything. I mean
21 what's the names on the credit card?

22 THE COURT: Well, what's your - - the
23 nature of your - -

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1 MS. NEVAN: My objection is he's talking
2 about evidence that I'm unaware of. I've never seen it.
3 I don't know what he's talking about.

4 THE COURT: You have the right to ask him
5 about it. It's not a basis for an objection.

6 MS. NEVAN: All right. Pardon me.

7 THE COURT: Overruled.

8 MS. NEVAN: Thank you.

9 MR. CASEY: The value of that VISA card
10 was \$2,466. It was probably slightly more than that
11 because the statement I'm looking at was 11 (inaudible),
12 and nothing has been charged on this thing for decades -
13 - it's just been paid off. The total - - at one point,
14 it was \$7,000. And a portion of that got paid off when I
15 got that initial batch of cash from O'Hare Solicitors.
16 All things Petitioner are aware of.

17
18 As regards the parenting issue, one other
19 thing that dawned on me. At one point during our
20 relationship, Suzanne requested that if anything happened
21 to her that I keep Katie and Pasqually here, and not let
22 them return to Texas. That's not to say anything bad
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1 about their dad, it just shows what kind of parent she
2 thought I was.

3 And that's all I have, Your Honor. Thank
4 you.

5 THE COURT: Now you have the opportunity
6 for cross-examination.

7 CROSS-EXAMINATION BY PETITIONER

8 Q: Thank you. Um, how much - - how much
9 did we pay for the Dodge Caravan?

10 A: I think it was \$4,000.

11 Q: With regard to your mom's estate, did
12 you receive a check from the O'Hare Solicitors in the
13 amount of - - well, did you receive a check first of all
14 from them.

15 A: Yeah.

16 Q: And what was the approximate amount of
17 the check?

18 A: Oh, it was in U.S. Dollars. I believe
19 it was close to \$40,000 or \$42,000 or something - - I
20 can't remember.
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1 Q: Okay. Do you have any documentation
2 supporting how much was owed back to the Social Security
3 Office?

4 A: None - - none was owed. It did
5 finally close.

6 Q: So, how much did you have to send back
7 to Ireland?

8 A: I didn't send any back.

9 Q: Okay. Um, so just to reiterate. So
10 you received, to your recollection, \$40 plus thousand
11 from your mom?
12

13 A: That is correct.

14 Q: Okay. Danny, do you have a temper?

15 A: Define the word temper.

16 Q: Do you fly off the handle? Do you
17 have a temper?

18 A: Everybody has a temper. To what
19 degree? I think I - - I don't think I have a major
20 temper, if that's what you're trying to get at.

21 Q: Have you ever punched a hole in a wall
22 in anger?

23 A: Oh, 20 years ago, yeah.
24
25

1 Q: Did you - - did you punch a hole in
2 the wall during your first marriage?

3 A: That was 20 years ago.

4 Q: Did you ever punch a hole in a wall
5 married to me?

6 A: No.

7 Q: Did you punch a hole in the wall in
8 the basement?

9 A: No.

10 Q: Have you ever been reprimanded at work
11 for anything?

12 A: No.

13 Q: Have you ever used the "f" word with a
14 co-worker at your current job?

15 A: No.

16 Q: Have you received any reprimands from
17 your current job?

18 A: No.

19 Q: Was there an incident with Kindu where
20 you used the "f" word in disciplining him?

21 A: No.

22

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1 Q: Did you receive any reprimands at any
2 of your previous jobs about how you interacted with other
3 employees?

4 A: No.

5 Q: During your first divorce case, was
6 there any discussion or evidence presented about you
7 being reprimanded at any jobs regarding tempers?

8 A: I'll gladly answer that question. The
9 testimony that was entered was entered by a gentleman, I
10 forget his name, William, I forget his name, Harry,
11 Harry, Harry, a colored gentlemen. I apologize, I forget
12 his name. And the testimony that he entered in the file,
13 which is true and correct, and it wasn't disciplinary, is
14 that we were talking about one of the inspectors - - and
15 this was a long time ago so I'm trying to work this off
16 my head - - and it wasn't anything I did, it was what the
17 inspector did. So, if you go through the testimony and
18 you read the testimony, he says that I was correct. He
19 was wrong. I didn't do anything.

20
21 Q: Thank you. Did you ever come home
22 from work at The Kenney and tell me that you received a
23
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1 disciplinary talking to by HR because you had used the
2 "f" word with Kindu?

3 A: No.

4 Q: Have you ever used or shouted the "f"
5 word at me in our home?

6 A: Don't remember. I don't think so.

7 Q: Did you ever shout the "f" word and
8 lunge at me in our room one evening?

9 A: Lunge at ya - -

10 Q: F-you, B-I-T-C-H, you're killing me -
11 - do you remember that episode?

12 A: Three years ago, I think it was four
13 years ago, yes.

14 Q: Have you ever used the "f" word at
15 Katie or Pasqually?

16 A: No.

17 Q: Did you lose your temper with Orla and
18 Joe in Ireland?

19 A: No.

20 Q: Have you ever considered or availed
21 yourself of anger management counseling?

22 A: No.

23

24

1 Q: Why not?

2 A: Because I don't have an anger issue,
3 Suzanne.

4 Q: Do you recall a time in March of 2007
5 when I was in California visiting my father and the kids
6 were home with you?

7 A: Can you be more specific?

8 Q: March of 2007 I went for a three day
9 weekend visiting my father in Roseville, California.
10

11 A: I don't know what you're referencing.

12 Q: You don't remember that?

13 A: I wasn't in California. I don't know
14 what you're trying to say.

15 Q: You stayed home, I went to California
16 to visit my father. Do you recall a time when you were
17 home with the kids for that three day weekend alone?
18 With Katie, Pasqually, Orla and Joe.

19 A: You're asking me do I recall a time -
20 - what specific time? I mean, we're talking - - you say
21 three days and you're talking how many years ago? How am
22 I going to remember that?

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1 Q: Do you recall that you picked
2 Pasqually up from a baseball game and there was an
3 incident in your van?

4 A: No.

5 Q: Did you threaten to hit Pasqually with
6 a 2x4 in your van because he tripped over your toolbox
7 and landed on Orla and she squealed?

8 A: I don't think so.

9 Q: Did you veer over three lanes or two
10 lanes of traffic to pull the car over and say to
11 Pasqually "when I ask a question, you answer me?"

12 A: I don't remember, Suzanne.

13 Q: Okay. Danny, what is the name of
14 Joe's dentist?

15 A: I don't know.

16 Q: What is the name of Joe's doctor - -
17 of his primary doctor?

18 A: I don't know.

19 Q: And what is the name of Joe's teacher?

20 A: I don't know.
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1 Q: When you had your stroke shortly after
2 you moved out of the house, who was the first person you
3 called from the emergency room?

4 A: I don't remember.

5 Q: Do you remember calling me from the
6 emergency room?

7 A: I called a number of people from the
8 emergency room, but I don't remember who was the first
9 one.
10

11 Q: Okay. When you called me and told me
12 what was going on with you, you said you wouldn't be able
13 to take care of Joe. Did I ask you, "can I come down,
14 can I help you, do you want somebody as a second pair of
15 ears?" Do you recall me asking that?

16 A: I do.

17 Q: And did you respond to me, "No, I
18 don't want you anywhere near me?"

19 A: I probably did.

20 Q: Okay. When I offered to call your
21 family to let them know what was going on with you,
22 initially, did you decline that offer?

23 A: Don't remember.
24
25

1 Q: Who ultimately notified your family of
2 you being in the emergency room?

3 A: I don't remember, Suzanne.

4 Q: Okay. Do you remember thanking me a
5 day or two later when you were in recovery for notifying
6 your family?

7 A: I possibly did. I don't remember.

8 Q: Do you think it's important for kids
9 to have one-on-one time with their parents?
10

11 A: Yeah.

12 Q: At your work, can you 100% guarantee
13 that you will not have to respond to a middle of the
14 night call?

15 A: Can I 100% guarantee that I won't have
16 to respond - - what time you talking?

17 Q: If you were to receive a call on a
18 weekend where you had Joe, at 1 AM, can you guarantee
19 that you would not have to respond to that call?

20 A: Odds are pretty slim. I have two
21 other employees I can call.

22 Q: Okay. Can you 100% guarantee that you
23 would not have to respond to that call?
24

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1 A: Nobody can guarantee anything 100%,
2 Suzanne.

3 Q: Does Kindu travel out of the country
4 three months every year to go back to his native land?

5 A: Not to my knowledge.

6 Q: Not to your knowledge?

7 A: Hey, you - -

8 Q: Kindu - - does he travel back to his
9 native country for an extended period of time every year
10 for his vacation? More than just a week or two - -
11 doesn't he go over an extended period - -

12 A: The two years - - going on the two
13 years that I've been there, I'd say no.

14 Q: Danny, are you accruing retirement
15 benefits at your current job?

16 A: No. I don't believe so.

17 Q: You are not?

18 A: No.

19 Q: And have I asked for any division of
20 your retirement or your - - any investments, anything
21 like that?
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1 A: I don't have anything - - you have
2 nothing to ask for.

3 Q: What is the official policy at your
4 work regarding bringing children to the office?

5 A: I don't know.

6 Q: In looking at what you pay for
7 medical, um, I noticed that you say that you pay over
8 \$400 a month - - oh, exhibit 60. Sorry, Your Honor. You
9 make note there that you pay over \$400 a month for just
10 the children. What I did is I recalculated that, and
11 that is what it turns out to be. Um, if you were to
12 remarry and have more kids or stepkids, do you think that
13 I should have to subsidize the cost of them and Orla?
14

15 A: Hypothetical question. I object. I -
16 - Can I object to that?

17 THE COURT: Yes.

18 MR. CASEY: I object to it.

19 THE COURT: It's actually an argumentative
20 type of question.

21 MS. NEVAN: I'm sorry, Your Honor?

22 THE COURT: That sounds like an
23 argumentative type of question.
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1 MS. NEVAN: Okay.

2 THE COURT: You can argue that to me when
3 it's over (inaudible), so I'm sustaining the objection.

4 MS. NEVAN: Okay.

5 THE COURT: You can ask another question.

6 Q: Okay, thank you. At the time of our
7 marriage, how much debt did you have?

8 A: Quite a bit. I don't remember.

9 Q: Can you ballpark it, please?
10

11 A: Don't remember, Suzanne. I mean - -
12 ballpark - -

13 Q: Do you feel that a figure of about
14 \$25,000 would be accurate?

15 A: No.

16 Q: How did you accrue your - - would you
17 agree that you had sizeable debt coming into our
18 marriage?

19 A: I had a fair amount of debt, yeah.

20 Q: Yes. How did you accrue that debt?

21 A: From the first divorce.

22 Q: In what way?
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1 A: In what way? Paying child support,
2 um, paying all the bills. I was pro se, so I had to get
3 my money from somewhere.

4 Q: Did you quit your job to defend
5 yourself in that trial?

6 A: No.

7 Q: What happened to your job at Boeing?
8

9 A: Irrelevant, Your Honor. Objection,
10 Your Honor.

11 THE COURT: And the basis for your
12 objection?

13 MR. CASEY: It's irrelevant to this case.

14 THE COURT: The relevancy?

15 MS. NEVAN: The relevancy is, is that at
16 the time of the marriage he came in with quite a bit of
17 debt and during the course of our marriage I feel that he
18 had an opportunity to pay some of that debt off - - that
19 every ounce of the money I earned and brought into the
20 household went to the household. And I just want to
21 bring that to the Court's attention.

22 THE COURT: The objection is overruled.
23 Please answer the question.
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1 MR. CASEY: I'm sorry, I just want to take
2 a quick note. Sorry, can you tell me again - - I forgot
3 what the question was.

4 Q: The question was what happened to your
5 job at Boeing?

6 A: I was let go.

7 Q: And why were you let go?

8 A: Basically, the union let me go. The
9 union let me go because I was working a shift that they
10 didn't want me working and I was way more productive than
11 everybody else. And if you go up there and check the
12 thing, you'll find out that's correct.

13 Q: Um, so, did you receive unemployment
14 during the time - - after Boeing let you go?

15 A: Nope.

16 Q: Did you apply for unemployment?

17 A: Yep.

18 Q: And were you denied.

19 A: Yep.

20 Q: And why were you denied?
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1 A: They felt that I could have got
2 another job at Boeing - - they thought that - - something
3 to that degree.

4 Q: And why did you not pursue employment
5 at the time of the divorce?

6 A: I did pursue employment.

7 Q: Where?

8 A: Oh, God. I don't remember. You're
9 talking a long time ago, Suzanne.
10

11 Q: So, at the time that we had moved out,
12 the majority of that debt was paid off, correct?

13 A: I believe so.

14 Q: And how was it paid?

15 A: Using my mother's estate.

16 Q: 100% fully because - - through that?

17 A: Of the debt that was there - - when I
18 got my mother's estate I paid off a portion of it then,
19 and then before I moved out. Well, no - - no - - so your
20 statement is incorrect then. No, a large portion of it
21 wasn't paid off whenever I moved out.
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1 Q: Any debt resulted - - that you brought
2 into the marriage that was due to your first divorce,
3 was any of that debt paid off while we were married?

4 A: Yes.

5 Q: How much in savings did you have at
6 the time that you moved out of the house?

7 A: Are you talking savings or are you
8 talking what's from my mom's estate?

9 Q: Both.

10 A: All I had was what was from my mom's
11 estate.

12 Q: How much did you have when you moved
13 out?

14 A: I don't know. I don't have - - I
15 don't remember - - I don't know.

16 Q: Did you have more than \$20,000 in the
17 account?

18 A: Yeah.

19 Q: Um, do you think it's unusual for a
20 couple to share in household chores when both work
21 outside of the home?

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1 A: I don't understand the question. Do I

2 - -

3 Q: Do you think it is unusual for a
4 couple to share in household chores when both individuals
5 work outside the home?

6 A: No. I don't get the question. No, I
7 don't think it's unusual for people to share household
8 chores.

9 Q: I guess that's it for now.

10 THE COURT: Sir, do you have a
11 restatement?
12

13 MR. CASEY: Yeah. Let's see. Suzanne is
14 correct. When we got married I still had a substantial
15 debt from my first marriage. The debt was paid off on a
16 monthly basis, minimum payment. When I left, there was
17 still a large portion of that debt. There was also a
18 large portion of a VISA card that, when Suzanne took her
19 first job, the one that I tried to submit that she
20 (inaudible) knowing nothing about that had almost \$7,000
21 in it that had nothing to do with my prior first
22 marriage, divorce marriage - - first marriage from my
23 divorce - - and was sole expenses that were accrued
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1 during Suzanne and mines together, and it was all
2 expenses with regards to whatever it was we do. You
3 know, Suzanne - - when we first got marriage - -

4 MS. NEVAN: Objection, Your Honor.

5 THE COURT: Your objection?

6 MS. NEVAN: Thank you, sir. If he's going
7 to talk about specific charges on a credit card, I think
8 that we should have evidence of what those charges are.
9 We're not disputing debts at all between us, we're not
10 disputing assets. I think it's - - it's not relevant to
11 what we're talking about here. I mean I can't answer to
12 or discuss anything that I don't have in front of me and
13 that I don't see. And considering I don't, you know - -
14 unless he can prove to me when and what I did charge on
15 that credit card, I can't acknowledge that credit card.

17 THE COURT: It's relevant to argue debt.
18 But to the extent that it goes to the weight of the
19 evidence provided, one would require statements and the
20 like. So the objection is based on relevancy, and on
21 that, I'm going to overrule it. It can be relevant. You
22 may argue that it goes to the weight of the evidence,
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1 since you don't have that evidence before me. All right.

2 I have to technical even though you folks aren't.

3 MS. NEVAN: No, I understand. So, let me
4 understand. Because - -

5 THE COURT: It's relevant to talk about
6 debt.

7 MS. NEVAN: Oh, okay.

8 THE COURT: Your argument is, "I don't
9 have a copy of that exhibit."
10

11 MS. NEVAN: Right.

12 THE COURT: But that's not a proper basis
13 for an objection. That's a proper basis to say, "Gee,
14 Judge, nothing I can do about that because I don't have
15 that exhibit."

16 MS. NEVAN: Okay, so that would be
17 something for closing? Yeah, okay.

18 THE COURT: Go on.

19 MR. CASEY: Thank you. This debt that I'm
20 referring to originally started out as a Sears Mastercard
21 and was shuffled from account to account to minimize fees
22 and Suzanne was fully aware of this debt. She was, you
23 know, some of that debt went to pay for some flights for
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1 her children to go down and see their dad in Texas. It
2 went to pay for meals that we had. When she took, you
3 know, when we first got married, I was aware that I had
4 all this debt. Like quite a bit of debt. And I did not
5 want to be taking out another credit card.

6 My credit score is exemplary. Suzanne's
7 credit score, on the other hand, is quite the opposite.
8 And I didn't want to be destroying my credit score. And
9 so, I said, look, I don't want to be taking this out.
10 She says look, I'll be responsible for it. I'll be the
11 one to take care of it and that's when she went and got
12 the job working for the mortgage company. She was making
13 quite a bit of money there, so for my point of it, that
14 wasn't going to be a problem. But it became a problem
15 when she wouldn't get a job that she was qualified to
16 make the income for. And hence, the debt just mounted,
17 and mounted, and mounted, and I'm the one who has to pay
18 for it.

19
20 So Suzanne's right; there was debt from my
21 first marriage. It was paid only on a monthly fee basis.
22 There was debt from this marriage that I have solely paid
23 and she has paid nothing for it. Yeah, the account is in
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1 my name, but she is fully aware what purchases were made
2 with it.

3 That's all I have, Your Honor.

4 THE COURT: Do you have any other
5 witnesses?

6 MR. CASEY: Sorry, Your Honor?

7 THE COURT: Do you have any other
8 witnesses?

9 MR. CASEY: No other witnesses, Your
10 Honor.

11 THE COURT: Do you rest?

12 MR. CASEY: I rest. Thank you.

13 THE COURT: Now we proceed to the argument
14 portion of the trial. Do you need a few minutes to
15 collect your notes?

16 MS. NEVAN: Yes.

17 THE COURT: Okay. Then it's five after,
18 and - - 15 minutes?

19 MS. NEVAN: Fifteen minutes.

20 THE COURT: Okay, so we'll be back here at
21 2:20.

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1 MS. NEVAN: Your Honor, could I just
2 clarify - - and I'm sorry about this - - but when you say
3 the argument portion of the trial - - so I'm not quite
4 exactly sure what that means.

5 THE COURT: We've - - you've now made your
6 statements, you've presented your evidence. Now you're
7 going to say how this evidence is relevant to my
8 decisions.

9 MS. NEVAN: Okay.
10

11 THE COURT: All right? So, some of those
12 objections you raised, this is your opportunity to
13 address those in your argument. Again, most times we
14 spend time arguing the fine portions of the law and the
15 statutes. We don't have that here. But you can argue -
16 - this is basically your period of time you can say
17 "you've heard what I've had to say, and this is what I
18 want based upon the facts as I've presented."

19 MS. NEVAN: All right.

20 THE COURT: All right?

21 MS. NEVAN: Thank you.

22 MR. CASEY: So this is not closing, this
23 is just argument.
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1 THE COURT: Okay, it is closing.

2 MR. CASEY: It is closing. Ah, okay.

3 THE COURT: All right? I need you to
4 prepare at the same time, all right. When we begin it, I
5 will give you maybe ten minutes each to make your
6 presentation. Okay.

7 MR. CASEY: I'm sorry, Your Honor. When
8 are we going to start it?

9 THE COURT: We're going to start at 2:20.
10 Well, we are now going to start at 2:25. So you'll have
11 15 minutes to get your notes ready then we're going to
12 make your presentation. Okay. All right, good.

13 MS. NEVAN: Thank you.

14 BAILIFF: All rise.

15 (Court in recess.)

16 (Court reconvenes.)

17 JAVS 2 ENDS @ 2:09:10

18 SKIPS JAVS 3 2:28:54 - 3:07:50 pm

19 JAVS 4 @ 3:07:51 pm to end

20 BAILIFF: Please rise. Court is again in
21 session.

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1 THE COURT: Please be seated. All right,
2 well. I took it upon myself as a courtesy to both
3 parties to write out the final orders, which is normally
4 the responsibility of the litigants. So, instead of just
5 writing out my notes, I've prepared the Orders
6 themselves.

7 MR. CASEY: Thank you.

8 MS. NEVAN: Thank you.

9 THE COURT: Now, you both have the right
10 to appeal my decision - - what I have to say, you may not
11 like - - and you have that right to appeal. I am - - as
12 I told you at the beginning of this trial, I'm going to
13 take the laws of the State of Washington and apply them
14 to the facts here, commenting on the testimony.

15 So, in regard to my findings, the
16 Petitioner, Suzanne Nevan, testified and the Respondent,
17 Daniel Casey, testified. Both are residents of the State
18 of Washington. Both were residents of the State of
19 Washington at the time of filing the Petition. They have
20 one child that was born of this marriage, and his name is
21 Joseph, and he is currently seven years old.
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1 The parties were married in Seattle in
2 January of 2004. They separated in August of 2008; more
3 than 90 days have elapsed since the Petition was filed.

4 The parties have minimal community
5 property. They have already divided their debts.

6 Maintenance was not requested.

7 The principle issues at trial dealt with
8 some debt division, some property division, the terms of
9 an Order of Support, and the Parenting Plan. For the
10 Court to determine - - I find that the wife is not
11 pregnant and that the marriage is irretrievably broken.

12 In regard to development of a Parenting
13 Plan, the Court relies on RCW 26.09.187, subparagraph 3,
14 Residential Provisions. In that the Court needs to look
15 at the relative strength, nature and stability of a
16 child's relationship with each parent, including which
17 parent has taken a greater responsibility performing
18 parenting functions relating to the daily needs of a
19 child.
20

21 Two, the agreements of the parties,
22 provided they were entered into knowingly and
23 voluntarily. Three, each parent's past and potential for
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1 future performance of parenting functions. Four, the
2 emotional needs and developmental level of a child,
3 Five, the child's relationship with siblings and with
4 other significant adults as well as the child's
5 involvement with his or her physical surroundings,
6 school, and other significant activities.

7
8 Six, the wishes of the parents and the
9 wishes of the child who is sufficiently mature to express
10 reason and independent preferences. Seven, each parent's
11 employment schedule.

12 Factor number one should be given the
13 greatest weight.

14 So the testimony that I garnered here is
15 that clearly both parents love this child very much. The
16 mother has two children from a previous marriage; the
17 father has a child from a previous marriage. The
18 circumstances regarding the divorces of the parties are
19 not really relevant to this proceeding here because each
20 case has its own flavor and its own issues, and there
21 could be a very good reason for a litigious case, there
22 could be very poor reasons, but nevertheless, that's
23 different than what's before me today. The types of the
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1 attorneys that are on the case, how a judge runs a case,
2 all of these are factors.

3 What is important in regard to a Parenting
4 Plan is the statute that I've referred to. I get the
5 sense that both parties have the ability to cook and to
6 clean up and to take care of Joseph. That's fine. But
7 when both are asking for custody I have to look at the
8 statute and how it plugs into the facts.

9 For paragraph one, the relative strength,
10 nature and stability - - if the child appears - - and I
11 should throw in this caveat. It is normal in most cases,
12 particularly ones that are contested for custody, to have
13 an evaluation either by a psychiatrist, psychologist or
14 social worker who investigates the situation and
15 testifies at the time of trial. Here we don't have that,
16 so this is going to be the parties' testimony given the
17 fact that I was a divorce attorney for many years before
18 being on the bench where I've been on for 12. So, it's
19 not that I haven't seen my share of cases. But we don't
20 have the true benefits of a mental health professional
21 weighing in on this.
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1 The stability of the child's relationship
2 with each parent, including which parent has taken a
3 greater responsibility. Well, the testimony was, of
4 course, the child has resided with the mother at all
5 times since birth. That there was heavy involvement by
6 the father - - it's very clear from the testimony. But
7 it does appear that the child has - - that the mother has
8 taken a greater responsibility of performing parenting
9 functions. The test - -

10 MR. CASEY: I understand you're doing - -
11 you're finishing - - but if - - I have updated
12 187(3)(1)(a), and it does not include that last phrase
13 that you have included. They have removed it for that
14 specific reason. That the only criteria to consider - -
15 the number one criteria according to (inaudible) is
16 relative strength, nature and stability of the
17 relationship with the parents who has had the primary - -
18 the most time is irrelevant and they've removed it from
19 the statute, and you're quoting a different statute.

20 THE COURT: Okay, that's a basis for an
21 appeal. Thank you.
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1 Now, the father couldn't tell me who the
2 doctor was for the child, who the dentist was for the
3 child or, more importantly, who the school teacher was
4 the child.

5 MR. CASEY: He's been at the school for
6 one week.

7 THE COURT: Okay. Would you prefer that I
8 send you these notes?

9 MR. CASEY: No, Your Honor.
10

11 THE COURT: So stop interrupting me.

12 MR. CASEY: Yes, Your Honor.

13 THE COURT: You have the right to disagree
14 with me in a civilized context. Do you understand that
15 sir?

16 MR. CASEY: Yes, Your Honor.

17 THE COURT: I've been more than patient
18 with you, and have been respectful to you.

19 MR. CASEY: You have, Your Honor.

20 THE COURT: Most certainly I expect that
21 decorum and respect to this robe. Is that understood?

22 MR. CASEY: Yes, Your Honor. I apologize,
23 Your Honor.
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1 THE COURT: No more interruptions.

2 MR. CASEY: Yes, Your Honor, I apologize.

3 THE COURT: The father could not tell me
4 who these people are which bespeaks the argument that
5 he's the primary caretaker. A primary caretaker would be
6 able to tell a judge who the dentist, the doctor, and the
7 teacher are, irrespective of whether school's only been
8 in effect for one week.

9
10 The agreements of the parties - - a very
11 important factor. There have been no temporary orders
12 entered in this case. The child has been residing with
13 the parents based upon the mother's proposed Parenting
14 Plan - - actually, her Parenting Plan proposes an extra
15 overnight - - meaning that the parties, whether they - -
16 they clearly agree to the scenario, but with the case
17 pending for a year, they could have come in for temporary
18 orders at any time and did not. That is another factor.

19 The potential for future performance of
20 parenting functions. Well, that tends to be a draw.
21 Both have children from previous relationships, and I
22 think that that factor in itself shows that they can take
23 care of Joseph.

24
25

1 The emotional needs and developmental
2 level of the child. No testimony's been presented to me
3 regarding that. Both parties gave me their version of
4 how Joe's doing, but I don't have any outside or third
5 party input on that issue.

6 The child's relationship with its siblings
7 and other significant adults. Both parties have
8 testified that he has a very strong relationship with the
9 children that they have from previous relationships and
10 with significant adults in his life. I think that's more
11 of a function of the fact that the parties have included
12 this child in their extended families and he is
13 comfortable with all the adults and children in his life.

14 His attachment to significant activities
15 is not really important here because he's only seven.

16 The wishes of the parents and a child
17 that's sufficiently mature. At age seven, I do not find
18 the child is sufficiently mature to express an
19 independent preference as to where he would like to live.

20 The employment schedule here - - the
21 closest that that came a factor was the father's
22 schedule, and I'm satisfied that he would do what's
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1 necessary during the periods of time that he needs to
2 deal with work to make sure the child has suitable
3 supervision.

4 The child will reside primarily with the
5 mother and I'm accepting her residential schedule as an
6 Order of the Court.

7 In regard to the decision-making, I've
8 only added a clarification as to religious upbringing,
9 meaning the parties may engage in any activity of their
10 choice. It doesn't mean you have to agree on one
11 religion, you can each pick your own.

12 I've added tattoos, piercing, military
13 service and marriage as to this Court's experience in
14 these calendars.

15 In regard to the property division, the
16 value of the automobile has to be at the time of trial,
17 not at the time of purchase. Those values drop. The
18 parties may have paid \$4,000, but there is no basis in
19 the law to allow 50% of the purchase price to be
20 reimbursed. The law does provide that it can be 50% of
21 the current value, and the only value that was given to
22 me was \$1,500. I'm granting judgment of \$750.
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1 Ms. Nevan is currently unemployed.

2 Mr. Casey has a decent employment.

3 The request for mediation expenses was
4 based upon bad faith. The Court rejects that argument.
5 People have a right to disagree, and mediation is
6 something that they have a right to express their
7 feelings on. I was persuaded, however, in looking at the
8 financial declarations that based upon need and ability
9 to pay, I can reallocate that expense and will grant
10 judgment for \$375 for mediation costs.

11
12 In regard to the Child Support Order,
13 there was no dispute as to the father's income, and I
14 find that his net amount of income to be \$4,664.24. The
15 mother is currently unemployed, but argued that income
16 should be imputed to her and the Court accepts that
17 argument because at some point she should be able to be
18 employed. I didn't find that she had a substantial - -
19 there wasn't anything given to me to show that she had a
20 substantially higher income at the time she was employed
21 versus what the imputation amount is so I believe that's
22 reasonable.

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1 The issue of the insurance. The way I
2 understand it and the testimony bears out, that the only
3 child that has to be covered by this insurance is Joseph.
4 That the father, by virtue of the employment, has the
5 option of including other children, such as Orla, such as
6 Pasqually, and such as Katherine, and therefore, that is
7 not mandatory. And that distinguishes that, meaning that
8 I'm going to give the father the full credit for the
9 insurance that he pays on behalf of the child. That
10 amount is \$302.20.

11 RCW 26.19.071 does provide this Court to
12 look - - .075, I'm sorry - - does have this Court look at
13 whether or not the obligor, which in this case is the
14 father, has the responsibility of paying support for
15 other children. The Court therefore will grant a
16 deviation based upon that responsibility of the obligor
17 parent to provide support for another child.

18 The calculation of the support without the
19 deviation totals \$534.41. The Court will deviate down
20 \$134.41, the transfer payment being therefore \$400 per
21 month. The effective date of this Order will be
22 October 1, 2009.
23
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1 Periodic adjustments. They - - the
2 parties shall adjust, in 12 months, exchanging
3 information by September 1st 2010. The effective date of
4 the next Order will be October 1, 2010.

5 The parties shall comply with the local
6 Family Law Rule 10 which is the exchange of financial
7 information. Thereafter, adjustments will be made every
8 two years. I'm persuaded by this because of the mother's
9 current unemployment, and therefore, we need to take a
10 look at the situation at that point.

11 The relative percentages for any agreed
12 upon academic or tutoring support and agreed upon
13 activities would be 30% to the mother, 70% to the father.

14 Support will terminate - - now, at the
15 last - - I understood that the child had to retake
16 kindergarten and so I'm actually ordering that until he
17 reaches 19 or remains in high school, support is payable
18 because he may be behind and it's the Court's intention
19 to have support payable through the time he's in high
20 school.
21

22 The provision for post (inaudible)
23 educational support is reserved.
24
25

1 Father currently is paying medical and
2 receives credit, and the Court is granting him credit on
3 the worksheets, but we'll require both parties, if it's
4 available to them from their employment, to get
5 insurance.

6 The Court is granting the deviation to the
7 father. Therefore, the Court is going to grant the IRS
8 exemption to the mother.

9 This provision, however, may be addressed
10 in future adjustments, meaning that if the economic
11 circumstances of the parties change or there's no
12 deviation, then the Commissioner hearing that may adjust
13 that exemption.

14 In regard to life insurance, the Court is
15 amending the proposed language to say that the mother
16 will be an irrevocable co-equal beneficiary of a life
17 insurance policy such as available through employment
18 recognizing that the father has another obligation for
19 another child.

20 You may not give argument; you may ask a
21 question. Ms. Nevan.

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1 MS. NEVAN: Okay, sorry. So, in 12 months
2 when we come back together again, I believe you said
3 under local Family Law 10 - - so, a month before that,
4 should we present documentation to the Court or - -

5 THE COURT: To each other first. To each
6 other first, - -

7 MS. NEVAN: Okay.

8 THE COURT: - - noting it to the Court if
9 necessary.

10 MS. NEVAN: Okay. Okay.

11 THE COURT: Do you have another question?
12 Mr. Casey, questions?

13 MR. CASEY: None, Your Honor. Thank you.

14 THE COURT: We'll make copies of these
15 Orders for you.

16 MS. NEVAN: Thank you very much.

17 THE COURT: You want to make a certified
18 copy of this Decree?

19 MS. NEVAN: Yeah, I'm sorry. When would
20 those certified copies become available?

21 THE COURT: Well, would you be able to go
22 up with her to the third floor, after you make his copy,
23
24

25

1 would you go up with them to the sixth floor? Okay and
2 you can just leave them there at the cashier's. Do you
3 want to purchase yours today?

4 MS. NEVAN: Sure.

5 THE COURT: Do you want to purchase a
6 certified copy?

7 MR. CASEY: No.

8 THE COURT: Okay. Make a copy for
9 Mr. Casey, then if you could just escort her up to the
10 cashier's office, and you can get your certified then.
11

12 MS. NEVAN: Thank you very much.

13 BAILIFF: Please rise. Court is
14 adjourned.

15 (Proceedings Concluded.)
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1 STATE OF WASHINGTON)
) ss.
2 KING COUNTY SUPERIOR COURT)

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I, CATHY L. SWANSON, an Official Transcriptionist
for the King County Superior Court, State of Washington,
hereby certify that the foregoing pages, 1 through 115,
inclusive, comprise a full, true and correct transcript
of the proceedings in the above-entitled cause to the
best of my ability.

DATED this 5th day of November, 2009.


CATHY L. SWANSON
Official Transcriptionist

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SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re the Marriage of:
SUZANNE E. NEVAN,
Petitioner,
and
DANIEL M. CASEY,
Respondent

Case No.: No. 08-3-07464-5 SEA
Current Court of Appeals No. 67319-0-1

NARRATIVE REPORT OF PROCEEDINGS

Before the HONORABLE Meg Sassaman on Thursday August 19th 2010, on temporary hearing for relocation by Suzanne Nevan.

APPEARANCE:
Suzanne Nevan, Pro Se Petitioner
Doug Becker, attorney for Daniel Casey.

Transcribed By
Daniel Casey

FILED
COURT OF APPEALS, DIV I
STATE OF WASHINGTON
2011 OCT 25 PM 1:59

1
2 Thursday August 19th 2010

3
4 At this time we call Nevan verse Casey, --08-3-04545 will the parties approach please

5 Judge: Please state your name.

6 Ms. Nevan: Suzanne Nevan

7
8 Mr. Becker: I'm Doug Becker representing Mr. Casey

9 The Court: This is the mother's motion. I did review all material from both parties, I will hear 5
10 minutes of argument from both sides starting with the moving party and the responding party
11 will have a chance for a response and the mother will have a chance for a brief reply. After
12 which to I will enter my ruling and an order will be entered.
13

14 Ms. Nevan: Your honor before I get started, I in my hast I neglected to include exhibit E, it is my
15 2010 job log during recess I did prove a copy to counsel, so I'd like to give one to the court as
16 well
17

18 The Court: Do you have and objection

19 Mr. Becker: No

20 The Court: Ok

21 (Ms. Nevan gives Job log to court.)

22 (Ms. Nevan: Argument)

23
24 Ms. Nevan: Sorry, am, your honor my name is Suzanne Nevan and I'm Joe's mom, I know that
25 you have already read the documents and the declaration that I submitted. What I'd like to just
26 say to you is the crux of the matter is whether or not. My relocation to Bellingham is exigent and
27 I clearly I believe that I have proven that it is. Am I have been unemployed for 16 months I have
28 made every effort to find employment. It has been a humiliating experience, to not even get
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1 called into for an interview. Repeatedly employers have told me they have had littler hundreds of
2 applications.

3
4 Judge: I'm going to stop you there, am I can't consider testimony from you.

5 Ms. Nevan: Thank you I'll move on then. Exigent being that because I've been unemployed so
6 long finally getting a bit , and getting someone to offer me a position, in a windows frame that
7 precluded me from giving 60 days notice, truly and sincerely has occurred. I interview on the
8 26th I was offered the job on the 28th I accepted the Job on the 29th and I notified the court and
9 the respondent on the 3rd. I 'm due to start he Job Monday the 23rd, I have because of the laws of
10 the state , tenant laws I had to give notice by the 11th on my current house. I can no longer afford,
11 because my unemployment has exhausted I can no long afford the rent on that house. The
12 children need to be registered and starting school on September 7th in Bellingham. So I need to
13 move I have a job in my hand and I believe that I have proven that it is a urgent situation. Mr.
14 Casey states in his declaring that the cost of living in Bellingham not significantly lower, I would
15 like to remind the court that I did present exhibit c. That showed the cost of living from 2
16 different source, CNN and rate dot com that the cost of living is lower. In particular rent is 35%
17 lower am I have no been able to secure housing in Bellingham because I can't afford to put a
18 deposit down and risk loosing it, so I had to wait for the court to make its decision about my
19 relocation the house that I have been looking at are between \$800 and \$1000 including water
20 sewer and garbage which represents approximately \$385 -\$450 less a month that what I'm
21 currently paying . I again Mr. Casey exerts that I'm terminating or serving Joe relationship with
22 his sister or his cousins and I believe that I was fairly comprehensive that I'm not severing
23 anything with Orla he will enjoy her weekends with her father as she has Always enjoyed them.
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30 With regard to Joe's cousins they don't live two blocks away, they live in Vashon island or they

1 live in Everett. And those were always weekend excursions. Yes Joe has a close relationship
2 with his cousin Sean but it not live he calls him up and say hay lets go play albeit the elementary
3 school it's a trip I has to be planned out this would not interfere with at. Mr. Casey certainly
4 could continue to have Sean visit on the weekends that he has him and frankly his Sister Ann
5 Maria call s me all the time trying to out our schedules together to get the boys, we had sleep
6 over's I've taken care of Sean for Ann Maria, I mean relationships exist err that I have made a
7 point of continuing to foster because they are important or Joe and frankly the people I've
8 continued to have a relationship with so it's good for me to.

9 His accusation that I need help in dealing with Joe for pickups drop off or otherwise, is just
10 unsupported he gives no examples, Noting substantive at all except for his opinion. When in fact
11 what has really happened he has called me and said I've got a meeting could you pick up Joe for
12 me and I'll pick him up from your hose, which I was glad to do. I believe I addressed that in my
13 statements and I believe that that particular issue was addressed in the declarations I submitted
14 by my brother and also by Danny's sister in Law, the wife of his youngest brother who lives in
15 Everett.

16 With regard to the schools I was able to go on the internet and do some comparisons and the
17 schools in the particular web site which is the phrazer institute, they are all in the same green
18 zone rating which is the highest rating; there is a comparable comparison there.

19 Your honor I have always been Joe's primary parent Danny and I did not get married until Joe
20 was 18months. We did not live together until the Marriage. During the time of my mom's severe
21 illness and I was taking care of my brother's twins Joe was with me every day. With the
22 exception of three hours when he went to preschool, but I walked the twins with him to
23 preschool, he was there we came we picked him up. Danny and I have been separated now for
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1 one year and divorced for one year and I have been Joe primary parent during that time. SO Joe
2 has been 8 years old little over 4 years of that I have been his sole parent.

3
4 What would be disruptive to that little man would be to remove him from the family unit he has
5 lived with his entire life, and that just is the truth.

6 With regard to Mr. Casey comments in paragraph seven about my daughter, I am not going to
7 dignify them with any further comment, other than what I provide in my response. I believe I
8 covered it all. (8min, 12Sec)(Video Time stamp 10:58:34am)

9
10 The Court: Thank You. I'm going to stop out her you have a chance for a reply I am reserving
11 you a minute for your reply

12 Ms. Nevan: Thank You

13 Mr. Becker: Your honor the relocation is a major disruption in the life of not to mention the
14 parent who is left behind sometimes this is not readily apparent to the parent who has the
15 majority of residential time because that relationship to the child is not affected. Bu the child's
16 relationship to the father is going to be affected. I think the mother is under estimating the impact
17 of the long trip up to Bellingham and back and what that will do to his schedule and to the sons'
18 interaction with the father.
19

20
21 Relocation is not automatic or even encouraged under the statue certainly not by evaluators and
22 temp orders which is what we are hear about today are particularly not favored there are
23 standards that have to be met. Now because temporary orders have a tendency to be outcome
24 determinative, very outcome determinative there are high standards to allow them. First of all if
25 this hearing was before the fathers had an opportunity to object and filed it. The test would be in
26 other words all that is where the mother's arguments would apply. How ever since this is being
27 requested before the father had had time to object and I will note in passing that mothers original
28 motion was to get an order to move exparta to get a motion with no hearing at all now that was
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1 properly denied now we are here. U this is all rather sudden but there is a pretty high standard
2 and LFR 15 (d) says it need to be exigent circumstances now in that regard it is notable after 16
3 months being on unemployment her first interview occurred 2 weeks before her benefits ran out .
4 and she was promptly hired and it appears to me that she is very employable when she
5 interviews. And she can get the interviews when she is motivated to get the interviews. 16
6 months it's a little, stretching things to say that no interviews could have possibly have come her
7 way in that 16 months, then suddenly her first one is two weeks before he befits run out. This
8 particular at Job which s part time and \$15 dollars an hour is not worth major disruption to the
9 child life which she is asking for right now , before this case even gets underway.

10 As far as the expenses go King County is a big county, you don't have to go to Bellingham to.
11 She living in west Seattle at this point she could make adjustment to her cost of living at this
12 point, particularly her rent if she makes that effort I don't see that she has made an effort to get
13 in this county. The job she is getting in Bellingham is not worth making an outcome
14 determinative decision today. These are not exigent circumstances. (11mins 45 Sec)(Video Time
15 Stamp: 11:02:06am)

16 The court: a brief reply, brief reply

17 Ms. Nevan: Ok, thank you

18 The father did not even address in his response his relationship with Joe he really focused on the
19 severing or the terminating of the relationship with Orla and Sean he didn't even address his
20 relationship with Joe. Then I offered to meet him in Marysville to mitigate of the hour and forty
21 minute journey to Bellingham for the exchanges. I would meet him in Maryville on I-5 it would
22 only take him forty Minutes. I also offered to

23 The court: When you said you offered your are you talking about your proposed parenting plan

1 Ms. Nevan Yes Yes

2 The court: OK because I', not allowed to consider offeres of settlement I wanted to clarify that

3 Ms. Nevan: and then in my response, OK I did an offer that you can't consider. The exparte

4 form, in other words the suggestion that I tried to go around Danny. I filled that by accident, I

5 bought the 20 dollar packet, I spent eh \$20 bucks I didn't understand and when I went in front

6 of the commissioner Wattsman I believe I said whoops was I not suppose to file this and so. That

7 was a mistake because I 'm not a lawyer, so I did apologize for that to the commissioner. Yes it's

8 been 16 months and imaging my frustration that my applications won't even be considered in

9 many time because I did not have a BA degree I'm one year shy. Yes if get in front of someone I

10 can sell myself to the sun goes down but I did not even have an opportunity to get in front of

11 someone. I looked for work on the eastside, in North Seattle, in Everett, in Tacoma, I exhausted

12 everything. Going to Bellingham this was the first live bit and and clearly opposing counsel has

13 not been employed in this environment. Hundreds, I applied for a receptionists job there were

14 three hundred 76 applicants.

15 The court: Is that in your material.

16 Ms. Nevan It was in my initial

17 The court: because I can't consider

18 Ms. Nevan: That was in my first

19 Ms. Nevan: It was in my initial one where I said the employer said they wouldn't consider me

20 because I didn't have a BA. That was in my first

21 The court: That part that you're getting into now, about various jobs

22

23

24

25

1 Ms. Nevan: I'll back off that then and then finally at west, at Bellingham I will have an
2 opportunity to go and finish my BA. Which hopefully would make me not have to go through this
3 in the future
4

5 My last comment your honor would be. Mr. Casey is litigious in the extreme. It's difficult to co
6 parent because everything is a potential court case with him. His objection to this relocation your
7 honor I feel is truly a thinly veiled attempt to get another bit out of that custody apple and I pray
8 that you will treat it as such. (14min 46 Sec)

9
10 (Video time Stamp 11:05:08am)

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12
13 The court: Thank you. First of all I need to clarify the legal status of this case. Which is the
14 mother did file and serve her notice of intent to relocate, I have proof of serve, stating it was
15 served on August 3rd and the father as far as I can understand it has not yet filed his notice of
16 objection which would then, assign this case a trial date and you would be moving forward to a
17 trial. Is that correct?
18

19
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21 The court: he hasn't filed an objection

22 Mr. Becker: That's correct, certainly he intends to.

23 The court: Certainly he intends to. Ok I'm looking. Sometimes my print out of the case file is not
24 totally current. So, because of the way the case is, or the status of the case as it sits here we don't
25 have an objection we don't have a pending action and there is, I mean appending trial date and I
26 don't have a motion from the father. To restrain the relocation instead what I have I the mother
27 having filed her notice. Properly served the father and then coming in on a what she claims to be
28 and emergency bases asking for an interim order until the case can be on the schedule based on
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1 the father's objection and then there might be another motion coming. The way I see it. So I find
2 as follows. First of all I do not find bad faith on the part of the mother she, received her job offer
3 on 28th of July she filed her notice less than a week later. She set this hearing and she has and she
4 served the father and she has tried to do what she could in the time frame available to her and it's
5 unfortunate but all of these events happened very quickly and are not within the time frames that
6 are anticipated by the statute. And I find she gave as much notice as she possible could , given
7 how her interview was on 26th of July her offer on the 28th and she immediately gave notice and
8 she has brought the case in for a hearing , she has not attempt to circumvent the statute or
9 somehow or move without permission. I find she has done the proper thing. She is acting Pro se
10 and she has done a very good job of trying to comply with the statute and she has substantially
11 complied. The question today is are there exigent circumstances requiring the court to permit her
12 to move before we can have a hearing , on a temporary relocation pending trial I find in this case
13 there are exigent circumstances. It doesn't matter if the mother finds a less expensive apartment ,
14 it doesn't matter if she squeezes her budget down she has no, income she can't squeeze her
15 budget down to zero, because her unemployment is ending this month. And if I require that she
16 stay here with child she is going to have no money next month, no money, none that means no
17 place to live, that means no food to eat that means, a change in school for the child, because she
18 is going to have to go to some kind of temporary living situation with the child. So this child is
19 going to be moving one way or another she had no job and I find her credible in her presentation
20 that she has made a good faith effort to find employment she indicates all of the efforts she went
21 through. She has a job it is the only job she option open to her right now unfortunately it is not in
22 Seattle and in order to accept the job she has to start work on Monday . And there is just no way
23 around that so I am going to grant on the bases I find there to be an emergency exigent
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1 circumstance here and that the mother unemployment ends. She , or her unemployment benefits
2 end, she has no other job options she has no other income coming in and this is her only option
3 that she and the child will be permitted to relocate immediate pending further orders of the court
4 in what I understand will be an ongoing action. And that she may enroll the child in school in
5 Bellingham so that he can start on the regular start date, which as I understand it is second week
6 of September, in the mean time (20min 06Sec) the mother has proposed that the parties have
7 continued to follow their parenting plan with the exception that the midweek visit which I
8 believe was a Wednesday will no longer occur and that the exchanges for the child will occur at
9 Marysville. I believe, I'm looking for the or the current parenting plan I'm return Monday
10 morning. or if there is no school at 3pm on Friday on Friday and 9am on Monday and given that
11 both parties are working and the parents are going to have to exchange the child at Marysville. I
12 don't find that this, that parents can follow those exchange times I'll order the exchange to be
13 Sunday evening for the return and Friday evening for the pickup. Let me see if the mother
14 proposes a good time. If the parties can't reach agreement on what time the exchanges will be
15 I'll pick times but I'm confident that the parties can reach agreement knowing. The mother asks
16 for 6pm,
17

18 Ms. Nevan: yes

19 The court: I don't know if 6pm on a Friday to get to Marysville, that seems very difficult from
20 Seattle

21 Mr. Becker: we will work on it

22 Ms. Nevan: Thank you your honor. Do I need to pass the temp order?

23 The court: No the two of you. You need to discuss with the attorney to make changes to the order
24 so it reflex's my ruling today
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1 Ms. Nevan: OK

2 The court: and then it is going to be handed up to me to sign. Don't leave until you get a copy to
3 take with you. You both will get a copy after it is signed.
4

5 Ms. Nevan: thank you

6 The court: thank you
7
8
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10 Daniel Casey, not an official Transcriptionist for the King County Superior Court, State of Washington,
11 hereby certify that the foregoing pages, , inclusive, comprise a true and correct transcript of the
12 proceedings in the above-entitled cause to the best of my ability. DATED this October 25th, 2011
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17 Daniel M. Casey
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COMMENTS AND TRANSCRIPTION OF ESHB 2884

HOUSE:

SP = Speaker of the House

RC = Representative Constantine District #34

RK = Representative Carol District #28

SP: ESHB 2884 on final passage remarks gentleman from the district 34 Representative Constantine

RC: Thank you Mr. Speaker. Two Washington State Supreme Court cases have created quite a stir among those who are interested in the area of family law in this state. They are commonly known as the Pape and Littlefield decisions. They dealt with the ability of a divorced parent to relocate the child and the degree to which they are free to move the child despite what the parenting plan might have set forth. After these decisions we were left with a decision people were very unsure about what their rights were where they could receive notice if the spouse was going to move, whether they had the right to object, how the parenting plan would be amended. Last year we had a couple of the bills on the subject one was supported by groups that had traditionally been associated with fathers and one was supported by groups that had traditionally been associated with mothers. I would hasten to add that those distinctions are quickly breaking down as the parenting plans become more diverse it is not always the mother's having the majority of the time it's not always the father having visitation on the weekend. So the interests of these groups are starting to merge and that is part of the reason why we are able to reach some agreement here. We stated with a group that included representative from the NW woman Law center, Shared Parenting, National organization for women, Tabs, the bar association and many other folks who have been interested in this issue for a long time.

We addressed several issues, let me get right to the heart of it, under this bill if you have your child after the divorce more than half the time, although you cannot be constitutionally restricted from moving. You will need to give your spouse notice when you intend to move and take the child with you, and you need to propose how the parenting plan is going to change in order to deal with your move and then your spouse has an opportunity to respond to object to moving the child or to propose a different parenting plan in terms of the time allocated between the two parents for parenting the child. There are protections in the bill for victims of domestic violence, there are protections in the bill for the parents, but most of all there are protections in the bill for children. Because we gave the criteria to the judges, on which they can base their decision about how the child's time will be allocated whether they will move or not move. And the criteria start out with what's the most important issue what is the relationship of the child to the two parents, because the heart of everything in the parenting act is, is the best interest of the child. And the second right after that is what were the prior agreements of the parents. Now miraculously we have managed to get agreement between all the groups I already mentioned. Mr. Speaker I will conclude.

Earnings Statement



METROPOLITAN MARKET
 4025 DELRIDGE WAY SW #210
 SEATTLE, WA 98106

Period Ending: 06/18/2005
 Pay Date: 06/22/2005

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 0
 State: No State Income Tax

SUZANNE EMILIE NEVAN
 3417 41ST AVE SW
 SEATTLE, WA 98116

Social Security Number: XXX-XX-6465

Earnings	rate	hours	this period	year to date
Regular	10.7200	4.00	42.88	2,062.52
Premium 1	10.9200	21.00	229.32	2,759.49
Premium 2	11.2200	10.10	113.32	982.86
Overtime				130.26
Holiday				107.20
Holiday Worked				210.65
Sunday Worked				790.00
Gross Pay			385.52	7,042.98

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
Sun 06/05	NO PUNCHES				
Mon 06/06	5:59pm	11:01pm			5.00
Tue 06/07	4:59pm	9:59pm			5.00
Wed 06/08	NO PUNCHES				
Thu 06/09	NO PUNCHES				
Fri 06/10	NO PUNCHES				
Sat 06/11	5:58pm	11:05pm			5.10
Sun 06/12	NO PUNCHES				
Mon 06/13	5:59pm	11:00pm			5.00
Tue 06/14	NO PUNCHES				
Wed 06/15	4:58pm	10:03pm			5.00
Thu 06/16	4:58pm	10:00pm			5.00
Fri 06/17	NO PUNCHES				
Sat 06/18	4:58pm	9:59pm			5.00

Deductions	Statutory		
Federal Income Tax		-7.78	304.28
Social Security Tax		-23.90	436.66
Medicare Tax		-5.59	102.12
Other			
Hmo Plan B Indv		-10.00	50.00
Labor & Indust.		-5.72	98.18
Union Dues 1105		-47.50	130.00
Net Pay		325.03	

Your federal taxable wages this period are \$385.52



METROPOLITAN MARKET
 4025 DELRIDGE WAY SW #210
 SEATTLE, WA 98106

Earnings Statement



Period Ending: 06/18/2005
 Pay Date: 06/22/2005

Taxable Marital Status: Married
 Exemptions/Allowances:
 Federal: 0
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 3417 41ST AVE SW
 SEATTLE, WA 98116

Social Security Number: XXX-XX-6465

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Premium 1	10.9200	21.00	229.32	2,759.49
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Overtime				130.26
Holiday				107.20
Holiday Worked				210.65
Sunday Worked				790.00
Gross Pay			\$385.52	7,042.98

Deductions	Statutory	Other
Federal Income Tax	-7.78	304.28
Social Security Tax	-23.90	436.66
Medicare Tax	-5.59	102.12
Hmo Plan B Indv	-10.00	50.00
Labor & Indust.	-5.72	98.18
Union Dues 1105	-47.50	130.00
Net Pay		\$285.03

Time Card Detail		IN	OUT	IN	OUT	TOTAL
Sun	06/05	NO PUNCHES				
Mon	06/06	5:59pm	11:01pm			5.00
Tue	06/07	4:59pm	9:59pm			5.00
Wed	06/08	NO PUNCHES				
Thu	06/09	NO PUNCHES				
Fri	06/10	NO PUNCHES				
Sat	06/11	5:58pm	11:05pm			5.10
Sun	06/12	NO PUNCHES				
Mon	06/13	5:59pm	11:00pm			5.00
Tue	06/14	NO PUNCHES				
Wed	06/15	4:58pm	10:03pm			5.00
Thu	06/16	4:58pm	10:00pm			5.00
Fri	06/17	NO PUNCHES				
Sat	06/18	4:58pm	9:59pm			5.00

Your federal taxable wages this period are \$385.52

Earnings Statement



METROPOLITAN MARKET
 4025 DELRIDGE WAY SW #210
 SEATTLE, WA 98106

Period Ending: 06/18/2005
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 Federal: 0
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 SEATTLE, WA 98116

Social Security Number: XXX-XX-6465

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Premium 1	10.9200	21.00	229.32	2,759.49
Premium 2	11.2200	10.10	113.32	982.86
Overtime				130.26
Holiday				107.20
Holiday Worked				210.65
Sunday Worked				790.00
Gross Pay			\$385.52	7,042.98

Time Card Detail

DATE	IN	OUT	IN	OUT	TOTAL
Sun 06/05	NO PUNCHES				
Mon 06/06	5:59pm	11:01pm			5.00
Tue 06/07	4:59pm	9:59pm			5.00
Wed 06/08	NO PUNCHES				
Thu 06/09	NO PUNCHES				
Fri 06/10	NO PUNCHES				
Sat 06/11	5:58pm	11:05pm			5.10
Sun 06/12	NO PUNCHES				
Mon 06/13	5:59pm	11:00pm			5.00
Tue 06/14	NO PUNCHES				
Wed 06/15	4:58pm	10:03pm			5.00
Thu 06/16	4:58pm	10:00pm			5.00
Fri 06/17	NO PUNCHES				
Sat 06/18	4:58pm	9:59pm			5.00

Deductions	Statutory		
Federal Income Tax		-7.78	304.28
Social Security Tax		-23.90	436.66
Medicare Tax		-5.59	102.12
Other			
Hmo Plan B Indv		-10.00	50.00
Labor & Indust.		-5.72	98.18
Union Dues 1105		-47.50	130.00
Net Pay		\$285.03	

Your federal taxable wages this period are \$385.52

SEARS Gold MasterCard Account Number: [REDACTED] 5150



Account Balance	Payment Due	Minimum Due
\$322.57	03/02/04	\$20.00

Amount Enclosed: \$ [REDACTED]

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 SEATTLE WA 98102-5520

PO BOX 182156
 COLUMBUS OH 43218-2156

5012 5121071867115150 0032257 0002000 0000000



Account Number 5121-0718-6711-5150 1 OF 2
 Customer Service 1-800-669-8488

Account Balance	Total Credit Line	Cash Access Line	Available Credit Line	Available Cash	Billing Cycle Closing Date	Payment Due Date
\$322.57	\$7,500.00	\$1,500.00	\$7,177.43	\$1,500.00	02/03/04	03/02/04

Account Summary

Previous Balance	\$104.04
Payments & Credits	\$0.00
Purchases & Debits	\$181.27
Other Charges	\$35.00
FINANCE CHARGES	\$2.26
Account Balance	\$322.57

4 DAYS ONLY - FEBRUARY 18-21

take an extra 10% off storewide*
at Sears and sears.com
 only with your Sears Gold MasterCard®

*Exclusions apply. See store or sears.com for details. 02/18/04

Regular Transactions

Trans Date	Post Date	Description	Charges/Credits
01-21	01-23	PACIFIC SUPPLY COMPANY SEATTLE WA	\$18.49
01-23	01-24	SHORT STOP CLEANERS SEATTLE WA	\$12.78
01-24	01-26	CARUH SEATTLE WA	\$58.00
01-25	01-26	LUNA PARK CAFE SEATTLE WA	\$27.00
01-25	01-27	CUTTER'S BAYHOUSE SEATTLE WA	\$65.00
02-01	02-01	LATE PAYMENT FEE	\$35.00

IMPORTANT PROGRAM INFORMATION: MASTERCARD RENEWED THEIR INSURANCE COVERAGE WITH VIRGINIA SURETY COMPANY, EXTENDING PURCHASE ASSURANCE, EXTENDED WARRANTY AND MASTERRENTAL THROUGH JANUARY 31, 2005.

THE AMOUNT DUE SHOWN ABOVE INCLUDES A PAST DUE AMOUNT. YOU SHOULD SEND THE ENTIRE AMOUNT DUE NOW. IF PAYMENT HAS BEEN MADE RECENTLY, THANK YOU.





H&R BLOCK®
at **SEARS**

Come to H&R Block at Sears and let our Tax Professionals find the largest refund you're entitled to. In addition, you'll get valuable coupons worth over \$200 in Savings on Sears merchandise.

Some exclusions apply, see H&R Block associate for details.

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SEARS
Gold MasterCard.

Account Number [REDACTED]-5150 2 OF 2

Customer Service 1-800-669-8488

Finance Charges

Days In Billing Period: 31

Purchase Type	Total Balance	Average Daily Balance	Corresponding ANNUAL PERCENTAGE RATE	Periodic Rate D-Day M-Month	Periodic FINANCE CHARGE
Sears Regular	\$35.04	\$3.38	15.49 %*	0.0425 % (D)*	\$0.04
External Regular	\$287.53	\$168.39	15.49 %*	0.0425 % (D)*	\$2.22
Cash Regular	\$0.00	\$0.00	20.25 %*	0.0555 % (D)*	\$0.00
Minimum FINANCE CHARGE: \$0.00					

*The Rate Varies. NOTICE: See reverse side for important information and billing rights summary.

Call 1-800-669-8488 for customer service or to report your card lost or stolen.

Mail Billing Error Notices to PO BOX 818007 CLEVELAND OH 44181-8007



Account Balance	Total Credit Line	Cash Access Line	Available Credit Line	Available Cash	Billing Cycle Closing Date	Payment Due Date
\$1,166.11	\$7,500.00	\$1,500.00	\$6,333.89	\$1,500.00	03/03/04	03/31/04

Sears Choice Rewards Point Summary

Previous Points Balance	Points Earned This Period	Adjustments	Points Redeemed This Period	Ending Points Balance	Expiration Date
0	974	0	0	974	974 = 03/03/07
Program To Date Points	USE YOUR SEARS MASTERCARD CHOICE REWARDS POINTS TO REWARD YOURSELF. AND REMEMBER, YOU CAN REDEEM FOR MORE \$\$\$ WITH SEARS GIFT CERTIFICATES. GO TO WWW.SEARSCHOICEREWARDS.COM FOR DETAILS. USE YOUR CARD FOR ALL YOUR EVERYDAY PURCHASES, INCLUDING GROCERIES & GAS, AND EARN EVEN MORE POINTS.				
974					

Account Summary

Previous Balance	\$322.57
Payments & Credits	\$72.88
Purchases & Debits	\$909.07
Other Charges	\$1.00
FINANCE CHARGES	\$6.35
Account Balance	\$1,166.11

*pd. by SM7. \$250.00
Sent 3/19/04 ok, ck.*

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*** SPRING '04**

A7 SRL 3/04

Regular Transactions

Trans Date	Post Date	Description	Charges/Credits
02-08	02-10	JUNCTION TRUE VALUE HR SEATTLE WA	\$35.62
02-08	02-10	QFC #5801 S1R SEATTLE WA	\$10.83
02-10	02-11	ADJUSTMENT	- \$2.26
02-10	02-11	LATE FEE CREDIT	- \$35.00
02-11	02-13	FRED-MEYER #6608 SFJ SEATTLE WA	\$12.46
02-15	02-17	JUNCTION TRUE VALUE HR SEATTLE WA	- \$35.62
02-21	02-23	ALKI HOMESTEAD RESTAUR SEATTLE WA	\$30.14
02-22	02-24	THE HOME DEPOT 4702 SEATTLE WA	\$36.37
02-23	02-25	SAFEWAY STORE00003SC9 SEATTLE WA	\$14.49
02-24	02-26	THE BCN MARCHE 2 SEATTLE WA	\$35.90
02-24	02-26	THE BON MARCHE 2 SEATTLE WA	\$38.05
02-24	02-26	CHOICE DELI GROCERY SEATTLE WA	\$6.75
02-24	02-26	QFC #5801 S1R SEATTLE WA	\$10.96
02-24	02-26	#56 BARTELL DRUGS ADMI SEATTLE WA	\$8.15
02-24	02-26	KINKO'S #5144 SEATTLE WA	\$23.50
02-25	02-26	BASKIN ROBBINS NO 1339 SEATTLE WA	\$8.20
02-25	02-26	ALBERTSONS #409 S9H SEATTLE WA	\$10.76
02-25	02-27	SAFEWAY STORE00010SC9 SEATTLE WA	\$3.00

Regular Transactions

Trans Date	Post Date	Description	Charges/Credits
02-25	02-27	W SEATTLE THRIFTWAYSJ7 SEATTLE WA	\$30.37
02-26	02-28	SAFEWAY STORE00003SC9 SEATTLE WA	\$9.27
02-25	02-28	DENNY'S INC Q67 SEATTLE WA	\$17.30
02-26	02-28	SHELLOIL 27440052606 SEATTLE WA	\$6.00
02-27	02-28	FIFE SERVICE & TOWING TACOMA WA	\$182.38
02-27	03-01	SAFEWAY STORE00003SC9 SEATTLE WA	\$21.20
02-28	03-01	METROPOLITAN MKT SJ7 SEATTLE WA	\$9.75
02-28	03-01	CARQUEST #3709 SEATTLE WA	\$219.12
02-28	03-01	PARTS PLUS ROSEVELT SEATTLE WA	\$3.38
02-29	03-01	TARGET 00003400 FEDERAL WAY WA	\$19.56
02-28	03-01	SAFEWAY STORE00003SC9 SEATTLE WA	\$17.11
02-28	03-01	SAFEWAY STORE00003SC9 SEATTLE WA	\$20.18
02-28	03-01	SAFEWAY STORE00003SC9 SEATTLE WA	\$1.80
02-29	03-02	SAFEWAY STORE00003SC9 SEATTLE WA	\$17.47
02-29	03-02	SAFEWAY STORE00003SC9 SEATTLE WA	\$13.73
02-29	03-02	SHELLOIL 63232228688 SEATTLE WA	\$11.29
03-01	03-03	SAFEWAY STORE00003SC9 SEATTLE WA	\$13.98
03-01	03-03	SHELLOIL 63232228688 SEATTLE WA	\$10.00
03-03	03-03	REWARDS PARTICIPATION FEE	\$1.00

IMPORTANT PROGRAM INFORMATION: MASTERCARD RENEWED THEIR INSURANCE COVERAGE WITH VIRGINIA SURETY COMPANY, EXTENDING PURCHASE ASSURANCE, EXTENDED WARRANTY AND MASTERRENTAL THROUGH JANUARY 31, 2005.

Finance Charges

Days in Billing Period: 29

Purchase Type	Total Balance	Average Daily Balance	Corresponding ANNUAL PERCENTAGE RATE	Periodic Rate D-Day M-Month	Periodic FINANCE CHARGE
Sears Regular	\$1.09	\$7.32	15.49 %*	0.0425 % (D)*	\$0.09
External Regular	\$1,165.02	\$507.65	15.49 %*	0.0425 % (D)*	\$6.26
Cash Regular	\$0.00	\$0.00	20.25 %*	0.0555 % (D)*	\$0.00
Minimum FINANCE CHARGE: \$0.00					

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Customer Service 1-800-669-8488

Billing Cycle Closing Date	Account Balance	Total Credit Line	Available Credit Line	Cash Access Line	Available Cash
11/03/04	\$6,531.45	\$7,500.00	\$968.55	\$1,500.00	\$968.00
Amount Over Credit Line	Amount Past Due	Current Minimum Due	Total Minimum Due	Payment Due Date	
\$0.00	+ \$0.00	+ \$149.00	= \$149.00	12/01/04	

Sears Choice Rewards Point Summary

Previous Points Balance	Points Earned This Period	Adjustments	Points Redeemed This Period	Ending Points Balance	Expiration Date
5993	373	0	0	6366	6366 = 03/03/08
Program To Date Points	THIS HOLIDAY SEASON USE YOUR CARD FOR ELIGIBLE PURCHASES AT SEARS AND EVERYWHERE ELSE MASTERCARD CARDS ARE ACCEPTED, TO MAXIMIZE THE NUMBER OF POINTS YOU CAN EARN. AND DON'T FORGET, YOU CAN NOW MANAGE YOUR ACC OUNT AND REDEEM ONLINE. GO TO WWW.SEARSCOICEREWARDS.COM FOR DETAILS.				
6366					

Account Summary

Previous Balance	\$6,154.79
Payments & Credits	\$150.00
Purchases & Debits	\$372.30
Other Charges	\$0.00
FINANCE CHARGES	\$154.36
Account Balance	\$6,531.45

When you pay an amount in excess of the Total Minimum Due (but less than the Calculated Account Balance) we may apply this excess amount to future Total Minimum Due amounts for up to two billing cycles. Finance charges will continue to accrue. You may always pay more than the Total Minimum Due.

A2 9ACPM 7/04

Regular Transactions

Trans Date	Post Date	Description	Charges/ Credits
10-01	10-04	NETZERO*INTERNET NETZERO.COM CA	\$9.95
10-11	10-13	W SEATTLE THRIFTWAYSJ7 SEATTLE WA	\$18.91
10-24	10-26	SAFWAY STORE00003SC9 SEATTLE WA	\$13.41
10-24	10-26	W SEATTLE THRIFTWAYSJ7 SEATTLE WA	\$18.33
10-25	10-27	BALLARD MKT THRIFT SJ7 SEATTLE WA	\$8.43
10-24	10-27	TOYS R US #8002 TUKWILA WA	\$24.64
10-25	10-27	SHELL OIL 63232228688 SEATTLE WA	\$14.99
10-26	10-28	SAFWAY STORE00003SC9 SEATTLE WA	\$30.53
10-26	10-28	PERFECT COPY AND PRINT SEATTLE WA	\$39.23
10-27	10-29	SAFWAY STORE00003SC9 SEATTLE WA	\$37.11
10-27	10-29	SAFWAY STORE00003SC9 SEATTLE WA	\$3.54
10-27	10-29	SAFWAY STORE00010SC9 SEATTLE WA	\$11.02
10-27	10-29	W SEATTLE THRIFTWAYSJ7 SEATTLE WA	\$13.69
10-27	10-29	SHELL OIL 27440052804 SEATTLE WA	\$28.70
10-27	10-29	SHELL OIL 63232228688 SEATTLE WA	\$14.27



Regular Transactions

Trans Date	Post Date	Description	Charges/ Credits
10-30	10-31	PAYMENT - THANK YOU	- \$150.00
10-29	11-01	SAFEWAY STORE00003SC9 SEATTLE WA	\$21.95
10-29	11-01	THE HOME DEPOT 4702 SEATTLE WA	\$39.06
11-01	11-02	NETZERO*INTERNET NETZERO.COM CA	\$9.95
11-01	11-03	SHELL OIL 63232228688 SEATTLE WA	\$14.59

Finance Charges

Days In Billing Period: 31

Transaction Type	Balance	Average Daily Balance	Corresponding ANNUAL PERCENTAGE RATE	Periodic Rate D-Day M-Month	Periodic FINANCE CHARGE
Sears Regular	\$72.79	\$73.43	28.74 %*	0.0788 % (D)*	\$1.79
External Regular	\$6,458.66	\$6,245.50	28.74 %*	0.0788 % (D)*	\$152.57
Cash Access Regular	\$0.00	\$0.00	28.74 %*	0.0788 % (D)*	\$0.00
Minimum FINANCE CHARGE:					\$0.00

*The Rate Varies. **NOTICE:** See reverse side for important information and billing rights summary.

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BAJ Capital, LLC

BAJ Capital (BAJC) specializes in long and short term equity growth through investment in real estate opportunities in high-growth markets throughout the United States. BAJC principals and employees share in these opportunities by investing significant portions of their personal assets with our projects. BAJC strongly believes that intelligent and informed investing in strong markets will yield consistently high returns.

BAJC has been raising money and investing in real estate since 1999. Our principals bring cutting edge market knowledge to each project and provide our investors with due diligence that encompasses marketplace assessments, comparable building analyses, financial reviews and critical data evaluations for every acquisition, regardless of size or scope.

If you should wish to discuss an investment opportunity, please contact:

Chris NeVan

Principal

chrisn@BAJCapital.com

BAJ Capital, LLC

820 Fourth Avenue, Suite 502

Seattle, WA 98104

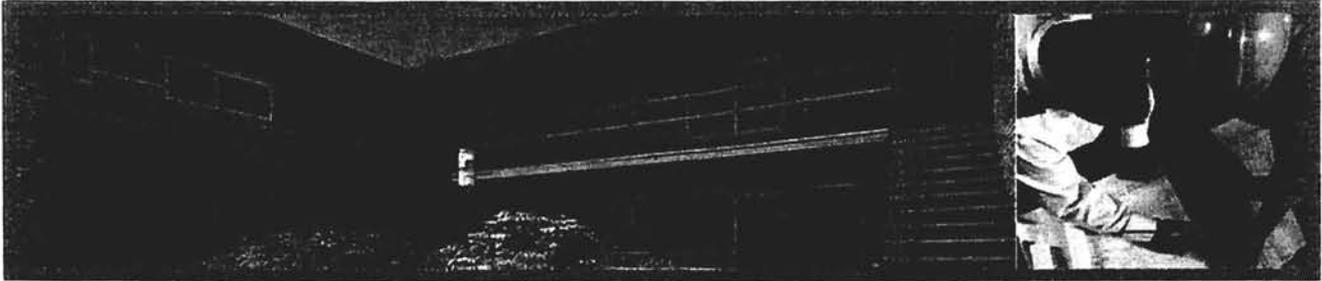
206-459-2432 Office

206-888-4410 Fax

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Residential



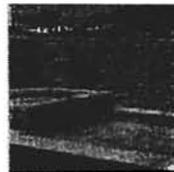
Promenade at the Park



Sandhurst Cove



Desert Sun Ranch



Mountain Estates



Cielo Vista

Multi-Family / Mixed Use



Fauntleroy Place



Spring Hill

Medical Office / Surgery / Specialty Medical



Center for Diagnostic Imaging



Edmonds Medical

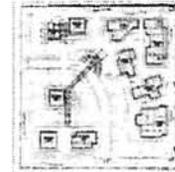
Commercial / Manufacturing



Community Fitness



Ryco Machine Company



Palm Village

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info@bluestarmi.com 206.362.4417

CHAPTER THREE

OBJECTIONS TO RELOCATION – NOT ALWAYS A LOST CAUSE

June 2008

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JULIET C. LAYCOE received her B.A. from Pacific Lutheran University (1994) and her J.D. from Northwestern School of Law of Lewis & Clark College (1998). She is admitted to both the Washington State Bar and the Oregon State Bar. Ms. Laycoe is a partner at Laycoe & Bogdon PC where her practice focuses on family law. She also practices in the areas of guardianship, estate planning and probate. She enjoys reading, playing indoor soccer and spending time with her husband, Tom, and their fourteen month old son, Benjamin.

STEVEN N. BOGDON received his B.A. from The Evergreen State College (1978) and his J.D. from University of Washington (1982). He is admitted to both the Washington State Bar and Oregon State Bar. Mr. Bogdon is a partner at Laycoe & Bogdon PC where his practice focuses on family law. He also practices in the area of special education law. He and his wife, Mary Jo, like to dream about retirement, travel and entertain their grandchildren.

II. INTRODUCTION

Relocation cases can be difficult both in terms of the litigation and emotion. It is easy to view the statutory presumption in favor of a primary residential parent's intended relocation as a final determination before the case even proceeds to hearing. Yet, objecting to the relocation is not always a lost cause. The following materials are provided to assist in the understanding of Washington's Child Relocation Act and preparation of the objecting party's case for trial.

III. RELOCATION PRIOR TO THE CHILD RELOCATION ACT

Prior to the adoption of Washington's Child Relocation Act in 2000, our courts determined a parent's right to relocate the residence of the child, either in the initial proceeding or in connection with the modification of a parenting plan or custody order, on an ad hoc basis. The cases struggled to find an analytic framework within which to make the decision.

A. THE BEST INTERESTS OF THE CHILD STANDARD

Two early cases applied a "best interests of the child standard" as grounds for restricting a parent from relocating the residence of the child without notice to the other parent and a requirement that the restriction be modified prior to the relocation. *Kirby v. Kirby*, 126 Wash. 530 (1923); *Clarke v. Clarke*, 49 Wn.2d 509 (1956); *Nedrow v. Nedrow*, 48 Wn.2d 243 (1956). After the enactment of the Parenting Act, the Court of Appeals concluded that the Parenting Act supported this same approach with some refinement.

In *Marriage of Sheley*, 78 Wn. App. 494, 895 P.2d 850 (1995), review denied, 128 Wn.2d 1009 (1996), Division I of the Court of Appeals held that the parent objecting to a restriction on the relocation of the child's residence in an initial proceeding had to show not only that a restriction on the child's relocation was in the best interests of the child but also that the proposed relocation be detrimental to the child in some specific way that is not inherent in the geographical distance between the parents if the move is approved. The court observed that "all change is disruptive, and a simple balance of the status quo against the unknowns of the new location, particularly in light of the disruption already attendant to the separation and divorce, is likely to result in the undue sacrifice of the constitutional right to travel" *Id.* at 504.

In *Marriage of Schneider*, 82 Wn. App. 471, 918 P.2d 543 (1996), Division II of the Court of Appeals declined to follow *Sheley* insofar as it placed a burden upon the non-custodial parent to show a specific detriment to the child absent a showing by the custodial parent that the limitation on his or her right to travel posed an unreasonable burden. Under this approach, the moving parent had to first examine the reasons for the proposed relocation, including financial considerations, physical and emotional health, including family support, and the good faith of the moving parent. In this case, the Court of Appeals did not find that the restriction in the original final parenting plan posed an undue burden as it did not appear the primary residential parent had any immediate plan to move and the order permitted future modification upon prior notice to the other parent.

This change must be a bona fide change in circumstances, such as a change in employment or a new employment or educational opportunity. . . .

If the primary residential parent meets the statutory standard, the other parent must be given an opportunity to show (1) that there is no bona fide reason for the move or (2) that the move will cause harm to the child that is beyond the normal distress suffered due to travel, infrequent contact with a parent, or other predictable hardships resulting from relocation following a divorce.

Id. at 716-17. Interestingly, the Supreme Court framed the issue as whether the primary residential parent should be restrained from relocating, not just the child, and even stated that “[t]he trial court need not reassess which parent should be the primary residential parent, as that determination will already have been made and because of the strong presumption that custodial continuity is in the child’s best interests. *Id.* at 717.

IV. THE CHILD RELOCATION ACT

In 2000, the Washington state legislature adopted the Child Relocation Act. The act provides a framework for how relocation cases proceed through the court system and what factors the court must consider in making a final determination.

A. PROCEDURE

The Relocation Act contains specific procedural requirements that each party must satisfy. The objecting party should confirm that proper notice was given by the relocating party. In addition to serving and filing the required objection, the objecting party should start to prepare for trial at the outset of the case with a critical focus on the eleven statutory relocation factors.

1. Notice

A person with whom a child resides the majority of the time must give notice of an intended relocation to every other person entitled to residential time with the child pursuant to a court order. RCW 26.09.430. The moving party must give notice sixty days before the intended relocation or no more than five days after the person receives the information required to be furnished in the actual notice. RCW 26.09.440(i) and (ii). A relocating party has an ongoing duty to promptly notify the other party of any new information concerning the relocation as it becomes available. RCW 26.09.440(3). Sanctions, including a finding of contempt, may be granted for failure to give proper notice. RCW 26.09.470.

2. Objection

A party objecting to the intended relocation must file and serve the objection within thirty days of receipt of the Notice of Intended Relocation. RCW 26.09.480. The objection must be in the form of a petition for modification of parenting plan or other court proceeding adequate to provide grounds for relief.

to the child than disrupting contact between the child and the person objecting to the relocation;

- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

The “best interest of the child” is not the standard for determining relocation cases. Rather, the court must consider each of the child relocation factors when deciding whether to permit or restrain the relocation of the child. *In re the Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004). Consideration of all the statutory factors is logical because they serve as a balancing test between many important and competing interests and circumstances involved in relocation cases. *Id.* at 894.

C. THE PRESUMPTION

The Child Relocation Act establishes a rebuttable presumption in favor of a request by the primary residential parent that the intended relocation will be permitted. The Act may represent a major policy shift from the policies embodied in the prior court decisions. A presumption “is a rule of law which requires the assumption of a fact from another fact or set of facts. The term “presumption” indicates that certain weight is accorded by law to a given evidentiary fact, which weight is heavy enough to require the production of further evidence to overcome the assumption thereby established. It thus constitutes a rule of evidence which has the effect of shifting either the burden of proof or the burden of producing evidence.” BARRON’S LEGAL DICTIONARY 367 (3rd ed. 1991).

The core question in a relocation case is set forth in the Act's balancing test: do the detrimental effects of the relocation outweigh the benefit of the change to the child and the relocating person? The legislature has given the court an analytical framework in the form of an equation but how does the math add up? How does one determine the benefits to the mother and then weigh that against the detriment to the child? When and how would a child benefit from the relocation? What kind of evidence can and should the court consider? And, ultimately, how does the court determine when a benefit to a primary parent outweighs a detriment to the child resulting from relocation?

D. THE EVIDENCE AND PROOF

For better or worse, the proceedings to determine whether the court will allow the relocation of the child's residence will take place on an accelerated schedule. The attorney for the objecting party must evaluate the case, develop a discovery and trial plan, and move quickly. The evaluation must focus on the balancing test and each individual factor.

1. The benefit to the moving parent.

The primary residential parent has one or more reasons for the move, which may or may not be articulated clearly or honestly. The left behind parent may or may not have independent information regarding the primary parent's reasons for the proposed move, any alternate courses of action available to the primary parent to avoid the move, the anticipated benefits resulting from the move, or the planning, or lack of planning, in anticipation of the move. The attorney's first step should be to depose the moving parent at the outset of the case to explore these and other topic areas before the hearing on the motion to temporarily restrain relocation. The relocating parent may not have consulted with an attorney and obtained good advice about how to lay the groundwork for the move and how to deal with an objection to relocation. Deposing the relocating parent may enable the objecting parent to expose the lack of good faith, clear thinking and good judgment on the part of the relocating parent before the relocating parent's attorney has had an opportunity to educate his or her client and patch up any holes in the relocating parent's case. The deposition should be thorough and exhaustive to decipher the strengths and weaknesses of the relocating parent's case and to use as a basis for planning further discovery and preparing for trial.

In deposition, it is helpful to bear in the mind the problems the relocating parent will face in court admitting evidence to support his or her request for relocation. The objecting parent has certain advantages in the rules of evidence. The relocating parent must, by the nature of issue, present evidence of what he or she anticipates will happen in the future. Very often, the evidence, while it sounds good initially, lacks the kind of weight that will override real detriment to the child.

Take the statement "my new position of employment in San Francisco offers me great opportunities for future advancement." This statement is probably based upon information obtained from the prospective employer and is therefore hearsay and not admissible. This statement is probably based upon broad assumptions about the future and is therefore speculation and not admissible. And this statement is ultimately an opinion that lacks an adequate

one of which may cause devastation and long terms adverse effects. William G. Austin, *A Forensic Psychology Model of Risk Assessment for Child Custody Relocation Law*, 38 Family and Conciliation Courts Review 192, 197 (2000). On a practical level, the objecting party can present evidence regarding all of the child's attachments, not only with the left behind parent, but with other family members, friends, and others to demonstrate that, even if the child's attachment with the moving parent is substantial, it does not exceed the combined attachments the child has with others, all of which will be disrupted by the move.

3. The detriment to the child.

Evidence of the detriment can come through lay testimony, expert fact witnesses, and experts retained for the purpose of the litigation.

The objecting parent should demonstrate the importance of the child's bond with the left behind parent using every means possible. What is the parent's involvement with the child at school, in extracurricular activities, in recreational activities, with friends, with extended family, with educators and with health care providers? While school districts frequently prohibit teachers, counselors and administrators generally from becoming involved in a family law dispute without compulsory process, once served with process, they can provide valuable information. Because they try to steer clear of controversy within the family, they are likely to offer an even-handed and not hypercritical view of the left behind parent. Family pictures, notes, classroom writings may offer insight into the relationship.

In an initial proceeding, a parenting evaluator must really evaluate both parents to offer an opinion that is helpful to the court. But the different framework for the relocation case lends itself to an evaluation of the parent-child relationship and bond of one parent alone. There is a question whether there is any recognized methodology for doing so, at least in comparison to the fairly well recognized methodology for psychologists to conduct parenting evaluations. In various family law contexts, the court relies upon mental health professionals to conduct parent child observations to evaluate a parent's skills and the child's bond with the parent, such as in case of parent-child unification and reunification. Observation of the objecting parent and child in a variety of natural contexts by one with professional experience and training can provide more reliable and rich evidence of the bond, and consequently the harm from disruption of the bond.

Even though the Washington state legislature has, in adopting the Act, given the primary residential parent the benefit of the presumption, the objecting parent still has the weight of social science research on his or her side. Relocation, even outside the context of divorce, has a well recognized correlation with heightened risk. The research in the area of divorce reaches a similar conclusion, with the caveat that the divorce itself has already heightened the risk factors for bad outcomes. The objecting parent can present this research, through expert testimony, and then apply the research to facts at hand. While the court has a list of factors to consider, the question remains how to evaluate the evidence using something more than guesswork. Once again, expert opinion evidence can fill the void. Dr. William G. Austin has provided a conceptual framework for evaluating the potential consequences of relocation based upon established methodologies for risk assessment in analogous areas. William G. Austin,

VI. CHECKLIST FOR OBJECTING PARTY

1. Was proper Notice of Intended Relocation received?
2. Timely file Objection and Petition for Modification of Parenting Plan.
3. Timely file motion to temporarily restrain relocation.
4. What information has relocating party provided regarding the basis for relocation?
5. What information is still needed to analyze basis for relocation?
6. How can you obtain information?

Discovery (Interrogatories and Requests for Production)
Depositions
Witness Interviews
Subpoena Duces Tecum

7. Identify lay witnesses.
8. Identify and retain experts.

Economist
Parenting Evaluator
Psychologist
Other Mental Health Professional
Education Expert

9. Prepare trial memorandum and include analysis of statutory relocation factors.
10. Prepare proposed Findings of Fact and Conclusions of Law to submit with trial memorandum or closing argument.

Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations

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Relocation cases, in which a divorced parent seeks to move away with the child, are among the knottiest problems facing family courts. The recent trend is to permit such moves, largely because of Wallerstein's (1995) controversial *amica curiae* brief, which a recent court (*Baures v. Lewis*, 2001) interpreted as supporting the conclusion that "in general, what is good for the custodial parent is good for the child" (p. 222). The current study provides the first direct evidence on relocation by dividing college students into groups on the basis of their divorced parents' move-away status. On most child outcomes, the ones whose parents moved are significantly disadvantaged. This suggests courts should give greater weight to the child's separate interests in deciding such cases.

Americans are a mobile people for whom moving is a relatively common experience. According to 2000 U.S. Census data, between March 1997 and March 1998, 16% of all Americans moved (U.S. Bureau of the Census, 2000). About 43% of the movers left for a different metropolitan statistical area. The adults most likely to move are those between 20 and 34 years old, ages at which they are likely to have young children.¹ Undoubtedly for that reason, children are, on average, more likely to move than are adults. Between March 1997 and March 1998, 23.5% of all children between 1 and 4 years of age moved. Children between 5 and 6 moved at an annual rate of 17.9%. Rates for older children were a bit lower.

People appear especially likely to move after their marriage fails. Ford (1997) showed that within 4 years of separation and divorce, about one fourth of mothers with custody move to a new location. In Braver and O'Connell's (1998) data set, 3% of the custodial parents who could be located moved out of the area within 12 weeks of the divorce filing, 10% moved away within a year, and 17% moved within 2 years. As explained more fully below, among the college students surveyed for the current study

whose parents had divorced, 61% experienced a move of more than one hour's drive by at least one parent at some time during their childhood; of the divorced sample, 25% moved with their custodial mother away from their father.

Postdivorce moves give rise to legal disputes primarily when the custodial parent seeks to move with the child and the other parent objects to the move's impact on his² contacts with the child. This fact pattern is, therefore, the focus of this introductory discussion, but we later return to the companion case, in which the noncustodial parent relocates, leaving the custodial household behind.

Relocation disputes pose a considerable dilemma for courts (Kelly & Lamb, 2003). They may pit a custodial parent's reasonable wish to better her circumstances by moving against a noncustodial parent's reasonable desire to maintain the frequent contact with his minor child that is a normal and perhaps essential element of any parental relationship. How the court should decide such cases has been a fertile source of dispute (Bruch & Bowermaster, 1996; Elrod & Spector, 1997; American Academy of Matrimonial Lawyers, 1998; Richards, 1999). The applicable legal rules have been unstable, as different courts and different states have struggled to develop coherent and just policies (American Law Institute, 2002, Reporter's Notes to Comment d, § 2.17). According to legal researchers (Bruch & Bowermaster, 1996; Elrod & Spector, 1997; Richards, 1999) some states' statutes declare a presumption permitting the reloca-

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¹ Adults between 20 and 24 moved more frequently (34.2%) than adults in any other age range, with those from 25 to 29 (31%) and 30 to 34 (22%) next most likely.

² Because about 85% of custodial parents are mothers (Meyer & Garasky, 1993; Nord & Zill, 1997), for convenience, but with some loss of accuracy, we refer to noncustodial parents with masculine pronouns and custodial parents with feminine.

tion (e.g., Oklahoma, Tennessee, and Wisconsin), whereas others have a presumption precluding it (e.g., Montana and South Carolina). Some place the burden of proof on the parent desiring to relocate (e.g., Arizona, Alaska, and Arkansas); others place it on the parent opposing the move (e.g., California, Connecticut, and Louisiana). When courts have been called on to interpret these statutes or case law, they previously have generally restricted such moves (Terry, Proctor, Phelan, & Womack, 1998), and some still hold there is a presumption against it (e.g., *White v. White*, 1994). However, the trend in court decisions in the past 5 years, beginning with the *Burgess* decision in California (*In re the Marriage of Burgess*, 1996; Shear, 1996), has clearly been to permit relocation (American Law Institute, 2002, Reporter's Notes to Comment d, § 2.17).

In coming to their decisions, courts consider the interests of both the parents and the child, which are, of course, intertwined (American Law Institute, 2002, § 2.02; Austin, 2000a, 2000b; Braver, Hipke, Ellman, & Sandler, in press; Miller, 1995; Richards, 1999; Rotman, Tompkins, Schwartz, & Samuels, 2000; Sample & Reiger, 1998; Sobie, 1995). On the one hand, the better home that the custodial parent sees for herself in a new location can also be seen as a better home for the child. On the other hand, preserving the noncustodial parent's relationship with the child can be seen as an important interest of the child's as well as the parent's. As a strategic matter, both contesting parents are best off portraying their own interests as aligned with the child's, because the child's interests are normally regarded as the guidepost for all custody decisions, including relocation (American Law Institute, 2002, § 2.02). But understanding the dilemma facing courts in these cases requires examining separately each of these three interests.

The interest of the noncustodial parent is both obvious and substantial: retaining sufficient contact with his child to maintain a parental relationship. Significant physical separation that makes weekly or even monthly visits impractical is likely to add considerably to the difficulty of maintaining such a relationship. The interest of the relocating custodial parent can also be substantial. The move may be necessary to accommodate a new job for the custodial parent or it may be required to pursue an educational opportunity; perhaps she is moving in order to remarry or perhaps her new spouse is being transferred; maybe the move is contemplated to allow the custodial parent to live near friends or relatives available to provide that parent needed assistance or support. Both the noncustodial parent's interest in access to his child and the custodial parent's interest in choosing to move are substantial enough that governmental actions that burden either of them may, depending on the facts, be limited by federal constitutional principles.³

Of course, in any particular case we may have good reason to doubt the importance or sincerity of either parent's proffered interests. In some cases, the relatively short distance of the proposed move, or the child's relatively greater age, may suggest that the custodial parent's relocation would place no important burden on the noncustodial parent's relationship with the child. In other cases there may not be much relationship to burden: A noncustodial parent

who has not taken advantage of his opportunities for time with his child when they both live in the same city is poorly positioned to argue that the child's relocation will unduly burden his right to maintain their relationship. Notice too that the proposed relocation may not burden the child's interests in these cases: In the first, the child's relationship with the parent left behind may continue unimpeded, and in the second, it may be largely absent in any event.

On the other side, some reasons for relocation are more compelling and legitimate than others. For example, the custodial parent with unpursued nearby employment prospects that are substantially equivalent to those available at the more distant situation (or whose new spouse has such prospects, where the new spouse's career is the occasion for the move) is differently situated than if relocation is truly necessary to realize a major career opportunity. Or compare the spouse with friends and family nearby, as well as in a distant location, with another who came only recently to the city she now wants to leave so that she can return to her former home, in which she has many relatives and close friends who are available to provide critical assistance. Once again, the interests of the child whose custodial parent has less compelling reasons to relocate seem themselves less likely to be furthered by the relocation, because there seems little reason to think the proposed home offers the child advantages over the present one. In short, sometimes an analysis of the interests of all parties will allow us confidently to conclude that this custodial parent should, or should not, relocate with the child.

Other cases are harder. Consider, for example, the custodial parent with sound reasons for seeking to move to a distant location that will in fact seriously impair a caring and involved noncustodial parent's access to his child. The New York Supreme Court, for example, has termed such relocation disputes to be among "the knottiest and most disturbing problems" (p. 736) courts face (*Tropea v. Tropea*,

³ The constitutional protection afforded parents against arbitrary government action depriving them of access to their children is well established, arising in many contexts (see Ellman, Kurtz, & Scott, 1998, pp. 1063–1093 [protection of unmarried father's parental right]; pp. 1337–1354 [termination of parental rights generally]). Most recently, the United State Supreme Court has held that parental rights are violated when a state court requires parents to allow third parties, including grandparents, access to their children merely because a judge decides that such access is in the child's best interests; parents alone have a right of access (*Troxel v. Granville*, 2000). The constitutional status of a right to travel or choose one's residence is more contested but clearly exists in some form and has been relied on by some courts in custody relocation cases (see, e.g., *Jaramillo v. Jaramillo*, 1991 [placing the burden of proof on the custodial parent is an unconstitutional impairment of the relocating parent's right to travel] and *Holder v. Polanski*, 1988 [allowing relocation unless adverse to child's best interests avoids the unconstitutional infringement on parent's right to travel]), although even courts recognizing the applicability of a constitutional right to travel find that it yields when the child's interests so require, *Everett v. Everett*, 1995 [best interests of the child have priority over the parent's right to travel]).

1996). Such cases inevitably result in a decision adverse to a parent with a good claim, because both parents have a good claim, insofar as their own interests are at stake. Here especially, then, the child's interests seem key, but intuition (so often relied on by appellate courts in devising rules) offers little guidance as to where those interests lie. Trustworthy empirical evidence concerning the impact of a custodial parent's long-distance moves on the children is thus critical to resolving the legal policy question.

There is, however, an even more fundamental problem, for it also turns out that cases that seem easy may actually be difficult for courts. Consider a case with facts like these: Both parents have a good relationship with their two children; Mom has primary custody and has always been the primary parent; and Dad, the family's primary breadwinner, works long hours incompatible with being the primary parent, although he is emotionally connected to his children, always makes full use of his visitation rights, and reliably pays his substantial child support obligation. The parents cannot realistically switch roles without a major financial sacrifice that will affect their children as well as themselves, because Mom's earning potential does not approach Dad's. Mom seeks to move several thousand miles away but offers no compelling rationale for the move, which the court reasonably suspects is truly motivated by her anger at Dad's remarriage. Dad cannot move to Mom's intended destination without an immediate and substantial sacrifice in income and without imposing severe dislocations on his new wife, who also has a career requiring her to remain where she is. Dad therefore opposes her relocation and persuades the court that it would seriously impair his relationship with his children and that Mom has no good reason for it.

Now consider the choices *logically* available to a judge asked to rule on Dad's objection to Mom's proposed move (the *legally* available choices may be fewer, as we note below): The court may (a) allow Mom to relocate with the children; (b) order primary custody changed from Mom to Dad, *if* Mom chooses to relocate (so that the status quo may or may not continue, depending on Mom's decision as to relocation); or (c) make no change in the custodial arrangements but instead tell Mom she may not move. It turns out that all of these choices are problematic. The first seems inadvisable because the court does not want to endorse the move. The second was once a fairly common response to a case like this, courts employing such orders strategically to deter relocation. Recent cases reject such a strategic use of change-of-custody orders, however, even though new evidence tells us that they are or would be effective as deterrents in nearly two thirds of cases (Braver, Cookston, & Cohen, 2002).

These recent cases bar the use of conditional change-of-custody orders as strategic tools to deter relocation because they require that such orders satisfy the requirements that govern ordinary petitions to change primary custody.⁴ Although there is of course variation from state to state, as a general matter these requirements are fairly demanding. At a minimum, they would in this context bar a conditional change-of-custody order unless the court found that the

children would be much better off, assuming the primary custodian relocates, remaining with Dad as the new primary custodian rather than moving with Mom to her new home. (Many states impose an even more demanding rule.⁵) And

⁴ Jurisdictions do disagree about whether an order conditioning continuation of primary custody on the parent's remaining at the same residence must satisfy otherwise applicable modification standards. Among those courts that have issued conditional orders without determining whether the change of custody from one parent to the other would be justified under the rules applicable to custody modifications, see *LaChapelle v. Mitten* (2000, upholding court order conditioning mother's custody on her return to Minnesota); *Maeda v. Maeda* (1990; upholding court order granting mother primary physical custody subject to transfer if she leaves the court's jurisdiction); *Lozinak v. Lozinak* (1990; upholding conditional order providing mother with continued physical custody only if she stayed in Pennsylvania, and otherwise primary custody would change to father, under best interests test); *Alfieri v. Alfieri* (1987, upholding court order that made continued custody by mother contingent on return to New Mexico); see also *Sullivan v. Sullivan* (1993; conditioning mother's custody on not moving, even after the court determined that best interests of child would not be served by change of custody to father).

Courts holding that conditional awards may not be issued unless a change of custody would be warranted under the modification of custody standards include *In re the Marriage of Burgess* (1996; California statute provides no grounding for permitting court to test parental attachment by "bluff" that custody will change if parent relocates); *Lamb v. Wenning* (1992; move out of state by custodial parent does not justify change in custody unless the usual more stringent standard governing requests for change in custody—that the changed circumstances are so substantial and continuing as to make the existing custody order unreasonable—is met); *Gould v. Miller* (1992; to justify change of custody away from custodial parent, other parent must show significant change in circumstances plus adverse effect on child); *Lane v. Schenk* (1992; continued custody may not be conditioned on remaining in community, unless in light of the move, children's best interests would be so undermined that transfer of custody is necessary); *Hensgens v. Hensgens* (1995; change in custody to the nonrelocating parent not justified simply because the relocation would reduce contact with the child); *Moore v. Moore* (1991; change in custody would impose an "equally difficult" burden on custodial parent as on noncustodial parent). See also *Taylor v. Taylor* (1993; describing as "the worst of several possible alternatives" (p. 321) that mother, who was not allowed by the trial court to relocate to Iowa, is living in an apartment in Memphis with child of former marriage and infant child of new marriage, separated from her new husband who goes to school in Iowa).

⁵ Indeed, the legal burden placed on the party seeking to change primary custody can be more substantial. The Commissioners on Uniform State Laws have urged, since their adoption of the Uniform Marriage and Divorce (UMDA) Act in the early 1970's (National Conference of Commissioners on Uniform State Laws, 1974), that such petitions be rejected unless the movant can show that "the child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages" (§ 409(b)). State statutes adopting the UMDA standard include Colo. Rev. Stat. § 14-10-131(2) (1998); Ky. Rev. Stat. Ann. § 403.340(2) (Banks-Baldwin 1998); Ohio Rev. Code Ann. § 3109.04(E)(1)(a) (West 1995); see also Mont. Code Ann.

that is a showing men like the Dad in our example are unlikely to be able to make. Parents who are primary custodians under existing court orders usually provide a home at least as good as that which the other parent would provide, and there is no obvious reason to think that as a general matter Mom's parenting ability will be so compromised by her move that shifting primary custody to Dad would become demonstrably superior for the child. Indeed, while the relocation-caused separation from Dad may be burdensome for the child, separation from Mom, who has been the child's primary caretaker during and after the marriage, might seem worse. And indeed, Dad may be reluctant even to seek a conditional change-of-custody order, from fear that Mom might call his bluff.

What Dad really wants, of course, is the third alternative: a simple order that Mom not relocate. As a general matter, however, such orders are not available. Courts generally regard themselves as having authority to decide whether the child can relocate, because at divorce the court assumes a responsibility for the child's welfare. It has no more authority over the parent's relocation, however, than over any other adult's choice of where to live. Cases like our example might suggest to some, however, that this limitation be reconsidered. Indeed, there is at least one state that does provide its courts statutory authority to prohibit a custodial

§ 40-4-219(1), (8) (1997) (same, without endangerment standard, and with additional grounds that child is at least 14 years of age and desires the modification, the custodial parent has interfered with noncustodial parent's exercise of visitation rights, or the parent has been convicted of one of a number of listed crimes relating to the child's welfare); Wash. Rev. Code Ann. § 26.09.260(2) (West 1997) (same, with addition that the nonmoving party has been found in contempt of court at least twice in the past 2 years or has been convicted of custodial interference in the first or second degree). Although other jurisdictions allow more flexibility, their general approach still favors maintenance of the status quo. Section 2.15 (1) of the American Law Institute's (2002) recently approved *Principles of the Law of Family Dissolution* recommends that the court limit nonconsensual changes in the custody arrangements to cases in which it finds

on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated therein, that a substantial change has occurred in the circumstances of the child or of one or both parents and that a modification is necessary to the child's welfare. (p. 332)

Recommendations of the American Law Institute are often very influential with courts. For a comprehensive review of varying state rules on custody change, see the Reporter's Notes to Comment a of Section 2.15, which conclude that a clear majority of jurisdictions allow modification of custody only when there has been a substantial change in circumstances that establishes the modification is in the child's interests. This dominant approach is based on the plausible intuition that, other things being equal, changes in primary custody, or repeated petitions to change it, are not good for the child and ought to be discouraged in the absence of some reasonably compelling story. Applying such rules to our case would almost surely require rejecting any conditional change-of-custody order.

parent's relocation, without changing the physical custody order, if it finds that the prohibition is in the best interest of the child (Wis. Stat. Ann., 1998).

Certainly, if one focused exclusively, or even primarily, on the child's interests, simple orders granting or denying a custodial parent's request to relocate might seem plausible. It may be that courts have not normally entertained them because they had no need to: Conditional change-of-custody orders served the same purpose, and in fact usually worked as intended to deter the relocation. There is no question that at one time many courts employed them in situations in which they simply assumed, probably correctly, that no change in custody would in fact ever take place because the custodial parent would not move. Some courts continue to employ them, despite the recent legal trend otherwise.⁶ If one were persuaded that the interests of children were served by such orders, one might believe that the recent trend is ill advised and should be reversed. Once again, then, evidence on the impact of parental moves on children seems key to the important policy choices courts are currently making in this area.

Social Science Evidence and Relocation

Unfortunately, in a recent review of the social science literature undertaken for the legal community (Gindes, 1998), not a single empirical study could be found containing direct data on the effects of parental moves on the well-being of children of divorce. In its absence, courts appear to have relied instead on quite indirect—and quite controversial—social science evidence about the potential effects of relocation on children. Even more troubling, this controversial evidence appears to have played an important role in generating the recent shift in legal doctrine away from restrictions on moves by custodial parents.

Consider the decision of the California Supreme Court *In re the Marriage of Burgess* (1996), an early and influential precedent in this legal shift, as noted earlier. At one time California had placed the burden on the relocating parent to prove that her move was in the child's best interest, and taking into account the noncustodial parent's ability to exercise visitation was a "significant consideration" in assessing that interest (see *In re Carlson*, 1991; *Cooper v. Roe*, 1993). In *Burgess* the court reversed itself, holding that the parent with primary custody has a presumptive right to move with the child, which can be overcome only if the other parent shows that changing custody from the relocating to the objecting parent "is essential or expedient for the welfare of the child" (*In re the Marriage of Burgess*, 1996, p. 482) because of a detriment the child would otherwise suffer that arises from the relocation.

As Warshak (2000) noted, the *Burgess* decision "closely echoed" (p. 83) an *amica curiae* brief filed in the case by pioneering divorce researcher Dr. Judith Wallerstein (1995;

⁶ *Sullivan v. Sullivan* (1993; conditioning mother's custody on not moving, even after the court determined that best interests of child would not be served by change of custody to father).

this was later adapted into a journal article: Wallerstein & Tanke, 1996) arguing for a presumption in favor of relocation. In the absence of direct empirical evidence about the effects of parental moves on children of divorce, the brief attempted to infer the probable effects of relocation from the more general empirical literature on adjustment of children of divorce. However, Warshak (2000) claimed the brief contradicted "the broad consensus of professional opinion, based on a large body of evidence" (p. 85). He noted that the brief cites only 10 articles (7 from Wallerstein's own research group), whereas he identified a much larger pool of relevant articles that he claimed support a far different conclusion. He argued that "a comprehensive and critical reading of over 75 studies in the social science literature, including Wallerstein's earlier reports, generally supports a policy of encouraging *both* parents to remain in close proximity to their children" (Warshak, 2000, p. 84). He contended that Wallerstein has "shifted from her earlier position" (Warshak, 1999, p. 9) in the brief. He continued: "It is unclear what accounts for this shift, but the scientific literature does not justify it" (p. 9).

A very recent decision of the New Jersey Supreme Court, *Baures v. Lewis* (2001), again cites the social science literature rather extensively. It concluded that "most importantly, social science research links a positive outcome for children of divorce with the welfare of the primary custodian and the stability and happiness within that newly formed post-divorce household" and that recent "social science research has uniformly confirmed the simple principle that, in general, what is good for the custodial parent is good for the child" (*Baures v. Lewis*, 2001, p. 222). But a careful reading discloses that the social science articles cited in *Baures* are (with one minor exception, Tessman, 1978) confined to those cited in the Wallerstein and Tanke (1996) article. After reviewing them, the court observed that "as a result of all those factors, many courts have eased the burden on custodial parents in removal cases" (*Baures v. Lewis*, 2001, p. 224). Richards (1999), in reviewing court decisions nationally, termed Wallerstein's "a powerful and persuasive voice" in influencing court decisions and said her viewpoints are "credited with influencing [*Tropea* and *Burgess*, two influential state Supreme Court decisions] and reversing the national trend in relocation cases" (pp. 259–260).

What is the *direct* social science evidence concerning children's *moves*? A few studies exist reporting on the (generally deleterious) effects of parental relocation on *non*-divorced children (Humke & Schaeffer, 1995; Jordan, Lara, & McPartland, 1996; Levine, 1966; Stokols & Shumaker, 1982; Tucker, Marx, & Long, 1998). The most direct evidence to be found specifically with divorced children (Stolberg & Anker, 1983) showed that a large number of "environmental changes," one item of which was parental relocation, predicted poor outcomes with divorced children, more so than with nondivorced children. Unfortunately, the effect of parental relocation was not broken out and specifically analyzed.

Clearly, courts ought to have better data than was available to the *Burgess* and *Baures* tribunals on the question of

the impact of parental moves on the children of divorce. We present below new data that are far more direct than any previously in the literature.

Although evidence of short-term benefit or disruption to the child occasioned by the move would be useful and a greatly needed addition to the literature, more compelling still is evidence about more-enduring child outcomes. The short- and long-term impacts of a move on a child might not be the same. For example, moves might be initially disruptive for children but become positive or neutral in their impact longer term, once adjustments to the move have been made. In that case, sound policy might weigh the long-term effects more heavily than the move's transitional effects.

The current study provides some evidence of the long-term effects by examining the outcomes of young adults (college students) whose parents had divorced at some time during their childhood. For some, neither parent had moved very far from the intact family's home. We compared them, on various indices of current well-being, with the students with at least one parent who had moved more than an hour's drive away from the intact family's home. Among the indices we assessed are current measures of psychological and emotional adjustment, general life satisfaction, current health status, the relationship to and among the parents, and perceptions about having lived "a hard life." We also chose to assess the extent of financial help the students were currently receiving from their parents. Financial help is relatively objective, is of obvious interest to courts and policymakers, and could plausibly vary with moveaway status. Although a college student sample might introduce certain biases as compared with a more general young adult sample, as we explain below, these biases do not seem to be appreciable.

Method

Respondents and Procedure

Surveys were administered at a large Southwestern state university to nearly all students who were enrolled in introductory psychology classes in fall semester, 2001. All students present in each of the 15 sections on the administration day (in the second week of classes) were given a comprehensive research questionnaire sponsored by the Psychology Department, of which only a subset of questions relate to the current study. The 2,067 students responding were instructed to answer the items discussed below only if their parents were divorced and to skip these questions if their parents were not divorced. Students signed consent forms and were free to discontinue participation if they so chose, but few if any students did so. The 602 students who completed these questions and whose parents were thus divorced represented 29% of the total. Although it is certainly possible, if not probable, that young adult children of divorce who end up going to college at this state university are a biased subset of those whose parents divorce, it should be noted that the above *percentage* appears very representative. For example, Bumpass and Sweet (1989) found that almost the identical percentage, 31%, of children whose parents are married are expected to experience parental divorce (see also comparable findings in the National Center for Health Statistics, 1990, Table 1–31). Thus, there is no clear evidence that the sample is self-selected and nonrepresentative of the general population of

young adults whose parents earlier divorced. Of the total, 65% indicated they were paying in-state tuition, which runs \$2,488 per year, and 35% indicated they were paying out-of-state tuition, which is \$10,354. Total annual college costs are estimated on the official university Web site (<http://www.asu.edu/admissions/whyattendasu/costs.html>) to be \$11,794 for in-state and \$19,660 for out-of-state students, respectively. It should be noted that the state is among those that do not allow their courts to require either parent to pay for the cost of attending college. Thus, for students whose parents were divorced in-state, any support either parent provides for college expenses is voluntary.

Measures

The primary predictor variable to be analyzed was students' response to the question regarding the moveaway status of their parents after the divorce. Specifically, respondents were asked, "Which of the following best describes whether either of your parents ever moved more than an hour's drive away from what used to be the family home?" Potential answer alternatives were that (1) neither ever moved that far away, (2) the mother moved and the respondent accompanied her, (3) the mother moved but the respondent remained with the father, (4) the father moved and the respondent accompanied him, or (5) the father moved but the respondent remained with the mother. To accommodate the possibility of both parents moving, each of the last four responses concerned which parent moved first; for example, the exact wording of alternative (5) was "Dad moved that far away at least once (but mom either never did or mom moved that far away *after* dad did); I stayed with mom."

A series of criterion variables were measured, some as multi-item scales, others as one-item measures. Parental contribution to college expenses was assessed by combining an item for each parent that asked, "How much money is your [mother's/father's] household (including [her/his] new [husband/wife] or live-in partner or [boy/girl]friend, if any) contributing to your total college expenses (tuition, books, room and board, fees, etc.) *per year*?" The potential responses included 0; 1–8, which represented \$1,000 increments (e.g., 5 = \$4,001–\$5,000), and 9, which represented "more than \$8,000." The 1–8 scores were recoded to the midpoint of the interval, and the 9 score (endorsed by 15% for mother's contribution and 17% for father's) was recoded to \$9,000. Note the result thus plausibly understates total contribution.

We also included measures of hostility and general physical health. Parental divorce has been shown to be associated with lower quality of parent–child relationships (e.g., Amato & Booth, 1996) and marital conflict (Amato, 1993), and lower levels of perceived parental caring and exposure to parental conflict have been associated with the development of trait hostility (e.g., Luecken, 2000a; Matthews, Woodall, Kenyon, & Jacob, 1996). A large literature exists linking the psychosocial characteristic of hostility with heightened risk for cardiovascular and other diseases and poorer prognosis following cardiac incidents (e.g., Barefoot, Larsen, von der Lieth, & Schroll, 1995; Williams, 1997). Increased sympathetic reactivity to stress has been associated with hostility and may represent the biological mechanism by which hostility increases risk of coronary heart disease (e.g., Davis, Matthews, & McGrath, 2000; Engebretson, & Matthews, 1992; Kamarck et al., 1997). In general, parental divorce is stressful for many children (e.g., Wolchik, Sandler, Braver, & Fogas, 1985), and evidence is mounting that stressful early childhood experiences, especially with caregivers, can have lasting effects on physical health (e.g., DeBellis et al., 1999) and on physiological stress reactivity and

vulnerability to stress-related illness (e.g., Gunnar, 1998; Heim et al., 2000; Luecken, 2000b). Luecken and Fabricius (in press) found that young adult children of divorce who felt very negative about their parents' divorce showed higher hostility and more illness reports than those who felt more positive about the divorce. Goede and Spruijt (1996) found poorer health in young adult females from divorced families relative to intact families, but not in males. We selected nine items from the Cook–Medley Hostility Scale (Cook & Medley, 1957) to assess trait hostility, rated from 0 (*strongly disagree*) to 3 (*strongly agree*). These items correlated best (.71, $p < .01$) with the whole score in a stepwise regression. A typical item was "I have at times had to be rough with people who were rude or annoying." The standardized coefficient alpha was .64. We used a one-item measure of general health, "Would you say that in general your health is . . ." with responses of 0 = *poor*, 1 = *fair*, 2 = *good*, 3 = *very good*, 4 = *excellent*. Perceived general global health, as measured by single items such as this one, has been shown to be related to physical health and premature mortality (e.g., Idler & Benyamini, 1997).

We used a one-item construct of general life satisfaction, patterned after the "Life 3" measure (Andrews & Withey, 1976), which has been found to be highly valid and predictive of other measures of global life satisfaction. The item read, "Generally speaking, how satisfied are you with your life?," with responses of 0 (*extremely dissatisfied*) to 8 (*extremely satisfied*).

A vastly shortened version of the *Personal and Emotional Adjustment*-subscales of the Student Adaptation to College Questionnaire (SACQ) (Baker & Siryk, 1989) scale was included to assess current adjustment levels. Specifically, the four items inquired about depressive symptoms and thought disturbances. These items, with a 0 (*applies to me very closely*) to 8 (*doesn't apply to me at all*) response format, were chosen because in preliminary analyses with a similar sample (Coatsworth, 2000) they correlated best with the whole subscale score in a stepwise regression. In the current data set, the coefficient alpha was adequate, .69. A final item from the same subscale of the SACQ, which inquired about worry over college expenses, *lowered* the alpha if included; accordingly, it was analyzed instead as a single-item construct.

A vastly shortened version of the Painful Feeling About Divorce Scale (Laumann-Billings & Emery, 2000) was included to assess inner turmoil and distress from divorce. Of the 38 original items, we asked 4, 2 from the Seeing Life Through the Filter of Divorce subscale ("I probably would be a different person if my parents had not gotten divorced" and "My parents' divorce still causes struggles for me") and 2 from the Loss and Abandonment subscale ("I had a harder childhood than most people" and "My childhood was cut short"). These items were asked with a 0 (*strongly disagree*) to 4 (*strongly agree*) response format used in the original. The coefficient alpha was marginal, .59.

Whether the respondent regarded his or her mother and/or father as a positive supporter and role model was explored with two 0 (*not at all*) to 8 (*extremely*) items each, devised specially for this purpose. They asked, "To what extent is your [mother/father] really there for you when you need [her/him] to be?" and "To what extent do you feel your [mother/father] is a good role model for you?" For mothers, the "good supporter" scale alpha was .84; for fathers, it was .93. When they were combined (added) into the "two good role models" scale, the alpha dropped to a marginal .56. As the latter was considered an effects rarer than a causal indicator construct (Bollen & Lennox, 1991), the low alpha was not deemed a cause for concern.

As single-item constructs, we asked, "I feel that the number of

very close friends I have is the right number for me," "The kind of women (men) I am attracted to are unfortunately not very good for me," and "I feel I have a problem with drinking too much or using substances too much." In preliminary analyses with a similar sample (Coatsworth, 2000), the latter were each found to be the best single-item correlate with the full scales of the Platonic Relationship Choices, Romantic Relationships Choices, and Substance Abuse subscales, respectively. The latter were all answered on a 0 (*applies to me very closely*) to 8 (*doesn't apply to me at all*) response format. In addition, we included the single item "How well do your parents get along?" on a 0 (*not at all well*) to 8 (*extremely well*) format, designed especially for this investigation.

Results

The results are presented in Table 1. In only 39% of cases did neither parent move. Of the remainder, relocating with the mother and the father relocating while the child remained with the mother were almost equally likely, constituting about 25% of the overall divorced sample each. The remaining two possibilities, remaining with the father while the mother relocated or relocating with the father, were comparatively rare, constituting only about 8% and 4% of cases, respectively.

Each criterion variable was analyzed with a one-way analysis of variance (ANOVA) (using variable-wise deletion) considering the five moveaway status situations. In addition to the overall or omnibus ANOVA *F* test (reported in column a), four specific planned contrasts of special

interest because of their policy implications and prevalence were conducted for each criterion variable. The first (in column b) compared the group for which neither parent moved with the average of all of the moveaway groups. Next, column c reports the results of a contrast comparing children's outcomes when they relocated with mother with when all family members remained near the original family home. This contrast assesses the outcomes in the circumstances courts are most often asked to decide. Column d reports analogous results when it was the father who moved and left mother and child behind. Finally, column e compares child outcomes for the most common relocation situations: when mother moves, taking the child with her, and when father moves, and mother and child remain behind. The final two contrasts address the question of who is the moving parent in the most common situation where the child and the mother remain together.

A number of criterion variables show no differences whatever, and these are mentioned first: Platonic relationship choices, romantic relationship choices, and current substance abuse problems appeared unrelated to moveaway status. The remaining 11 criterion variables showed at least some significant differences between moveaway status groups. First, children enjoyed significantly more financial support for their college expenses when there were no moves than in other conditions. They received over \$1,800 per year more in that circumstance than when they relocated

Table 1
Means for Outcome Variable, for Each of the Five Move-away Status Groups, and Significance Test Values

Variable	Move-away status group					(a) Omnibus test	(b) (1) vs. (2-5)	(c) (1) vs. (2)	(d) (1) vs. (5)	(e) (2) vs. (5)
	(1) Neither moved	(2) I moved with mom	(3) I remained with dad	(4) I moved with dad	(5) I remained with mom					
<i>N</i>	232	148	46	22	154					
%	39	25	8	4	26					
Total contribution to college (\$)	6,154	4,378	4,987	3,700	5,197	.01	.001	.001	.05	<i>ns</i>
Personal/emotional adjustment	20.57	20.23	19.26	17.32	21.16	<i>ns</i>	.06	<i>ns</i>	<i>ns</i>	<i>ns</i>
Hostility ^a	11.75	11.42	13.59	13.68	12.11	.01	.05	<i>ns</i>	<i>ns</i>	.05
Inner turmoil and distress from divorce	1.66	1.96	2.23	2.19	1.98	.001	.001	.01	.001	<i>ns</i>
Mom good supporter	11.99	12.33	8.65	7.14	12.54	.001	.001	<i>ns</i>	<i>ns</i>	<i>ns</i>
Dad good supporter	9.94	6.66	10.89	9.68	6.03	.001	.001	.001	.001	<i>ns</i>
Two good role models	21.90	19.08	19.77	16.82	18.56	.001	.001	.001	.001	<i>ns</i>
Parents get along	3.97	2.74	6.67	2.90	2.83	.001	.001	.001	.001	<i>ns</i>
Platonic relationship choices	5.50	5.52	5.24	5.05	5.35	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>
Romantic relationship choices	2.91	2.91	3.20	3.05	3.13	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>
Substance abuse	6.22	6.41	5.55	6.09	6.21	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>	<i>ns</i>
Worry about college expenses	4.64	4.18	4.30	3.05	3.88	.05	.01	<i>ns</i>	.01	<i>ns</i>
Global health ^b	2.80	2.62	2.66	2.48	2.76	<i>ns</i>	.05	.05	<i>ns</i>	<i>ns</i>
General life satisfaction	5.80	5.78	5.47	5.05	5.81	<i>ns</i>	.05	<i>ns</i>	<i>ns</i>	<i>ns</i>

^a Also significantly interacted with gender: Girls were more hostile and boys were less hostile when dad moved than when both parents remained. ^b Also significantly interacted with gender: Girls were less healthy than boys in (2) than in (1).

with their mother ($p < .001^7$), and about \$1,000 more in that condition than when it was their father who moved ($p < .05$). Additional analyses (not shown) show that father's share of this contribution is 58%, 35%, 72%, 69%, and 41%, respectively, in the five groups. It appears, thus, that fathers' voluntary support for college dropped off very noticeably when the child relocated with mother and that this loss was not made up for by increases mother made. Fathers' dropoff was not as dramatic when it was the father who moved, though this difference only approached significance ($p < .07$).⁸

Worry about college expenses showed similar but distinguishable effects (lower scores imply more worry). These young people worried more when it was their father who moved, and only the contrast of this from the neither-moved group was conventionally significant; the contrast of the mother-moved group from the neither-moved group approached significance ($p < .07$).

In terms of their current reports of their personal and emotional adjustment, the groups appeared about equal except that in the two infrequent groups, where the youngster moved with or remained with the father, the respondent was noticeably less well adjusted. The same is true for general life satisfaction. Although a similar conclusion pertains to students' reported hostility levels, there was also a significant larger degree of hostility evident in students whose father relocated than in those who relocated with their mother. As the table note implies, this variable also had a significant interaction with child's gender: Girls were more hostile whereas boys were less hostile when their father moved than when both parents remained.

Results from the Inner Turmoil and Distress From Divorce Scale show many effects of moveaway status. Although the neither-moved group was lowest and the two infrequent statuses were highest, both moving away with mother and remaining with mother while father moved were significantly higher in distress than both parents remaining.

Students had better total rapport with their parents and saw both as role models significantly more when there had been no moves. In the three most common moveaway groups, rapport with mother stayed relatively constant; the above effect was instead due to dramatic dropoffs in their relationship with their father when either he moved or the respondent moved with their mother.

How well the parents got along showed a somewhat unusual pattern: It was much higher among the 8% who remained with their father while the mother moved. Among the remaining statuses, the parents' reported relationship was significantly better when neither parent moved than in any of the other moveaway situations.

Moreover, the student's reported level of general global health significantly differed by moveaway status. Global health was significantly lower when the student moved with his or her mother than when neither moved. It is also interesting to note that this effect significantly interacted with gender: It was primarily the female students who showed this diminution in health when they relocated away from their father with their mother.

Finally, we found that the student's report of the *legal*

custody arrangement predicted moveaway status. Students were asked to report their legal custody arrangements with the following options: *joint legal custody (both parents shared legal responsibility for making decisions for you)*, *mother had sole legal custody (mother had legal responsibility for making decisions for you)*, *father had sole legal custody (father had legal responsibility for making decisions for you)*, *other*, and *don't know*. In the 40% of families with joint legal custody, only 48% had any moves. This rose to 75% for the 38% of families with sole maternal legal custody and 69% for the 5% of families with sole paternal legal custody.

Discussion

Continuing policy debates over the best rules for deciding relocation disputes have been hampered by a lack of direct data on the long-term impact of parental moves on children of divorce. The present study begins to close this information gap. It provides a window into the relative outcomes for children whose parents move more than one hour's drive away from one another after their divorce. It does so by comparing families in which neither parent ever moved away with families, in which either the mother or the father moved *with the child*, as well as to families in which either parent moved without the child (who remained with the nonmoving parent). We evaluated the young adult child's outcomes on 14 variables representing financial and emotional support from parents, personal distress and adjustment, social relations, substance abuse, and physical health. These assessments represented somewhat long-term outcomes, in that our source of data was college students' reports about themselves and their divorced families. We acknowledge, of course, that findings from such a sample may misrepresent the long-term effect of relocation in a more general sample of divorced families, because college students from divorced families are probably a biased (i.e., more successful) subset of those from divorced families in general (although the rate of divorce among students' families was not substantially different from what has been estimated for the general population). It may well be, for

⁷ All contrast p values are one-tailed, because a direction was predicted.

⁸ We explored parents' financial support for college in additional analyses of covariance (not shown) that controlled for parents' standard of living and for the type of tuition (in-state, out-of-state) that students reported paying. We measured standard of living by asking students to report on the current financial state of each of their parent's households. The details of how we asked this are given in Fabricius, Braver, and Deneau (2003). The only substantive differences were that the contrast between Groups 1 and 5 no longer reached significance and the contrast between Groups 2 and 5 approached significance ($p = .055$). Thus, when equated for both of their parents' ability to pay, students received relatively more financial help for college when their fathers had been the ones to move away than when their mothers had moved and taken them away from their fathers.

example, that a college sample is likely to include those who were least negatively affected by relocation.⁹

We find a preponderance of negative effects associated with parental moves by mother or father, with or without the child, as compared with divorced families in which neither parent moved away. On 11 of the 14 variables, there were significant (or, in one case, near-significant, $p = .06$) differences. As compared with divorced families in which neither parent moved, students from families in which one parent moved received less financial support from their parents (even after correcting for differences in the current financial conditions of the groups), worried more about that support, felt more hostility in their interpersonal relations, suffered more distress related to their parents' divorce, perceived their parents less favorably as sources of emotional support and as role models, believed the quality of their parents' relations with each other to be worse, and rated themselves less favorably on their general physical health, their general life satisfaction, and their personal and emotional adjustment ($p = .06$). In some cases, the differences, although significant, are relatively modest. But in other cases they seem substantial. The students whose divorced parents had moved received, on average, considerably less financial help from their parents for their college expenses. They also rated the distant parent (mother or father) considerably less favorably as a source of emotional support, without regard to whether the distance arose from their move away from that parent or from that parent's move away from them.

In the great majority of these relocating families (82%), the move separated the child from the father, because either the mother moved away with the child or the father moved away alone.¹⁰ Table 1 shows that the effects are remarkably similar in these two cases. The only exceptions are worry about college expenses (where greater deficits are associated with the father moving), hostility (where greater deficits are associated with the father moving for girls), and general global health (where greater deficits are associated with the mother moving for girls). The less common cases (18%) in which the child and mother were separated, whether because the child moved with the father or the mother moved alone, similarly appear to have deficits compared with the nonmoving group.

We found that children were much less likely to experience either of their parents moving if they reported their parents had joint legal custody as opposed to sole maternal legal custody. The rates were 48% versus 75%. (However, caution is needed here because the custody arrangement we used is the student's report, rather than examination of official records. There is thus the distinct possibility that these reports inaccurately represent the true legal custody arrangement in the divorce decree. Indeed, it is plausible that the accuracy of the report is confounded with move-away status; for example, that those who move with their mother wrongly infer that their mother must have had sole custody.) It is noteworthy that a recent meta-analysis (Bauserman, 2002) of the published and unpublished research on custody arrangements concluded that children in joint custody arrangements are better adjusted than those in

sole maternal custody on a variety of measures, including general adjustment, family relationships, self-esteem, emotional and behavioral adjustment, and divorce-specific adjustment. This suggests that future research should be aimed at determining whether parental relocation in sole maternal custody families contributes to children's greater maladjustment in those families.

The data also suggest potentially important physical health implications. The children of divorced parents who moved showed less favorable scores on several variables (hostility, parents getting along, inner turmoil and distress, parental support, and current global health) that may suggest future health problems for them. Higher hostility in college students has been found to predict greater coronary risk factors 21–23 years later (Siegler, Peterson, Barefoot, & Williams, 1992), and high levels of family conflict have been associated with poorer physical health in adolescents (Mechanic & Hansell, 1989). Other research suggests that childhood stress may have long-lasting influences on the development of physiological stress response systems important in long-term disease susceptibility (DiPietro, 2000). Poor quality parent–child relationships have been associated with higher blood pressure in undergraduate students (Luecken, 1998) and physical health status in middle-age adults (Russek, Schwartz, Bell, & Baldwin, 1998). Finally, self-reported global health has been found to be a remarkably consistent predictor of premature mortality, even when controlling for numerous specific health indicators known to predict mortality (Idler & Benyamini, 1997). Combined, it is reasonable to project that even greater and more serious deficits might be found in children of relocating parents the longer the term of the follow-up.

Limitations and Interpretation

Although these data are far more on point in evaluating relocation policies than any previously considered by courts, they are of course correlational, not causal. So whereas the data tell us that a variety of poor outcomes are associated with postdivorce parental moves, they cannot establish with anything near certainty that the moves are a contributing cause. It is certainly possible, if not likely, for example, that various preexisting (or self-selection) factors are responsible *both* for the parents' moving and for the child's diminished outcomes. Preexisting factors that could plausibly play this role include a low level of functioning for one or both parents, the inability of one or both parents to put the child's needs ahead of his or her own, and high

⁹ We thank an anonymous reviewer for pointing this out.

¹⁰ When children moved with the mother, students reported she was either the sole legal custodian or a joint legal custodian 87% of the time. When they moved with the father, he was either sole or joint custodian 67% of the time. When the father moved without the child, he was a custodian only 31% of the time, and when the mother moved without the child, she was a custodian 57% of the time. Students reported "some other" legal custodial arrangement or that they didn't know what their legal custodial arrangement was 12%, 24%, 18%, and 17% of the time, respectively.

levels of premove conflict between the parents (indeed, our finding that nonmoving parents are reported by their children to have significantly better relationships with each other is plausibly interpreted with such a causal sequence). Because research designs using random assignment to probe the causal connections are precluded by the nature of the subject matter, causation can be addressed only with longitudinal (or perhaps retrospective) data that control or equate for such potential selection factors. Collecting such longitudinal or retrospective data should be high on the research agenda for this topic.

In the absence of such longitudinal data, one must consider several alternative explanations for our results: (a) that moving per se tends to be harmful for children, (b) that families with characteristics that are harmful for children also tend to move, or (c) that both (a) and (b) are true. It is also logically possible (d) that parental moves are actually beneficial for children but tend to be undertaken primarily by families with characteristics that are harmful for children, so that while the children of divorced parents who move are, on balance, worse off than the children of divorced parents who do not, their disadvantage is smaller than it might otherwise have been had they not moved. Note that the data do appear to exclude what might otherwise seem an additional alternative, that divorced parents who are inclined to move away from one another are not, on average, more risky for their children than other divorced families, and that the parental move improves the children's situation. Had this possibility been valid, the moving groups would have had superior outcomes rather than the inferior ones found. This final possibility is excluded whether one focuses on parental moves in general or looks separately at moves by custodial parents or noncustodial parents.

That exclusion offers some help to policymakers in this area. General data on average effects cannot decide individual cases, of course. But the data can help the rulemaker, judicial or legislative, because it suggests that courts would be mistaken to assume, in the absence of contrary evidence, that children benefit from moving with their custodial parent to a new location that is distant from their other parent *whenever* the custodial parent wishes to make the move. Putting the point in legal terminology, the burden of persuasion in relocation disputes, on the question of whether the move is in the child's interests, should probably lie with the custodial parent who seeks to relocate rather than with the objecting parent. Decisions like *Baures v. Lewis* (2001) and *In re the Marriage of Burgess* (1996) reach the opposite conclusion because they appear to accept the proposition that children are aided by any move that their custodial parent believes desirable. The current data suggest, however, that this proposition can be true only if alternative (d) is the explanation for our data—that parental moves arise disproportionately among divorced families that are so dysfunctional that their children remain worse off than children of other divorced families, even after reaping the move's presumed benefits. The greater the benefit one presumes is conferred by the average move, the greater the family dysfunction one must presume on average precedes it, in order to explain how the move's purported benefit is concealed in

the adverse outcomes that we found. We are not aware of evidence that would support the presumption that moving families are disproportionately so dysfunctional, although we are currently attempting to collect further data on this issue. For now, we are content to treat alternative (d) as less likely than the other explanations of our data.

Alternative (c) appears to us the most likely explanation of the data. In any event, it seems more likely than alternative (b) (that selection accounts for *all* of the poorer outcomes experienced by children whose divorced parents move), because of the repeated associations found, in a variety of contexts, between the amount of time spent with the noncustodial parent and the quality of the parent–adult child relationship. For example, Lye, Klepinger, Hyle, and Nelson (1995) reported that “the longer the adult child lived apart from the parent, the weaker are relations with the noncustodial parents” (p. 261). And it has been found that the less children saw their fathers while growing up, the less fathers contributed to their college expenses (Fabricius, Braver, & Deneau, 2003) and the less close were the fathers' relationships with their adult children (Deneau, 1999; Fabricius, in press; Luecken & Fabricius, in press). Finally, students report that both they and their divorced fathers generally wanted more time together (Fabricius & Hall, 2000). The overall pattern thus seems consistent with a causal model in which custodial parent moves, even those made for good reasons, thwart the long-term relationship with the parent left behind, which in turn will in some respects impair the child.

Ultimately, however, our data cannot establish with certainty that moves cause children substantial harm. They do allow us to say, however, that there is no empirical basis on which to justify a legal presumption that a move by a custodial parent to a destination she plausibly believes will improve her life will necessarily confer benefits on the children she takes with her.

As noted earlier, some courts (e.g., *Burgess, Baures*), relying on Wallerstein and Tanke's (1996) summary of the social science literature to the effect that “a close, sensitive relationship with the . . . custodial parent” had “centrality” (p. 311) and that the relationship with the noncustodial parent could therefore be discounted, have recently arrived at the opposite conclusion: that “whatever is good for the custodial parent is good for the child” (*Baures v. Lewis*, 2001, p. 222). However, Warshak (2000) has argued that Wallerstein miscast the voluminous social science literature, and certainly the matter appears more nuanced than such judicial language suggests. For example, although Amato and Gilbreth (1999) found, on the basis of their meta-analysis of 63 studies of divorcing children, no significant association between the frequency of father–child contact and child outcomes, they also found evidence that better outcomes for children, in both academic achievement and frequency of behavioral problems, are associated with authoritative parenting by noncustodial fathers. Moreover, they found that more recent studies have found more benefits of noncustodial parent contact than older studies, suggesting that “noncustodial fathers might be enacting the parent role more successfully now than in the past, with

beneficial consequences for children" (Amato, 2000, p. 1280). On the other hand, it also appears that noncustodial fathers, at least in past decades, did not usually engage in authoritative parenting, because that kind of relationship is more difficult to maintain for a parent who does not live with the child (Marsiglio, Amato, Day, & Lamb, 2000); nonetheless, the child's relocation to a considerable distance from the noncustodial parent may make such a relationship not merely more difficult but essentially impossible. More recently, Kelly and Lamb (2003) concluded that "there is substantial evidence that children are more likely to attain their psychological potential when they are able to develop and maintain meaningful relationships with both of their parents, whether or not the two parents live together" (p. 196).

Ironically, cases like *Baures v. Lewis* (2001) are also inconsistent with Wallerstein's own conclusions, in publications that precede her brief in *In re the Marriage of Burgess* (1996), as Warshak has shown. For example, in 1980 Wallerstein stated that

our findings regarding the centrality of both parents to the psychological health of children and adolescents alike leads [sic] us to hold that, where possible, divorcing parents should be encouraged and helped to shape postdivorce arrangements which permit and foster continuity in the children's relations with both parents. (Wallerstein & Kelly, 1980, p. 311).

In sum, recent judicial conclusions concerning the impact of the noncustodial father's relationship with the child on the child's development were not entirely consistent with the psychological evidence, nor even with the prelitigation conclusions of the researcher on whose description of that evidence they relied. The current study adds to that discrepancy because its comparison of children of divorced families that did and did not move provides no evidence that the child is benefited by moving away with the custodial parent.

Implications for Application and Public Policy

We must note that no data can free the judicial system from the difficult problem of finding a workable and acceptable remedy for the parent who reasonably objects to the other parent's move. The problem arises from the law's understandable resistance to orders that directly restrict a parent's right to move. A court may change the custodial arrangement because of the move, effectively controlling the child's mobility by moving primary custody to the parent who does not move, but it will not bar the initial custodial parent from moving by herself. For the same reason, it will not bar a noncustodial parent from moving, even if the move effectively precludes that parent from exercising his visitation rights, and even if it were persuaded that the child suffers detriment from that parent's move. In extreme cases, of course, the law can terminate the parental status of a reluctant parent. The man who, for example, moves far from his child, never sees or acknowledges her, and does not contribute to her support may have his parental rights terminated, freeing the child for adoption by the mother's new husband. But the law has no effective method

for requiring a man (or a woman) to nurture and love a child.

This reality means that the primary tool available to courts that believe a proposed move is not in the child's interests is the strategic use of a conditional change-of-custody order. Such orders have disadvantages. They are of no value in restraining moves by noncustodial parents, which appear from our data generally as harmful to the child as custodial parent moves, and (as explained in the introduction) their use may seem doctrinally inconsistent with the prevailing view that nonconsensual changes in primary custody are disfavored, and perhaps ordered only when needed to protect the child from some demonstrable detriment in the existing custodial arrangement. For these reasons, recent legal trends discourage their use, as recounted in the introduction.

Yet perhaps our data suggest a reconsideration of this trend. From the perspective of the child's interests, there may be real value in discouraging moves by custodial parents, at least in cases in which the child enjoys a good relationship with the other parent and the move is not prompted by the need to otherwise remove the child from a detrimental environment. And other recent data (Braver, Cookston, & Cohen, 2002) suggest that these conditional orders would in fact prevent the move in up to two thirds of the cases.

The dilemma resulting from the modern trend is well exemplified in *Marriage of Bryant* (2001), a California appeals court case applying *In re the Marriage of Burgess* (1996). At their divorce, the mother, who had always been the children's primary parent, sought primary custody and announced her intention to move with them from Santa Barbara to New Mexico, where her family lived. Since the parents' separation, the father had seen the children, 6 and 9 years of age, three or four times weekly, as well as talking with them daily on the phone. All agreed that his relationship with the children was important to them as well as to him, but all also agreed that the mother was a good parent with a close emotional bond with her children. Father earned a good income and had the financial capacity to fly regularly to New Mexico to visit the children, but he could not move there without considerable financial sacrifice. It seemed clear that the episodic paternal contact that would be possible if the children moved to New Mexico would be a poor substitute for the daily involvement in his children's life that the father maintained in Santa Barbara. Mother was the beneficiary of a trust fund and had no financial pressure requiring her move, which the court's appointed expert described as motivated by her desire to "escape a failed marriage." Her move to New Mexico was not badly intentioned, although a bad parenting decision according to both the court's expert and the parties' therapist. The trial judge observed:

There are two realistically possible scenarios in this case. The court could conditionally grant physical custody of the children to the father (with liberal visitation to the mother) if the mother moves away, with joint physical custody if the mother remains in Santa Barbara. In all likelihood, the court could force the joint-physical-custody scenario, since it is unlikely

that mother will move away if it means she thereby becomes the non-custodial parent. This would be the optimum scenario for the best interests of the children, since it would preserve their lifelong social structure in the Santa Barbara area with very successful schooling, church, sports, paternal extended family and maternal aunt and would maximize the children's frequent and continuing contact with both parents. (*Marriage of Bryant*, 2001, p. 797)

But the trial judge nonetheless concluded he was compelled by *Burgess* to deny the father's petition for the conditional change of custody order, and "select what is next best in the children's interest"—maintaining primary custody with the mother in New Mexico. The intermediate court of appeals, also bound by *Burgess*, agreed and affirmed the trial judge:

Having found that [mother] was not acting in bad faith and that it is in the best interests of the children for custody to be with [her], the trial court was bound to rule as it did. We agree with the dissent that *Burgess* is disquieting because in cases such as this one it leaves the children with the second best solution. (*Marriage of Bryant*, 2001, p. 797)

Clearly, no court should issue a conditional change-of-custody order if it believes that any custodial change would yield important disadvantages for the child. But on the other hand, it may also be poor policy to insist that such orders be denied unless the noncustodial parent shows that the current custodial parent's home has some detrimental impact on the child, as is often required for ordinary petitions to change a child's primary custody. Certainly, if further studies were to support the causal inference—were to show that moves by custodial parents have a substantial harmful causal impact on their children—then the child's separate interests would seem to require this reconsideration.

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Social Science and Children's Best Interests in Relocation Cases: *Burgess* Revisited

RICHARD A. WARSHAK, Ph.D.*

I. Introduction

Disputes that arise from the request of one parent to move children to a distant location away from the other parent present some of the most complex, controversial, and heart-wrenching issues in family law. Divorce alters the rhythms of each parent's contact with the children. Living in separate cities, though, transforms the relationships in ways that neither parent had previously envisioned.

With an increase in relocation litigation, courts and litigants have increasingly called upon experts to gather evidence and testify on issues related to the best interests of the children. The highly publicized decision in *In re Marriage of Burgess*¹ echoed closely the opinions expressed in the *amica curiae* brief filed by Judith Wallerstein.² Citing ten social science articles in her table of authorities, seven of which emanate from her own research group, Wallerstein argued for a presumption in favor of relocation.³ In contrast, I believe that a compre-

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1. *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996).

2. Judith S. Wallerstein, *Amica Curiae Brief of Dr. Judith S. Wallerstein, Ph.D.*, filed in Cause No. S046116, *In re Marriage of Burgess*, Supreme Court of the State of California, Dec. 7, 1995 [hereinafter *Burgess Amica Curiae Brief*]. See also Judith S. Wallerstein & Tony I. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L. Q. 305 (1996).

3. Of these seven articles, one is solely authored by Wallerstein, five co-authored, and one is authored by her colleagues.

hensive and critical reading of over seventy-five studies in the social science literature, including Wallerstein's earlier reports, generally supports a policy of encouraging both parents to remain in close proximity to their children.

The literature also reveals, however, that the impact of relocation on children is dependent on several factors. Thus, it is unlikely that any specific test or standard can do justice to a decision as complex as relocation. Instead of forcing every family into the same mold, we can serve children's best interests by tailoring relocation decisions to fit the circumstances and needs of each individual family as determined by all the available evidence.

II. Relevance and Utility of Social Science Data

Though each case is unique, several different lines of psychological empirical research may assist the parties and the court in predicting the likely impact of relocation on children. These include studies on the influence of mothers and fathers on children's psychological development; the effect of parental absence; the impact of divorce; the effects of father custody and joint custody; the effects of remarriage; and the impact of relocation on children in intact and divorced families.

Research may be used in a *Daubert*⁴ hearing to determine whether an expert has evaluated the relevant factors and whether the expert's testimony is scientifically valid or reflects personal bias. If an expert relies on a selective account of the literature, or presents a skewed interpretation of research results, another expert with a comprehensive knowledge of the relevant literature can offer opposing testimony and assist in preparing cross-examination.

A. *Wallerstein's Amica Curiae Brief in Burgess*

While noting that a key factor in relocation cases is "a child's need for stability and continuity in established patterns of care and emotional bonds," Wallerstein then makes a subtle shift from a concern about continuity of emotional *bonds*, plural, to continuity of the bond only between mother and child. She offers two justifications for this position: (1) "All our work shows the centrality of the well-functioning custodial parent-child relationship as the protective factor during the post-divorce years."⁵ (2) "Frequent and continuing contact between father and child is not a significant factor in the child's psychological

4. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

5. *Burgess Amica Curiae Brief*, *supra* note 2, at 13.

development [but this] does not diminish the important role of the father or of the father-child relationship in the child's growing up years."⁶

Wallerstein repeatedly uses the phrase "family unit" to describe the custodial mother's home which seems to imply that, after divorce, the father is no longer part of the child's family unit. Bruch and Bowermaster, who also filed an *amicus curiae* in *Burgess*, took the same position: "An initial custody decision between parents is, of course, handled with the best interests standard. But once made, whether consensually or by court order, a new family unit results that deserves protection for many of the same reasons that parents are protected from strangers in other contexts."⁷ Note that, for the purposes of relocation litigation, the authors equate the divorced father with a stranger to the child's family. Ahrons, presenting a contrasting viewpoint based on her research, conceptualizes the child's postdivorce family unit as binuclear, involving two households.⁸

The *Burgess* brief ignores the broad consensus of professional opinion, based on a large body of evidence, that children normally develop close attachments to both parents, and that they do best when they have the opportunity to establish and maintain such attachments.⁹ Others, including Wallerstein's former collaborator, have criticized the primary parent presumption as a poor foundation for custody decisions.¹⁰ In earlier research, Wallerstein herself recognized that the child's need for continuity of emotional bonds means the need for continuity of relations with *both* parents: "Our findings regarding *the centrality of both parents* to the psychological health of children and adolescents alike leads us to hold that, where possible, divorcing parents should be encouraged and helped to shape postdivorce arrangements which permit and *foster continuity in the children's relations with both parents.*"¹¹

6. *Id.* at 1.

7. Carol S. Bruch & Janet M. Bowermaster, *The Relocation of Children and Custodial Parents: Public Policy, Past and Present*, 30 *FAM. L. Q.* 245, 265 (1996).

8. Constance Ahrons, *Redefining the Divorced Family: A Conceptual Framework*, 25 *SOC. WORK* 437 (1981).

9. For reviews of this literature, see RICHARD A. WARSHAK, *THE CUSTODY REVOLUTION* (1992); HENRY B. BILLER, *FATHERS AND FAMILIES: PATERNAL FACTORS IN CHILD DEVELOPMENT* (1993); *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* (Michel E. Lamb ed., 1997); ROSS D. PARKE, *FATHERS* (1981).

10. Joan B. Kelly, *The Determination of Child Custody*, in 4 *THE FUTURE OF CHILDREN* 12, 130-131 (1994); Ross A. Thompson, *The Role of the Father After Divorce*, in 4 *THE FUTURE OF CHILDREN* 210, 217-19 (1994); Richard A. Warshak, *Gender Bias in Child Custody Decisions*, 34 *FAM. & CONCIL. CTS. REV.* 396, 403-06 (1996); Richard A. Warshak, *The Primary Parent Presumption*, in 101 + *PRACTICAL SOLUTIONS FOR THE FAMILY LAWYER* 101 (G. Hetman ed., ABA 1996).

11. JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP* 149, 311 (1980) [hereinafter *SURVIVING THE BREAKUP*].

[Emphasis added.] Why Wallerstein now interprets the same research results as supporting the view that courts should foster continuity in the child's relationship with the mother but not with the father is unclear, but the scientific literature does not justify it.

B. Importance of Custodial Mothers to Children

Wallerstein believes that the literature supports her recommendation regarding the unimportance of frequent and continuing access to the father: "While the psychological adjustment of the *custodial* parent has consistently been found to be related to the child's adjustment, that of the *non-custodial* parent has not."¹² This apparently represents a skewed interpretation of a very important research finding identified in a classic study conducted by Hetherington, Cox, and Cox that, "Although divorced fathers who remain involved with their children play an important role in shaping the adjustment of their children, particularly sons, in most divorced families the behavior of the custodial mother becomes increasingly salient."¹³ "Adjustment" refers to the child's behavior problems. This study began in the 1970s at a time when children saw relatively little of their fathers after divorce; only one-third of the children saw their father as frequently as once per week.¹⁴ Recent studies document a change since the 1970s and early 1980s with greater involvement of divorced fathers with their children.¹⁵

The finding that the behavior of custodial mothers had more direct impact on their children's behavior supports the common sense notion that adults with whom children have the most daily contact will have the most influence on them. Consistent with this notion is Hetherington's finding that the structure of the classroom, the teacher's behavior,

12. *Burgess Amica Curiae Brief*, *supra* note 2, at 17.

13. E. Mavis Hetherington & Margaret S. Hagan, *Divorced Fathers: Stress, Coping, and Adjustment*, in *THE FATHER'S ROLE: APPLIED PERSPECTIVES* 103, 117 (Michael E. Lamb ed., 1986).

14. E. Mavis Hetherington, Martha Cox & Roger Cox, *Effects of Divorce on Parents and Children*, in *NONTRADITIONAL FAMILIES: PARENTING AND CHILD DEVELOPMENT* 233, 252 (Michael E. Lamb ed., 1982) [hereinafter *NONTRADITIONAL FAMILIES*].

15. Sanford L. Braver et al., *A Longitudinal Study of Noncustodial Parents*, 7 *J. FAM. PSYCHOL.* 9-23 (1993); J.M. Healy, Jr., et al., *Children and Their Fathers After Parental Separation*, 60 *AM. J. ORTHOPSYCHIATRY* 531 (1990); Joan B. Kelly, *Developing and Implementing Post-Divorce Parenting Plans: Does the Forum Make a Difference?*, in *NONRESIDENTIAL PARENTING: NEW VISTAS IN FAMILY LIVING* 136 (Charlene Depner & James Bray eds., 1993); Christine Winquist Nord et al., *Fathers' Involvement in Their Children's Schools*, U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS (NCES #98-091) (1997). <<http://nces.ed.gov/pubsearch/pubinfo.asp?pubid=98091>> and <<http://nces.ed.gov/pubs98/fathers/>> [July 12, 1999].

and the school environment also had a significant effect on the child's adjustment.¹⁶ Children spend more waking hours with their teacher than with either parent. We should not expect the father's fluctuating moods or behavior to be reflected in the researcher's measure of his child's behavior problems, particularly when the child sees his father once every two weeks or less. But this does not mean that the child's contact with his teacher is more important than contact with the father.

It is error to assume that because the noncustodial father's own psychological adjustment does not correlate as strongly or as obviously with the child's adjustment as does the custodial mother's adjustment, the child will be unaffected by the father's absence. It is a huge, and faulty, leap to interpret the Hetherington finding as supportive of moving children far away from their fathers. This becomes clearer as Hetherington elaborates on the results of her research:

When the father is not available, both the constructive and destructive behavior of the divorced mother are funneled more directly to the child. A good relationship with a noncustodial father cannot buffer the adverse effects of a destructive relationship between the mother and child in the same way that occurs with a residential father who is regularly available.¹⁷

Hetherington then described a research finding not included in the *Burgess* brief:

Problems in children's adjustment following divorce are least likely to occur if both parents assume a role in helping children cope successfully. Low conflict, an absence of denigration between parents, high parental agreement, and availability of the noncustodial father, if the father is not extremely deviant or destructive, are associated with positive adjustment in children.¹⁸

Wallerstein's earlier research supports this finding, but contradicts her current position:

At five years [the] positive contribution of the father's role emerged with clarity. Specifically, good father-child relationships appeared linked to high self-esteem and the absence of depression in children of both sexes and at all ages. We were interested to find this significant link in both sexes up to and including those in the thirteen-to-twenty-four age group.¹⁹

* * *

It is noteworthy that the divorce appeared not to diminish the importance of the psychological link between father and child. This connection was

16. E. Mavis Hetherington et al., *supra* note 14, at 278-79; E. Mavis Hetherington, *An Overview of the Virginia Longitudinal Study of Divorce and Remarriage With a Focus on Early Adolescence*, 7 J. FAM. PSYCHOL. 39, at 54-55 (1993).

17. Hetherington & Hagan, *supra* note 13.

18. *Id.* at 117.

19. SURVIVING THE BREAKUP, *supra* note 11, at 219.

especially obvious at the five-year mark in those children who were between nine and twelve, or entering adolescence. *Children in this age group took intense pleasure in the visiting and when they were not visited they grieved.* It seemed possible, in fact, that in this nine-to-twelve-year-old group the visiting father might sustain a youngster even in the care of a disorganized mother.²⁰ [Emphasis added.]

A multidisciplinary group of eighteen experts interpreted the weaker association between the adjustment of noncustodial parents and their offspring in a carefully worded consensus statement: "Nonresidential parents who maintain parental roles (providing guidance, discipline, supervision, and educational assistance) may affect their children more profoundly than those who are limited to functioning as occasional visiting companions."²¹ Rather than support a presumption in favor of allowing relocation, the findings discussed in the *Burgess* brief suggest the importance of maintaining both parents in the child's life on a frequent and continuing basis.

One additional consideration is that most of the studies that describe the link in the adjustment of custodial mothers and their children report correlations, not causal connections. When parent and child adjustment go together, we must also consider the possibility that it is the child's adjustment that influences the parent's adjustment, or that a third factor is the causal agent linking the two factors together.²² Also, many of the studies rely on the mother as the sole informant of how well her children are doing. This may inflate the correlations between mother and child adjustment because of the influence of the mother's own emotional state on her perceptions of her children. A mother who is coping well may rate her children's behavior problems more mildly than one who feels overwhelmed. A depressed or overly stressed mother may see her children through a negative lens.²³ Several researchers have recognized how parents' own needs biased their perceptions of their children's reactions to divorce.²⁴

20. *Id.*

21. Michael E. Lamb et al., *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 *FAM. & CONCIL. CTS. REV.* 393, 398 (1997).

22. Richard Q. Bell, *A Reinterpretation of the Direction of Effects in Studies of Socialization*, 75 *PSYCHOL. REV.* 81-85 (1968); Richard Q. Bell, *Parent, Child, and Reciprocal Influences*, 34 *AM. PSYCHOL.* 821-26 (1979).

23. David S. DeGarmo & Marion S. Forgatch, *Determinants of Observed Confidant Support*, 72 *J. PERSON. SOC. PSYCHOL.* 336 (1997).

24. SURVIVING THE BREAKUP, *supra* note 11; Richard A. Warshak & John W. Santrock, *Children of Divorce: Impact of Custody Disposition on Social Development*, in *LIFESPAN DEVELOPMENTAL PSYCHOLOGY: NON-NORMATIVE LIFE EVENTS* 241, 256-257 (E.J. Callahan & K.A. McCluskey eds., 1983).

C. Significance of Frequent Father-Child Contact

Wallerstein makes the bold assertion, "There is no evidence in my own work of many years, including the 10- and 15-year longitudinal study, that frequency of visiting or the amount of time spent with the non-custodial parent over the child's entire growing-up years was significantly related to good outcome in the child or adolescent."²⁵ In her first book, however, Wallerstein provides such evidence:

In the youngest children the good father-child relationship was closely related to a regular and frequent visiting schedule and to a visiting pattern that included continuity and pleasure in the visiting. For most children, this meant overnight and weekend stays.²⁶

Boys and girls of various ages who had been doing poorly at the initial assessment were able to improve significantly with increased visiting by the father. Similarly, visits by the father which increased after the first year diminished loneliness among the older youngsters and adolescents. Those children who had been fortunate enough to enjoy a good father-child relationship on a continuing basis over the years were more likely to be in good psychological health.²⁷

Aside from pleas to reunite their parents, the most pressing demand children brought to counseling was for more visiting. . . . The intense longing for greater contact persisted undiminished over many years, long after the divorce was accepted as an unalterable fact of life.²⁸

Brief contacts were valued by youngsters only if there were many of them and they included midweek meetings as well as overnight weekend stays.²⁹

A rethinking of visiting issues must include the concept that both parents remain centrally responsible for and involved in the care and psychological development of their children.³⁰

The *Burgess* brief cites Furstenberg's research³¹ as supporting the lack of evidence of the positive impact of father-child contact but fails to add Furstenberg's caveat, "The absence of any general association between contact with the noncustodial parent and child outcomes may be due to the fact that relatively few outside parents see their children

25. *Burgess Amica Curiae Brief*, *supra* note 2, at 17.

26. SURVIVING THE BREAKUP, *supra* note 11, at 219.

27. *Id.*

28. *Id.* at 134.

29. *Id.* at 138.

30. *Id.* at 134.

31. FRANK F. FURSTENBERG, JR. & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART (1991).

frequently enough to exert much influence."³² Furstenberg's analyses did not distinguish between families in which the parents never married and those in which the parents divorced; relied solely on the responses of custodial mothers; and most of the families had divorced in the 1960s when fathers were less involved.

Wallerstein excluded many studies which repeatedly demonstrate a link between frequency of children's contact with divorced fathers and children's behavior, emotional health, satisfaction with custodial arrangements, and academic achievement.³³ For example, data from interviews with over 900 parents found that regular visitation "was a compelling factor" predicting children's adjustment.³⁴ The beneficial effects of father involvement are most apparent, especially for boys, when the mother values the father-child relationship, the children witness little overt conflict between parents, and the father is reasonably well-adjusted, supportive, and authoritative.

Wallerstein is correct that the "amount of visiting" has not been "consistently related to adjustment," if by this she means that some studies failed to detect such a relationship. We should not expect all studies to arrive at a "consistent" finding regarding the influence of

32. Frank F. Furstenberg, Jr., *Child Care After Divorce and Remarriage in IMPACT OF DIVORCE, SINGLE PARENTING, AND STEPPARENTING ON CHILDREN* 256 (E. Mavis Hetherington & Josephine Arasteh eds., 1988).

33. Lise M.C. Bisnaire, Philip Firestone & David Rynard, *Factors Associated with Academic Achievement in Children Following Parental Separation*, 60 AM. J. ORTHOPSYCHIATRY 75 (1990); John Guidubaldi & Joseph D. Petry, *Divorce and Mental Health Sequelae for Children: A Two-Year Follow-Up of a Nationwide Sample*, 24 J. AM. ACAD. CHILD PSYCHIAT. 531 (1985); Healy et al., *supra* note 15; Hetherington et al., *supra* note 14, at 233; Doris S. Jacobson, *The Impact of Marital Separation/Divorce on Children: I. Parent-Child Separation and Child Adjustment*, 1 J. DIVORCE 341 (1978); Lawrence Kurdek, *Custodial Mothers' Perceptions of Visitation and Payments of Child Support By Noncustodial Fathers in Families with Low and High Levels of Preseparation Interparent Conflict*, 9 J. APPLIED DEV. PSYCHOL. 315 (1988); DEBORAH A. LEUPNITZ, *CHILD CUSTODY: A STUDY OF FAMILIES AFTER DIVORCE* (1982); Eleanor E. Maccoby et al., *Postdivorce Roles of Mothers and Fathers in the Lives of Their Children*, 7 J. FAM. PSYCHOL. 24 (1993); R. Neugebauer, *Divorce, Custody, and Visitation: The Child's Point of View*, 12 J. DIVORCE 153 (1989); Jessica Pearson & Nancy Thoennes, *The Denial of Visitation Rights: A Preliminary Look at Its Incidence, Correlates, Antecedents, and Consequences*, 10 LAW & POL'Y 363 (1990); Rhona Rosen, *Children of Divorce: What They Feel About Access and Other Aspects of the Divorce Experience*, 6 J. CLIN. CHILD PSYCHOL. 24-27 (1977); Virginia Shiller, *Joint Versus Maternal Custody for Families with Latency Age Boys: Parent Characteristics and Child Adjustment*, 56 AM. J. ORTHOPSYCHIATRY 486 (1986); SURVIVING THE BREAKUP, *supra* note 11; Richard A. Warshak, *Father-Custody and Child Development: A Review and Analysis of Psychological Research*, 4 BEH. SCI. & LAW 185 (1986); Richard A. Warshak & John W. Santrock, *The Impact of Divorce in Father-Custody and Mother-Custody Homes: The Child's Perspective*, in CHILDREN AND DIVORCE 29 (Lawrence A. Kurdek ed., 1983).

34. Jessica Pearson & Nancy Thoennes, *Custody After Divorce: Demographic and Attitudinal Patterns*, 60 AM. J. ORTHOPSYCHIATRY 233, at 246 (1990).

frequent father-child contact. The degree to which such contact is positive, neutral, or negative in any one family depends on a number of factors, such as the manner in which the contact is structured, the types of activities that fathers share with their children, whether the contact disrupts the children's social lives and extracurricular activities (which is more likely to occur with relocation), the mother's attitude toward the contact, and the father's treatment of the children.

When various studies have inconsistent findings, it is important to determine which findings have the strongest support in terms of the number of studies that replicate each finding and the scientific merits of the respective studies. One study merits special mention. Guidubaldi and colleagues studied a large, randomly selected nationwide sample from the general population (rather than a clinical sample of families referred for mental health treatment) and they included a control group of children from intact families. The researchers used objective psychological tests, teacher rating scales, and child and parent interviews. Guidubaldi found a positive association between visiting frequency and child adjustment, an association that is stronger when the custodial mother supports the father's continued contact and rates the father-child relationship positively.³⁵

The literature on children growing up in father-custody homes, not mentioned in the *Burgess* brief, is also a rich source of information about the impact of greater father involvement after divorce. Though some studies found no advantages of father-custody over mother-custody, most of the better methodological studies reported significant psychological benefits for father-custody elementary school-age boys that can be attributed, in part, to the type of relationships fostered by the father's level and type of involvement.³⁶ Adolescent boys in father-custody homes are less likely to be delinquent, less prone to antisocial behavior and depression, and less likely to drop out of school (unless the father has remarried).³⁷ Some of the benefits of father-custody homes, however, come from the contact these children have with additional caregivers.³⁸

35. John Guidubaldi & Joseph D. Perry, *Divorce, Socioeconomic Status, and Children's Cognitive-Social Competence at School Entry*, 54 AM. J. ORTHOPSYCHIATRY 459 (1984); Guidubaldi & Perry, *supra* note 33.

36. See Warshak, *Father-Custody*, *supra* note 33.

37. Ian Gregory, *Anterospective Data Following Childhood Loss of a Parent. I: Delinquency and High School Dropout*, 13 ARCH. GEN. PSYCHIAT. 99 (1965); J. L. Peterson & Nicholas Zill, *Marital Disruption, Parent-Child Relationships, and Behavior Problems in Children*, 48 J. MARRIAGE FAM. 295 (1986); Herbert Zimiles & V.E. Lee, *Adolescent Family Structure and Educational Progress*, 27 DEV. PSYCHOL. 314 (1991).

38. John W. Santrock & Richard A. Warshak, *Father Custody and Social Development in Boys and Girls*, 35 J. SOCIAL ISSUES 112 (1979).

A recent custody study, published after the Wallerstein brief was submitted, illustrates well the complexity of the relationships between children's psychological development and frequency and amount of contact with the nonresident parent.³⁹ Each of the following factors was associated with a better relationship between the child and the nonresident parent (father or mother): frequent and longer visits, living closer to each other, participating in a wide variety of activities, spending holidays together, and the child having previously been in the custody of that parent. Girls who shared more activities with, and lived closer to, the nonresident parent also had a better relationship with the custodial parent. On other measures of adjustment, such as mood and behavior problems, the same study found that children's well-being was related, not to the frequency of visits, but to type of contact. The investigators concluded, "Apparently it is important for children that their nonresidential parent continue to act like a 'full-service' parent rather than simply taking trips to Disneyland or McDonalds—no matter how frequent these trips are."⁴⁰

A U.S. Department of Education report, also issued after the Wallerstein brief was submitted, underscores the importance of the type of involvement a divorced father has with his children. This study provided national survey data on nearly 17,000 children.⁴¹ The focus was on the extent and influence of parents' participation in four typical school activities: attending a school or class event; attending a regularly scheduled parent-teacher conference; attending a general school meeting; and volunteering at the school. The results showed that whether or not the mother is remarried, "The involvement of nonresident fathers in their children's school appears to be particularly important for children in grades 6 through 12, reducing the likelihood that the children have ever been suspended or expelled from school or repeated a grade."⁴² To a lesser, but still significant, degree, when noncustodial fathers participated in school activities, their children were more likely to get As, enjoy school, and participate in extracurricular activities. Whether or not the father participated in school activities was more influential than the frequency of father-child contact. The results are summarized as providing "strong evidence that nonresident fathers' involvement in their children's schools is important to children, par-

39. K. Alison Clarke-Stewart & Craig Hayward, *Advantages of Father Custody and Contact for the Psychological Well-Being of School-Age Children*, 17 J. APPLIED DEV. PSYCHOL. 239 (1996).

40. *Id.* at 260.

41. Nord et al., *supra* note 15.

42. *Id.*

ticularly to older children."⁴³ These results provide a powerful argument against postdivorce living arrangements that preclude both parents' attendance at school activities.

In an attempt to make sense of the studies, cited by those proposing relocation, that fail to detect a link between noncustodial father-child involvement and children's adjustment, the authors suggested that the researchers may be using inadequate measures of involvement. They concluded, "It is not contact, per se, that is important, but rather other dimensions of involvement that go along with contact that are beneficial to children's lives. Indeed, contact may be a mixed blessing if the contact is enough to tantalize children but not enough to satisfy."⁴⁴ A recent analysis which pooled information from sixty-three studies reached an identical conclusion: "How often fathers see their children is less important than what fathers do when they are with their children."⁴⁵ The analysis also revealed that compared with earlier studies, more recent studies found a stronger link between paternal contact and children's well-being; this may be the result of changes in divorce policies which have encouraged fathers to be more committed to the parental role.

As the studies discussed above demonstrate, the highest quality relationships are maintained with access arrangements that promote a breadth of involvement between parent and child. Though this may not be tied in a perfect linear relationship to the frequency or amount of contact, the schedule of contacts does need to afford opportunities for each parent's involvement in the child's daily life and routines, including supervision of homework and chores, setting and enforcing limits, arranging and supervising interactions with peers, and dealing with conflicts.

Parent-child contacts that are restricted to weekends and, in many relocation cases, only school vacation periods, are not generally conducive to "full-service" parenting. They usually result in a decline in the depth and richness of the relationship. We symbolize this decline by labeling the contacts children have with their father after divorce as "visits," a term that connotes that a person is set apart, in some fundamental way, from others at the same location. A visitor is a guest in the home. The term reflects the reality that, for many children, divorce transforms the father-child relationship into something less than a nor-

43. *Id.* at 76.

44. *Id.* at 75-76.

45. Paul R. Amato & Joan G. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 J. MARRIAGE FAM. 557, 569 (1999).

mal parent-child relationship. As his children become guests, the father becomes a host who entertains his guests. So many divorced fathers fall into this pattern that the phrase, "Disneyland Dad," is commonly used to describe the altered relationship.⁴⁶

Custodial mothers also suffer when the father-child relationship is undermined. They are more likely to receive the expressions of anger and frustration that their children suppress while "guests" in their father's home. When Dad becomes the "fun" parent, Mom becomes associated with boring daily routines, chores, and homework.⁴⁷

In addition to psychological benefits, frequent and continuing father-child contact results in a higher percentage of child support payments and less incidence of fathers dropping out of their children's lives.⁴⁸ In other words, allowing a father to see his children more frequently results in a greater likelihood that he will maintain his financial and emotional obligations to them.

Considering the large volume of studies documenting the detrimental effects of a father's absence on his children's moral, intellectual, and social development,⁴⁹ the finding that frequent contact keeps fathers committed to their children is significant. This finding suggests that frequent contact plays a key role in cementing the father-child bond. And the corollary is true: Absence of contact places a strain on the relationship. Because some father-child relationships withstand this strain—some fathers remain committed in the absence of frequent contact, or following relocation—does not mean that we should ignore this possible contaminant of the quality of their relationship.

46. Richard A. Warshak, *Keeping Fathers Involved*, in Constance Ahrons & Joan Kelly, *The Cup Is Half Full: Promoting Health in Divorced Families*, Panel presented at the 71st Annual Meeting of the Am. Orthopsychiatry Ass'n, Washington, D.C. (April 1994), <<http://www.warshak.com>> [July 13, 1999].

47. E. Mavis Hetherington et al., *The Aftermath of Divorce*, in MOTHER/CHILD, FATHER/CHILD RELATIONSHIPS (Joseph H. Stevens, Jr. & Marilyn Mathews eds., 1978).

48. Braver et al., *supra* note 15; SANFORD L. BRAVER & DIANE O'CONNELL, *DIVORCED DADS: SHATTERING THE MYTHS* 65 (1998); Clarke-Stewart & Hayward, *supra* note 39, at 260; Furstenberg, *supra* note 32; EDWARD KRUK, *DIVORCE AND DISENGAGEMENT* (1993); Edward Kruk, *Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers After Divorce*, 29 *FAM. & CONCL. CTS. REV.* 81 (1992); LEUPNITZ, *supra* note 33; ELEANOR E. MACCOBY & ROBERT MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (1992); Jessica Pearson & Nancy Thoennes, *Child Custody and Child Support After Divorce*, in *JOINT CUSTODY AND SHARED PARENTING* 185 (Jay Folberg ed., 1991); James L. Peterson & Christine W. Nord, *The Regular Receipt of Child Support: A Multistep Process*, 52 *J. MARRIAGE & FAM.* 539 (1990); Judith A. Seltzer, *Relationships Between Fathers and Children Who Live Apart*, 53 *J. MARRIAGE & FAM.* 79 (1991); Judith A. Seltzer et al., *Family Ties After Divorce: The Relationship Between Visiting and Paying Child Support*, 51 *J. MARRIAGE & FAM.* 1013 (1989).

49. For a comprehensive review, see BILLER, *supra* note 9.

After examining all the evidence, the multidisciplinary group of eighteen experts cited earlier offered the following consensus opinion:

To maintain high quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children.⁵⁰

D. Frequency of Father-Child Contact and the Quality of the Relationship

Anticipating the concern that her conclusion about the insignificance of frequent father-child contact devalues the father-child relationship, Wallerstein responds by claiming that it is not the form of the relationship that is critical, but the “substance and nature of that relationship.”⁵¹ She does not define what she means by substance and nature except to emphasize the importance of the child's positive perception of the father and perception of his or her relationship with the father.

It is not clear how this argument supports a presumption in favor of a custodial mother's relocation. If all that is important are the child's perceptions of the parent and of the relationship and the parent's participation in the child's daily routines, school, and extracurricular activities has no bearing on the quality or importance of the relationship, why couldn't the mother relocate away from her children and maintain an important role with them in spite of the geographical separation, just as she is proposing for the father?

More to the point, the weight of empirical evidence and a consensus of experts support the conclusion that regular and extensive interaction and involvement in a wide range of the child's daily routines and activities is critical to providing the “substance and nature” of a high quality relationship. Wallerstein herself reported a strong link between quantity and quality in the young child's relationship with the father, “In the youngest children the good father-child relationship was closely related to a regular and frequent visiting schedule and to a visiting pattern that included continuity and pleasure in the visiting. For most

50. Lamb et al., *supra* note 21, at 400.

51. *Burgess Amica Curiae Brief*, *supra* note 2, at 18.

children, this meant overnight and weekend stays."⁵² It is likely that Wallerstein would have found this link for older children as well, except for a characteristic of her sample mentioned in her book's appendix. Only a third of the men she studied had adequate psychological functioning before the divorce and, in general, these were the fathers of the younger children.⁵³

Granting for the moment Wallerstein's premise that children's feelings define the only critical dimension of their relationship with their parents, we should recall that in eight separate studies cited above, including Wallerstein's own, children indicated their desire for more contact and were most satisfied when the contact was more frequent than is possible with a large geographical separation. Wallerstein is correct that children need to feel loved and appreciated by their parents. But they also need frequent demonstrations of this love and appreciation. Wallerstein is also correct that not every parent-child relationship deteriorates with relocation. But the most likely outcome of relocation is a reduction in the intensity and meaningfulness of the relationship.

E. Direct Studies of Relocation

Substantial evidence links frequent residential moves to problems in child adjustment. Frequent relocation was associated with lower academic performance, and higher rates of problems with depression, conduct, and peer relationships.⁵⁴ In a nationally representative sample of families surveyed by the U.S. Census Bureau, frequent relocation was

52. SURVIVING THE BREAKUP, *supra* note 11, at 219.

53. *Id.* at 330-31. The older children were more likely to have fathers with significant mental disturbance. Fifty percent of the men were "moderately disturbed or frequently incapacitated by disabling neuroses and addictions," including "chronically depressed, sometimes suicidal individuals . . . or those with long-standing problems in controlling their rage or sexual impulses." Another 15 percent of the men were "severely troubled" with a history of mental illness including paranoid thinking, bizarre behavior, and an inability to cope with life's demands.

54. G. P. Benson et al., *Mobility in Sixth Graders as Related to Academic Achievement, Adjustment, and Socioeconomic Status*, 16 *PSYCHOL. IN SCHOOLS* 444 (1979); A. C. Brown & Dennis K. Orthner, *Relocation and Personal Well-Being Among Early Adolescents*, 10 *J. EARLY ADOL.* 366; P. Cohen et al., *Family Mobility as a Risk for Childhood Psychopathology*, in *EPIDEMIOLOGY AND THE PREVENTION OF MENTAL DISORDERS* (B. Cooper & T. Helgason eds., 1989); J. Eckenrode et al., *Mobility as a Mediator of the Effects of Child Maltreatment on Academic Performance*, 66 *CHILD DEV.* 1130; R. D. Felner et al., *The Impact of School Transitions: A Focus for Preventive Efforts*, 9 *AM. J. COMM. PSYCHOL.* 449; G. M. Ingersoll et al., *Geographic Mobility and Student Achievement in an Urban Setting*, 11 *EDUC. EVAL. POL. ANAL.* 143; P. Mundy et al., *Residential Instability in Adolescent Inpatients*, 28 *J. AM. ACAD. CHILD ADOL. PSYCHIAT.* 176; M. D. Newcomb et al., *A Multidimensional Assessment of Stressful Life Events Among Adolescents; Derivation and Correlates*, 22 *J. HEALTH SOC. BEHAV.* 400; R. G. Simmons et al., *The Impact of Cumulative Change in Early Adolescence*, 58 *CHILD DEV.* 715.

linked to an increased risk of school failure and behavior problems which were not attributable to other risk factors, such as poverty.⁵⁵

In the divorce literature, Pearson and Thoennes found, "Along with visitation, favorable adjustment patterns were also associated with fewer changes in the child's life (e.g., moving and changing schools). . . ."⁵⁶ A smaller study of ninety children, thirty of whom were from divorced mother-custody homes, found a relationship between preschool children's aggression and the number of times they moved.⁵⁷ Another study of a group of seventy-nine school-age children, forty from divorced mother-custody homes, reported that more environmental changes in the divorce group were associated with more problems in the areas of depression, social withdrawal, aggression, and delinquent behavior.⁵⁸

As a group, these studies provide support for the common sense notion that children's psychological well-being is challenged by the numerous changes accompanying relocation. These include disrupting familiar routines, changing schools and neighborhoods, leaving friends and familiar care providers, and, most important, disrupting the ongoing contact with the other parent. These studies provide limited help in relocation questions, however, because they have not established the threshold level of change necessary to undermine the average child's adjustment. The results suggest that the more moves, the greater the risk to children's development. But they do not allow us to say how many moves are too much. Also, it is possible that parents who impose many changes on their children tend to be less well-adjusted themselves or less sensitive to their children's needs, and that this is what contributes to their children's problems rather than the relocation per se.

III. The Impact of the Relocation Decision

A. The Custodial Parent

Moving away from empirical research, Wallerstein argues, "To require divorcing parents to spend their lives in the same geographical vicinity is unrealistic."⁵⁹ Yet, in an analysis of the geographical stability

55. David Wood et al., *Impact of Family Relocation on Children's Growth, Development, School Function, and Behavior*, 270 JAMA 1334 (1993).

56. Pearson & Thoennes, *supra* note 34, at 246.

57. William F. Hodges et al., *The Cumulative Effect of Stress on Preschool Children of Divorced and Intact Families*, 46 J. MARRIAGE & FAM. 611 (1984).

58. Arnold L. Stolberg & James M. Anker, *Cognitive and Behavioral Changes in Children Resulting from Parental Divorce and Consequent Environmental Changes*, 7 J. DIVORCE 23 (1983).

59. *Burgess Amica Curiae Brief*, *supra* note 2, at 21-22.

of 900 parents, approximately three years postdivorce, 81 percent of parents with joint residential custody and 72 percent of parents with joint legal custody reported that neither parent had moved, as compared with 60 percent of sole custody parents.⁶⁰ Also, it would be more accurate to speak of divorcing parents remaining in the same vicinity *while their children are still growing up*, not for the parents' entire lives.

Wallerstein notes that, "Prohibiting a move by the custodial parent may force that parent to choose between custody of his or her child and opportunities that may benefit the family unit, including the child as well as the parent."⁶¹ Again, she excludes the noncustodial parent from the family unit. Wallerstein is concerned that a parent may become depressed by giving up the opportunities associated with relocation or by giving up custody in order to pursue such opportunities. Her sympathies are on the side of the parent proposing relocation. But we should balance this with consideration of the impact on the father or mother whose children are taken away, a parent who may have made his or her own concessions in order to remain involved with the children. Research shows that fathers who are denied access to their children, or are merely threatened with the loss of contact, suffer intense distress.⁶² The same is true for noncustodial mothers.⁶³ In addition to reducing direct contact, relocation deprives the noncustodial parent of the opportunity to participate in parent-teacher conferences, help with homework and other projects, listen to the children's worries, and regularly attend children's extracurricular activities.

The *Burgess* brief suggests that children are harmed by frustrating a parent's desire to relocate because that parent's suffering over lost opportunities may expose the children to diminished parenting and guilt for causing the parent's disappointment. But, children may also experience guilt at leaving behind a parent, thereby causing that parent great anguish. In both situations, whether or not children suffer excessive guilt depends, in some measure, on how the parents manage their own disappointment.

60. Pearson & Thoennes, *supra* note 34.

61. *Burgess Amica Curiae Brief*, *supra* note 2, at 22.

62. James R. Dudley, *Noncustodial Fathers Speak About Their Parental Role*, 34 *FAM. & CONCIL. CTS. REV.* 410 (1996); John W. Jacobs, *Involuntary Child Absence Syndrome: An Affliction of Divorcing Fathers*, in *DIVORCE AND FATHERHOOD: THE STRUGGLE FOR PARENTAL IDENTITY* (John W. Jacobs ed., 1986); KRUK, *supra* note 48.

63. See WARSHAK, *supra* note 9, at 106-24, for review of the literature on mothers without custody.

While Wallerstein assumes that the relocation will be rewarding for the relocating parent, we should consider the very real possibility that the relocation may not bring the anticipated benefits. The new relationship may fail. Graduate school may not be what the parent expected. The new job could be short-lived. Relationships with extended family can become strained. And the children's difficulties adjusting to the move and separation from their other parent might cast a pall on the parent's satisfaction with the new circumstances. In the event that the relocation disappoints the custodial parent, the children could experience the diminished parenting Wallerstein refers to, without the protective buffering effect of frequent contact with the noncustodial parent. Even when the relocation is successful for the custodial parent, the children may experience diminished parenting as the parent copes with the challenges of a new city, job, and relationships. Every study of mothers and fathers with sole custody reports that most of these parents feel overloaded with their responsibilities and that this compromises their treatment of the children.⁶⁴

B. Financial Impact of Relocation

When economic improvement accompanies relocation, children may benefit if they get special educational and health care opportunities that were not previously affordable. When the move does not result in more net financial resources, the additional travel expenses incurred for visits with the noncustodial parent will subtract from money that might otherwise be spent on the children. In general, children's adjustment does not improve with better financial status.⁶⁵ When children are asked to discuss the bad things about the divorce, they do not complain about material deprivation, but they do complain about not spending enough time with their parents.⁶⁶

C. Impact of Joint Custody and Relocation

Wallerstein, and the *Burgess* court, make an exception to a presumption in favor of relocation in cases of joint custody. The court noted

⁶⁴ *Id.* at 142.

⁶⁵ E. Mavis Hetherington et al., *Long-Term Effects of Divorce and Remarriage on the Adjustment of Children*, 24 J. AM. ACAD. CHILD PSYCHIAT. 518 (1985); Warshak & Santrock, *supra* note 24, at 241; Nicholas Zill, *Behavior, Achievement, and Health Problems Among Children in Stepfamilies: Findings From a National Survey of Child Health*, in IMPACT OF DIVORCE, SINGLE PARENTING, AND STEPPARENTING ON CHILDREN 325 (E. Mavis Hetherington & Josephine D. Arasteh eds., 1988). See also Neil Kalter et al., *Predictors of Children's Postdivorce Adjustment*, 59 AM. J. ORTHOPSYCHIATRY 605, 610 (1989) (the higher the family income the worse the adjustment of boys in the custody of their mothers).

⁶⁶ Warshak & Santrock, *supra* note 33.

that when parents share joint physical custody under an existing order and one parent seeks to relocate, the trial court must determine *de novo* the primary custody arrangement that is in the best interest of the children. Wallerstein defines "dual residential family" ambiguously as, "Those cases in which two parents are genuinely sharing the care and raising of the child."⁶⁷ Her brief fails to define "primary parent" or "primary residential parent." So it is not clear where the cut-off is between a primary and a dual residential arrangement. How much more does one parent need to be doing than the other, or how much more time needs to be spent in possession of the child, before the parent earns the coveted title "primary," along with the presumptive right to relocate? Under *Burgess*, it is not clear what arrangements would qualify as *de facto* joint physical custody. In Texas, for example, a schedule in accord with the Standard Possession Order might qualify a parent as a "*Burgess*" joint physical custodian.⁶⁸

D. *Hardships of Travel and Access Schedules*

Wallerstein acknowledges that relocation subjects children to the strain of frequent air travel, often unaccompanied by an adult, plus the loss of social and recreational opportunities. To this list we should add loss of parenting time. She advises that children "should not be forced to spend a major portion of their growing up years in constant travel."⁶⁹ Such concerns sound like a good argument against relocation. But, Wallerstein draws a different lesson. Rather than discuss the hardship of travel as a reason for parents to give pause before relocating, and for courts to preclude relocation, Wallerstein advocates reducing the frequency of travel by using alternatives: restrict visits to summers and vacation periods, alternate residences annually, alternate residences to coincide with transitions in school level and have the parent travel to the child's location for visits.

The absence of systematic research on the impact of different access schedules following relocation makes the task of predicting the best alternative more difficult. In providing recommendations to parents and to courts, experts will need to extrapolate from general research in child development and parent-child relationships, integrate this with their clinical experience, and apply it to the parties and specific circumstances of the case, while noting the limited basis for the opinions.

67. *Burgess Amica Curiae Brief*, *supra* note 2, at 29.

68. TEX. FAM. CODE § 153.252 (1) (Vernon 1996).

69. *Burgess Amica Curiae Brief*, *supra* note 2, at 29.

Mental health professionals usually advise against extended separations between parents and young children.⁷⁰ Experts regard frequent and continuous personal contact as essential to the formation of a high quality parent-child relationship. Thus, when a parent relocates with an infant, the child may never form an adequate emotional attachment to the parent who is left behind.

The option of having the parent travel to the child has certain obvious advantages and drawbacks which need to be considered. Among the advantages: The child is spared the additional air travel; the travel time saved may be spent profitably in the custodial parent's home or with peers; and the noncustodial parent gets the chance to meet the child's teacher, and to attend a special school event or activity. Among the disadvantages: It removes the relationship from the routines, mundane activities, competing demands, and frustrations of everyday life. These often generate conflict, and necessitate setting and enforcing limits, problem-solving, and compromise. In the process they promote a stronger, richer, higher quality relationship that gives both child and parent a sense of living together as opposed to just visiting. Also, it entails additional expense for lodging, meals, entertaining the child, and lost income. If the noncustodial parent is remarried, the child loses opportunities to strengthen ties with the stepparent and stepsiblings.

Most children want to maintain contact with both parents. As children become older and more involved with friends, however, they may resent having to travel long distances away from their neighborhood and regard such visits as unwelcome intrusions in their social and recreational activities. They miss out on athletic events, parties, and other opportunities for socializing and strengthening friendships. Relocation creates a conflict for children between seeing the nonresidential parent and maintaining age-appropriate peer activities, a conflict that is usually avoided when the parent lives in close proximity. If these children participate in research studies and make up a large enough percentage of the sample, their dissatisfaction with visits may obscure the benefits to children who live close to their noncustodial parent and with whom contact fits easily into the context and flow of everyday life. Studies which fail to discriminate between the two situations will mistakenly conclude that frequent contact has no relation to child well-being. And they will overlook the significance of close proximity as a factor that mediates the positive impact of frequent contact.⁷¹ Thus, the very same

70. Warshak, *supra* note 9.

71. See Clarke-Stewart & Hayward, *supra* note 39 (showing influence of proximity on the father-child relationship).

studies that report no link between child adjustment and frequent contact with the noncustodial parent, which experts cite to defend relocation, may well have data that illustrate the hazards of relocation.

IV. Motives for Relocation

Wallerstein agrees with courts in a number of jurisdictions that the parent's motive for relocating is an essential consideration; the wrong motive should lead to a judgment against relocation. She notes motives that do not justify a move are: ". . . frivolous or advanced out of anger or a desire for revenge that is calculated to prevent or substantially diminish a child's contact with the other parent."⁷² Gardner adds to the list:

Lack of appreciation of the bonding between the child(ren) and the non-custodial parent; pathological dependency on family members in the locale to which the relocating parent wishes to move; and personality problems that interfere with the parent's ability to adjust to a particular environment, with the associated fantasy that change of location will somehow result in more gratifying personal relationships.⁷³

Motives that do justify a move, according to Wallerstein, are those that provide, "occupational, educational, or other opportunities that will enhance the quality of life of the relocating child, as well as the parent." To this we should add motives such as accommodating a new spouse's job transfer, living closer to extended family, or getting away from a violent former spouse.

Wallerstein does not address situations in which the interests of parent and child might conflict, presumably because she believes that the child's interest are so closely tied to those of the custodial parent. An example might be a mother who seeks to join her new spouse and his children. The mother looks forward to enhancing the quality of her life through the remarriage; her child resents having to share her home with a stepfather and stepsiblings and thinks that this diminishes the quality of her life.

Divorced parents often decide to move in order to be closer to their own parents. When this results in better quality after-school care for children, or intensification of beneficial ties with extended family, this can have salutary effects on the children. Often the main goal of relocating parents is to get emotional comfort from their own parents in

72. *Burgess Amica Curiae Brief*, *supra* note 2, at 31.

73. Richard A. Gardner, *The Burgess Decision and the Wallerstein Brief*, 26 J. AM. ACAD. PSYCHIAT. L. 425, 428 (1998).

the aftermath of the divorce crisis. The irony is that they recognize the value, to themselves, of having their parents' support during difficult times, but do not afford the same privilege to their children. They create a situation where the children cannot turn to both parents for comfort. Since adults presumably have more resources to cope with stress than do children, courts should consider the likely effect on the children of being deprived of the comfort and security offered by the other parent.

No social science research exists regarding the link between a parent's motives for relocation and subsequent child adjustment. The importance of evaluating motives, though, is supported by studies which indicate that a child's postdivorce adjustment is aided when each parent supports and encourages the relationship with the other and the parents' relationship is civil.⁷⁴ Because the wish to relocate a child will predictably generate anguish and hostility in the remaining parent, the motives for relocation should be weighed against the damage done to the parents' cooperative relationship and, derivatively, to the child's well-being.

A psychologist can evaluate the custodial parent's past record in supporting or undermining the child's relationship with the other parent. When the urge to move is triggered by remarriage or valuable educational and occupational opportunities, the moving parent may be genuinely troubled by the disruption the move will cause the children. But, sometimes the stated reasons for relocation conceal other motives. The new job that necessitates moving may be secondary to the parent's true intent of diluting the strength of the child's relationship with the other parent. In some cases, the relocating parent has not even afforded the children and the other parent the chance to say goodbye in person.

In other cases the move is not specifically orchestrated to rupture the child's relationship with the other parent. These parents really do prefer to live somewhere else. But their reasons are not compelling, and they fail to appreciate the value of their children's relationship with the other parent. Such a casual attitude about relocation may give children the idea that regular contact with the other parent is expendable.

One aspect of effective parenting is sensitivity to the child's needs and feelings. Sensitive parents are aware that a relocation has both potential benefits and hazards to the child's well-being. Despite any perceived benefits, relocation also creates a hardship for most children. In their eagerness to move, some parents overlook obvious indications of their children's anxiety and discomfort with the proposed relocation.

74. Kelly, *supra* note 10, at 132.

The more reluctant a parent is to recognize the potential losses to the child of moving and living far away from the other parent, the more it may appear that the parent's own wish to relocate is impairing his or her ability to be sensitive to the child's needs. By the same token, if the parent has a genuine and reasonable conviction that the move will provide important benefits to the child, this suggests that the parent has taken the child's needs into account in planning the move.

Wallerstein recommends that relocating parents devise a plan which shows how they intend "to mitigate the losses incurred by the child and the attenuation of the parent-child relationship involved in the move-away."⁷⁵ A reasonable plan reflects well on the parent. An unreasonable plan might suggest that the parent is acting rashly without due consideration of the child's needs.

V. Children's Preferences

Judith Wallerstein was an early, passionate, and poignant champion of children of divorce. So it is no surprise that she closes her brief with a plea for courts to give strong consideration to children's feelings and preferences about relocation, "Especially at the time of a contemplated move, the court should be responsive to the child's voice, amplifying it above the din of competing parents. Only in this way can it ascertain and respect 'the best interest of the child.'"⁷⁶ She believes, "At the time of the relocation request, the child necessarily speaks on the basis of his or her experience in each residence."⁷⁷

Most mental health professionals would agree that children's feelings should be considered in assessing the likely impact of relocation.⁷⁸ It is also essential to recognize the limitations and potential drawbacks of relying on children's expression of preferences. Such preferences do not always reflect their true feelings, or the reality of their relationships with each parent, or their experiences in each residence, or their best interests. Children may say things to please one parent or the other, or to avoid a parent's displeasure. The parent they apparently support may be the parent they fear most or the parent they regard as most unstable. Some children invest too much in caring for a needy parent, while they

75. *Burgess Amica Curiae Brief*, *supra* note 2, at 31.

76. *Id.* at 35.

77. *Id.* at 33.

78. RICHARD A. GARDNER, *FAMILY EVALUATION IN CHILD CUSTODY MEDIATION, ARBITRATION, AND LITIGATION* (1989); PHILIP M. STAHL, *CONDUCTING CHILD CUSTODY EVALUATIONS* (1994).

sacrifice their own developmental needs.⁷⁹ Even adolescents cannot be counted upon to exercise good judgment with respect to custody choices. One teenager might base a preference on which parent provides the most freedom, the most expensive possessions, the least supervision, and the fewest responsibilities. Another teenager might base a preference on which parent provides the most genuine acceptance, emotional support, and reasonable limits. In deciding how much weight to give children's preferences, the expert and court should strive to understand the underlying reasons for these preferences.⁸⁰

Children's attitudes and preferences can also be manipulated by others,⁸¹ and custody litigation is one circumstance in which this often occurs.⁸² Testimony by an expert knowledgeable about the strategies that parents use to manipulate, and the extent to which children can be pressured or programmed into supporting or rejecting a parent, or the extent to which children are suggestible, may assist the court in determining the proper amount of weight to give a child's explicitly stated preferences and statements in relocation disputes. The expert may demonstrate that a child's statement of preference, even when executed in an affidavit, does not necessarily reflect the history of that child's relationship with the nonpreferred parent, particularly when the child is totally rejecting or is estranged from the other parent.

Wallerstein expresses an opposite concern, "It is disrespectful of the child's humanity to view the child as a puppet and to attribute the child's responses to manipulation by adults as if a child had no mind or heart of her own. Unfortunately, the courts are all too willing to see the child's responses as reflecting adults' manipulation."⁸³ Gardner

79. WARSHAK, *supra* note 9, at 156-58.

80. See *Rose v. Rose*, 340 S.E.2d 176 (W. Va. 1985) (in evaluating the evidentiary weight to give a child's expressions of preference, "The trial court should investigate whether the statement of preference by the child was induced by the party in whose favor the preference was expressed. If so, said statement of preference should be accorded little, if any, weight. Where an otherwise intelligent child makes an illogical decision based on unimportant factors, the trial court may disregard the child's statement of preference." See also *Reynolds v. Reynolds*, 433 S.E.2d 277, 281 (W. Va. 1993) (the basis for a child's preference against a particular residential or domiciliary location may be "relatively unimportant" and born of "temporary dissatisfaction with a recent move.").

81. For an excellent overview of research on children's suggestibility, see STEPHEN J. CECI & MAGGIE BRUCK, *JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY* (1995).

82. Richard A. Warshak, *Parental Alienation Syndrome*, EXPERT WITNESS MANUAL 3-32 (Richard Orsinger ed., State Bar of Texas, 1999); STANLEY S. CLAWAR & BRYNNE V. RIVLIN, *CHILDREN HELD HOSTAGE: DEALING WITH PROGRAMMED AND BRAINWASHED CHILDREN* (ABA 1991); Gardner, *supra* note 73, at 429-430; RICHARD A. GARDNER, *THE PARENTAL ALIENATION SYNDROME* (2d ed. 1998).

83. *Burgess Amica Curiae Brief*, *supra* note 2, at appendix B, Case 1, at 10.

criticizes Wallerstein's dismissal of concern about children being manipulated, "I am not claiming that we should ignore entirely what children have to say in divorce disputes; I am only saying that one must give consideration to the fact that children are children, that they can easily be manipulated, and that when considering their comments about relocation, the manipulation/programming element must be given serious consideration."⁸⁴

In her earlier work, Wallerstein herself cautioned, "Although the wishes of children always merit careful consideration, our work suggests that children below adolescence are not reliable judges of their own best interests and that their attitudes at the time of the divorce crisis may be very much at odds with their usual feelings and inclinations."⁸⁵ Wallerstein and Kelly also wrote, "Several of the youngsters with the most passionate convictions at the time of the breakup later came shamefacedly to regret their vehement statements at that time. . . ."⁸⁶

Wallerstein is correct that children who have experienced the differences between each parent's home after divorce have firsthand knowledge and perceptions that were not available to them at the time of the breakup. Such perceptions can be very helpful in deciding a relocation disposition. But it is also true that, in most cases, children lack firsthand experience with life in the proposed new location. If the relocation coincides with a remarriage, they will not have a clear sense of what life will be like with a stepparent.

In view of the research on children's suggestibility and parental manipulation of children's thoughts, feelings, and memories, it makes sense to balance a genuine interest in, and consideration of, children's perspectives, with an awareness of the possibility that their statements and preferences are contaminated by parental manipulation. An evaluator should make every effort to understand the basis for children's expressed preferences, to detect manipulation when it is present and, if possible, to bypass the effects of parental programming during the assessment. An expert witness should be able to explain to the court what special procedures were used to accomplish these goals.

In addition to a child's expressed statements in a particular case, courts can "hear children's voices" by attending to research on children's perceptions about matters relevant to relocation. The research reviewed earlier indicates that most children want ongoing contact with

84. Gardner, *supra* note 73, at 429.

85. SURVIVING THE BREAKUP, *supra* note 11, at 314.

86. *Id.* at 315.

both parents, and the most satisfied are those who are able to remain close to both parents with flexible and expanded access. Relocation typically makes this impossible. Children's voices, then, would seem to support legislative presumptions and court decisions that make relocation more difficult, such as placing the burden of proof on the relocating parent to show why the move is in the children's best interests.

David Chambers proposes that courts attempt to define children's interests in custody disputes by asking, "Which placement would most children in comparable positions experience more positively, now and in hindsight?"⁸⁷ This type of inquiry would benefit from research with adults who, as children, experienced their parents' divorce, although such retrospective reporting may be subject to distortion. Wallerstein reported on her follow-up interviews with adults whose parents divorced twenty-five years earlier.⁸⁸ Her subjects were angry that their wishes regarding residential schedules were not considered and they resented the inflexibility of their schedules of contact with their fathers. A more recent study examined the perspectives of 819 college adults from divorced families.⁸⁹ When asked to rate the best living arrangement, 70 percent chose the option "equal amounts of time with each parent." The investigators ruled out the explanation that this was a "grass is greener" phenomenon because 93 percent of those who grew up in an equal time arrangement endorsed this as best. These findings match the preferences of children and adolescents who are currently living with divorced parents. Clearly, we could use more systematic studies comparing children and adults whose parents did, and did not, live in close geographical proximity.

Wallerstein's brief uses anecdotal data of two case studies supporting a woman's request for relocation. Though individual anecdotes should not be confused with scientific data, those seeking a child's personal view of the hardships of relocation may wish to read a sixteen year old boy's poignant account of his experiences following his mother's relocation which concludes with, "If I do get a divorce, I will put my children's needs first. I will stay near them no matter what happens."⁹⁰

87. David L. Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 MICH. L. REV. 477-569 (1984).

88. Judith S. Wallerstein & Julia Lewis, *The Long-Term Impact of Divorce on Children*, 36 FAM. & CONCL. CTS. REV. 368-83 (1997).

89. William V. Fabricius & Jeffrey Hall, *Young Adults' Perspectives on Divorce: Living Arrangements*, submitted for publication (2000).

90. Nick Sheff, *My Long-Distance Life*, NEWSWEEK, Feb. 15, 1999, at 16.

Some parents do manipulate their children's affections with the intent of undermining the children's relationship with the other parent. Relocation raises special concerns in such situations. Even when a parent is not consciously trying to turn the children against the other parent, certain conditions, when paired with bad-mouthing and bashing, heighten the risk of this occurring. These include isolation from the target of the bad-mouthing, and dependence on the parent doing it.

When the children are physically isolated from the target, the chances of preventing or reversing alienation are slim. As long as the children are exclusively dependent on the parent doing the bad-mouthing, there is little hope that they will be able to resist maneuvers to estrange them from the other parent. The most effective means of resisting and reversing such programming is to provide them with opportunities to be with that parent and to experience his or her love and attention.⁹¹ If too much time goes by before contact is reestablished, the damage to the relationship is much harder to repair. In view of the above, when the parent who requests relocation denigrates and devalues the other parent, even if the children have not succumbed to alienation, the psychologist should consider the risks of alienation taking root or becoming further entrenched if the children are relocated away from the target parent.

Custodial parents who are intent on undermining their children's relationship with the other parent will often try to obstruct visits.⁹² Although this occurs when parents live in close proximity, relocation magnifies the custodial parent's power to accomplish visitation interference. The custodial parent can easily thwart visits by not taking the child to the airport or arriving late and missing the flight, or by not having the child at home when the other parent arrives from out-of-town.

When allegations of parental alienation are raised, the expert should try to determine the validity of the allegations. If the child is in fact alienated from a parent, the various possible reasons for the child's estrangement must be carefully considered before placing blame on the other parent. In some cases the situation is complicated by cross-allegations of bad-mouthing, bashing, and brainwashing.

VI. Custody Evaluations and Limitations of Research

A. Custody Evaluations

When a relocation dispute reaches the court, the judge may appoint a psychologist or other mental health professional to conduct a custody

91. Warshak, *supra* note 82.

92. *Id.*

evaluation. If the expert is not given explicit direction by the court on what factors to assess or consider in the recommendations, the scope of the evaluation could be determined, in part, by the psychologist's interpretation of the literature discussed above. If the expert agrees with Wallerstein, he or she will act on the presumption that the child's best interests favor the custodial parent's decision. The expert will then attempt to rule out of the presence of *de facto* joint physical custody and the absence of unusual circumstances, and will assess whether or not the proposed relocation has been undertaken "thoughtfully, seriously, and in good faith."⁹³

If the parents share custodial and child care responsibilities to such an extent that they are considered to have *de facto* joint physical custody, the expert following Wallerstein should then assess all the factors typically considered in a custody evaluation. Even when the parents do not share *de facto* joint custody, these factors will be considered by an expert who rejects the *Burgess* rationale, and instead believes that, in general, both divorced parents play central roles in children's lives, that children prosper best when both parents remain active and involved in their daily lives, and that children's well-being can be significantly harmed if the relationship with either parent is disrupted. The task is to assess the likely benefits and hazards to the child of three alternatives: changing custody, relocating, or remaining in the custody of a parent whose wish to relocate has been frustrated. If the move is occasioned by a remarriage, the new stepparent, and possibly stepsiblings who will be living with the child, should be included in the evaluation.

B. Limitations of Research

An unfortunate oversight in the *Burgess* brief is its failure to disclose the limitations of scientific research. Social science research has limitations no matter whose it is. When applying social science research to specific cases, courts should be aware of these limitations. The confusion between correlation and causation has been discussed. There are other limitations.

- Results from psychological research imply probabilities, rather than absolute generalizations. When a study reports differences between two groups, for example, children with much versus little contact with the noncustodial parent, it is important to keep in mind that these results pertain to average differences. In any particular study there is usually overlap between the two groups. While em-

93. *Burgess Amica Curia Brief*, *supra* note 2, at 26.

irical research directs our attention to factors that place children at risk or optimize their development, the specifics of any one case might outweigh general conclusions drawn from research.

- Most of the studies discussed, except where otherwise noted, focus on children living in mother-custody homes. Also, most of the research reviewed in this article was conducted with more affluent white children. In some cases generalizations to families from other backgrounds may not be warranted; in other cases the significant psychological processes are identical.
- Many divorce studies rely on measures of outcome, such as behavior checklists, that are relatively easier and cheaper to obtain. But children's distress, suffering, and sadness, or comfort and happiness do not always translate into overt behavior. Furthermore, not all behavior is observed by parents. And behavior that is observed is not always reported to investigators. Children's feelings of loss, or satisfaction, though more difficult to measure, are important for anyone concerned about their welfare, including courts.
- Studies which rely on only one informant, are as likely to get a distorted, biased, and one-sided viewpoint as courts would get if only one side were allowed to present its case.⁹⁴

Despite limitations, the social science research literature can serve valuable purposes in relocation disputes. It can direct the court's attention to factors relevant to the best interests of the children. It can assist the court in making predictions about the likely future outcome of any disposition. It can alert the court to biases and stereotypes that should not influence custody decisions. Psychologists' opinions rooted solely in clinical experience can lead to faulty generalizations based on the most troubled population of children whose problems are severe enough to warrant mental health intervention. Empirical research can help psychologists avoid this error. Finally, a good understanding of research can help the fact-finder clarify the basis for disagreement among experts, objectively evaluate the merits of conflicting opinions, and assess the credibility of expert witnesses who testify about social science research.

C. Additional Considerations

Neither research, nor this article, could possibly cover all the factors that might affect any individual child's adjustment to relocation. Children's adjustment after divorce has much to do with their own person-

94. BRAVER & O'CONNELL, *supra* note 48, at 42-45.

alities and coping skills. A psychologist can try to identify the extent to which the child is adapting to the changes imposed by divorce and assess the likelihood that the child will be able to tolerate, benefit, or suffer from the proposed relocation. A child who has historically adapted easily to moves and changes of school, and who makes friends easily, may be more likely to adjust to a relocation than the child who has greater difficulty adjusting to change.

Authoritative parenting, as opposed to permissive or authoritarian parenting, is associated with better child outcomes after divorce.⁹⁵ Authoritative parenting includes warmth, clear setting of rules and regulations, and extensive verbal give-and-take. In the case of relocation, each parent's style of relating to the child should be considered as a relevant factor. This may be particularly important if the parents have very different styles and their child has problems (e.g., with self-control or autonomy) in one home more than the other. The impact of less competent parenting may be magnified when the other parent's influence is dramatically reduced.

The remarriage of one or both parents may have positive and negative effects on a child's adjustment to relocation. The impact of living in a stepfamily depends on many factors, a review of which is outside the scope of this article.⁹⁶ Nevertheless, a custody evaluator testifying in a case involving a remarriage should be acquainted with the literature and be prepared to address relevant factors.

The impact of relocation on the child's relationships with extended family may also be relevant in any particular relocation case. One study found that when divorce weakens the link between the outside parent and child, it also reduces the child's access to the family of the non-custodial parent, and weakens the bond between child and grandparent. If the noncustodial parent maintains regular contact, the link is often preserved.⁹⁷

D. Should Custody Change on Relocation?

If legislatures and courts believe that most children do best when their parents remain in close geographical proximity, this might result in presumptions, standards, tests, and burdens that discourage reloca-

95. Hetherington et al., *supra* note 14; Santrock & Warshak, *supra* note 38, at 122-23; John W. Santrock et al., *Social Development and Parent-Child Interaction in Father-Custody and Stepmother Families*, in NONTRADITIONAL FAMILIES, *supra* note 14.

96. See E. Mavis Hetherington & W. Glenn Clingempeel, *Coping with Marital Transitions: A Family Systems Perspective*, 57 MONOGRAPHS SOC. RES. CHILD DEV. Serial No. 227 (1992).

97. Furstenberg, *supra* note 32, at 257.

tion. Under such rules, in any individual case, if testimony establishes that the custodial parent will forgo relocation in order to retain custody, the court might be inclined to deny relocation of the child, and thereby guarantee the child close proximity to both parents.

The *Burgess* decision criticized this assumption as confronting a parent with a "Solomonic choice" and found "no ground for the trial court to test parental attachments or to risk detriment to the 'best interest' of the minor children, on that basis."⁹⁸ Similarly, the model relocation act of the American Academy of Matrimonial Lawyers constrains courts from considering whether the person proposing relocation of the child has declared the intention not to move if relocation of the child is denied.⁹⁹ Even doing so, the court would need to consider the impact on the child of remaining in the custody of a parent whose wish to relocate has been frustrated. Wallerstein's concerns about the inability of the parent to cope adequately with this frustration, and the derivative harm to the child, are well-taken.¹⁰⁰ Such possibility would need to be taken into account in deciding which home would be best for the child, even when the parent forgoes the move.

If precluding the child's move will necessarily result in custody modification because the parent will relocate even without the child, the court will then need to decide if the benefits to the child of transferring custody and avoiding the disruptions of relocation outweigh the drawbacks of decreasing the child's contact with the relocating parent.

VII. Conclusion

Wrestling with the complexity of relocation decisions teaches two valuable lessons. First, there is no perfect relocation disposition. Within each family, every possible arrangement has its advantages and disadvantages. Second, the relocation disposition that is optimal for one family may not be best for another. It is unlikely that any bright-line rule can alleviate the difficult task before the court without doing damage to some families. Relocation decisions must be tailored to fit the circumstances and needs of each individual family rather than force

98. *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996). See also *Lane v. Schenck*, 614 A.2d 785, 791 (Vt. 1992).

99. AMERICAN ACADEMY OF MATRIMONIAL LAWYERS, PROPOSED MODEL RELOCATION ACT § 406(b) (1997).

100. *Burgess Amica Curiae Brief*, *supra* note 2, at 22-23 ("The child may well experience diminished parenting as a result of the parent's discouragement and suffering.").

every family into the same mold. Statutes, case law, research, and experts can provide valuable input into the decision. But the best path for ensuring the best interests of children is to remain open to all the evidence and encourage all parties to do the same.

A Critical Analysis of the First Empirical Research Study on Child Relocation

By
Robert Pasahow*

Family courts have had to determine whether to allow custodial parents to relocate with their children, against the wishes of the noncustodial parents, to a residence of significant geographical distance from the noncustodial parent. In addition to such a move being against the noncustodial parent's wishes, psychologists have had concern about the effects on the children from no longer having easy access to the parent who is left behind. Would such relocations harm the children and damage their relationships with the noncustodial parents? Would allowing the children to move with the custodial parents be beneficial to the children?

Wallerstein's *Amica Curiae Brief*¹ was an initial landmark document in child relocation and it argued that children's best interests were best served by allowing the custodial parents, mostly mothers, to relocate with children even if it meant being away from the noncustodial parent. The present article will summarize that *Amica Curiae Brief* and the research literature that contradicts Wallerstein's position. Braver, Ellman, and Fabricius² provided the first empirical study on the effects of par-

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¹ Judith S. Wallerstein, *Amica Curiae Brief of Dr. Judith S. Wallerstein, Ph.D.*, filed in Cause No. S046116, *In re Marriage of Burgess*, Supreme Court of the State of California, Dec. 7, 1995 [hereinafter *Burgess Amica Brief*]. See also Judith S. Wallerstein & Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 FAM. L.Q. 305 (1996).

² Sanford L. Braver, et al., *Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations*, 17 J. FAM. PSYCHOL. 206 (2003).

ent relocation of the psychological functioning on the children at a time in their life when they were in college. A summary of these important research findings will be reviewed so that the courts can properly interpret Braver et al.'s data. This article evaluates what the social science literature and research indicates about the effects of parents' and children's relocation away from noncustodial parents to inform the legal system in the hopes of urging adaptations of legal rules to empirical realities.

I. Wallerstein's *Amica Brief*³

A landmark case about relocation was *In re Marriage of Burgess*.⁴ In that case, Judith Wallerstein, a famous psychologist who has studied the effects of divorce on children, presented her opinion on child relocation. She had conducted a twenty-five year longitudinal study on 131 post-divorced children from sixty families. Children were three to eighteen years of age when the study began. Wallerstein reinterviewed many of these people over the years up to twenty-five years after their parents divorced. She summarized results of that research on the effects of divorce in three books.⁵ Although much information is now understood on the effects of divorce, it should be noted that Wallerstein did not quantify her data, precluding meaningful statistical comparisons between different families, children, ages, and gender. In addition, only six of the families in her study relocated during the course of this investigation. Wallerstein was only able to interview three of these mothers. Thus, Wallerstein had very little information about child relocation and was generalizing from the interview data that she collected about children of divorce.

Nevertheless, in the *Amica Curiae Brief* that she submitted in *In re Marriage of Burgess*, Wallerstein rendered her opinion that it was in the children's best interest to allow custodial par-

³ Wallerstein, *supra* note 1.

⁴ 913 P.2d 473 (Cal. 1996).

⁵ JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, *SECOND CHANCES: MEN, WOMEN, AND CHILDREN A DECADE AFTER DIVORCE* (1989); JUDITH S. WALLERSTEIN, SANDRA BLAKESLEE, & LEWIS, J., *THE UNEXPECTED LEGACY OF DIVORCE: A 25 YEAR LANDMARK STUDY* (2000); JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980).

ents, mostly mothers, to relocate with their children away from the noncustodial fathers. Wallerstein emphasized the centrality of the well-functioning custodial parent-child relationship as a protective factor from psychological problems during the post-divorce years. She reasoned that her studies of divorce have pointed out the major significance of the primary parent's relationship with the child in terms of their moral and emotional development. Wallerstein concluded that the effects of frequent and continued contact with the noncustodial parent had not been found to be central to engender the child's subsequent psychological well-being. It should be noted, however, that a review of the social science literature revealed no research studies collecting data directly measuring the psychological effects of parent relocation on the post-divorced child.⁶

Wallerstein's *Amica Curiae Brief* contributed to the California Supreme Court in *Burgess* setting a significant precedent in relocation cases. The *Burgess* Court held that the parent with primary custody has a presumptive right to relocate with his or her children. This could only be overcome if the noncustodial parent could demonstrate that changing custody from the relocating parent to the noncustodial parent was in the best interest of the children because of the harmful effects the children would suffer as a result of the relocation. The *Burgess* decision had far reaching effects. For example, relying on *Burgess*, the New Jersey Supreme Court in *Baures v. Lewis*⁷ gives the parent with primary residential custody the presumptive right to relocate.

II. Warshak's Critical Review of Wallerstein's *Amica Curiae Brief*

Richard Warshak, a clinical and research psychologist, provided an excellent and comprehensive analysis of the issues related to Wallerstein's *Amica Curiae Brief*.⁸ Warshak disagreed with Wallerstein's opinion that courts should invoke a presumption favoring the custodial parent in child relocation decisions.

⁶ Marion Gindes, *The Psychological Effects of Relocation for Children of Divorce*, 10 J. AM. ACAD. MATRIM. LAW. 119 (1998).

⁷ 770 A.2d 214, 230-31 (N.J. 2001).

⁸ Richard A. Warshak, *Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited*, 34 FAM. L.Q. 83 (2000).

Warshak further pointed out that Wallerstein only cited ten references supporting her *Amica Curiae Brief*. One article was authored by Wallerstein's colleague and Wallerstein solely authored one and co-authored five of these references. Warshak reviewed over seventy-five social science studies generally supporting that children of divorce are best served if both divorced parents stay near their children. He provided numerous examples of how Wallerstein ignored and contradicted her own past writings about the importance of the noncustodial parent to the child.⁹ Warshak rightfully argued that Wallerstein took a skewed interpretation of a study on post-divorced fathers and their children.¹⁰ This research minimized the importance of the father to a post-divorce child because the study was started in the 1970s when fathers saw little of their children following divorce. Subsequent studies, from the 1970s and into the 1980s, found greater interactions of divorced fathers with their children.¹¹

Wallerstein's generalizations from her post-divorce studies to the effect of parent relocation on children's psychological functioning were not updated or accurate. Wallerstein cited Frank Furstenberg's research in support of her opinion on child relocation.¹² However, Wallerstein omitted Furstenberg's opinion that the minimal influence of post-divorced fathers on their children may be attributable to the noncustodial parent having too little contact with the child. The amount that the noncustodial parent is involved with the child would be expected to affect the child's psychological well-being. It should also be noted that Furstenberg's study solely obtained data about the children from the maternal custodial parent, and not from the actual children. Moreover, the parents in this sample divorced in the 1960s

⁹ *Id.* at 95-96.

¹⁰ *Id.* at 86-87. See E. Mavis Hetherington & Margaret S. Hagan, *Divorced Fathers: Stress, Coping, and Adjustment*, in *THE FATHER'S ROLE: APPLIED PERSPECTIVES* 103, 117 (Michael E. Lamb ed., 1986).

¹¹ See Sanford L. Braver, et al., *A Longitudinal Study of Noncustodial Parent Without Childrens*, 7 *J. FAM. PSYCHOL.* 9 (1993); Joan B. Kelly, *Developing and Implementing Post-Divorce Parenting Plans: Does the Forum Make a Difference?*, in *NONRESIDENTIAL PARENTING: NEW VISTAS IN FAMILY LIVING* 136 (Charlene Depner & James Bray eds., 1993).

¹² See Frank F. Furstenberg, Jr., *Child Care After Divorce and Remarriage* in *IMPACT OF DIVORCE, SINGLE PARENTING, AND STEPPARENTING ON CHILDREN* 256 (E. Mavis Hetherington & Josephine Arasteh eds., 1988).

when noncustodial parents were less involved with their children's upbringing.

A number of studies that Warshak reviewed demonstrated the importance of the child-noncustodial parent relationship in fostering the psychological well-being. One study found a positive correlation between the frequency of the father's visitation with the child and the child's psychological adjustment.¹³ This association is further strengthened when the custodial mother supported the father's continued involvement and also rated the father-child relationship in a favorable manner. Another study found a number of factors that have a positive association between the post-divorced child and the involvement of the noncustodial parent, whether father or mother.¹⁴ These include frequent and longer visits, living in close proximity, participating in a wide range of activities, and spending holidays together. A national survey showed that the involvement of nonresidential fathers in their children's school activities reduced the probability that the child has been suspended or expelled from school or has repeated a grade.¹⁵

Warshak wrote about research in other fields that is relevant to understanding the effects of parent and child relocation away from the noncustodial parent. Numerous studies have demonstrated that the continuing frequent contact by the noncustodial parent results in a higher incidence of compliance with child support payments and a smaller percentage of the fathers dropping out of their children's lives.¹⁶ Eighteen experts provided their group opinion that quantity, quality, and type of involvement of

¹³ See John Guidubaldi & Joseph D. Perry, *Divorce, Socioeconomic Status, and Children's Cognitive-Social Competence at School Entry*, 54 AM. J. ORTHOPSYCHIATRY 459 (1984).

¹⁴ K. Alison Clarke-Stewart & Craig Hayward, *Advantages of Father Custody and Contact for the Psychological Well-Being of School-Age Children*, 17 J. APPLIED DEV. PSYCHOL. 239 (1996).

¹⁵ Christine Winquist Nord, et al., *Fathers' Involvement in Their Children's Schools*, U.S. Department of Education, National Center for Education Statistics (NCES #98-091) (1997), <http://nces.ed.gov/pubsearch/pubinfo.asp?pubid=98091> and <http://nces.ed.gov/pubs98/fathers>.

¹⁶ SANFORD L. BRAVER & DIANE O'CONNELL, *DIVORCED DADS: SHATTERING THE MYTHS* 65 (1998); Furstenberg, *supra* note 12; Judith A. Seltzer, *Relationships Between Fathers and Children Who Live Apart: The Father's Role After Separation*, 53 J. MARRIAGE FAM. 79 (1991).

the noncustodial parent with their children were all important to the post-divorced child's well-being.¹⁷

Warshak also reviewed literature on the general effects of frequent relocation. These studies do not specifically address divorced families where one parent relocates while the other parent remains. However, this research showed that, in general, frequent relocation was correlated with lower academic performance and higher rates of depression, behavioral and interpersonal problems in post-divorced children.¹⁸ A U.S. Census Bureau survey found an increased incidence of school failure and behavioral problems associated with frequent relocation.¹⁹ This supports the relocation studies on divorced families that showed school age and pre-school age children had a higher incidence of psychological symptoms, behavioral problems, and social withdrawal with more frequent family moves.²⁰

A study was conducted on college students who came from divorced families. These subjects were asked to rate the best custody of living arrangements once the parents have separated.²¹ Seventy percent chose "equal amounts of time with each parent." Furthermore, 93% of those students who grew up spending equal

¹⁷ Michael E. Lamb, et al., *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 *FAM. & CONCILIATION CTS. REV.* 393 (1997).

¹⁸ G.P. Benson, et al., *Mobility in Sixth Graders as Related to Achievement, Adjustment, and Socioeconomic Status*, 16 *PSYCHOL. IN SCHOOLS* 444 (1979); A.C. Brown & Dennis K. Orthner, *Relocation and Personal Well-Being Among Early Adolescents*, 10 *J. EARLY ADOL.* 366 (1990); Patricia Cohen, et al., *Family Mobility as a Risk for Childhood Psychopathology*, in *EPIDEMIOLOGY AND THE PREVENTION OF MENTAL DISORDERS* (Brian Cooper & Thomas Helgason eds., 1989).

¹⁹ David Wood, et al., *Impact of Family Relocation on Children's Growth, Development, School Function, and Behavior*, 270 *JAMA* 1334 (1993).

²⁰ William F. Hodges, et al., *The Cumulative Effect of Stress on Preschool Children of Divorced and Intact Families*, 46 *J. MARRIAGE & FAM.* 611 (1984); Jessica Pearson & Nancy Thoennes, *The Denial of Visitation Rights: A Preliminary Look at Its Incidence, Correlates, Antecedents, and Consequences*, 10 *LAW & POL'Y* 363 (1988); Arnold L. Stolberg & James M. Anker, *Cognitive and Behavioral Changes in Children Resulting from Parental Divorce and Consequent Environmental Changes*, 7 *J. DIVORCE* 23 (1983).

²¹ Judith S. Wallerstein & Julia Lewis, *The Long-Term Impact of Divorce on Children*, 36 *FAM. & CONCILIATION CTS. REV.* 368 (1998).

amounts of time with both parents endorsed that this was the best living arrangement.

All of these studies were omitted from Wallerstein's *Amica Curiae Brief* and do not support Wallerstein's bias toward supporting child and parent relocation away from the noncustodial parent. Warshak did an excellent review of literature that was pertinent but not directly bearing on child relocation. A need clearly exists for an empirical study that provides information on the psychological effects of post-divorced children when the custodial or noncustodial parents relocate.

III. Braver, Ellman, & Fabricius's Study on Relocation

A. Study Results

Braver et al. provided the first empirical study collecting data on parents' relocation or move away status after divorce and the associated psychological effects on their offspring.²² The subjects in the Braver et al. study were 602 introductory psychology students. They completed a comprehensive questionnaire that contained some questions regarding whether their parents had divorced. Twenty-nine percent of all the students reported that their parents divorced, a rate of divorce that is similar to other studies.²³ The fact that this research took place in a state that precludes courts from requiring either parent to pay for college costs allowed researchers to assess parents' voluntary contribution to their children's academic expenses. The authors provided a detailed description of the independent and dependent variables in this study.²⁴ The independent variable was the move-away status of the parents following divorce. The questionnaire asks "Which of the following best describes whether either of your parents moved an hours drive away from what used to be the family home?" Potential answers covered all four possibilities of either parent being the custodial parent and either parent moving away. Besides the four choices generated, a fifth option

²² Sanford L. Braver, et al., *Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Considerations*, 17 J. FAM. PSYCHOL. 206 (2003).

²³ *Id.* at 210.

²⁴ *Id.* at 211-212.

was that neither parent moved away. Self-report outcome variables that the researchers measured included parent's financial contributions to college expenses, the degree to which students worried about college expenses, perceptions of the parents as good supporters and role models, perceptions of the parents as being supportive, and the students' rating of their romantic and platonic relationships. They also collected data on such important psychological variables as the student's personal/emotional adjustment, hostility level, inner turmoil and distress from divorce, substance abuse, and general life satisfaction. The researchers also obtained a measure of the students' general health.

The results of the Braver et al. study are summarized in Table 1. In reference to the parents move-away status, 39% of families had neither parent relocating. Groups classified as the child relocating with the custodial mother and the group where the father moved away while the child and custodial mother remained each represented nearly 25% of the sample. The child remaining with the custodial father when the mother relocated was 8%. Relocating with the custodial father constituted the remaining 4% of the sample.

The results on the students of the five different parent move-away status groups and five sets of statistical comparisons appear in Table 1. The study made an omnibus comparison between all the different parent move-away status groups including when neither parent moved away. It also compared results between the group where neither parent moved away versus all the other parent move-away status groups. Data from students where neither parent moved away was compared to those who had moved with the custodial mother away from their noncustodial father. This comparison is the one most relevant to judges who decide whether to permit a custodial mother to move away with the children against the father's objections while the father remains. Another comparison was made for the students where neither parent moved away versus the students who remained

Table 1
Means for Outcome Variable, for Each of the Five Move-away Status Groups, and
Significance Test Values

Variable	Move-away status group					(as) Omnibus test	(b) (1) vs. (2-5)	(c) (1) vs. (2)	(d) (1) vs. (5)	(e) (1) vs. (5)
	(1) Neither moved	(2) I moved with mom	(3) I remained with dad	(4) I moved with dad	(5) I remained with mom					
N	232	148	46	22	154					
%	39	25	8	4	26					
Total contribution to college (\$)	6,154	4,378	4,987	3,700	5,197	.01	.001	.001	.05	ns
Personal/emotional adjustment	20.57	20.23	19.26	17.31	21.16	ns	.06	ns	ns	ns
Hostility ^a	11.75	11.42	13.59	13.68	12.11	.01	.05	ns	ns	.05
Inner turmoil and distress from divorce	1.66	1.96	2.23	2.19	1.98	.001	.001	.01	.001	ns
Mom good supporter	11.99	12.33	8.65	7.14	12.54	.001	.001	ns	ns	ns
Dad good supporter	9.94	6.66	10.89	9.68	6.03	.001	.001	.001	.001	ns
Two good role models	21.90	19.08	19.77	16.82	18.56	.001	.001	.001	.001	ns
Parents get along	3.97	2.74	6.67	2.90	2.83	.001	.001	.001	.001	ns
Platonic relationship choices	5.50	5.52	5.24	5.05	5.35	ns	ns	ns	ns	ns
Romantic relationship choices	2.91	2.91	3.20	3.05	3.13	ns	ns	ns	ns	ns
Substance abuse	6.22	6.41	5.55	6.09	6.21	ns	ns	ns	ns	ns
Worry about college expenses	4.64	4.18	4.30	3.05	3.88	.05	.01	ns	.01	ns
Global health ^b	2.80	2.62	2.66	2.48	2.76	ns	.05	.05	ns	ns
General life satisfaction	5.80	5.78	5.47	5.05	5.81	ns	.05	ns	ns	ns

^a Also significantly interacted with gender: Girls were more hostile and boys were less hostile when dad moved than when both parents remained.

^b Also significantly interacted with gender: Girls were less healthy than boys in (2) than in (1).

* Sanford Braver, Ira Ellman, William Fabricus, Relocation of Children After Divorce and Children's Best Interests: New Evidence and Legal Consideration, Journal of Family Psychology 17(2) June 2003, 206-219. Copyright © 2003 by American Psychological Association, Reprinted with permission.

with their mother while their father moved away. The last comparison was of the most common relocation situations of when the mother moves and takes her child with her versus when the father moves away and the mother and child remain behind.

Braver et al. made five statistical comparisons for all fourteen outcome variables on the effects on the post-divorced students. Thus, they conducted seventy statistical tests. The acceptable probability level the authors chose in the study was $p = .05$. This was an exceedingly high probability level given the numerous comparisons made.²⁵ Such probability levels made it too likely that false positives would occur, but could not be identified.²⁶ It is worth noting that the authors even wrote about findings as approaching significance $p < .07$ as near significant $p = .06$.²⁷

The authors examined perhaps as many as 140 comparisons. They included in their discussion section the findings of gender effects on some of the fourteen outcome variables for the five groups of comparisons.²⁸ For example, the authors wrote, "the only exceptions are worry about college expenses (where greater deficits are associated with the father moving), hostility (where greater deficits associated with the father moving for girls), and general global health (where greater deficits are associated with the mother moving for girls)." The reporting of these findings suggests that the authors looked at any gender effects that showed a statistical difference at *their* acceptable probability

²⁵ J. RICK TURNER & JULIAN THAYER, INTRODUCTION TO ANALYSIS OF VARIANCE: DESIGN, ANALYSIS AND INTERPRETATION (2001).

²⁶ Braver et al. indicated that "all contrast p values are one-tailed, because a direction was predicted." Braver et al., *supra* note 20, at 213 n.7. However, the opposite one-tailed test would be predicted by Wallerstein for one of the comparisons made by Braver et al. . When comparing children who relocated with their custodial mother away from the noncustodial father verses children where neither parent moved away but the custodial mother wished to relocate, Wallerstein would predict better psychological functioning in the former group. Wallerstein, *supra* note 1, There is, however, no way to know how many of the custodial mothers wished to move away but never did. Thus, this would lead to the application of two-tailed test. The probability level would have to be half. This would lead to a requirement that group differences be significant at the .005 level. For sake of simplicity, this paper did not apply the probability level of .005, but left it at .01.

²⁷ Braver, et al., *supra* note 22, at 213-214.

²⁸ *Id.* at 214.

level. Making 140 possible comparisons (14 variables x 5 group comparisons x 2 genders) would require a significance level of .005 or .001.

Surprisingly, the authors do not discuss the comparison that is most relevant to the court system: whether to allow custodial parents to relocate against a noncustodial parents' objection. This would have involved comparing situations where neither parent relocated to those in which the custodial father moved with the child away from the mother. There were twenty-two students who qualified for this latter group. No statistical comparisons were made for this group even though the researchers made what appear to be less relevant comparisons. Even more importantly, there was no discussion about the statistical comparisons the authors made between students whose parents never moved away after divorce versus students who moved with their custodial mother away from the father. This comparison is the most relevant to the courts in relocation cases as mothers are most often the custodial parent in sole custody cases. Braver's own research showed that the most frequent parent move-away status was when the custodial mother moved with the child away from the father (approximately 25% of the sample). Thus, discussion is needed between the statistical comparisons made between the students where neither parent moved away versus when the custodial mother moved with the child away from the father.

Five of the fourteen variables showed a statistical difference between the students whose parents did not move away versus the students who moved away with their custodial mother.²⁹ They were: total parental contributions to college; inner turmoil and distress from divorce; dad a good supporter; two good role models; parents perceived as getting along. The following variables were not significant at the .01 level when comparing students from these two groups: personal emotional adjustment; hostility; platonic relationship choices; romantic relationship choices; substance abuse; worry about college expenses; global

²⁹ Please note that the criteria of a *p* at the .005 level might be appropriate in these comparisons. However, a lesser standard is used by applying the .01 level. This makes it more probable that differences between the groups would be found. Nevertheless, only 5 variables show a statistical difference at the .01 level.

health; global life satisfaction; mom good supporter. Thus, almost twice as many variables were not significantly different when comparing the groups of students where neither parent moved away versus when the child moved away with the custodial parent.

Out of the five variables that showed significant differences, only one reflected the students' current psychological functioning. This variable was "inner turmoil and stress from divorce." Even this variable would only affect current functioning when the student thought about his or her parents' divorce. Three of the four variables concerned perceptions about the parent. The remaining variable, which showed statistical significance, was not about the students' functioning, but assessed the total amount of money that parents contributed for college. Thus, almost all of the five measures that showed differences had nothing to do with the college students' current functioning, except for when they thought about their parents' divorce.

Contrast these five variables with the nine measures that did not show any statistical difference at the .01 level when comparing students where neither parent moved away to where the student had moved away with the custodial mother. The first eight listed above strike at the core of the students' psychological and physical functioning and health. All eight of these measures reflected the students' present functioning. Certainly the three measures "personal and emotional adjustments," "global health," and "global life satisfaction" are crucial measures of the students' current functioning. Difference in levels of substance abuse would also be of concern, but this difference did not exist in the data. College students are usually very concerned about their romantic and platonic relationships. Once again, there was no statistical difference between these particular students. It is interesting to note that even though a statistical difference existed between these different groups in parental college contribution levels, there was no such difference between these students regarding how much they worried about their college cost. The lack of a greater percentage of statistical differences between these two groups would not be expected according to Warshak and Braver et al.'s review of the literature.

Research literature helps to explain the lack of more statistical differences between the post-divorced students whose parents

never moved away compared to those who moved with their custodial mother away from their father. One study on the effects of parental divorce on college students found that students were becoming more accepting of their parents' divorce, but still had painful feelings, beliefs, and memories about it.³⁰ Interestingly, these students reported having few present psychological symptoms. This is similar to Braver et al.'s findings when comparing post-divorce students whose parents did not move versus the students who relocated with their mother away from their father.³¹ This latter group in Braver et al.'s study experienced inner distress and turmoil when thinking about their parents' divorce, but did not experience significant higher degrees of personal/emotional maladjustment, generalized life dissatisfaction, hostility, or substance abuse.

A longitudinal study of 297 parents and their married offspring provides further insight into Braver et al.'s findings of the few statistical differences in the important psychological variables between the students whose parents did not move away compared to students who moved away with their mother.³² This study found that discord in the marriages of the offspring of divorced parents was related to the marital discord of their parents that the offspring experienced and witnessed as a child. The transmission of marital problems into the offspring's own matrimonial life was mediated more by observing parental discord than if the parents got divorced. The authors reported that parents' jealousy, domineering behavior, getting angry easily, criticalness, moodiness, and absence of conversation all mediated about half of the found association between parents' reports of marital discord and offspring's reports of discord in their present marriage. If these parental behaviors affect offspring's own marital relationship more than a divorce does, it is not surprising that post-divorce parental relocation did not produce a significant effect on their romantic relationships between Braver et al.'s 2003

³⁰ Lisa Laumann-Billings & Robert E. Emery, *Distress Among Young Adults from Divorced Families*, 14 J. FAM. PSYCHOL. 671 (2000).

³¹ Braver, et al., *supra* note 22, at 212.

³² Paul R. Amato & Alan Booth, *The Legacy of Parents' Marital Discord: Consequences for Children's Marital Quality*, 81 J. PERSONALITY & SOC. PSYCHOL. 627 (2001).

students where neither parent moved away versus the child moved with their mother away from their father.

In a third study, data was used from the National Institute of Child Health and Human Development Study of Early Child Care to study the effects of parents' divorce on the child who was no older than three years of age.³³ Later measurements of children's cognitive and social abilities, problematic behavior, and attachment security were influenced by the mother's income, education, ethnicity, child-rearing beliefs, depression, and behavior more than was influenced by parental separation. Similarly, these maternal characteristics could be more influential on the same psychological variables in studies by Braver et al. than the relocation status of the parents.

B. *Braver et al. on Criticisms of Their Own Study*

Braver et al. pointed out that the differences found in the five parent move-away status groups were not necessarily causing the differences on the outcome variables. They are, "of course, correlational, not causal."³⁴ Plausible alternative explanations for their findings on the fourteen dependent variables were provided by the authors.

The authors were also aware of the limitations in generalizing any conclusions about the general population of children from divorced parents since the subjects in their study were all college students. It may not be possible to generalize these findings to a population of children whose parents divorced, but were unable to or did not desire to attend college.

IV. Summary

Braver et al. provided the first empirically based study examining the effects of post-divorce parental relocation on children's psychological functioning. This is in contrast to how Wallerstein presented her opinion about children's reactions to divorce and then generalized to make predictions about the ef-

³³ K. Alison Clarke-Stewart, et al., *Effects of Parental Separation and Divorce on Very Young Children*, 14 J. FAM. PSYCHOL. 304 (2000).

³⁴ Braver, et al., *supra* note 22, at 214.

fects of relocation.³⁵ Wallerstein never provided quantitative data.

Braver et al. provided concrete data so that meaningful statistical comparisons can be conducted. This data provided support for Warshak's opinion that there was little scientific evidence to support a legal presumption presumptively approving the relocation decision of the custodial parent, as argued by Wallerstein's *Amica Curiae Brief*. Braver et al.'s data indicated that there should not be a burden of proof on the noncustodial parent to demonstrate that the relocation would be inimical to the children in order to preclude the child's relocation with the custodial parent. Braver et al.'s 2003 results also did not provide strong enough evidence to support the opinion that a custodial mother's relocation with the child away from the noncustodial father is, in general, detrimental to the child's psychological functioning. Only five of the fourteen variables showed significance. There were no significant differences between the groups on the remaining nine variables, which represented the students' current psychological and physical functioning. It would appear that Braver et al.'s study would suggest a preponderance of evidence criteria be applied to child relocation cases when courts are deciding whether to permit the custodial parent to move with a child away from the noncustodial parent.

³⁵ *Burgess Amica Curiae Brief*, *supra* note 1.

Washington State Court of Appeals
Division I

Suzanne Nevan)	
Respondent,)	No. 08-3-07464-5 SEA
)	Current No. 67319-0-1
)	Previous No. 64322-3
v.)	
)	
Daniel M Casey)	
Appellant.)	

CERTIFICATE

I certify that I mailed a copy of the Appellant Brief. This was mailed to Suzanne Nevan home (respondent, Pro Se), at 9 Sunnyside Lane, Bellingham, WA 98229(residence), and mailed to the same address, postage prepaid, on October 25th, 2011.



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