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Relocation: Long Distance Families

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I. Introduction

Relocation and Long Distance Families. Although it's the latest and hottest topic in family law, over the last several decades a portion of America's children of divorce have quietly grown up with parents living in different cities, different states and even different countries. As these children are now becoming adults and parents themselves, legal and mental health professionals are coming to understand relocation issues from a different perspective, i.e. through the eyes of the children. About ten years ago, National Public Radio aired an interview with a young man who shared his painful experiences traveling coast to coast, torn between two homes. Fortunately, his experience brought national attention to the problems experienced by this new generation of traveling children.

The complexity of relocation cases presents a thorny conundrum for legal and mental health professionals. Nevertheless, unlike twenty years ago, today there are answers that can steer the courts, juries and even parents in resolving these complex issues. As it now stands, when preparing to go through the heaps of legal and social science materials it is exceptionally challenging for even family law specialists and forensic experts to separate the wheat from the chaff. When chaff guides decision-making in relocation cases, scores of children and families can be harmed. The repercussions can last a lifetime. How then can parents, judges or juries make informed decisions for these children and families?

Use this paper as a guide. Though far from exhaustive, this paper cuts to the bare bones of the current social science research, public policy and statutes and serves as a state-of-the-art guide for informed and sensitive decision making regarding relocation by parents, lawyers, mental health professionals, judges and juries.

Where are the answers?

The answers lie in several places: Texas public policy regarding parenting, Texas

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statutes directing how decisions should be made regarding custody and possession, analysis of relevant social science empirical data which passes Daubert muster, analysis of misunderstood research that has been erroneously joined to this question, and finally in the application of unadorned common sense. The answers are not necessarily in Texas case law, as will be explained in the case law review section.

II. Texas Family Code: Evolutionary History of the Relocation Question

In essence, understanding the problems of long distance parenting necessitates an understanding of the evolution of co-parenting in this century. In the late 1980's a number of states, including Texas, adopted co-parenting models for child custody and possession. Rather than awarding custody to one parent or the other, Texas adopted the co-parent model which presumed that a child's best interests were served by having a continuing relationship with both parents. The Texas Family Code legislated this public policy in both marriage dissolution as well as paternity cases.

The revamping of Texas public policy was provoked by the U.S. Governmental requirements that all states improve the financial support of their children because of the staggering numbers of children straining the federal welfare system.¹ These federally driven guidelines coincided with the tidal wave of social change of women's roles (legally confirmed equal rights for women, social changes in gender roles, the increased presence of women in the work force, the fading stigma of divorce and of children born out of wedlock) in the 1970's and 1980's. These movements paved the way for gender neutral custody laws across the United States, including Texas, and ultimately spawned the co-parenting movement.

When the Texas Family Code became effective (June 1, 1974) there was no "joint" custody and the sole managing conservator held all rights, duties and powers to the exclusion of the other parent. A few years later (1977) the Family Code was amended to provide for joint conservatorship, but only upon agreement of the parties.

Ten years later (1987) joint conservatorship could be obtained even in absence of an agreement, however; it wasn't until 1995 that the Texas Family Code adopted the presumption that joint managing conservatorship was in the child's best interest, "It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child."² Within this default arrangement, there is the additional issue of the right to determine primary residence. There is a history of ambiguous language regarding the term "primary" residence. Today the language indicates that if joint managing conservatorship is by written agreement that the agreement "designates the conservator who has the exclusive right to designate the primary residence of the child, and: (A) establishes, until modified by further order, the geographic area within which the conservator shall maintain the child's residence; or (B) specifies that the conservator may designate the child's primary residence without regard to geographic location."³ Joint custody by court-order reads: "(b) In rendering an order appointing joint managing conservators, the court shall (1) designate the conservator who has the exclusive right to determine the primary residence of the child and: (A) establish until modified by further order, a geographic area within which the conservator shall maintain the child's residence without regard to geographic location; (B) specify that the conservator may determine the child's primary residence without regard to geographic location"⁴ In summary, language

regarding domicile restriction or non-restriction must be included in every divorce decree involving children regardless of whether it is by agreement or court-order.

Texas Public Policy for nearly ten years (since 1995) supports both parents sharing the raising of children. As stated in the Texas Family Code, “(a) The Public Policy of this state is to (1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child; (2) provide a safe, stable, and nonviolent environment for the child; and (3) encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.”⁵

Turning to the current possession guidelines, in 1997 legislators expanded the definition of the standard possession order (remember that the SPO is defined as a presumptive *minimum* amount of time for possession⁶) which resulted in the possessory parent having an election to have the child close to half of the child’s waking, non-school hours (for children three and over.)⁷ This election for expansion remains and now is found in most situations where joint managing conservators live in close proximity.⁸ The expansion of the possessory periods has resulted in more parenting opportunities for the joint conservators in that it allows for interaction with children across a variety of contexts and time. This type of rich parenting experience was not readily available under the older possession guidelines which targeted weekend time. Although the SPO does not apply to children under three, the trend in urban environments and in situations where both parents are working outside the home has been to allow increased access for fathers which approaches the SPO. And, as will be discussed in the research section, the so called non-primary parent (usually the father) has evolved into a primary role with the child.

Prior to these changes in Texas Public Policy and the Texas Family Code in the mid- and late-1990’s, mothers generally had custody of children. Fathers typically had limited weekend time with their children, made few decisions regarding the children, were less involved with their children and quite frankly, because of their restricted involvement had limited grounds to challenge a mother’s desire to relocate. Thus, efforts to relocate children have only recently received noteworthy challenge. Fathers have moved from “visiting roles” to “parenting roles.” Today, it is the rule rather than the exception for fathers to share in daily parenting of their children, i.e. they are involved in parenting in a variety of contexts and situations with children. Therefore, relocation in today’s world is qualitatively different than in the past.

Backtracking somewhat, addressing how fathers have become more involved with children in these last few decades would be remiss without reference to the emergence of gender neutral custody laws. In Texas, as in many states, such laws evolved mainly in response to higher courts implementing sex equality doctrines through the 1980’s and early 1990’s. Such equality laws abandoned presumptions that mothers were favored caretakers by virtue of their gender. Rather, the general criterion for determination of custody in most states (as in Texas) is the child’s best interests. The Texas Family Code general provisions reflect gender-neutral and even role neutral⁹ (i.e. conservatorship,) status when considering qualifications of parties for conservatorship. “The court shall consider the qualifications of the parties without regard to their marital status or to the sex of the party or the child in determining: (1) which party to appoint as sole managing conservator; (2) whether to appoint a party as joint managing conservatorship; and (3) the terms and conditions of conservatorship and possession of and access to the child.”¹⁰ Interestingly, these labels are also free of biological implications as

neither implies parentage of the child. Rather, these terms are concretely defined in practical terms. “Conservatorship” is a legal relationship defined by court-order.

The Texas Family Code now provides the right for a party to demand a jury trial regarding several questions of conservatorship and geographical restrictions: “... (D) the determination of which joint managing conservator has the exclusive right to designate the primary residence of the child; (E) the determination of whether to impose a restriction on the geographic area in which a joint managing conservator may designate the child’s primary residence; and (F) if a restriction described by Paragraph (E) is imposed, the determination of the geographic area within which the joint managing conservator must designate the child’s primary residence.”¹¹ Nevertheless, the Texas Family Code does not list any factors specific to geographical restrictions to consider.

III. Texas Caselaw*

*Lenz v Lenz*¹² is the only Texas case that has thus far set out factors to consider in relocation cases. *Lenz* involved a divorced mother seeking modification of her divorce decree to remove a Texas geographical restriction. Both the mother and the father were German citizens and the mother was seeking to return to Germany. The couple was married in Germany and their first child was born there. The family then moved to Arizona because of the father’s employment and had a second child while residing in Arizona. The couple separated while still living in Arizona and adopted a parenting plan (reflected in a stipulated decree of legal separation) indicating that both parties intended to relocate to San Antonio, Texas and thereby restricted the boy’s residence to Texas. After relocating to Texas, the mother initiated divorce proceedings and the resulting decree which was granted in Texas indicated that the mother had the authority to determine the boys’ residence in Texas. Shortly after the decree, however, the mother sought modification to remove the Texas residency restriction so that she could return to Germany for several reasons, one of which was to remarry. The modification was tried to a jury. The jury awarded the mother the right to relocate to Germany with the children; however, the trial court imposed its own residence restriction to Bexar County and thereby discounted the jury verdict in regard to the mother’s right to establish primary residence. The court of appeals affirmed, finding that there was no evidence showing the relocation would be a positive improvement (best interest test) for the children and that TFC §153.134 authorized the trial court to impose the residency restriction. The Texas Supreme Court reversed.

Justice Hankinson, in the delivered opinion of the Texas Supreme Court, approached the appeal question from two fronts, “(1) Whether legally sufficient evidence supports the jury’s finding that that her children’s relocation to Germany would be a positive improvement for them and in their best interest, thereby justifying modification of the joint managing conservatorship ... and (2) whether the trial court had the authority to impose an additional residency restriction contrary to the jury’s verdict.”¹³ The Texas Supreme Court held that the jury’s verdict designating a parent to determine a child’s primary residence was binding (this was prior to the 2003 TFC amendments) and that the trial court did not have authority to override the verdict by imposing a geographical restriction if the jury awarded that right to a conservator.

* Thank you to Richard Orsinger who reviewed this section.

In discussing the standards for relocation, the Texas Supreme Court reviewed standards used in other states such as California (*Burgess*), New Jersey (*Baures v. Lewis*) and New York (*Tropea v. Tropea*). The Texas Supreme Court commented that historically courts have disfavored relocation and that recently courts were reassessing the standards for relocation and moving away from the presumption against relocation toward a more “fluid balancing test that permits the trial court to take into account a greater number of relevant factors.”¹⁴ The Texas Supreme Court noted that three principle cases from other jurisdictions guided their decision-making in re-evaluating issues related to relocation: *Burgess*, *Baures* and *Tropea*.

The Texas Supreme Court listed out several factors (standards) which had been considered in these other cases such as,

- a) Reasons for and against the move;
- b) Education, health, and leisure opportunities;
- c) Accommodation of special needs or talents of the children;
- d) Effect on extended family relationships;
- e) Effect on visitation and communication with the non-custodial parent;
- f) The non custodial parent’s ability to relocate;
- g) The parent’s good faith in requesting the move;
- h) Continuation of a meaningful relationship with the non-custodial parent;
- i) Economic, emotional and educational enhancement for the children and the custodial parent;
- j) Employment and educational opportunities of the parents;
- k) The ages of the children;
- l) Community ties.¹⁵

The Supreme Court, in applying these above listed factors, found that the jury verdict was supported by the evidence. The court also held that the jury verdict was binding on the trial court. This Texas relocation case is unusual in that it involved citizens from another country. It is of particular interest that there was evidence that the father stated he could relocate to Germany and that most of the extended family on both sides still lived in Germany. In addition, the Supreme Court found that factors impacting the mother’s best interest were noteworthy, i.e. improved employment, better financial circumstances, and cited *Burgess* to support consideration of these factors. As will be seen in the following sections of this paper, the underlying social science research guiding the *Burgess* decision has been misinterpreted and misunderstood.

The research, spearheaded by Judith Wallerstein, which guided the *Burgess* decision, is critically analyzed in Section V of this paper, and has been heavily criticized the past few years by social scientists across the United States. In a nutshell, the social science data presented in *Burgess* persuaded the California Court that a child’s best interests were served best by preserving the stability of the primary custodial relationship (primary psychological parent), i.e. a child’s best interests is closely linked to the best interests of the custodial parent.

Baures involved a divorcing mother wanting to relocate the couple’s autistic child from New Jersey to Wisconsin. The mother was from Wisconsin and the father was from Iowa. The father was in the Navy and the couple had lived in several locations prior to the divorce action being filed in New Jersey.¹⁶ The mother claimed “extreme cruelty” in the divorce proceedings

and eventually claimed that she could not financially live in New Jersey and take care of her disabled child without the assistance of her parents who were still living in Wisconsin, her home state. During the pendency of the divorce, the mother's parents lived in New Jersey for about one year to assist her. The father was still in the Navy and testified in the trial that his command would not allow travel to Wisconsin one week a month to visit his son if the mother was allowed to relocate. The trial court denied the relocation request. The father later discharged from the Navy and the mother raised the relocation question yet again. It was denied by the Appellate Court;¹⁷ however, the Supreme Court reversed and remanded the case back.¹⁸

The Supreme Court of New Jersey commented that courts across the United States struggling with relocation questions had not developed any uniform approach; however, the court acknowledged having developed a hybrid scheme that "does recognize the identity of the interests of the custodial parent and the child, and as a result, accords particular respect to the custodial parent's right to seek happiness and fulfillment. . . . and incorporates a variation on a best interests analysis by requiring proof that the child will not suffer from the move."¹⁹ The New Jersey Supreme court cited Wallerstein's research: "According to scholars, so long as the child has regular communication and contact with the non-custodial parent that is extensive enough to sustain their relationship, the child's interests are served."²⁰ The court found that there was insufficient research evidence to confirm there was "any connection between the duration and frequency of visits and the quality of the relationship of the child and the non-custodial parent, but again cited Wallerstein as the support for such a claim."²¹ Again, the same faulty research served as the underpinnings for this New Jersey case that was cited in *Lenz*.

The New York case, *Tropea*, involved the mother having sole custody requesting to relocate the children a two and one-half hour drive from the father after a divorce was granted. The request of relocation was based on mother's desire to remarry; she was also pregnant with the fiancé's child. The family court granted the motion; the Supreme Court affirmed the decision as did the New York Supreme court. Note that the Supreme Court consolidated this appeal with a similar relocation appeal, *Kenword*.²² The New York Supreme court commented, "we believe that no single factor should be treated as dispositive or given such disproportionate weight as to predetermine the outcome" and that "each relocation request must be considered in its own merits with due consideration of all the relevant facts and circumstances. . . ."²³ The court further drew a distinction between a custodial parent with primary child rearing responsibilities and a non-custodial parent's responsibilities. The *Tropea* divorce was initiated in the early 1990's and mother was granted sole custody of the children, father had visitation rights. No social science research was cited in the Supreme Court commentary. It was clear that the commentary was made with the view that the father was only peripherally involved in child rearing.

Bottom Line? The one Texas case, *Lenz*, which listed out factors, was prior to specific provisions for relocation in the Texas Family Code 2004. The *Lenz* Supreme Court commentary referenced factors from other jurisdictions, some of which were, in turn, based on misinterpreted research, i.e. Wallerstein. In addition, these older cases did not involve relocation in families sharing joint custody; rather, the mothers in the main three cases did provide the majority of the child care. Therefore, the *Lenz* case should have value today in terms of providing direction in relocation cases in the finding that the jury verdict was binding and the factors listed are obligatory to consider. Today, relocation typically involves children facing the loss of a dynamic,

involved, and “attached” parent, not just a visitor. Justifying this kind of loss as being in the best interest of a child is an uphill battle. Some might argue that relocation is appropriate if the parent has been harmful to the child. This is a red herring argument. If the parent in question has been abusive or inappropriate with the child, relocation is **not** the front-line answer. Rather, limiting and/or supervising parental contact would be the front line concern. If a parent is harmful, then it is not the child’s best interests to be exposed to the parent, even if the parent lives next door. In such circumstances relocation could possibly be a secondary and moot question, i.e. if the child has no or supervised contact with a parent, then there is only limited loss to that child to relocate in regard to involvement with that parent and it is likely that the primary parent already controls the domicile as well as all the rights, powers, and duties and thereby could relocate anyway.

IV. Social Science Research

There is a great deal of empirical research which impacts the question of relocation. It can be divided into two somewhat overlapping categories: Direct Research (research involving children who grew up or are growing up in long distance families) and Indirect Research (research involving the short term and long term impact of parental involvement or lack thereof with their children).

A. Direct Research.

This body of research is limited but nonetheless highly informative regarding the question of relocation. A review of the empirical studies in 1998 found no empirical literature relating to relocation and the impact on children.²⁴ Independent review by this author and a separate independent review by Warshak found only one empirical study directly relating to this subject.

This pioneering research from the University of Arizona (2003) indicated that college students who grew up in long distance families had less positive outcomes (across a variety of areas) than did their divorced counterparts whose parents stayed in the same geographical location.²⁵ This innovative study revealed a unique viewpoint in that it assessed the impact of growing up in long distance families from the perspective of young adult looking back and reflecting upon their own childhood.

The study involved 2,067 students enrolled in an introductory psychology class in the Fall of 2001. Of this number, about twenty-nine percent (29%, N=602) of the students reported that their parents were divorced.²⁶ This percentage is in keeping with Census statistics indicating that about one-third of marriages with children end in divorce.²⁷

The students in the study were around age nineteen (19) to twenty (20) years old. Accordingly, most of the students were reared prior to gender neutral language laws and the emergence of joint custody arrangements.

Of the students reared in divorced families, about thirty-nine percent (39%) of the parents stayed in the same geographical location. This group was the “control group” upon which comparisons were later based. This means that about two-thirds (61%) of the students were

reared in some form or another of a long distance family.²⁸ In this study, long distance was defined as parents living one hour or more apart. Of this latter group (170 students), one-quarter of the children had relocated with their mother, around one-quarter remained with their mother while their father moved away, nearly eight percent (8%) stayed with their father while their mother moved away and four percent (4%) relocated with their father.²⁹

Move Scenario Groups

Percentage	Scenario
25%	Children moved with Mother, Father stayed
26%	Father moved without children, children stayed with Mother
8%	Mother moved, Children stayed with Father
4%	Children moved with Father, Mother stayed

The study found that the legal custody arrangements were associated with whether or not either parent relocated. Sole custody for either parent increased the statistical likelihood of relocation by twenty to twenty five percent (20-25%). Of the group studied, forty percent (40%) of the families had joint custody with slightly less than half (48%) having relocated. Of the thirty-eight percent (38%) of the families with sole custody held by the mother, only about one-quarter (25%) stayed in close proximity while seventy-five percent (75%) relocated. Of the five percent (5%) with sole custody held by the father, sixty-nine (69%) relocated.³⁰

The students were assessed by several different instruments and by direct questions specifically designed for the study. The assessment instruments included measures of general physical health, hostility, personal and emotional adjustment, and painful feelings about divorce. Examples of specific constructs which were assessed were financial contribution to college education by each parent, perceptions of positive role models, perceptions of friendships and social adjustment, and general life satisfaction.³¹

When the two groups (parents in close proximity versus long distance parents) of students who grew up in divorced families were compared along several variables, a number of statistically significant differences between the groups emerged. The next several sections highlight the differences found between groups.

College Expenses- Students whose parents stayed in close proximity received more financial support for college (about \$1800.00 annually) than any of the four different move scenario groups. Of the move scenario groups, the “father move away without the children” group received the least and the “mother move away with the children” received the most financial support. All of the move scenario students worried more about their financial support than did the close proximity group; however, significant differences in worry were only found between the “no-move” group and the “father moved without children” group.³²

College Support & Move Scenario Group Comparisons

Percentage of College support by Father	Move Scenario

35%	Children moved with mother, father stayed
72%	Mother moved, children stayed with father
69%	Children moved with father, mother stayed
41%	Father moved, children stayed with mother

Personal and Emotional Adjustment, General Life Satisfaction and Hostility levels.

Only two groups of the move scenario groups evidenced statistically significant differences in the adjustment and general life satisfaction. Children who had relocated with their father or stayed with the father when the mother moved away reported feeling less well-adjusted and demonstrated lower scores in general life satisfaction.

Adjustment, General Life Satisfaction

Significant Differences from the No-Move Group	Move Scenario
No Sig Difference	Children moved with Mother, Father remained
No Sign Difference	Father moved without children, children remained with Mother
*Sig Difference	Mother moved ,Children stayed with Father,
*Sig Difference	Children moved with Father, Mother stayed

Hostility. Three move scenario groups showed more hostility than the most common move scenario group. Interestingly, in the “father move without children” group, girls showed more hostility than boys when compared to the “no-move” group.

Hostility Levels

Significant Differences within groups	Move Scenario
No Sig Difference	Children moved with Mother, Father stayed
*Sig Difference	Father moved without children, children stayed with Mother
*Sig Difference	Mother moved, Children stayed with Father
*Sig Difference	Children moved with Father, Mother stayed

Inner Turmoil and Distress- As would be expected from the other findings, students who grew up in “no-move” divorced families scored the lowest on inner turmoil and distress when compared to all of the move scenario groups. Each move scenario group showed statistical significant differences to the no-move group. The highest inner turmoil and distress groups were the students whose mothers (as opposed to fathers) were long distance.³³

Relationship with parents- Students in the “no-move” group reported having better rapport and seeing their parents as more positive role models and sources of support than did students in any of the move-scenario groups. Two move scenario groups had a significantly negative impact on the father-child relationship: “Father move without children” and “Mother move with children”.

Relationship between parents- There was less conflict reported between parents in the non-move families. Of the move scenarios, the least conflict between parents was reported by the “children stay with father, mother move group”. This finding is particularly salient regarding positive post divorce adjustment of children and the impact of conflict between parents.

General Global Health- The reported global health of the no-move group was significantly higher than that reported by any of the move-scenario groups. Gender differences also emerged in the reported health of the four move scenario groups with girls reporting significantly more health issues when living long distance from their fathers.

The methodology of this study was straightforward and sound. A control group was used and proper statistical analyses were conducted and reported in the published research article. Criterion variables (parental contribution to college expenses, overall adjustment etc) were developed from other empirically based studies. This research appeared in a prestigious, peer-reviewed journal by the American Psychological Association. The research, overall, should pass any informed Daubert challenge.

The findings indicate that a move by either the mother or the father, regardless of where the child lives, is associated with more negative effects than if both parents stay in close proximity. In summary, as compared to students reared in families of divorce where parents stayed in close proximity, students from the long distance families:

- ❖ Had less financial support and less support for college
- ❖ Worried more about financial support
- ❖ Felt more hostility in relationships
- ❖ Felt more distress related to the divorce
- ❖ Saw their parents as less supportive emotionally (the distant parent)
- ❖ Saw their parents less favorably as role models
- ❖ Saw their parent’s relationship as more conflictual
- ❖ Had less favorable health ratings
- ❖ Had less favorable general life satisfaction
- ❖ Had less favorable personal & emotional adjustment

Eighty-two percent (82%) of the relocating families involved children being away from their fathers either by the mother moving the children or the father leaving. Surprisingly, the impact of both of these move scenarios seems quite similar.³⁴

Of the problems associated with relocation listed above, the adjustment and health issue seemed to be the most serious. There are thousands of research studies which indicate positive correlation between compromised health and overall adjustment (presence of stress) and self ratings of global health (presence of stress). This means that children of long-distance families are at higher risk for a myriad of health problems ranging from cardiovascular disease to impaired immunological systems.³⁵

Can the findings of this study be applied to children who are now traveling between households? The findings from these students looking back on their lives and assessing their own

current functioning are consistent with other pockets of empirical research studies assessing the adjustment of children in divorce. Most children of relocating families do not go to college, much less take introductory psychology courses. So in that respect results maybe skewed. Nevertheless, because the findings are consistent with other research studies which indirectly tap into the same issues, the findings are likely to be reliable. Because of the age of the students many of the young adults in this study probably were not living under joint custody arrangements prior to the relocation. Though this data was collected in the study, it was not specifically reported. Therefore, there is the question that these findings might underestimate problems associated with children under joint custody arrangements who relocate.

The real question is, "What do the findings really mean"? Are divorced families who stay in the same locale:

More attuned to their children's needs?

Are they more likely to sacrifice their own careers and interests for their children's stability?

Are they more in touch with the impact of change and stress on their children?

Do they experience less conflict than relocating parents?

Does some of the stress of relocating come from traveling or from problems in coordinating schedules and communication?

Are college students mature enough to fully understand the impact of long-distance families?

Would the same measurements yield more or less disturbing results twenty years from now?

Does family conflict drive relocation?

As moving tends to have a negative impact on children, are families who have a tendency to move also more likely to have a negative impact on their children anyway?

Is relocation the new replacement for child abuse accusations in parental alienation cases?

What effect is the move from sole managing to joint managing custodial arrangements going to have on relocating families?

Will relocation begin to subside?

Will the effects of relocation be worse, now that fathers are more equally sharing in parenting?

The simplest answer, which likely will be the one which emerges through replication studies and longitudinal future studies is that having two parents in close proximity is better for children regardless of other factors. Meaningful parenting means parenting under all conditions and circumstances: health, sickness, successes, and failures. Noteworthy parenting involves being available for a child's sudden fever at school, a basketball game, or scouts. Under these conditions of parenting across contexts, children at least have the opportunity to have a significant parenting relationship with both mother and father. This uncomplicated answer makes common sense and also reflects the public policy of most states of the union at this juncture.

Bottom line? The findings of the one available direct empirical study fall in line with Texas public policy and other indirect research, more time with both parents is better for children.

B. Indirect Research and Commentaries. Several empirical studies and summaries (abstracts) from referred journals published by mainstream, reputable referred journals are cited

below. Please note that such journals utilize independent editorial and peer reviewers who are experts in their particular fields to carefully scrutinize all elements of the research study and article (review of the literature, the research question, the methodology, the assessment instruments, the statistical analysis, the results of the findings, the discussion of the findings and the cited limitations of the study) and only allow publication of those studies which satisfy sound work on all the above listed areas. The following list is intended to give a broad smattering of research for the lawyer's review and is not intended to be exhaustive in any respect as literally hundreds of sound research articles have been published on these varying topics. Remember that many of these studies, especially those published in the early 1990's had a database from the late 1980's which would likely be children who lived primarily with mothers. The article and book summaries came directly from the authors.

Ahrons, C. R., Tanner, J.L. (2003) Adult Children and Their Fathers: Relationship Changes 20 Years After Parental Divorce. *Family Relations*, 52, 340-531.

Abstract: Adult children's reports of relationship changes with their fathers were examined 20 years after their parents' divorce. Data were drawn from interviews with 173 adult children from Binuclear Family Study about their perceptions of their parents' divorce and its long-term impact. Findings indicated that most adult children felt that their relationships with their fathers had either improved or remained stable over time. Custody did not directly affect reported changes in the quality of their relationship with their fathers; however, increased inter-parental conflict, early father remarriage, and low father involvement in the early post-divorce years were associated with worsening relationships over time. Those who reported that their relationships with their fathers got worse also reported poorer quality relationships with their stepmothers, stepsiblings, and paternal grandparents.

Amato, P (1993) Children's Adjustment to divorce: Theories, hypotheses, and empirical support. *Journal of Marriage & the Family*. 1993 Feb Vol 55(1) 23-38

Abstract: Compared 5 perspectives that account for children's adjustment to divorce. These perspectives refer to the absence of the noncustodial parent, the adjustment of the custodial parent, inter-parental conflict, economic hardship, and stressful life changes. Hypotheses derived from each perspective and available studies to determine the degree of support for each hypothesis are examined. This procedure allows for an overall assessment of how well predictions derived from each position fit with the empirical base. Existing research provides the most consistent and convincing support for the inter-parental conflict perspective. However, a model combining insights from all 5 perspectives is necessary to account fully for current research findings

Amato, P. R., & Booth, A. (1996). A prospective study of divorce and parent-child relationships. *Journal of Marriage and the Family*, 58, 356-365.

Abstract: This study used national longitudinal data (A. Booth, D. R. Johnson, L. White, and J. N. Edwards, 1991) to examine parent-child relationships before and after parental divorce. Data from 857 Ss from the original sample of 2,033 married persons (not couples; aged 55+ yrs) was used. Parents' reports of problems in their relationships with

children were significantly elevated as early as 8 to 12 yrs prior to divorce. Low quality in the parents' marriage largely accounted for these associations. Early problems in the parent-child relationship and low quality in the parents' marriage when children were 10 yrs old (on average) predicted low parental affection for children when they were 18 yrs old (on average). Divorce further eroded affection between fathers and children, but not between mothers and children. Findings suggest that the quality of the parents' marriage has both direct and indirect long-term consequences for parent-child affection.

Amato, P.R. & Gilreth, J.G. (1999) Nonresident fathers and children's well-being. A Meta-analysis. *Journal of Marriage and the Family*, 61, 557-573.

Abstract: Employed meta-analytic methods to pool information from 63 studies dealing with nonresident fathers and children's well-being. Fathers' payment of child support was positively associated with measures of children's well-being. The frequency of contact with nonresident fathers was not related to child outcomes in general. Two additional dimensions of the father-child relationship (feelings of closeness and authoritative parenting) were positively associated with children's academic success and negatively associated with children's externalizing and internalizing problems.

Amato, P. R. (2000) The consequences of divorce for adults and children. *Journal of Marriage & the Family*. 2000 Nov Vol 62(4) 1269-1287.

Abstract: Uses a divorce-stress-adjustment perspective to summarize and organize the empirical literature on the consequences of divorce for adults and children. This review draws on research in the 1990s to answer 5 questions: How do individuals from married and divorced families differ in well-being? Are these differences due to divorce or to selection? Do these differences reflect a temporary crisis to which most people gradually adapt or stable life strains that persist more or less indefinitely? What factors mediate the effects of divorce on individual adjustment? And finally, what are the moderators (protective factors) that account for individual variability in adjustment to divorce? In general, the accumulated research suggests that marital dissolution has the potential to create considerable turmoil in people's lives. It is maintained that people vary greatly in their reactions. Divorce benefits some individuals, leads others to experience temporary decrements in well-being, and forces others on a downward trajectory from which they might never recover fully. Understanding the contingencies under which divorce leads to these diverse outcomes is a priority for future research.

Amato, P. (2003) Reconciling Divergent Perspectives : Judith Wallerstein, Quantitative Family Research, and Children of Divorce. *Family Relations*, 52, 332-339.

Abstract: Although Judith Wallerstein's research on children with divorced parents has been influential, many quantitative family scholars have criticized her methods and conclusions. Wallerstein claims that children with divorced parents often reach adulthood as psychologically troubled individuals who find it difficult to maintain stable and satisfying relationships with others. Consistent with Wallerstein's claims, quantitative research suggests that parents' divorce increases the risk of experiencing psychological problems, having a discordant marriage, seeing one's own marriage end in divorce, and

having weak ties to parents (especially fathers) in adulthood. The accumulated evidence, however, reveals that the estimated effects of divorce are not as strong as Wallerstein appears to claim. Amato provides examples from the Marital Instability Over the Life Course study to illustrate the magnitude of divorce effects. I conclude with a call for rapprochement between Wallerstein and her critics.

Austin, W.G. (2000) A forensic psychology model of risk assessment for child custody relocation law. *Family and Conciliation Courts Review*, 38, 192-207.

Abstract: Relocation in child custody presents a psycho-legal dilemma of trying to preserve stability in the child's residential family unit while maintaining continuity in the role of the nonresidential parent. Courts have shown a strong preference to permitting the child to move away with the residential parent unless there is a showing of potential harm to the child. The forensic violence risk assessment literature provides an analogous conceptual framework for understanding the prediction of harm. Instead of predicting violence, the evaluator is predicting the effect of environmental circumstances on the child's adjustment. A forensic psychology model of risk assessment is adapted to the relocation problem. The elements of the model are an expected base rate of short-term emotional distress due to relocation, risk and modulating factors, and how to handle the potential consequences of prediction errors. A hierarchical predictive process, derived hypotheses, and practical considerations in relocation are discussed.

Bauserman, R. (2002) Child adjustment in joint-custody versus sole custody arrangements: A meta-analytic review. *Journal of Family Psychology*, 16, 91-102.

Abstract: The author meta-analyzed studies comparing child adjustment in joint physical or joint legal custody with sole-custody settings, including comparisons with paternal custody and intact families where possible. Children in joint physical or legal custody were better adjusted than children in sole-custody settings, but no different from those in intact families. More positive adjustment of joint-custody children held for separate comparisons of general adjustment, family relationships, self-esteem, emotional and behavioral adjustment, and divorce-specific adjustment. Joint-custody parents reported less current and past conflict than did sole-custody parents, but this did not explain the better adjustment of joint-custody children. The results are consistent with the hypothesis that joint custody can be advantageous for children in some cases, possibly by facilitating ongoing positive involvement with both parents.

Braver, S.L. & O'Connell, E. (1998) *Divorced dads: Shattering the myths*. (New York: Tarcher/Putnam.)

Book Description: Millions of families strive to give their children the best possible upbringing after being split apart by divorce. Separated mothers and fathers--and in many cases their second spouses--struggle to find the right way to piece together parent-child relationships in its wake. In this revolutionary work, psychologist Sanford L. Braver--who undertook the largest-ever federally funded study on issues confronting divorced

fathers--shows how millions of well-intentioned mothers, fathers, judges, lawyers, educators, and other caregivers have been repeatedly and tragically misled by the prevailing data about divorce and parenthood. For years our society has accepted the image of the "deadbeat dad" who shirks childcare payments and other responsibilities. Yet Braver proves that this villainous figure--like many other myths of the divorced parent--simply does not exist in significant numbers. Moreover, Braver overturns one of the most important pieces of data on divorce in the past quarter-century: the belief that divorced women suffer a steep decline in their standard of living. This widely embraced notion was the result of misread data, but was transformed into "fact" by the media and the courts, and accepted by divorced families and their advocates. No other book has revealed the deep flaws in today's research on divorce. One-sided studies of divorced men and women, misused census data, and poor research have skewed many of the assumptions around which parents and courts have shaped divorce settlements, parenting responsibilities, and child-rearing decisions. Every divorced parent--and anyone who loves a divorced parent -- urgently needs this book to understand the new realities behind divorce and parenting.

Braver, S.L. & Cookston, J.T. (2004) Controversies, Clarifications, and Consequences of Divorce's Legacy: Introduction to the Special Collection. *Family Relations*, 52, 4, 314.

Abstract: Recent publications describing long-term results of longitudinal investigations of divorced couples have stirred controversies because of substantial differences in findings. The current Special Collections was initiated to clarify some of the issues brought into controversy. Five primary themes are explored by the nine papers in this collection: How severe is the long-term effect of divorce on children? Why do various research findings on the long term effect of divorce tend to disagree so substantially? Why is divorce considered a problem? What do children have to say about their experiences with divorce? And what, if anything, can be done to help the children of divorce?

Clark-Stewart, A. & Howard, C. (1996) Advantages of Father Custody and Contact for the Psychological well-Being of School-Age Children, *Journal of Applied Developmental Psychology*. 1996 Apr-Jun Vol 17(2) 239-270.

Abstract: Examined the impact of the *custodial* parent gender, *contact* with the nonresident parent, and circumstances in the resident parent's household on the *psychological well-being* of 187 children (aged 5-13 yrs) from divorced families. 72 subjects (Ss) were in *father* custody (FC) and 115 Ss were in mother *custody* (MC). Results show that across a variety of assessments of *psychological well-being* (self-esteem anxiety, depression, problem behaviors), Ss (especially boys) did significantly better in FC. Ss in FC had the advantage of maintaining a more positive relationship with the nonresident parent, the mother. Differences in Ss' *well-being* were not eliminated by statistically controlling for the *custodial* parent's *psychological* state and adequate income or the Ss' *contact* with the nonresident parent. No same-gender *advantage* was found for girls in MC. For these Ss, *well-being* was predicted by close "parentlike" *contact* with the nonresident *father*.

**Coltrane, S. & Adams, M. (2003) The Social Construction of the Divorce “Problem”:
Morality, Child Victims, and the Politics of Gender. *Family Relations*, 53, 363-372.**

Abstract: Although divorce rates have been stable and dropping for two decades, Americans seem anxious about the state of marriage. Drawing on the sociology of knowledge and a social constructionist approach to the study of social problems, we examine reasons for this collective anxiety, documenting how the divorce “problem” has been framed by organizations promoting conservative family values. We examine the history of divorce and identify social contexts associated with cyclical claims that divorce reflects a breakdown of the moral order. In the contemporary context, we examine the social science experts are used to portray children as victims of divorce and how such images legitimate the political objectives of specific interest groups and mask underlying issues of gender inequality.

**Fabricius, W.V. (2003) Listening to children of divorce: New findings that diverge from
Wallerstein, Lewis and Blakeslee. *Family Relations*, 42, 4, 385.**

Abstract: Fabricius reviews new findings on (a) college students’ perspectives on their living arrangements after their parents’ divorce, (b) their relations with their parents as a function of their living arrangements, (c) their adjustment as a function of their parents’ relocation, and (d) the amount of college support they received. Students endorsed living arrangements that gave them equal time with their fathers, they had better outcomes when they had such arrangements and when their parents supported their time with the other parent, they experienced disagreement between mothers and fathers over living arrangements, and they gave evidence of their fathers’ continuing commitment to them into their young adult years. These findings consistently contradict the recent, influential public policy recommendations of Judith Wallerstein.

**Fabricius, W.V. (2000) Young adults’ perspectives on divorce: Living arrangements.
Family and Conciliation Courts Review, 38, 446-461.**

Abstract: Assessed the perspectives of 820 college adults from divorced families on the issue of children's living arrangements after divorce. Subjects (Ss) expressed a desire to have spent more time with their fathers as they were growing up and believed that best living arrangement is living equal time with each parent. The living arrangements they had as children generally gave Ss little time with their fathers. Ss reported that their fathers wanted more time with them but that their mothers generally did not want them to spend more time with their fathers.

**Goede, M. & Spruijt, E. (1996). Effects of parental divorce on youth unemployment on
adolescent health. *Patient Education and Counseling*, 29, 269-276.**

Abstract: Analyzed the connection between parental divorce and youth unemployment and 4 health variables (mental health, thoughts of suicide, psychological stress, and physical health) using OLS regression analysis. From the Utrecht Study of Adolescent

Development, a longitudinal panel study of 12-24 yr olds in the Netherlands, the 1991 dataset on 1,088 nonschool-going youngsters who were at least 18 yrs old were used. Results showed that parental divorce and sex, not the experience of unemployment, are risk factors for physical health. Parental divorce and the experience of unemployment are predictors of the dimensions of psychological health discerned. For boys, the experience of unemployment is the best predictor of mental health and thoughts of suicide. For girls, parental divorce is the best predictor of all the dimensions of health considered. The experience of unemployment is only connected with thoughts of suicide

Haine, R.A., Sandler, I.N., Wolchik, S.A., Tein, J., Dawson-McClure, S.R., Changing the Legacy of Divorce: Evidence From prevention Programs and Future Directions. *Family Relations*, 52, 4, 397.

Abstract: This paper has two primary objectives. The first is to assess the current status of efforts to prevent mental health problems in children of divorce by highlighting the importance of using theory in the design and evaluation of prevention programs and by reviewing the empirical research on the efficacy of programs to improve outcomes for children of divorce. the second objective is to propose two future directions for advancing theory-based preventive interventions for children of divorce: (a) improving our understanding of the theoretical mechanisms underlying prevention program effects, and (b) bridging the gap between the current evidence of program efficacy and the development of a public health strategy to reduce the negative outcomes experienced by children of divorce.

Hetherington, E. M. (2004) Intimate Pathways: Changing Patterns in Close Personal Relationships Across Time. *Family Relations*, 52, 4, 318.

Abstract: This paper presents findings from the Virginia Longitudinal Study of Divorce and Remarriage describing diverse patterns of intimate relationships and personal adjustment in marriage and following divorce. Both a conflictual, unsatisfying marriage and a divorce were associated with diminished psychological, social, and physical well-being. However, it was the diversity rather than the inevitability of outcomes following divorce that was striking, with most people able to adapt constructively to their new life situation within 2-3 years following divorce, a minority being defeated by the marital breakup, and a substantial group of women being enhanced. Although both marital conflict and divorce in the family of origin elevated the risk of marital instability in young adult offspring, the effect was greater for divorce. Marriage to a supportive, well-adjusted partner by youths from divorced families eliminated the difference in marital instability found for these youths and those from nondivorce families.

Humke, C. & Schaeffer, C. (1995) Relocation: A review of the effects of residential mobility on children and adolescents. *Psychology: A Journal of Human Behavior*, 32, 16-24.

Abstract: Conducted a literature review to investigate the effects of relocation on children and adolescents. The reviews included studies based on parents' reports, children's reports, and clinicians' reports. The evidence suggests that moving is a stressful

life event that can impair a child's adjustment. The following factors were identified as mediating the risk of impairment to a child's psychosocial and educational adjustment following a move: moving due to familial disruption, poor premove adjustment, number of moves, distance of move, and multiple stressors. One of the most influential factors was parental attitude toward the move, since children were found to mirror their parents' attitudes.

Kelly, J.B & Emery, R.E. (2004) Children's Adjustment Following Divorce: Risk and Resilience Perspectives. *Family Relations*, 52, 4, 352.

Abstract: The empirical literature on the longer-term adjustment of children of divorce is reviewed from the perspective of (a) the stressors and elevated risks that divorce presents for children and (b) protective factors associated with better adjustment. The resilience demonstrated by the majority of children is discussed, as are controversies regarding the adjustment of adult children of divorce. A third dimension of children's responses to divorce, that of lingering painful memories, is distinguished from pathology in order to add a useful compliment to risk and resilience perspectives. The potential benefits of using an increasingly differentiated body of divorce research to shape the content of interventions, such as divorce education, by designing programs that focus on known risk factors for children and that assist parents to institute more protective behaviors that may enhance children's long-term adjustment is discussed.

Kelly, J.B. & Lamb, M.E. (2003) Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How? 17 *Journal of Family Psychology* 196, 193-205.

Abstract: Many divorced parents seek the court's permission each year to move their children to a new location away from their other parents. Such moves stress and often disrupt psychologically important parent-child relationships, and this may in turn have adverse consequences for the children. This article discusses the development of attachment relationships in infants and toddlers and the ways in which relocation is likely to affect young children of different ages; recent trends in judicial decisions regarding relocation; factors to consider when deciding whether or not to permit relocation; ways of promoting long-distance relationships between young children and their nonmoving parents; and implications for legal policy and clinical practice.

Laumann-Billings, L. & Emery, R.E. (2000) Distress among young adults from divorced families. *Journal of Family Psychology*, 14, 671-687.

Abstract: Researchers find that most children from divorced families function normally, but some clinicians assert that young people are disturbed even many years after a divorce. These accounts may be less discrepant than they appear, because research typically focuses on notably problematic behavior (disorder), whereas case studies emphasize more subtle inner turmoil (distress). In Study 1 college students reported painful feelings, beliefs, and memories about their parents' divorce on a reliable new measure, but they also reported accepting the divorce and having few psychological symptoms. Distress about family life was greater among students from divorced than

from married families. Study 2 replicated these findings in a community sample of young people from low-income divorced families. In both studies, greater distress was associated with children's residence, frequency of contact with fathers, inter-parental conflict, and psychological symptoms.

Levine, M. (1996) Residential change and school adjustment. *Community Mental Health Journal*, 2, 61-69.

Abstract: A program to induct and orient the new child has been introduced on a pilot basis in 2 elementary schools. An older child provides a tour of the building, instructs the new child in the general rules of the school, and discusses facilities in the school and neighborhood. It should also be possible to counsel parents in the preparation of children for moving, since most families can predict their moves. Such a counseling program depends upon adequate parental cooperation, and upon knowledge of how to achieve mental mobility. Such cooperation may be difficult to obtain from Negro parents in the inner city when approached by white professionals. The implications of the high turnover in inner city schools for neighborhood or school-based mental health programs are discussed.

Marsiglio, W., Amato, P.R., Day, R.D. & Lamb, M.E. (2000) Scholarship on fatherhood in the 1990's and beyond. *Journal of Marriage and the Family*, 62, 1173-1191.

Abstract: Notes that throughout the 1990s, scholars interested in fatherhood have generated a voluminous, rich, and diverse body of work. This literature is selectively reviewed with an eye toward prominent theoretical, methodological, and substantive issues. This burgeoning literature, complemented by social policy makers' heightened interest in fathers and families, focuses on fatherhood in at least 4 key ways. First, theorists have studied fatherhood as a cultural representation that is expressed through different socio-cultural processes and embedded in a larger ecological context. Second, researchers have conceptualized and examined the diverse forms of fatherhood and father involvement. Third, attempts have been made to identify the linkages between dimensions of the father-child relationship and developmental outcomes among children and fathers. Fourth, scholars have explored the father identity as part of a reciprocal process negotiated by men, children, mothers, and other interested parties. The review highlights research that examines the relationships between dimensions of the father-child relationship and children's well-being and development.

Matthews, K.D. Woodall, K.L. , Kenyon, K. & Jacob, T. (1996). Negative family environment as a predictor of boys' future status on measures of hostile attitudes, interview behavior, and anger expression. *Health Psychology*, 15, 30-37.

Abstract: The present study tested the hypothesis that family environments characterized as no supportive, unaccepting, and conflictual lead to the development of hostile traits in adolescent Caucasian boys. Negative behaviors during parent-son discussions aimed at resolving disagreements were observed in a laboratory setting in 51 intact families. Sons' hostile traits were assessed at the time of the interactions and then 3 years later. Results showed that a high frequency of negative behaviors exhibited by both parents and sons

predicted sons' later hostile attitudes and outward expression of anger after adjustment for their initial level of hostile attitudes and anger expression, respectively. A low frequency of positive behaviors exhibited by the father and son predicted sons' later Potential for Hostility ratings after adjustment for their initial level. The meaning of these findings for the conceptualization of hostility is discussed.

Russek, L.G., Schwartz, G.E., Bell, I.R., & Baldwin, C.M (1998). Positive perceptions of parental caring are associated with reduced psychiatric and somatic symptoms. *Psychosomatic Medicine*, 60, 654-657.

Abstract: Examined the relationship between perceptions of parental caring, current psychiatric and somatic symptoms, and defensiveness in a University of Arizona sample of 17-46 yr old females and males. The Harvard Parental Caring Scale (HPCS), the SCL90R, and the Marlowe-Crowne scale (a measure of defensiveness) were administered to 398 students at the University of Arizona. Cronbach alphas were .83 for HPCS ratings of mothers and .88 for fathers. High HPCS ratings were associated with reduced symptoms reports in both females and males. Ratings of HPCS showed a small correlation with defensiveness. The relationship between HPCS and symptoms was strongest in the least defensive Ss. The authors conclude that positive perceptions of love and caring from parents, typically the most important source of social support for children, are associated with reduced psychiatric and somatic symptoms. Defensiveness may play a protective role psychologically (but not necessarily physiologically) in reducing the conscious awareness of symptoms accompanying low perceptions of parental love and caring.

Tucker, J., Marx, J. & Long, L. (1998) Moving on: Residential mobility and children's school lives. *Sociology of Education*, 71, 111-129.

Abstract: Parents are often warned of the negative impact of moving on children, but there has been little research on how the influence of moving may vary by family structure. The study presented here used data from the Child Health Supplement to the 1988 National Health Interview Survey to investigate the impact of mobility on the school life and performance of 4,595 Black and White elementary-aged school children (aged 7-12 yrs) in families with both biological parents present and those in alternate family structures. The study found that children who have moved an average or above average number of times are not significantly harmed if they reside in families in which both biological parents are present; however, for children in other family structures, any move is associated with an adverse school life.

U.S. Department of Education Report

This government funded study reviewed data on academic success and involvement of fathers nearly 17,000 children of divorced families. The findings indicated that more positive academic adjustment and performance of children (especially pre-teens and teens) was associated with children whose fathers attended a school-related event, a teacher conference, general meeting or volunteered at the school. These factors appeared to be more significant than the actual frequency of the contacts thus, the research emphasizes that it is the quality and nature


of the contact, rather than the frequency, which positively impacts a child's life. This report can be downloaded at <http://nces.ed.gov/pubinfo.asp>

Walker, Janet (2003) Radiating Messages: An International Perspective. *Family Relations*, 52, 406-417.

Abstract: Studies that radiated negative messages about the detrimental impacts of divorce on children prompted urgent calls in the United Kingdom for a reinstatement of traditional family values. A careful review of the evidence confirms that although the effects of divorce are real, care should be taken to avoid exaggeration. This has moved the debate forward from one centered on finding ways to save marriages at all costs to one centered on providing better support, advice, and information to parents and children to help them deal with the complexities associated with parental separation and establish a different kind of family life in which the qualities of relationships is a key factor.

Warshak, R. A. (2003) Payoffs and Pitfalls of Listening to Children. *Family Relations*, 52, 373-384.

Abstract: Children's perspectives can enlighten decisions regarding custody and parenting plans, but different opinions exist about how best to involve children in the decision making process. This article discusses why most procedures for soliciting children's preferences do not reliably elicit information on their best interests and do not give children a meaningful voice in decision making. Instead, these procedures provide children with forums in which to take sides in their parents' disputes. In addition to hearing an individual child's voice, decision makers can use the collective voice of children, as revealed in research on such topics as joint custody, overnight stays, and relocation to help understand what children might say about these issues with the hindsight of maturity and in the absence of parental pressure, loyalty conflicts, inhibitions, and limitations on perspective and articulation.

Warshak, R.A. (2003) Brief of  Amici Curiae on behalf of minor children RE: In re the marriage of Susan Poston Navarro (LaMusga) and Gary LaMusga. <http://psych.la.asu.edu/people/faculty/sbraver/>

Summary: This brief was accepted by the Supreme Court of California in a case that challenges narrow interpretations of *Burgess*. It was filed in response to a brief by Wallerstein, whose interpretations of the scientific literature have influenced relocation decisions reached by California courts (*Burgess*). Warshak maintains that Wallerstein offers a misleading account of the social science evidence relevant to relocation decisions and that her opinions run counter to a consensus of experts on divorce. Underscoring this point, a total of 28 experts in the field of divorce and child custody (several of whom are former collaborators and co-authors of Wallerstein), including several Texas psychologists, asked that their names be included as signers of the Warshak brief. In rebutting Wallerstein, Warshak shows that her central claims are inconsistent with her own published work. He presents the research and thinking of a majority of social scientists on the consequences of relocation, the causes and effects of unhealthy parent-

child alignments, the reasons for caution in considering children's opinions, the benefits to children from close involvement with both parents, and other issues relevant to relocation. The Warshak brief concludes that courts should inquire into the potential detriment of relocation for any particular child, and that relocation decisions should be guided by a case-by-case analysis of the best interests of children, rather than a bright-line rule establishing a presumption in favor of relocation.

Warshak, R.A. (2002) Social Science and Children's Best Interests in Relocation Cases: *Burgess Revisited*. *Family Law Quarterly*, 34, 83-113.

Summary: This article reviews and analyzes psychological research and considerations that relate to relocation decisions. The *Burgess* decision provides the context for this discussion with special attention to the arguments and research discussed in Wallerstein's amica curiae brief. Dr. Warshak identifies and explains crucial errors and oversights in the brief that detract from its value as a guide to children's best interests in relocation decisions. He shows that the brief is inconsistent with a large volume of empirical research and with Wallerstein's own earlier published findings and opinions. The article covers the importance of the custodial mother-child relationship, the significance of frequent father-child contact, the relationship between quantity and quality of contact, direct studies of relocation, the impact of the relocation decision on the custodial parent, the financial impact of relocation, joint custody and relocation, hardships of travel and access schedules following relocation, motives and reasonableness of plans, the role of children's preferences in relocation decisions, relocation and parental alienation syndrome, custody evaluations, and limitations of social science studies which courts should be aware of before applying research findings to relocation dispositions.

Wolchik, S. Sandler, I.N., Braver, S.T., & Fogas, B. (1985) Events of parental divorce: Stressfulness ratings of children, parents, & clinicians. *American Journal of Community Psychology*, 14, 59-74.

Abstract: Fifty eight 8 to 15 yr old children of divorce, their custodial parents, and 50 clinicians rated the stressfulness, for a hypothetical child, of 62 events that occur in this situation. One hundred and twenty-three 8-25 yr olds rated the goodness or badness of the events that had happened to them. Rank orders of the mean stress ratings for the hypothetical child were highly correlated between all groups. However, when the absolute stress value of the events was compared, children rated 10 events as significantly less stressful than did parents; parents and clinicians differed for 9 events, with parents rating 7 as less stressful. Children ranked 19 events as less stressful than did clinicians. Rank orderings of actually experienced events correlated highly with those of children's rankings for negative events for the hypothetical child. (24 ref)

V. Misunderstood Research: The Wallerstein, a.k.a. *Burgess* Debacle

History: Wallerstein and Tanke (1996) published one of the earliest articles addressing relocation of parents following a divorce.³⁶ The authors relied on ten (10) studies which they claimed indirectly commented on the question of relocation. In essence, the authors concluded that a child's adjustment depended primarily on the stability and adjustment of the primary

caretaker and thereby recommended that this focus should be of primary concern when considering relocation. They put forth that a child's adjustment was not adversely affected by limited or infrequent contact with their father. Being one of the earliest articles to surface on the question of relocation, it has strongly affected legal policies and expert recommendations, particularly in California where the research later surfaced with additional authors in an amici curiae brief in the California Supreme Court in 1996, *In re Marriage of Burgess*.³⁷

The brief, much like the published article, purported to have been an impartial summary of social science research regarding divorce, relocation, and subsequent adjustment of children. Like the article, the brief held that the relationship between the primary custodial parent and the child is key to a child's subsequent positive adjustment and thereby discounted the positive outcomes from frequent and ongoing contact with the possessory (visiting) parent. Such a position runs contrary to public policy statements of most states (even California) across the U.S. in terms of supporting frequent and continuing contact with both fathers and mothers.

Needless to say, this position has generated heated criticism from the professional and legal communities. Warshak, in an article published in the family law quarterly³⁸ and in a recent amici curiae brief challenging the Wallerstein claims, characterized her work as a "skewed and misleading account of social science evidence..."³⁹

Warshak's brief can be downloaded from the web and is well worth the effort to review thoroughly. Warshak dismantles the Wallerstein claims and provides extensive empirical evidence underpinning his critical analysis. The gist of Warshak's brisk criticism is that Wallerstein ignored the large body of research literature (even some of her own previous work) which supports positive adjustment of children being tied to the active involvement of two parents, i.e. mothers and fathers, as well as relied on her own data which many researchers agree is skewed (a sample of 60 highly troubled families). See Warshak's article and brief to review specific problems with the data.⁴⁰

Warshak comments, "The Wallerstein brief in Burgess argued that children's relationship with only one parent was central to their welfare..." and "that Wallerstein claimed that there was no evidence that frequency of visiting or 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."⁴¹ Proponents of relocation universally use this Wallerstein work to support their "expert" opinions. The Warshak brief concisely and systematically attacks Wallerstein's position highlighting the weaknesses in the research, interpretation, and inconsistencies in her own published works. Beyond this critical review of the Wallerstein work, Warshak also provided empirical support demonstrating the link between positive adjustment of children and frequent and continuous contact of fathers. Warshak concludes that, "Given the absence of any research that demonstrates net benefits to children of relocating away from a parent, and the overwhelming evidence of the importance of two parents to children's optimal development, the most prudent policy would be to encourage parents to remain in the same geographical area and thereby spare their children fragmentation in their living routines and the challenges to maintaining a meaningful relationship with an absent parent." References from the Warshak article are re-printed in this footnote.⁴²

In the brief, Warshak acknowledged that the research literature is sometimes inconsistent in regard to the impact of father-child contact because of the convergence of other factors. And,

in fact, this is the case; however, it is essential to consider such research in context. The presumption of joint custody is a relatively new development. Most of the studies of children's adjustment to divorce from the 1980's and even early 1990's tapped into families with "visiting" rather than with "parenting" fathers. In summary, the only so called research support in favor of relocation that has been put forth is seriously flawed.

VI. Texas Statutes: General Guide to decision making for the custody and possession of a child.

Other Jurisdictions: As noted in the discussion of the *Lenz* case, some states readily allow the custodial parent to relocate with the child if the motivation to move is not vindictive against the non-custodial parent, noting that, "(T)he child's best interests are fundamentally interrelated with those of the custodial parent, and the removal decision should be made with this in mind."⁴³ Given what is known about the negative impact of relocation and traveling on children, children would be better served if motivation of the moving parent was removed from the equation and the impact of the child became the primary concern. Still other states require the non-custodial parent to show that the custodial parent's move will not be in the child's best interest (the burden is on the parent opposed to the move).⁴⁴ Still others require neither parent to meet a burden of showing why the move will or will not be in the child's best interest; rather, these states decide the dilemma strictly on best interest of the child factors.⁴⁵

Several years ago (1997) in response to the lack of historical uniformity across states regarding the question of relocation, the *Model Relocation Act* was drafted by the American Academy of Matrimonial Lawyers to propose accepted procedures for handling these cases.⁴⁶ Despite committee agreement on many important issues, the *Model Relocation Act* was unable to resolve the issue about on whom to place the burden of proof, proposing three alternatives for state legislatures to consider.⁴⁷ Common sense would dictate that the burden should be placed on the parent proposing to relocate. Nevertheless, the *Model Relocation Act* listed several factors, culled from various court decisions across the United States, for the trier of fact to consider when deciding these cases. The *Model Relocation Act* noted that, "(W)hile the list of factors (to determine contested relocation) is comprehensive, it does little to resolve the dilemma so often presented in litigation. If the contestants are two competent, caring parents who have had a healthy post-divorce relationship with the child, the competing interests are properly labeled 'compelling and irreconcilable.' ... (E)ven a perfect list of factors, when applied to decide such a contest, will not resolve the dilemma, that is, relocation is often a problem seemingly incapable of a satisfactory solution."⁴⁸ This statement is concurrently reasonable and unreasonable. Common sense indicates that of course there will never be satisfactory answers if one views the relocation question from multiple perspectives. But, if one chooses a single perspective – such as the best interests of a child- then it is likely that there can be a satisfactory solution in the majority of the cases.

VII. Pulling it Altogether

The Wallerstein mantra of "If Momma isn't happy, nobody's happy"⁴⁹ lacks research support to justify relocating from a loving and involved parent, which is usually the father. There is overwhelming research which indicates that when a child grows up in a long distance family regardless of who the primary caretaker is, the child is at significant risk for problems,

some of which are quite serious. Therefore, the informed approach to these cases should be a presumption of status-quo (anti-relocation). Given that The American Psychological Association's *Guidelines for Child Custody Evaluations in Divorce Proceedings* state that a psychologist's "recommendations are based on articulated assumptions, data, interpretations, and inferences based upon established professional and scientific standards"⁵⁰ and that the psychologist's greatest duty is to serve the "best interests of the child"⁵¹ there is little evidence to justify any experts or custody evaluators approaching relocation from a perspective other than this presumption. And, in some cases, this presumption of status quo can be overcome by other factors that would indicate that relocation might be in a child's best interests.

How, then, should professionals approach this question of examining the viability of relocation? Approach the relocation on a case by case basis in light of the research, Texas Public Policy and the Texas Family Code.

First, parents should be educated regarding the problems with relocation and the impact it will have on their children, short-term and long-term consequences and the problems and risks of traveling. Many parents probably do not realize until much later the impact that relocation has on their child. This would include the parents who move away from their children as well. Educating families about the problems of long distance parenting will equip families to make their own determinations about the pros and cons of moving. It is inconceivable that the court would limit the residence of an adult unless that person has been convicted of a crime. It is a dangerous precedent, likely unconstitutional, and not in any way suggested to be a solution. Therefore, the only realistic option is limiting the domicile of the children. In many situations, much like the *Lenz* case, both parents can relocate and the viability of the non-custodial parent moving should be examined. In military situations, families will have to have fluid residence, so relocation is a way of life. If families are committed to overcoming some of the problems with long distance parenting, re-location might work out well for the children; however, these sorts of families usually work out these problems themselves rather than move into the judicial system.

Secondly, any and all specific justifications for the relocation being in the child's best interests should be examined. The following checklist raises issues which could shed more light on this question.

- What is the child's developmental level and needs?
*The child's needs should be the core of any decision impacting a child's life.
Is the child an infant? An adolescent? Loss and the impact of moving will be different for varying developmental ages and stages.*
- Does the child have special needs or a disability that can be better served through relocation?
*Does relocation offer more family assistance for care of a disabled child?
Does relocation offer more educational or medical assistance for care of a disabled child?*
- Does this family have a history of frequent moves?
*Does relocating bring one parent and the child back to a home base?
Is it likely that the non-custodial parent will be relocated because of employment anyway?*

Is this a military family who will face many future moves?

- Is there a history of non-involvement or unavailability by one of the parents?
Has one of the parents been notably uninvolved with the child?
Paternity Case?
Has one of the parents been incarcerated for periods of time?
Has one of the parents evidenced a history of marked instability or disability that has prohibited this parent from multifaceted parenting?
- Could the proposed relocation be a manifestation of parent alienation?
Is there a history of conflict between the parents?
Is there a history of unsupported allegations of child abuse or family violence?
Is there a history of interference in possession of the child?
- If allowed to relocate what must the child endure in terms of traveling?
What is the cost of time to the child in traveling?
What are the risks to the child in traveling?
What will the child lose in terms of educational and social development by traveling?
What will the cost be to the child in terms of physical exhaustion?
Is it realistic for the absent parent to travel part of the time?
What is the financial cost to the family for travel that would otherwise benefit the child?
- Can the relocating parent be trusted to foster the relationship with absent parent?
What is the history of the moving parent's support of the other parent?
Will the moving parent go to additional lengths to foster the relationship with absent parent?
What sacrifices is the moving parent willing to make to foster the relationship with the absent parent?
Give up the entire summer and most holiday vacations to the absent parent?
Ensure the child participates in everyday telephone or e-mail communication?

There are several legitimate reasons why a parent would want to move, escaping conflict with the ex-spouse, improved career or educational opportunities, marriage, starting over, or even going home. And, in most circumstances these factors would likely improve the quality of life of the moving parent, regardless of whether the child goes or stays behind. Nevertheless, the central question and concern should be the child's life and the child's best interests.

Legally interfering with a meaningful relationship with a parent is harmful to a child. Legally absenting a child from a meaningful relationship with a parent runs contrary to social science research findings, it is against Texas Public Policy, against the spirit of the Family Code, and last but not least, does not use common sense.

Mothers and children who relocate or fathers who relocate without the involvement of the legal system face many of these same risks for their children as do the families who become involved in domestic relations proceedings. Even parents who have perfect cooperation and support cannot escape the hard, cold fact that the distant parent cannot be a part of the everyday life of a child. The everyday experience of parenting is the tie that binds. Allowing one parent to

break this tie should be approached cautiously and judiciously.

1 Title Iv-D of the Social Security Act (PL-93-647) 1975. 1984 OCSE [Child Support Enforcement Nineteenth Annual Report to Congress, Office of Child Support Enforcement, Administration for children and Families, U.S. Department of Health and Human Services]: 19th Annual Report, Appendix H. By 1990, all states had presumptive, mandatory, numeric child support guidelines. See also the Family Support Act of 1988 (P.L. No. 100-485).

² §153.131 (b) Texas Family Code

³ §153.133 (b) Texas Family Code

⁴ §153.134 (b) Texas Family Code

⁵ §153.001(a) Texas Family Code

⁶ §153.37 Texas Family Code

⁷ §153.251 Texas Family Code

⁸ §153.312 Texas Family

⁹ §153.005 Texas Family Code

¹⁰ §153.003.Texas Family Code

¹¹ §105.002 Texas Family Code

¹² *Lenz v. Lenz*, 79 S.W. 3d 10 (Tex. 2002).

¹³ *Lenz v. Lenz*, 79 S.W. 3d 10, 3 (Tex. 2002).

¹⁴ *Lenz v. Lenz*, 79 S.W. 3d 10, 5-6 (Tex. 2002).

¹⁵ *Lenz v. Lenz*, 79 S.W. 3d 10, 6 (Tex. 2002).

¹⁶ *Baures v. Lewis*, 167 N.J. 91, 770 A.2d 648 (N.J. Jul 07, 2000) (Table, NO. C-1307 SEPT.TERM 199,49,532) p4

¹⁷ *Baures v. Lewis*, p7

¹⁸ *Baures v. Lewis*, p1

¹⁹ *Baures v. Lewis*,p4

²⁰ *Baures v. Lewis*, p8

²¹ *Baures v. Lewis*, p8

²² *Tropea v. Tropea* 87 N.Y. 2d 727, 642 N.Y. S. 2d 575,665 N.E. 2d 145 (1996), p1

²³ *Tropea v Tropea*, p7

²⁴ Gindes, M. (1998). "The Psychological Effects of Relocation for children of divorce." *Journal of the American Academic of Matrimonial Lawyers*, 15, 119-148.

²⁵ Braver, S.L., Fabricius, W.V., Ellman, I.M., (2003) Relocation of Children After Divorce and Children's Best Interest: New Evidence and Legal Considerations. *Journal of Family Psychology*, 17, 2, p. 212.

²⁶ Braver, et al (2003) p 210

²⁷ National Center for Health Statistics (1990). Vital statistics of the United States, 1988: Vol. 1. ((National DHHS Publication No. PHS-90-1100). Washington, D.C.: U.S. Government Printing Office.)

²⁸ Braver, et al (2003) p 212

²⁹ Braver, et al (2003) p 212

³⁰ Braver, et al (2003) p 213

³¹ Braver, et al (2003) p 211

³² Braver, et al (2003) p 212

³³ Braver, et al (2003) p 213

³⁴ Braver, et al (2003) p 214

³⁵ DiPietro, J.A. (2000). Baby and the brain: Advances in child development. *Annual Review of Public Health*, 21, 455-471; Leucken, L.J. (1998). Childhood attachment and loss experiences affect adult cardiovascular and cortisol function. *Psychosomatic Medicine*, 60, 765-772; Mechanic, D. & Hansell, S. (1989). Divorce, family conflict and adolescents' well-being. *Journal of health and Social Behavior*, 30, 106-116; Russek, L.G., Schwartz, L.L., Bell, I.R., & Baldwin, C.M. (1998). Positive perception of parental caring are associated with reduced psychiatric and somatic symptoms. *Psychosomatic Medicine*, 60, 654-657. Siegler, I.C., Peterson, B.L., Barefoot, J.C., & Williams, R.B. (1992). Hostility during late adolescence predicts coronary risk factors as mid-life. *American Journal of Epidemiology*, 36, 146-154.

³⁶ Wallerstein, J.S., & Tanke, T.J. (1996). To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce. *Family Law Quarterly*, 30, 305-332.

³⁷ *In re Marriage of Burgess*, 913 P.2d 473 (Cal. 1996).

³⁸ Richard A. Warshak, Social Science and Children's Best Interests in Relocation Cases: *Burgess Revisited*, 34 *Family Law Quarterly*, 83-113 (2000).

³⁹ Warshak, R.A. (2003) Brief of Amici Curiae on behalf of minor children RE: In re the marriage of Susan Poston Navarro (LaMusga) and Gary LaMusga, p2.

⁴⁰ Warshak, p5

⁴¹ Warshak, p8

⁴² 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 Guidibaldi & Joseph D. Perry, *Divorce and Mental Health Sequelae for Children: A Two-Year Follow-up of a Nationwide Sample*, 24 J. AM. J. ORTHOPSYCHIATRY 531 (1990); E. Mavis Hetherington, Martha Cox & Roger Cox, *Effects of Divorce on Parents and Children*, NONTRADITIONAL FAMILIES: PARENTING AND CHILD DEVELOPMENT (Michael E. Lamb ed., 1982). Doris S. Jacobson, *The Impact of Marital Separation/Divorce on Children: I. Parent-Child Support Separation and Child Adjustment*, 1 J. OF 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 Pre-separation Inter-parent Conflict*, 9 J. OF APPLIED DEV. PSYCHOL. 315 (1988); DEBORAH A. LEUPNITZ, CHILD CUSTODY: A STUDY OF FAMILIES AFTER DIVORCE (1982); Eleanor E. Maccoby, Christy M. Buchanan, et al, *Postdivorce Roles of Mothers and Father 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. OF DIVORCE 153 (1989); Jessica Pearson & Nancy Thoennes, *The Denial of Visitation Rights: A Preliminary Look at its Incidences, Correlates, Antecedents, and Consequences*, 10 LAW & POL'Y 363 (1988); Rhona Rosen, *Children of Divorce: What They Feel About Access of 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); WALLERSTEIN & KELLY, *supra* note 7; Richard A. Warshak, *Father-custody and Child Development: A Review and Analysis of Psychological Research*, 4 BEHAVIORAL SCIENCE & THE LAW 185 (1986); Richard A. Warshak & John W. Santrock, *The Impact of Divorce in Father- Custody and Mother-Custody Homes: The Childs Perspective*, in CHILDREN AND DIVORCE 29 (Lawrence A Kurdek, ed., 1983).

⁴³ *Aaby v. Strange*, 924 S.W.2d 623 (Tenn. 1996); *see also In re Francis*, 919 P.2d 776 (Colo. 1996); *Holder v. Polanski*, 544 A.2d 852 (N.J. 1988); *Russenberger v. Russenberger*, 669 So.2d 1044 (Fla. 1996). In *Russenberger*, the father was able to rebut the presumption that the mother could relocate with the child by casting doubt on the mother's motives for the move.

⁴⁴ *See Lane v. Schenck*, 614 A.2d 786 (Vt. 1992).

⁴⁵ *Jaramillo v. Jaramillo*, 823 P.2d 299 (N.M. 1991); *Tropea v. Tropea and Browner v. Keward*, 87 N.Y. 2d 727, 665 N.E. 2d 145 (1996).

⁴⁶ American Academy of Matrimonial Lawyers, Proposed Model Relocation Act (1997).

⁴⁷ American Academy of Matrimonial Lawyers, Proposed Model Relocation Act, §407 (1997).

⁴⁸ American Academy of Matrimonial Lawyers, Proposed Model Relocation Act, §405, Comment (1997).

⁴⁹ In fairness to the Wallerstein brief, adjustment of the child was tied to the "psychological parent", i.e. one person which, because of the time frame of the data used, was most often the mother." Adjustment was not specifically tie adjustment to mothers per se.

⁵⁰ American Psychological Association, Guidelines for Child Custody Evaluations in Divorce Proceedings, 49 Amer. Psychol. 677, 679 (1994).

⁵¹ American Psychological Association, Guidelines for Child Custody Evaluations in Divorce Proceedings, 49 Amer. Psychol. 677, 679 (1994).