

NASJE NEWS SUMMER 2004

NHTSA UPDATE

NASJE's Online DUI Resource Library is up and running, and accessible through a link from the NASJE home page. Check out this site, funded by the National Highway Traffic Safety Administration, for up-to-date and comprehensive resources on all aspects of handling—and training—on impaired driving cases. NHTSA has added funding to support maintenance and updating of the site for another year. So if you develop or find any new resources, in print, on CD or DVD, or online, please bring them to the attention of Pam Lambert, Senior Attorney at the New Mexico Judicial Education Center, and she'll add them to the library. Pam may be reached at plams@unm.edu, or (505) 277-1052.

TRANSITIONS

Please join us in welcoming our newest members:

- Evie Lancaster Bosch, Administrative Office of the Courts, Carson City, NV
- Denise O. Dancy, Research Analyst, National Center for State Courts, Williamsburg, VA
- Julie Doss, Administrative Office of the Courts, Center for Judicial Education and Research, San Francisco, CA
- Beth Ann Gillia, Esq., New Mexico Judicial Education Center, Albuquerque, New Mexico
- Paul D. Julien, Judicial Education Officer, Arizona Supreme Court, Phoenix, AZ
- B. Phyllis Whittiker, Consultant, Reno, NV

FROM THE EDITOR

This year the NASJE News institutionalized a structure based on the same type of sections you might find in a paper version of a newsletter. The benefits have been a closer look in the areas of adult education, domestic and family violence, and family courts. We have also consistently been able to give you sections for the manager/supervisor and the beginning technology user. All of this has been possible without the length restrictions that would have been constraining in a paper version of the newsletter.

NASJE News has brought you articles written by experts in various fields. Some of these experts have been members of the newsletter committee, and I want to thank them now:

Joy Ashton
William Brunson
Billie Lee Dunford Jackson
Liz Strong
Hon. William P. Williams

A special thanks to our web developers, Pam Castaldi and Steve Circeo. So much of how user-friendly and attractive the newsletter is has resulted from them and their efforts.

I would also like to thank those guest editors who contributed to NASJE News throughout the year:

Mary Ann Aguirre
Jo Dale Bearden
Maureen Conner
Ellen Marshall
Marguerite Stenquist

The NASJE News would not have been as good as it has become without the personal contributions made by those mentioned above and the people they recruited to submit articles to us. Thank you to all of them. And thank you to all of you who have read our efforts. We will continue to try our best to bring you an interesting and informative newsletter in the coming year.

Thiagi's Games for Judicial Educators

Best Summaries Game

This is the second in a series of articles for using Thiagi's Games in judicial education programs. The purpose of the games is to use interactive strategies in fun ways. All of Thiagi's Games can be found at the following address: <http://www.thiagi.com/games.html>. This article begins with an unedited version of the "Best Summaries" game. At the end, you will find a "judicial education debrief." This article features how Thiagi's Best Summaries game can be effectively used to educate judges and judicial branch employees about any subject that features concepts and theories.

Best Summaries

Asking listeners to summarize your presentation from time to time is a good technique for encouraging people to listen carefully, take notes, and to review the content. Best Summaries uses this basic concept.

Purpose

To encourage active and collaborative review of the presentation.
To focus listeners' attention on important points in the presentation.

Participants

Any number. Participants are divided into teams from time to time during this activity.

Time

Depends on the amount of information and the number of summary interludes. Suggested time: 60 minutes (consisting of three 10-minute presentations, each followed by 10 minute team review sessions).

Supplies

Index cards
Timer
Whistle

Use This Strategy When--

the instructional content involves concepts, principles, and procedures
participants are capable of taking notes, summarizing the content, and evaluating other people's summaries
you have a logical outline for your presentation

Sample Topics

Organizational values

Basic principles of customer service

Doing business in Texas

The coaching procedure

Life cycle of a high-tech product

Maintaining a database

Preparation

Prepare an outline. Chunk the content of your presentation into logical 10-minute units. Also prepare appropriate flip chart pages or slides.

Flow

Brief participants. Explain that you will be making a series of 10-minute presentations. At the end of each unit, you will pause for each participant to summarize what you presented in that unit. These summaries will be evaluated by other participants and the best summaries will receive special recognition. Encourage participants to take good notes during your presentation so they can produce effective summaries.

Present the first unit. Keep your eye on the clock and try to stick to your schedule.

Pause for summaries. Distribute blank index cards to each participant. Ask participants to summarize your presentation on one side of the card. Suggest a suitable time limit. At the end of this time, ask participants to stop writing. Ask them to write a four-digit identification number on the other side of the card. Participants should remember this number so they can identify their card later.

Form teams. Organize participants into teams of four to seven members each. Seat each team around a table. Ask someone at each team to collect the summaries from team members and shuffle the packet of cards.

Exchange and evaluate. Give the packet of summary cards from the first team to second one, from the second team to the third one, and so on, giving the cards from the last team to the first one. Ask members of each team to collaboratively review the summaries and select the best one, using whatever criteria they want. Announce a suitable time limit.

Conclude the evaluation activity. At the end of the allotted time, ask each team to read the summary that was rated as the best. After all teams read the best summaries, ask each team to read the identification number on the back of the card. Ask this person to stand up, and lead a round of applause for this person. Briefly comment on the summaries, identifying the key points and correcting any misconceptions.

Repeat the process. Continue with your next unit of presentation. Follow up with individual summary writing and team evaluation to identify the next set of best summaries. Conclude the session. After the last round of presentation and evaluation, thank all participants for their contribution. Invite participants to retrieve their summary cards from the next table.

Adjustments

Not enough time? Reduce the summary to a single sentence to be written within a minute. Also make the entire presentation and conduct a single round of summarizing and evaluating. Too many people? Instead of asking all teams to read their best summaries, select one or two teams at random and ask them to read the summaries.

Auditorium setup prevents teamwork? Individualize the evaluation process: After writing the summaries, ask participants to exchange summary cards several times. Now ask each participant to read the summary on the card she ended up with. Invite participants with a good summary on their card to come to the front of the room and read it. Identify and congratulate the authors of these summaries.

Judicial education debrief: This exercise would work well for any judicial education program that involves legal concepts such as evidence and civil or criminal procedure. Also, an instructor could effectively use this game in instructing on judicial skills such as decision-making, jury and case management, effectively responding to the media, etc. For example, in a program on jury innovation, the instructor would identify innovations such as juror notebooks, jury discussions of evidence during trial, juror note-taking, jurors' questions to witnesses, pre-instructing the jury, mini-openings and interim commentary, plain English juror instructions, etc. After the presentation, the instructor would ask the students to write down as many jury innovations as they can remember and a short description of each innovation. The instructor would allow between 2-3 minutes for the summary. As each team presents the best summary, the instructor would write down the innovations mentioned on an easel pad. There will be redundancy between summaries, so the instructor only needs to write down new items as each team presents its summary. If any items are missing, the instructor would add the additional innovations. After each team presents its best summary, it would identify the student who provided it, so the student receives recognition for his or her work. This summary will likely work best if the instructor only uses it once at the end of the session instead of using multiple summaries throughout the session. Of course, this recommendation doesn't signify that the faculty member should only lecture throughout the remainder of the session; rather, he or she should use a variety of learning activities.

How would you use it?

Can you think of any different uses? Please write to NASJE News with your ideas for using Thiagi's Best Summaries game.

Getting Started As An International Judicial Educator- A Practical Primer

By Thomas Nelson Langhorne, Esq.

I heard, but did not see the first bomb explode. I saw then repelled from the second explosion. The close, humid Balkan night air caused the settling dust to cling to me and to my simple, comfortable balcony chair.

I barely managed to gather myself or my wits. I still reflect upon my senses' reactions to that precise moment. Hearing my appeal, in typical Balkan denial fashion, the hotel staff responded, "No bombs, no bombs- no problem no problem". "Rule of Law" judicial educator, please meet the real "rule of law" world.

In all fairness, the above episode, although true, is a very rare example of foreign rule of law work. I know of no judicial educator who has ever been harmed in the course of trying to make a difference abroad. I initiate this article with that personal experience to paint a realistic backdrop for those who idealize foreign rule of law judicial education work. Having been honest from this article's beginning, I implore you to expand our shared notions of justice and judicial branch education with each narrow opportunity that presents itself to you. In the compelling words of the Macedonian freedom fighter, Delchev, "The world is a playing field for the competition of ideas". His country, Macedonia, is now free and seeking E.U. membership- an untenable aspiration several years ago. I respectfully submit, several NASJE educators have in small ways leveled that competitive intellectual playground. As a partial result of NASJE members' commitment, novel ideas for embracing emerging democratic ideals are taking root in that proud and intellectually rich country.

As predicted, a growing number of emerging democratic nations and transitional governments are turning to NASJE members for help. This trend is, in part, becoming the norm because USAID funded organizations are having difficulty satisfying their long-term and short-term demand for judicial branch educators abroad. These types of foreign engagements are certainly not lucrative. However, like mission work, if you can tolerate and learn to appreciate third world living standards, you will return stateside having grown both professionally and personally -- sometimes in profoundly unexpected ways. If truth be known, I have always learned more from my foreign students than they have from me. For that reason alone, I encourage you to consider volunteering for these worthwhile foreign opportunities. This article offers practical advice to those who wish to do so.

First, and most obviously, how do you get invited to train foreign courts? You could take my approach: grovel, beg and plead. Or, you could research the firms that offer foreign training opportunities and get on their "list" of available experts. I recommend the latter. This tactic is easier than it seems. The Internet has various corporate home pages that recruit desperately needed judicial branch educators. You could start by surfing some of the well regarded firms which include, but certainly are not limited to, DPK, AmidEast, East-West and of course our good friend the National Center for State Courts. Google the aforementioned companies and you will find easily accessible short-term and long-term foreign consultancy opportunities. Alternatively, you could Google "rule of law" and find a host of other good firms providing exciting foreign project opportunities. You simply file your resume on-line for country-specific opportunities and wait for the telephone to ring (but don't hold your breath).

Before you receive that first telephone call regarding your availability, decide which countries you are not willing to visit. Let's face it, "Rule of Law" work is primarily conducted in those countries presently enduring great, and often tumultuous political, cultural and social change. So divest yourself now of any notions that you will likely experience exotic travels sitting in the lap of luxury. Be prepared to travel non-stop for two, sometimes three days without any rest. Also be prepared to begin working twelve or more hours a day six or seven days a week the moment you walk off the plane. No, you probably will not be given an opportunity to shake off your severe jet lag before being expected to dazzle your hosts with your judicial education expertise. So how do you decide which countries from which you will not accept invitations? Here are some helpful hints.

First, visit in advance the CIA homepage at www.cia.gov. This site gives detailed information about the country you will be visiting. They also provide rich cultural, legal, economic and political background information. More importantly, the most recent travel advisories warning Americans where not to go and what not to do in certain countries are updated weekly. You should also visit the Center for Disease Control website for an accurate, current and important list of vaccinations you should receive prior to entering any particular country. Your NASJE colleagues who engage in this type of foreign work also provide invaluable grassroots insight. I suggest you call or email them before you decide to accept any foreign engagement.

Once you have decided to accept an invitation to teach or consult abroad, I suggest you do the following. First, insist that the company hiring you purchase "emergency extraction" insurance for you. This only costs them fifty dollars (at my last investigation). However, if you are injured or become very ill, it could cost you tens of thousands of dollars to evacuate you

back to the good 'ol US of A. Believe me- it happens. Also negotiate the purchase of "kidnapping" insurance which is much more expensive. It is worth the cost, even if you have to partially contribute to its purchase if you travel in certain countries. For example, in several countries that comprise the former Soviet Union, kidnapping American businesspersons for handsome ransom is not particularly rare. Relatedly, in certain countries (check the CIA and State Department Websites for updated information) you should inquire as to whether you will have a body guard assigned to you, and if so, what hours of the day and during what activities. Lastly, inquire as to whether and to what extent interpreters will be assigned to you.

In preparing your course materials for foreign engagements, I suggest several strategies. The first strategy is one I am confident all of you would instinctively do without being reminded. Learn about your country's culture, both social and legal. This includes reading their Constitution and learning more about their legal and structural reforms. This will not only prove invaluable from a curriculum design perspective, you will also gain your hosts' immediate trust and confidence by demonstrating your basic background understanding in these regards. This background knowledge will also help you devise answers to some tough questions as you stand before your students "without a fig leaf on". Credibility and sincerity cannot be faked. Prepare for the tough questions before getting on the plane.

Regarding your country's cultural norms and expectations, there are always a few things Fodor's ain't going to tell you! Of course, these are also the very same things that will bite you when you least expect it if you are not forewarned. For example, on my recent visit abroad, my advance research failed to disclose the following about some of my host country's idiosyncratic norms. For example, I soon discovered that people who drink directly from water bottles rather than from glasses are considered two steps below cavemen (which as many of you know represents a gigantic leap up the food chain for me). Secondly, when making a toast, people who do not maintain an uncomfortably long gaze into the toast's recipients' eyes are thought to be intentionally cursing them or wishing them ill will (no, I will not elaborate on this one. Please allow me some semblance of dignity). Third, when taking a taxi ride, be prepared to be physically removed from the cab should you decide that wearing your seatbelt might be wise (yes, even if it is pouring down rain. Oh- that reminds me that you must pack an umbrella!).

You get the picture? See my earlier recommendation regarding calling your NASJE colleagues who have preceded you to your foreign designation.

If you really want to impress upon your foreign students that you are not the epitome of "The Ugly American", research that countries most critically acclaimed movies, authors, national heroes and historical figures. Use appropriate clips from their native films, essays, short stories, and history as an entry to your course subject. For example, when I taught the newly elected Macedonian judges, I used a ten-minute clip from the Macedonian film "Before the Rain". The movie clip focused on a very young Orthodox Christian priest who was forced to make difficult "right versus right" decisions which involved conflicting duties between his church vows and his core values as a human being. Ultimately, he breaks his vows to the church and disobeys his senior priests in order to save an Albanian Muslim girl's life. This clip provided a compelling, deeply affective introduction to my "Judicial Decision-Making and the New Judge" class. All my students were appreciative that an American had taken the time to research their culture and use this Kolb circle technique to advance their group discussion.

When teaching or facilitating abroad, keep these practical tips in mind when using interpreters. First, when preparing your class materials and course design, remember that using interpreters will reduce by half the actual time available for your presentation. This remains true even if the interpreter is interpreting simultaneously rather than consecutively. Secondly, show professional courtesy to your interpreters by pacing your rate of speech. Nothing is more frustrating than to watch Americans present at their same fast pace without ever pausing. Failure to pace and measure your speech also detracts from your learners' experience because very few interpreters can maintain an error free interpretation at your regular speech rate (that applies equally to us Southerners!). Third, meet with your interpreters prior to your presentation. Let them get a feel for your rate of speech and accent. Also preview with them any terms of art or special English usage you intend to use. This will make your presentation more seamless and fluid. Lastly, ask for a copy of the translated written material in advance. In this fashion, you can place the translated overheads or PowerPoint slides next to your English versions. You can't imagine how this will improve your presentation, especially when receiving students' questions about your materials. In this fashion, you can smoothly answer their questions while referring to their native language handouts or slides.

Lastly and most importantly, remember that you are a guest in their country. Their norms and customs may make you feel uncomfortable. Nevertheless, go with the flow. I once witnessed an American colleague inform her dinner table guests that she found their smoking while eating to be offensive. Everyone in that particular country smokes during public dinners. She never recovered her students' respect.

Go forth, do well and have fun!

The Collaborative Divorce Project: Summary Highlights from the Final Report

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The Collaborative Divorce Project was a cooperative endeavor by the Connecticut judiciary, the Court Support Services Division of the Connecticut Superior Court, and the Yale University School of Medicine.

We wish to acknowledge all of the people who made this project possible: The parents who gave so much of themselves; attorneys and teachers who participated; Judges Anne Dranginis and Herbert Gruendel, and CSSD Deputy Director Stephen Grant for their leadership; Judges Kenefick, Resha, and Devine; Robert Tompkins, Craig Ogulnick, Michael Festa, Joseph Iassogna, and all of the other Court Support Services Personnel who provided hard work and invaluable expertise; students and staff of the CDP, notably Dr. Tamra Williams, Diane Coe, Rachel Ebling, and Katherine Gustafson, and Golan Shahar; and special thanks to our funders: Smith Richardson Foundation, Inc, Karen Pritzker, Roslyn and Jerry Meyers, and the Community Foundation of Northeastern Connecticut.

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Summary Highlights from the Collaborative Divorce Project

The following summary provides highlights from the full report made to the funding institution, the Smith Richardson Foundation, Inc.

Purpose

This project began with pilot research focused on the culture of litigation in the existing family law system. Our aim was to determine if and how legal system involvement interferes with parents' best efforts to raise their children cooperatively during and after the legal process of separation and divorce. The research indicated that parents and professionals acknowledge numerous problems with the current system. They desired a legal process that was less litigious, and more child-focused and family-centered, one that provided information and support to families while assisting them in navigating the legal system when separating or divorcing.

In response to these concerns, the Collaborative Divorce Project (CDP) was designed as an intervention to assist the parents of children six years or younger, as they began the separation/divorce process (for married couples) or child custody/support negotiations (for unmarried couples). The CDP was designed to integrate research, intervention, and policy formulation through three project strands: 1) to enhance **basic science** understanding of the associations between key family dynamics and outcomes for young children, 2) to develop and test an **intervention model** against an experimental control group with the goals of improving parent (e.g. reduced conflict, increased cooperation, and paternal involvement), child (adaptive functioning and behavior problems), and legal outcomes (time, cost, and litigiousness of divorce), and 3) to promote **policy reform** in the area of family law, which involves leadership and participation in new legislative and judicial policies aimed at changing the negative aspects of parental separation (e.g., see Pruett, 1997; Pruett and Jackson, 1999, 2000; K.D. Pruett and M.K. Pruett, 1999).

The CDP intervention incorporates a family-focused mental health model into the existing legal system structure. The program integrates education, mediation, counseling, child development and legal system information, and support with goals of reducing parental conflict, enhancing father involvement, maintaining strong parent-child relationships, and supporting co-parenting efforts. The ultimate aim of the program was to foster healthy child development and reduce the psychological and economic costs of separation and divorce.

Intervention components included:

1. Co-parenting Counsel and Case Management
2. Orientation to Divorce
3. Parenting Classes (two required and four recommended for higher conflict parents)
4. Feedback Session with Couple
5. Therapeutic Resolution Intervention (mediation with counseling)
6. Status/Settlement Conferences
7. Follow-up (9-12 months later)

Participants

Most of the 161 participating families were recruited when they first appeared in court after filing a child custody or access motion. The average age of the children (93 boys and 68 girls) was 3 years old. The average length of married parents' relationships at baseline was 8 years (ranging from 1-26 years). Most of the parents were Caucasian (white). With the exception of three couples that never lived together, the 36 other unmarried couples reported that they were significantly involved with one another at the time of conception. Parents had generally completed high school, a year of college, or some specialized training. Parents represented mostly lower to middle income families, with parents' incomes ranging from under \$5,000/year to over \$75,000/year, yielding an economically diverse sample. A majority of the parents (80-82%) reported either paying or receiving child support, with the discrepancies between mothers and fathers in reporting small and non-significant.

Method

Procedures

Families were recruited from two Connecticut court districts upon filing for divorce or a court action and were randomly assigned to groups as either intervention recipients or comparison group families. Inclusion criteria included (a) a child six years or under in the family who was the parents' biological child, (b) no substantial history of parental substance use, and (c) no significant history of physical spousal or child abuses within the family. Court clerks, parents' attorneys, the Family Court judges, and Family Services personnel from two selected court districts cooperated with the CDP in recruiting participants. Families were enrolled at the beginning of their legal proceedings. The majority of families had just separated, with the other families in the planning phase of doing so.

Once both parents consented to participate, they completed questionnaires as they entered the legal system (baseline), 6 months later, and then again 15-18 months (hereafter referred to as 18 months) after legal proceedings began. The questionnaires assessed family demographics, parents' and children's adjustment, legal outcomes, custody arrangements, nonresidential parents' involvement, and the quality of co-parenting and parent-child relationships. Mothers and fathers completed each measure, except for the dependent measure of children's adaptive behavior. Interviews with a trained clinician were conducted over the telephone, typically with custodial parents, to obtain ratings of adaptive behavior with the Vineland Screener. Parents were paid \$50 for their participation at each assessment.

At baseline 161 families participated in the program. Final follow-up data were collected from at least one parent in 143 families (89% of the original sample). In addition to parent questionnaires, collateral information was obtained from attorney questionnaires, teacher/day care provider questionnaires, and court-based information.

Results

Parent and Attorney Responses to the CDP

Between 93-98% of participants rated various aspects of the intervention favorably. They expressed particular appreciation for three aspects: avoiding conflict and mistakes with their ex-spouses, child development information, and assistance designing parenting plans. Given the opportunity to write in comments, parents touted the information they received on child development and the legal process, strategies for increasing communication and reducing conflict between spouses, and the skill and availability of CDP staff. In other words, information, skills, emphasis on the primacy of children's needs, and support were all important prevention aspects of the CDP. Fathers most appreciated the educational/support group component, and mothers approved most of the individual meetings (counseling and mediation focused), coordination with attorneys, and conflict management with their ex-partner. Both parents reported improvements in their ability to deal with each other with less conflict and less legal system involvement after the intervention. Thus, almost all of the 161 families deemed the program a valuable resource and service.

Parents' attorneys also were asked to evaluate the effectiveness of the CDP at both follow-up points (6 and 18 months). Attorneys signed informed consents and agreed that they and their clients would participate. However, despite repeated attempts to gather information from attorneys by telephone, fax, and in person, only 81 of the 148 attorneys hired by parents in the project completed their questionnaires (55%). Reasons and speculations offered for the other attorneys' lack of response include: attorneys' busyness; the final follow-up occurred long after most cases were settled and filed away (and their staff were reluctant to do the extra leg work needed); changes in the judges associated with the project meant there was no watchdog to encourage involvement; and attorneys' reluctance to divulge the amount of money billed and collected from their clients, which we queried to compare earnings across research conditions to determine if the CDP could reduce the workloads of attorneys and make the process more accessible/affordable to lower income parents.

Attorneys who did respond rated the CDP quite favorably for their clients. Both mothers' and fathers' attorneys noted their clients' reductions in litigious behaviors and conflict with one another, and in parents' use of the attorneys for child development information and access complaints. The extent of the gains reported was somewhat more muted by fathers' than by mothers' attorneys. Among mothers' attorneys, two-thirds of the attorneys responded that the intervention had a high positive impact on their clients, while the other third reported a medium impact. Among fathers' attorneys, 57% of the attorneys reported a high degree of change, 23% a medium degree, and 20% a low degree to none. It is not known whether this gender difference reflects a less favorable opinion by fathers' attorneys, or their having less information from their clients. According to clinical reports and impressions, mothers generally tended to discuss the process issues being asked about more often and in more detail than did fathers. We also cannot know whether we heard predominantly from those attorneys who felt favorably toward the project, or whether the half of the sample we received was representative of the larger group. We had a higher return rate from intervention families' attorneys, whom were largely pleased

with the intervention according to their responses. Given the difficulty in conducting court-based research, especially with broad attorney involvement, the positive response from attorneys and the positive change in their clients' behavior is promising.

Family Dynamics of Separating Families with Young Children

One aspect of this study examined relationships between parental, co-parental, and child outcome variables using structural equation modeling (a statistical technique that enables us to test directional hypotheses simultaneously). First, older children had more involved fathers, which was predictive of better communication, socialization, and daily living skills. However, parental conflict was an important predictor of father involvement, such that when parents had higher conflict, fathers were less involved with their children. This finding is in accord with previous research showing that in the face of conflict, fathers are more likely to withdraw from their children than in situations of lower parental conflict. One pathway in the model traces parental conflict to less father involvement, which in turn was associated with lower overall adaptive functioning by the child. The long shadow of marital conflict that affects child development is thus evident in the postdivorce parental conflict among these families with young children.

Parental conflict also led to reports of negative changes in the parent-child relationship, but for fathers only. Negative changes in both the mother-child and father-child relationships were predictive of greater internalizing (e.g., anxiety, depression) and externalizing (e.g., aggression) problems in young children, a common finding in studies with older children, as well.

Among mothers, psychological symptomatology (e.g.s., hostility, anxiety, interpersonal sensitivity, paranoia) was the best predictor of negative changes in the mother-child relationship after separation. Psychologically distressed mothers reported greater difficulty being consistent with their child's demands, maintaining consistent routines, being patient with their child, and making time to play with their child. It was not the co-parenting, but rather mothers' own internal well-being that most powerfully affected her parenting capacities. For both mothers and fathers, parental distress indirectly influenced child behavioral outcomes through negative changes in the parent-child relationship. This finding is consistent with research which shows that parental distress and vulnerability may lead to diminished parenting capabilities, which in turn is associated with poorer child outcomes.

Unexpectedly, mothers with more psychological symptoms were less likely to have hired an attorney, and their children had more internalizing problems. This finding held true when socioeconomic status was controlled, indicating that the choice of using an attorney was not solely an economic decision. These results have important implications for the role of attorneys in a collaborative divorce model. Many divorcing parents determine their interests and the interests of their children with the aid of legal counsel. This research suggests that when mothers who experience increased psychological vulnerability work with an attorney during the divorce process, the attorney may help absorb some of the negative effects of that

vulnerability on child functioning, especially as the parent's stress increases during the legal process. The attorney might serve to absorb some of the parents' distress, so that less directly impacts the child. Parental distress that might otherwise involve the child (e.g., the child serves as earpiece) could be directed, instead, at the attorney, or the attorney might provide a reality check and calm parental fears that would otherwise go unchecked.

This model of analysis demonstrated **how** marital conflict affects young children's outcomes. The results provide information about a relatively unknown population of special importance in the field of public health and policy – our country's youngest children.

Developing an Understanding of Gatekeeping

One of the goals of the project was to begin examining empirically the concept of gatekeeping. Gatekeeping recognizes mothers' typical control over fathers' access to the children in marriage and divorce. In divorce especially, such control becomes a powerful tool or weapon not only for protecting the children, but for supporting or depriving fathers of access to their children for reasons potentially related more to the marriage/relationship than to the fathers' parenting capacities.

Parents responded to a list of clinically derived statements that pertained to theories of gatekeeping. We used these variables in several different ways (see publications for more details). Eventually, we chose three variables for mothers and three for fathers that were selected theoretically rather than statistically, although they did correlate positively with each other and with other variables we expected to be related to gatekeeping, thereby lending some empirical support for our theoretical selections. The significant characteristics of gatekeeping for each gender included:

For Fathers:

- During my marriage, my spouse helped me be the best parent I could be. (PAST)
- My spouse's support of me as a parent is important in my ongoing relationship with my child. (SUPPORT)
- My feelings about my spouse affect my ability to parent my child. (FEEL)

For Mothers:

- During my marriage, my spouse helped me be the best parent I could be. (PAST)
- My child benefits from the time she/he spends with my ex-spouse. (DUTY)
- My own parenting is more central to my child's developing a positive sense of self than is my ex-spouse's parenting. (CHILD)

The CDP questionnaire also contained open-ended questions designed to elicit parents' understanding of their own and their partners' behavior in regard to gatekeeping. Parents were asked what they did to facilitate or hinder the other parent's relationship with and access to their child(ren). The questions asked similar questions in three slightly different ways, to obtain a relatively reliable indication from each parent.

At the last follow-up, 119/125 mothers (95%) and 92/106 fathers (87%) wrote in open-ended responses to the gatekeeping questions. Although we asked the questions about mothers' and fathers' gatekeeping, most of the mothers had primary physical custody of their children, and in keeping with prior theory and research on gatekeeping, our explorations focused predominately on mothers' gatekeeping in relation to fathers as less-seen parents. Counting total responses (more than one may have been given by any parent), mothers gave a total of 169 responses indicating that they facilitated father involvement, and only 30 responses about how they prevented father involvement. By far the most common way in which mothers said they support father involvement is by being flexible about visitation/access times. Other methods mothers offered for promoting access included "allowing or encouraging" telephone contact between their child and his/her father, nurturing the child's relationship with the father through their own interaction with their child, encouraging the father to spend time with the child, and providing emotional support for their child to help him/her deal with their feelings related to their father. Furthermore, some mothers reported that they made efforts to interact with their child's father in ways that would encourage him to be involved in the child's life: updating him on important events in the child's life, giving parenting advice to the father as a way to help him engage with the child, not speaking poorly of the father or fighting with him in front of the child, saying positive things about the father, suggesting activities for the father and child to do together, and arranging therapy either for themselves, the father or the child.

Far fewer mothers reported hindering father involvement. Some of the more common responses of mothers were that they were "controlling" or "over-protective", that they disliked their ex-spouse's new partner, that they argued with their ex-spouse in front of the child, or that they doubted the parenting abilities of their ex-spouse.

Fathers agreed mothers were facilitative about half as often as mothers stated they were. Most commonly, they agreed that their child's mother helped them to be involved in their child's life by being flexible about parenting arrangements. Other ways in which some mothers encouraged access according to fathers were providing transportation, having their child ready for the father to pick up, and allowing extra visitation for special occasions. However, fathers also complained that mothers were inflexible about access schedules, that mothers changed the schedules without sufficient notice, and that mothers had denied them access at some point – past or recent present.

Taken together, these findings support clinical representations of gatekeeping. Mothers' responses showed more breadth and depth in scope. They also described many positive efforts that seem to go unnoticed according to the fathers' more hesitant endorsements. The difference in detail by the mothers is in keeping with their having primary responsibility for the children, thus they seemed able to generate more examples by way of having more time with the children and responsibility for the gatekeeping. The discrepancy also follows the general attribution rules for communication. Since the mothers have primary responsibility, they tend to portray themselves in a more favorable light, to support their behaviors over time. These differences also exemplify general gender differences in specificity and intensity of communication styles. Thus, mothers were able to enunciate that they had done things to hinder fathers' access, but they were much better in detailing what they did positively than they were in explaining what they did negatively. Their vagueness in this area suggests either

less awareness or willingness to acknowledge the ways in which they prevent fathers from freer access. This difference is an important aspect in couple dynamics, as the mothers emphasize their positive and minimize their negative contributions, adding to fathers' frustrations around gatekeeping issues.

The intervention does seem to have positive effects on gatekeeping as shown in the quantitative analyses (described below), but among these responses, intervention and comparison families are equally likely to describe positive gatekeeping behaviors (e.g., where one or both partner state the mother has helped with access). However, the intervention families are overrepresented (4:1) in the negative gatekeeping categories (couples do not agree that mother has helped with access or do not agree about whether she has hindered access). Whether the intervention families were more likely to be aware of gatekeeping issues and raise them, or whether increased awareness also brought about increased disagreement cannot be discerned from these data.

Longitudinal Analyses of Family and Child Outcomes

The extensive findings in this section assessed whether the intervention had positive effects on parental symptomatology, paternal involvement, parent-child relationships, and child outcomes compared to the control condition families. The pattern of results indicated that the intervention decreased parental conflict, and increased their cooperation and paternal involvement. Effects were found for fathers and for mothers with greater symptomatology. For fathers, the period from baseline (filing) to T3 (18 month follow-up) is particularly important in that more results emerge over this longer period of time. By contrast, analyses with mothers' data show the period between baseline and the six-month follow-up to be more salient. Thus, the effects related to mothers emerged in the first six months, while fathers' effects emerged between the six- and 18-month follow-ups. This suggests that different patterns of results in divorce literature may be due to the time period in which they are measured, with mothers likely to show more effects in shorter studies.

Second, cross-lagged statistical analyses showed two directional effects from gatekeeping to father involvement, as hypothesized. Specific ways mothers facilitate or hinder fathers' access to their child after separation influenced father involvement, promoting it or contributing to father-child difficulties. The other significant effect in this analysis indicated that when fathers were highly involved with their child in the separation period, mothers recalled their spousal role during the marriage (or relationship) more favorably. The findings support our theory that what happens in the marriage, particularly in terms of the support mothers feel from fathers but also vice versa, affects gatekeeping after divorce. Divorce equals an opportunity for pay back time. Especially important, the connection between gatekeeping and father involvement held true only for intervention, and not for the control families. The intervention brought parents' attitudes and behaviors in this area to light, fostering more positive connections between gatekeeping and father involvement.

Examining father involvement from two additional, legitimate though statistically simpler perspectives, enabled us to document robust findings that emerged at each level of analysis. While a greater number of significant findings are found using the t-tests rather than the repeated measures ANOVAs, and for the repeated measures ANOVAs with two distant time

points than for the repeated measures ANOVAs across all three time points, certain consistent themes resound throughout the data. Intervention fathers reported more involvement in their children's lives as measured by greater regularity and consistency in time spent with their children over time, higher incidence of shared legal custody and provision of child support. Mothers and fathers in the intervention group were more satisfied with the residential and contact arrangements than were parents in the control group. This may be a function of parents feeling more of a sense of "ownership" in the legal decisions when they have collaborated in the legal process than when they are involved in the traditional channels of the legal system for divorcing parents (see Emery, 2001). Among intervention families, even fathers who shared joint custody and who were the nonresidential parents reported significantly higher satisfaction with the residential/arrangements than did fathers in the control group. Fathers and mothers also agreed that the nonresidential parents in the intervention group were less likely to cancel or rearrange plans with the child than in the comparison group.

Overall, intervention fathers' positive involvement actually increased over time, while control group fathers' involvement remained the same. The large body of psychological literature attesting to the importance of fathers' involvement for a variety of child outcomes suggests that over time this preventive intervention will have important spillover effects on children's adjustment.

The intervention did not yield as many findings as hypothesized, due to problems with small sample sizes because some families were only able to complete one or two of the follow-ups, and this type of analysis requires measurement at all time periods. Still, a number of important results deserve emphasis:

- 1) According to parents, the intervention was effective at reducing parental conflict and increasing parental cooperation and father involvement, but not directly affect child outcomes. This may be a function of insufficient time passing to obtain results, as prevention studies often show more results after longer follow-up periods (about three years). However, the positive effects on these important family variables indicate progress likely to trickle down over time to children.
- 2) The intervention was at least as effective, if not more so, for fathers than for mothers. The CDP's emphasis on father involvement led to better involvement outcomes for intervention than control condition fathers.
- 3) The intervention was especially effective for vulnerable parents, those with greater symptomatology, so its usefulness with a high risk subgroup that often dominates court dockets is a significant achievement.
- 4) The intervention was helpful for Caucasians, but it was not effective and was somewhat harmful for minorities. Given the homogeneity of our sample, further research is needed for more conclusive results. Caution is encouraged in applying what we know to be valuable for white parents to non-white parents. Further research should elucidate what aspects of the intervention were not helpful to minorities, and how the intervention can be modified to better serve minority families.

5) The findings indicate that positive relationships between gatekeeping and father involvement variables are facilitated by the intervention. Focusing the intervention on these aspects of couple life may be a pathway toward facilitating improved co-parenting after the couple's breakup.

6) Teachers reported that intervention children had fewer thought disorders and attention problems than did control group children by the last follow-up. This finding must be considered with caution, since the group of teachers from whom we heard was relatively small compared to the whole sample (many children too young for school, the survey was time consuming and teachers changed across follow-ups with some newer teachers difficult to recruit into the study mid-stream).

Young Children and Overnights

This research interjects data into the debate about young children's capacity to tolerate various kinds of post-separation parenting arrangements that include overnights with the second parent. Until now, the debate has been based largely on circumstantial evidence from research bearing on child adjustment to divorce, *in general*, rather than direct information pertaining specifically to parenting plan arrangements. These analyses offer new information about the psychological impact of overnights on children in the context of factors known from prior research to exert considerable influence on child adaptation during divorce. Such factors as child age, gender, parental conflict, and difficulty in the parent-child relationship are accounted for in the models *before* examining what additional impact overnights and caregiving arrangements have on child adjustment.

Our findings underline the importance of taking into account the circumstances that surround the arrangements and basic characteristics of the individual child. Both negative changes in the parent-child relationship and parental conflict contribute to children's problem behaviors after separation/divorce. After accounting for these variables, parenting plan variables still explained significant amounts of child problem behavior.

Results indicated that, according to both mothers and fathers, children with overnights and those with more caretakers had fewer social problems, while children with inconsistent schedules had more social problems. In addition, mothers reported that children with overnights and more caretakers had fewer attention problems. Having more caretakers also was associated with sleep disturbances and depression/anxiety. Children with inconsistent schedules were likely to be viewed as more anxious or sad/withdrawn by both mothers and fathers.

Though there were main effects of parenting arrangements on children's problem behaviors, important gender differences were noted. Girls were the beneficiaries of parenting plans with overnights and multiple caregivers, while boys did not derive the same benefit. *Girls with overnights had less social withdrawal, according to both mothers and fathers.* Since the professionals' debate about the benefit of overnights for young children generally casts

mothers as the primary parents who wish to limit overnights, and fathers as the driving force toward increasing shared parenting time, it is noteworthy that the mothers notice a positive difference among their female children when they have more overnights. The same effect was not found for boys.

Similarly, girls with more caretakers, who generally spent time with each parent on a regular basis as well as one or more other caregivers, manifested fewer internalizing symptoms (according to fathers) and fewer problems with their cognition/thinking (according to mothers). Boys, on the other hand, had more internalizing symptoms, according to mothers. Mothers also reported that boys with inconsistent schedules showed more externalizing behaviors.

One possible interpretation of these results is that girls, who generally develop verbal and social skills at an earlier age than boys (Mayes & Cohen, 2002), are better able to parlay the stresses and joys of overnights and multiple caretakers into a positive circumstance for themselves by making use of their greater ability to ascertain and state their needs and wishes, and the ease with which they interact with multiple caregivers. Boys, who lag behind at this developmental era, may not have the skills or readiness to engage at the levels the girls do, so that the parenting arrangements require more of them emotionally, and tap into their relative vulnerability in this regard. This does not mean boys should not/can not do overnights, only that the consideration given to scheduling and structure may need to be managed with special care given to their individual developmental progress at the time of decision.

Alternatively, overnights offer opportunities for adaptation to differing household routines and exposure to differing parenting styles around bedtime, meals, and other intimate activities, that may help foster this external world orientation in daughters. By contrast, the sons may simply identify more with their fathers' action-focused problem-solving styles on the basis of gender alone, such that the overnights per se have less of an incremental impact. For sons, the importance and significance of quality time spent with their less-seen fathers, occurring within the bounds of their usual routines and home life, may be salient enough. The parent-child tie among males may be supported by a less permeable connection secured by biological similarity and identification.

Although our sample size produced age effects that must be considered with caution, consistent trends emerged that suggest that age influences the child's adaptation as well. Having overnights and multiple caretakers was beneficial for children preschool age and older (ages 4-6) when their parents first filed in the legal system. The children showed less internalizing and externalizing problem behaviors according to their mothers. The youngest children showed no symptoms or benefits. Clinical logic dictates that the children are not old enough yet to manifest symptoms that are more likely to emerge as children enter preschool or elementary school settings. It is also possible that the younger children benefitted from being too young to have any/much memory about the legal process and parental separation/divorce; that is, they have never known living arrangements other than those set up during this period. It stands to reason that it is easier to be "born" into parenting plans that

require overnights and multiple caregivers than to adjust to it once the child has become familiar with a different family pattern.

Overnights do matter, but what matters more to these children is whether they occur on a regular, unchanging schedule. This consistency gives the child the best chance of adapting to the challenges and stresses inherent in mastering a schedule that includes adjusting to two homes, rooms, beds, and all of the other changes and additions associated with overnights. This research, like the divorce research before it, has found that relationships between parents and between parents and their children are the primary factors in children's adjustment to the changes occurring in their family.

Through the Eyes of the Children: Play Interviews and Drawings

Lessons learned from the pilot project alerted us to the importance of direct assessment of children's experience of divorce and the legal process through the use of play interviews administered to both intervention parents and a non-intervention divorcing population.

For this aspect of study, we randomly phoned families until we found 41 (1/4 of the initial sample) who arranged with us to interview their child. We targeted children in the project who were 3 ½ years and older at baseline. This group of children ranged in age from 3.5 –7.5 years, with a mean age of 5 years, 7 months. The sample was evenly divided between boys (n=22) and girls (n=19). Since the children were interviewed after their 15-18 month follow-ups were completed, the interviews usually took place between 18-24 months after the intervention began.

When the blind was broken at the end of the researchers' work, the sample consisted of 28 intervention and 13 control family children. There were no differences between intervention and control group children in terms of gender or age, and no family differences in terms of parent education, race, socioeconomic status, or income. The level of parental conflict was slightly lower among the play interview sample than among the general CDP sample, but not significantly so, and the difference between intervention and control groups at the T3 follow-up was comparable. (Conflict scores = 64.85 for intervention parents and 72.27 for control parents). (CDP sample = 66.91 for intervention parents and 75.25 for control parents)

We assessed the 41 children using a child assessment instrument designed for the project and a home-visit protocol expanded from the authors' experience in the pilot study. Three interviewers conducted the assessments. The child assessment consisted of observational ratings designed for Cowan and Cowan's *Becoming a Family Project* (2000) and the evaluators' global assessments of the child's perception of a) the degree of parental conflict, b) satisfaction with amount of time spent with less seen parent, c) comfort level with transitions between parents, and d) overall adjustment to divorce. The global ratings utilized a 1=low to 5=high scale. The Cowan ratings used a Likert scale to assess interview content in the following domains in the child's behavior and affect: 1) dependency on adult/parent, 2) autonomy from parent, 3) anger, 4) anxiety, 5)

expressiveness/emoting with parent, 6) interactiveness/engagement with interviewer, 7) attentiveness with parent, 8) happiness, 9) sadness, and 10) quality of separation from parent during the interview. Children were rated in terms of the highest, lowest, and average response on each item. In addition, the children's typical manner of relating to his/her parent (direct, balanced, indirect) and predominant form of expressiveness (verbal, balanced, or behavioral) were estimated on 5-point scales.

Procedures

After a simple developmental screen to determine linguistic competency, the researcher invited the child to draw, using supplied paper and markers, 1) anything they'd like, 2) a picture of a person, 3) a picture of a person of the other gender (if not already depicted), 4) picture of their family, 5) and a picture of divorce, which had by then typically emerged as a theme.

The researcher next invited the children to depict a day in their life, from wake-up to bed-down, when they saw both their mom and their dad, using toys and dolls brought by the researcher to the interview for that purpose. We supplied two different playhouses (one somewhat 'fancier') with appropriate complement of furniture and mother, father, child, grandparent, and pet figures—often in multiples if remarriages had occurred in the family. Toys provided included a vehicle for inter-home transportation, a policeman with police car, 2 phones, a treasure chest, a suitcase, and Band-Aids.

A series of questions were also asked by the researchers: 1) Are you satisfied/happy with the amount of time you have to see mom/dad? 2) What is it like to go back and forth between mom's/dad's houses? 3) What does 'divorce' mean/what happens in a divorce? 4) How do you think mom and dad get along now? 5) What is a lawyer-what is his/her job? 6) What is a judge-what is his/her job? 7) Do you have any advice for lawyers or judges about how families should divorce? 8) If you were the judge, what advice would you have for moms and dads?

Results

After the data summary from this component of the assessment was complete, and the blind broken, we saw that the richer, more coherent play sequences were far more likely to have been depicted by the intervention children than the controls. The latter had more play disruptions, fewer and shorter sequences of back and forth play. The former seemed more able to use play more efficiently as a coping strategy. They were more engaged in the play as a whole, developing images and themes more completely. They also seemed to differentiate mother and father images more consistently and clearly, somehow able to appreciate their differences as a function of feeling some autonomy from the adult 'issues'.

We evaluated and collated this data on the children unaware by design of their condition assignment. We speculated that were the intervention helpful to the families in limiting the negative effects on their children of divorce and the divorcing process, it would be theoretically possible to predict, in a general/global way from the child data, which children represented which condition. When the data were tabulated, predictions were made by the

senior clinician about which children came from which condition, and the blind then broken. The predictions were 79% accurate, suggesting that the quantitative and qualitative measures used had captured at least some of the important variables in evaluating the usefulness to the children of the parental intervention. No one sub-section of the research protocol stood out as especially robust in this regard, though the suggestions to lawyers and judges and the question regarding how the divorce had changed the relationship between parents depicted the sharpest delineations between children from the two experimental conditions.

Overall, results indicated that children in both conditions long to feel the security of committed, protected relationships post-divorce. The CDP children on the whole seemed less pre-occupied with personal safety than did children from the pilot data, possibly reflecting the somewhat lower representation of high-conflict families in this sample than in the pilot one. An alternative explanation is that the efficacy of the intervention may blur/mute some of the typical distinctions between children of high and low conflict divorce. The CDP children, like the pilot study children, wanted clear and realistic explanations of divorcing procedures that affected them directly and indirectly, though with somewhat less urgency than in the pilot group. Possibly because of the somewhat larger intervention than control cohort, the CDP children tended to be less worried about, though still strongly supportive of and wishing for, their parents' abilities to remain civil, collaborative forces in the child's life, if not friends.

The intervention children knew more helpful, and therefore less worrying, information about the mechanics of divorce; what lawyers and judges really did, who actually was involved in making the parenting plan, and the appropriate role of the police and the courts. The latter seemed to know more about, and be pre-occupied with, the problems of divorce – the adult arguments, the back and forth troubles, boy/girl friends, money problems etc. In addition, the typical use of verbal rather than behavioral expressiveness among intervention children, despite their same age as the control children, suggests that this information assisted them in their coping with their adjustment to the divorce.

Like the pilot study we wrote about previously (Pruett & Pruett, 1999), interpretations of this data must be reviewed with caution. The sample size is small, the follow-up time is quite brief for intervention effects to typically show themselves, and the uneven sample sizes between the intervention and control condition families strongly suggests a lack of representativeness among the latter, especially. Nevertheless, the similarities between the pilot study and this one are encouraging in their robustness: children want to be heard, they understand and empathize with far more than their parents often understand, and they benefit from developmentally appropriate information. These findings help us all listen better to these young children and help point us in the direction of the most promising areas of intervention.

Legal Outcomes

In the pilot study, parents told us they wanted a shorter, cheaper, and less litigious process. The CDP did not contribute to a shorter process. Both intervention and control group families averaged under a year to complete their separation/divorce. The automatic orders put into place by the Judiciary – supported by the Family Services' efforts to maintain a goal of efficiency in case management -- have mitigated the longer time frames once commonplace for many divorces.

The process also was not cheaper insofar as our data showed. The CDP's failure to cost participants less may be related to the number of attorneys who did not provide necessary financial information. It seems reasonable to assume those who did not respond may be more adversarial or less engaged with collaborative methods than those who cooperated fully with the project; and since more intervention attorneys responded than attorneys for parents in the control group (at T3: 78% of intervention attorneys responded vs. 22% of control group attorneys, at equal proportions for fathers and mothers), the outcomes would have been impossible to assess accurately. A finding of lowered cost to families remains for a study that more successfully overcomes roadblocks to the research process encountered with legal professionals.

Other differences in legal outcomes were not found either. In fact, according to mothers' attorneys, motions filed and special masters' sessions were more frequent among intervention families. This information may have been impacted by the fact that at the baseline assessment, intervention parents were significantly more likely to retain an attorney than were control group parents. By the 18-month follow-up, no differences existed between intervention and control group parents in regard to attorney representation. Thus, over time the control group families utilized attorneys at a consistent rate, while fewer intervention families utilized them over time. This may have been due to the CDP's effectiveness at fostering cooperation and constructive engagement by ex-spouses.

Importantly, the CDP also assuaged the demands on the court's resources. The amount of preventive services offered and taken by intervention families stands in sharp contrast to the more intensive, costly, and time-consuming services needed by comparison families. Involvement with the CDP prompted greater utilization of family services for mediations and parenting plans, while parents in the control group were far more likely to undergo a child custody evaluation and to receive mandated or advised additional services. Control group couples were also more likely to require one or more special masters' sessions.

Social Policy Change

The CDP contributed to changes in social and legal policies affecting young children in various ways:

1. Providing leadership for the Tristate Leadership Committee on Child Custody Reform for High Conflict Families;

Meetings were held in CT, MA, and NY among leaders in law (attorneys and judges), mental health (including Family Services), and public office fields to define problems in the system, work on joint solutions, and provide cross-state ideas, resources, and work groups.

2. Contributing to the Governor's Blue Ribbon Commission on Divorce, Custody, and Children;

3. Training and making presentations instate and nationally to judges, lawyers, mental health professionals, and parents about child development, successes and lessons learned from the CDP, and research emanating from the project;
 4. Working closely with the Association of Family and Conciliation Courts (AFCC), a national organization devoted to issues in the family courts, to foster new knowledge about divorcing families with young children, and to create new research agendas in this area of family law;
 5. Consulting provided to fathers' and parent groups on individual and legal system issues;
 6. Co-publishing a book with an attorney/mediator to help prospective divorcing parents: *Your Divorce Advisor*, by Diana Mercer and Marsha Kline Pruett [NY: Fireside Books (Simon and Schuster)];
 7. Publishing and disseminating findings in professional journals and books;
- Below see the list of publications from the CDP pilot work and intervention study thus far, with additional publications expected in the next 1-2 years.

The CDP was brought to a close with many lessons learned, including some major successes, some incomplete inquiries that will have to await further research, and many productive ideas – both clinically and empirically derived – about ways to strengthen an already progressive system of family law in Connecticut and the less progressive systems across the country. Dissemination of this information will be dedicated to helping families separate and divorce while protecting the young child's optimal development and adjustment during and after this family transition.

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East Meets West: The Supreme Court Addresses Relocation
By Hon. Thomas P. Zampino

When the Atlantic Pacific railroad completed construction that started at both ends of the country, a final golden spike was driven into the tracks joining the two coasts as a symbol that travel and communication had been established across America.

Today, a century later, air flight has diminished the time for coast to coast travel to less than half a day. In an expanding mobile society, many families have relocated throughout America. While intact families move quietly, the desire for relocation is not a choice simply made for divorced parents and often results in protracted litigation in court. Considering that half of all marriages end in divorce, this impacts the lives of children in significant number. Relocation disputes pose a consideration dilemma for courts (Kelly and Lamb, 2003) that may pit a custodial parent's reasonable wish to better his/her circumstance by moving against a noncustodial parent's reasonable desire to maintain the frequent contact with his/her minor child that is a normal and perhaps essential element of any parental relationship.

In nuclear or intact families, relocation is experienced by all members and the relationships between the parents and their children remains continuous and unaffected (Braver, Ellman and Fabricius, 2003). However, if parents are divorced and either parent moves to another state, there is a significant impact upon the relationship with the children now in a state separate from one of their parents.

When it is a non-custodial parent who seeks to relocate, no consent of the other parent is necessary nor will there be any court intervention. The move itself will occur and no court can prevent the non-custodial parent from making such a decision, even though it affects the relationship with the children.

While there may be some necessity for the court to establish a new parenting schedule for the relocated parent that would be the extent of the court's involvement. However, should a custodial parent seek to relocate with the child(ren) to another state and there is opposition to the "move away" then there is lengthy litigation in which there are clearly defined winners or losers.

Both in California and New Jersey recent Supreme Court opinions, Baures in New Jersey, Lamusga in California, have addressed this important issue. This writer seeks to analyze the similarities and differences exhibited by these coastal courts on such a truly complicated and sensitive issue.

In the New Jersey case of Baures v. Lewis (cited as 167 NJ 91), Justice Virginia Long, who previously served in the Appellate Court and also as a trial judge in the Family Court, is the scrivener of the court's opinion. Her knowledge and experience of the Family Court shines throughout the opinion and crafts a decision not only for the case before the court, but also presents a list of twelve specific factors for trial courts to utilize as a template for removal cases. These guideposts are welcomed as bringing consistency and understanding to courts, lawyers and litigants when confronted with this powerful issue. In writing for the full court and its unanimous opinion decided April 23, 2001, Justice Long begins with this opening statement.

"Ideally, after a divorce, parents cooperate and remain in close proximity to each other to provide access and succor to their children. But that ideal is not always the reality. In our

global economy, relocation for employment purposes is common. On a personal level, people remarry and move away. Noncustodial parents may relocate to pursue other interests regardless of the strength of the bond they have developed with their children. Custodial parents may do so only with the consent of the former spouse. Otherwise a court application is required.

Inevitably, upon objection by a noncustodial parent, there is a clash between the custodial parent's interest in self-determination and the noncustodial parent's interest in the companionship of the child. There is rarely an easy answer or even an entirely satisfactory one when a noncustodial parent objects. If the removal is denied, the custodial parent may be embittered by the assault on his or her autonomy. If it is granted, the noncustodial parent may live with the abiding belief that his or her connection to the child has been lost forever."

In *Baures*, the custodial parent had sought to relocate to Wisconsin with their autistic child. Both the Trial Court and the Appellate Division had denied the move, but the Supreme Court reversed and remanded. It is heartening to know that after remand, the parents were able to resolve their differences with both parents separately relocating to Wisconsin with the children.

In *Navarro v. Lamusga*, decided on April 30, 2004, California Justices granted review of this relocation case to determine whether its Appellate Court had misapplied the Supreme Court's prior holding in *Burgess* (some 8 years earlier in 1996). While Justice Marvin Baxter practiced family law almost exclusively as a lawyer, Justice Moreno was the writer for the court.

The Supreme Court concluded that misapplication had occurred and reversed that Appellate Court's judgment. The California legislature earlier had codified the court's *Burgess* decision by amending the Family Code to declare the ruling to be the "public policy and law of the State".

Why suddenly is there voiced concern that this decision (*Lamusga*) changes the landscape for "move away cases" and will provide full time employment for that state's mental health evaluators. On closer reading these concerns lessen, *Lamusga* seems to return discretion to the trial judge and shows that there is no presumption that all "move away" applications will be granted by the court.

Here, the California trial court had placed "primary importance" on the effect the proposed move would have on "what is now a tenuous and somewhat detached relationship with the boys and their father and the proposed move would be extremely detrimental" to the children's welfare because it would disrupt the progress being made by the children's therapist in promoting this relationship. The court was justifiably concerned that this parent-child relationship would be "lost" if the move were permitted (it is interesting to note that the move sought was first to Ohio but then changed to Arizona, a border state).

In both New Jersey and California the noncustodial parent has the initial burden of showing that the proposed relocation of the children's residence would cause detriment to the child, thereby causing a determination as to whether a change in custody is in the best interests of the children.

Neither Baures nor Lamusga prioritize the relocation factors and leave open for court determination in each case based on its own facts, the primary importance to be individually placed on these factors by the trial judge.

Both New Jersey and California look at the reasons for the move and the reasons given for the opposition. Both states consider the past dealings of the parties and the relationship presently existing between the parents.

In different words, yet in similar fashion, California looks at the distance of the move and New Jersey looks at whether a visitation and communication schedule can be developed that will allow the noncustodial parent to maintain a full and continuous relationship with the child(ren). Both states look at the likelihood that the custodial parent will continue to foster the child's relationship with the noncustodial if the move is allowed.

In California's Lamusga, there had been almost 8 years of court involvement and there was fear that the father's relationship with the children would decrease from tenuous to worse because the mother would not allow access to the child's father. Mental health experts called upon to offer recommendation to the court readily admitted that this future relationship was difficult to predict and there is no good solution to any "move away" case and often the conclusion is just, "I don't know".

This is also true for all Judges in all parts of the country. Sometimes you "just don't know" and there is no bright line favoring either outcome.

In July 2002, Braver, Ellman and Fabricius co-authored an article entitled "Relocation of Children after Divorce and Children's Best Interests: New Evidence and Legal Considerations". The preamble states that "relocation cases in which a divorced parents seeks to move away with the Child are among the knottiest problems facing family courts".

The study of college students whose parents were divorced showed over 60% had experienced a move of more than one hour's drive from the noncustodial parent at least once in their lifetime. It also studied the conditional award of custody, which was the outcome chosen in California's Lamusga, that if mom moved, the best interests of the children would be served by changing custody to the father. In this excellent study, a table of results finds a preponderance of negative effects associated with parental moves by mother or father with or without the child(ren), as compared with divorced families in which neither parent moved away.

As Judges, we are often confronted with parents who hate each other more than they love their child(ren). Braver, Ellman and Fabricius note that no data can free the judicial system from the difficult problem of finding a workable or acceptable remedy for the parent who reasonably objects to the other parent's move.

New Jersey in Baures specifically lists as a factor for court consideration whether or not the noncustodial parent has the ability to relocate to the same place that the custodial parent seeks to "move away" with the child(ren). This criteria seems absent from California case law.

Since it appears generally as harmful to the child(ren) if the noncustodial parent moved away from the children, the relationship with the parents and children, more than relocation itself, is pivotal.

We are always telling litigants that no one wins or loses in Family Court cases, but in relocation cases, it is clear that the child(ren) loses contact with one of their parents.

Another New Jersey Factor gives recognition to the child(ren)'s friends by stating that if the child is entering his or her senior year in high school he or she should generally not be moved until graduation without his/her consent. This acknowledges when a child reaches a certain age, their predilection or preference should be considered. Even in intact families, children may stay behind to live with friends to finish their senior year in high school. Didn't your child ever tell you don't talk to me if I'm with my friends. Sometimes parents embarrass their children. Their friends are most important to them.

While it is extremely important for Judges to have discretion, it is of greater importance to have guideposts that judges can follow to provide consistency in decisions and also allow litigants to know what foundations and boundaries the Supreme Courts of our states provide so that they are aware that there are no "free range" decisions made by trial courts.

When I have a relocation case, I have the attorneys give the parents a copy of our Supreme Court opinion so they understand the parameters of decision. A decision they (parents) can make together or leave to a stranger (judge) wearing a black robe is a choice that can be made prior to a trial or court intervention.

Parents must be required to discuss the specific effect of relocation upon the relationship. When a parent seeks to "move away" with the child(ren) he or she must provide a specific time proposal for the child(ren) with the parent left behind. The specifics of transportation costs and review of the new calendar may obviate the need for litigation. Parents who want to move with children often are most generous with time division at the time they seek to move.

There are three day weekends in almost every month, Martin Luther King day (January), President's Day (February), Good Friday (April), Memorial Day (May), July 4th (July), Labor Day (September), Columbus Day (October) and Thanksgiving and Christmas as block time along with the summer and spring vacations.

Most times, frequent and continuous contact can be maintained monthly in "move away" cases. This must be explored and discussed before the filing of litigation. A plan must be offered from each parent.

Clearly litigation will not cease between parents and America's mobility will increase each year. New technology will provide virtual visitation and camera phones can give us daily picture access.

As a judge, one of our responsibilities is to do no harm when a child is in our care. Another is to make sure that no one else does harm to these children. Clearly divorce is usually harmful to children. I have divorced 30,000 people over the last 15 years and I don't think it (divorce) is going to stop.

It is my belief that there should be a system structure that provides “speed bumps” before litigation is commenced for “move away” cases. Notice must be given from one parent to the other before the children are told of the parent’s desire to relocate. There must be recognition by both parents that this is not a unilateral decision, but a joint decision by the parents.

After the initial verbal notice, written notice must be given and also provided to the court to record the date that the request is initially made by the parent to “move away” with the children. It must be accompanied by the new proposal parenting arrangement and it must be filed at least 120 days before the date of the proposed move. Not 120 minutes, 120 days.

There should be a required mediation session before litigation is filed and mental health experts engaged in battle. There is always a rush to the courthouse with orders to show cause to permit a “move away” usually in the next 30 to 60 days.

Litigants create the crisis and now the court should stop what it is doing, leaving 500 other cases alone, because the parties have made this an emergent issue. Now the kids are going to start school, the trial is weeks away and “temporary” relocation occurs.

How healthy is it for the children if they are ordered to return to the state left behind. The courts, based on all psychological data, need to take control of the process. Perhaps a specialized judge with experience can be assigned all the relocation cases, and not leave it to the newly sworn family judge.

Courts and Judges need more tools available to them and perhaps should even consider discouraging a parent from moving the child when there are good relationships with both parents.

Baures and Lamusga show that not only trial judges anguish over these decision, but Supreme Court Justices as well.

Whatever ocean, river, lake or creek lies in your jurisdiction, you are sure to find that divorce has eroded trust and communication between parents. If they can have “child-focused” communication and build “human” trust as persons, then it shouldn’t matter in what state they live, the relationship will have no boundaries.

If only this were true.

Relocation Factors

The reasons given for the move.

The reasons given for the opposition.

The past history of dealings between the parties insofar as it bears on the reasons advanced by both parties for supporting and opposing the move.

Whether the child will receive educational, health and leisure opportunities at least equal to what is available here.

Any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location.

Whether a visitation and communication schedule can be developed that will allow the non-custodial parent to maintain a full and continuous relationship with the child.

The likelihood that the custodial parent will continue to foster the child's relationship with the non-custodial parent if the move is allowed.

The effect of the move on extended family relationships here in the new location.

If the child is of age, his or her preference.

Whether the child is entering his or her senior year in high school at which point her or she should generally not be moved until graduation without his or her consent.

Whether the non-custodial parent has the ability to relocate.

Any other factor bearing on the child's interest.

N.J. Supreme Court
Baures v. Lewis, 167 NJ 91

Judge Thomas Zampino is currently serving as Judge of the Superior Court of the Essex County Superior Court, Family Division, in Newark, New Jersey. Judge Zampino obtained his Juris Doctor in 1974 from Seton Hall University School of Law. He is a member of Supreme Court, Family Part, and the American Academy of Matrimonial Lawyers. Judge Zampino serves as chair for the Model Children in Court Advisory Committee, Newark, New Jersey Child Support Commission, and New Jersey State Bar Association, Family Law Section.

Judge Zampino also serves as a faculty lecturer for the New Jersey Institute of Continuing Legal Education, and the National Council of Juvenile and Family Court Judges, and is currently Lead Judge of the National Council of Juvenile and Family Court Judges' Permanency Planning for Children Department's Newark Model Court. Judge Zampino has written articles for the Seton Hall Law Review, New Jersey Lawyer, and New Jersey Family Lawyer.

So You've Been Selected! 6 Tips for Conference Presenters

"Someone's got to do something, and it's just incredibly pitiful that it has to be us." -- Jerry Garcia

Some are chosen, some are forced...but in the end, most business professionals present at industry conferences, annual meetings, or other events during the course of their careers. Please allow me to be the first to congratulate you if you have been recently selected to

present! You were chosen out of many, and are now charged with a fantastic opportunity to enhance your reputation as a credible expert in your field.

These TIPS will help you give the best presentation possible, while fulfilling your responsibility to your audience. Use them, and you'll come off like a pro!

TIP #1: Get off the WHAT. Tell them HOW.

The sad truth is that no one really wants to know how great your program, discovery, or event is. But everyone wants to know HOW it got to be that way! Be ready to provide at least 3 specific, tangible HOW-TO's that others can use in their own businesses, organizations, or communities.

Examples of tangible HOW TO's:

How did we get 2,500 people to participate in our annual fund drive? (What specific actions did we take?)

What were the most important 5 steps we took to accomplish...

Mistakes we made--things NOT to do...

TIP #2: Do what you said you would do in your session proposal.

Most conferences have a Program Committee, which selected your session based on your session objectives. Re-visit those objectives. Did you say participants would...

Identify methods to develop corporate-community partnerships?

Develop next steps to connect to technology resources?

Learn at least 3 new business development techniques?

Don't b.s. your audience...Make sure you give them what you promised. That is your primary responsibility to the people who will sit through your session.

TIP #3: PREPARE.

Do you really want to come off like an unprepared buffoon at a professional conference?

Demonstrate your respect for the audience and for yourself by spending quality time preparing and practicing your presentation. Run it by your spouse and friends, and take their feedback to heart. Your presentation should never be "last-minute."

If you're on a panel, make a solid plan with your co-presenters about what specific aspects each will address. Talk with ALL of them at least twice before the conference. Make sure you are all clear on time limits. Put your plan in writing, and meet once more before your session to make sure everyone's clear on what's going to happen. Don't "assume" anything.

TIP #4: Make it active.

As an audience member, do YOU really like sitting there like a lump on a log? On the other hand, few of us enjoy participating in meaningless "fluff." Here are some easy strategies to bring your content alive while keeping your group energized:® INTEGRATE Q-A throughout your presentation. DON'T wait until the last 5 minutes to ask "Are there any questions?" But always bring the conversation back on track. (That's when your preparation will really help you!)

ASK the audience questions. They can either answer you or talk with their neighbor about the issue. Be ready to pull them back to order.

MINIMIZE your PowerPoint slides or transparencies. A good rule of thumb is to use only 3-6 slides for a 75-minute presentation. Use your time to look at and discuss relevant handouts, materials, case studies, financial reports, etc.

BREAK THE GROUP INTO SMALL GROUPS to discuss and solve a problem. Don't ask for reports from each group--5 top responses from the entire group may suffice. Remember, people can often learn as much by talking to each other as they can by listening to you.

TIP # 5: Begin and end ON TIME.

Tough luck if people are late! You are responsible to those who got to your session on time. Maintain your awareness of time throughout the session. True professionals never "run out of time," because they have practiced thoroughly beforehand.

PLAN the last five minutes for an overall summary, written evaluations and last-minute questions.

TIP #6: Relax and Have Fun.

If you've followed the preceding tips, this one will be much easier to achieve. Remember that your presentation is really not "about you," it's about your audience. Give them what you promised and what you practiced. The audience wants you to succeed!

When you're done, give yourself a pat on the back. Think about what went right and what you might change next time. Find a friend, buy a coffee, and enjoy the rest of the conference!

About Guila Muir & Associates

Guila Muir and Associates is the premiere Train-the-Trainer firm on the West Coast. Using participatory adult education since 1981, Guila Muir & Associates has developed the skills of hundreds of trainers and facilitators in business and government. Enhance your organization's ability to transmit information the way adults learn best-actively! Visit our web site at guilamuir.com, write us at connect@guilamuir.com or call us at (206) 725-1994.

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Understanding FLSA for Managers

By Jim Nelson and William Brunson

For months now, managers have probably been hearing about the proposed changes to the Fair Labor Standards Act (FLSA) regarding overtime and exemptions. Congress enacted FLSA in 1938 to ensure the following:

all employees receive a minimum wage;

men and women are paid equally when performing substantially the same job;

the use of child labor meets strict requirements, and

unless an employee is "exempt" from the requirements, he or she receives extra compensation for hours worked in excess of forty (40) in a workweek.

Much of the debate over the changes has been about overtime pay. The act requires that employers pay "non-exempt" employees time and one-half for overtime work. The act allows employers not to pay overtime pay to "administrative," "professional" and "executive" workers because they are "exempt." There has been tremendous litigation concerning the definitions of these positions and determining who is exempt from overtime pay. The Act covers employees in state and local governments as well as private individuals. See *Garcia v. San Antonio Metro. Transit Authority*, 469 U.S. 528 (1985).

The Department of Labor (DOL) has long wanted to update the ancient FLSA to be more reflective of today's work environment. However, it has been, and continues to be, an uphill battle to get the changes finalized. For busy managers, here's a quick re-cap on what has transpired.

The DOL suggested the changes in March 2003. It proposed the following:

Raise the salary threshold from \$155 per week to \$425 per week. Under this change, any employee who makes less than \$425 per week (approximately \$10.62 per hour) would automatically qualify for overtime. The DOL states that this increase of \$270 per week would be the largest since Congress passed the FLSA. It also stated that the impact would be to

increase the wages of 1.3 million lower-income workers and reduce the number of low-wage salaried workers who are being denied overtime pay.

Revise job duties required to qualify for the exemption to better correspond to current workplace realities. The DOL stated that “[t]he old regulations, written in 1949, mention job classifications that no longer exist, such as key punch operators, straw bosses, leg men and gang leaders. Clarifying which job duties qualify for overtime pay will help workers and employers easily determine overtime entitlement for millions of workers whose status is currently unclear.” See <http://www.dol.gov/opa/media/press/esa/ESA2003146.htm>. The full version of the proposed regulation is printed in the March 31, 2003 Federal Register. See <http://www.gpoaccess.gov/fr/browse.html>.

In September 2003, Senator Tom Harkin, D-Iowa, added an amendment to the DOL’s appropriations bill in an effort to ensure that there was no expansion of “exempt” employees. His amendment would have prohibited the DOL from using any of its appropriated funds to finalize or implement regulations that changed the “white collar” rules. That is, the amendment prohibits the Department of Labor (DOL) from exempting any additional workers from overtime pay who would not be exempt under current rules. He stated that the DOL’s proposed rule change was “anti-worker, anti-family and bad economic policy.” See <http://harkin.senate.gov/news.cfm?id=211058>. As a result of the amendment, the appropriations bill was held up for a period of time. Finally, after significant pressure from the white house, the amendment was removed so that the appropriations bill could go through. The bill passed, but the democrats vowed angrily to continue fighting the overtime rule changes.

On April 23, 2004, the DOL published its final overtime rule changes in the Federal Register with the rules to take effect on August 23, 2004. What are the changes to the FLSA? A complete review of the changes can be seen at the DOL’s website at www.dol.gov/fairpay. Some of the major changes are:

The final rule makes clear that white collar regulations do not apply to blue collar workers, to first responders (police and fire) or to licensed practical nurses. These individuals are currently entitled to overtime and remain so entitled under the final regulations. Under the final regulations the treatment of registered nurses is unchanged from current regulation.

Currently (because the salary level has not increased since 1975), an employee making as little as \$8,060 could be exempt from overtime pay requirements. The final rule requires that employees receive a minimum of \$455 per week (or \$23,660 per year) to be considered eligible for exemption. Of course, the employer would also have to ensure that the “duties test” was met. See <http://www.dol.gov/dol/topic/wages/overtimepay.htm>. Under the final rule, all employees making below \$23,660 or \$455 per week automatically receive overtime, no matter what their duties.

The final rule retains the concept of “highly compensated” employees. Under the proposed rule, the salary level was \$65,000. The final rule requires that highly compensated employees receive \$100,000 a year or more. In addition to salary level, the employer will have to demonstrate that the employee is performing white collar work and meets a streamlined duties test.

For white collar employees between \$23,660 and \$100,000, to be exempt from the overtime requirements, they will have to meet the duties tests of the executive, administrative, professional or outside sales exemption or some combination thereof. There is no “long test” and “short test,” only a single set of tests for each exemption.

Senator Harkin attached an amendment to an extremely important tax bill, S. 1637, and the Senate approved the amendment by a vote of 52-47 on May 4, 2004. On May 11, the Senate overwhelmingly approved S. 1637 which contained the Harkin amendment. The House passed its version of the bill, H.R. 4520. The two bills must be reconciled through a House-Senate conference. It's anticipated that this will occur later this summer. Whether or not the amendment remains in the final version has yet to be decided and will certainly determine the fate of the changes. White house staff has said that the President will veto any bill that includes any measures to block the overtime changes. However, as the democrats have painted this change as bad news for the worker, and with the issue of jobs a sensitive one during this election year, a veto is far from a given.

In light of this, what should a manager do? With this situation so fluid and no one really knowing exactly what will transpire, the advice of most in the human resources field has been to operate under the assumption that new rule will take effect on August 23, with the understanding that the effective date may be pushed back. We will all just have to take a wait and see posture.

For further information or clarification, contact your local Department of Labor representative, employment law attorney or your human resources professional.