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July 6, 2002

Honorable Ronald M. George
Chief Justice
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-3600

Re: *Marriage of LaMusga*
S107355

Dear Chief Justice George:

We (Leslie Ellen Shear, Joan B. Kelly, and Donald S. Eisenberg) write pursuant to Rule 28(f) urging this Court to grant review in *Marriage of LaMusga*. In addition, we oppose the pending requests of Carol Bruch and others for publication of the Court of Appeal opinion.

Brief biographies of each of us, and recent publications related to these issues are attached hereto. Joan B. Kelly is one of the world's most prominent psychological experts on the impact of divorce on children. Leslie Ellen Shear is a certified family law specialist whose practice is devoted almost exclusively to the representation of children and parents in family law custody and parentage matters. She has written and lectured extensively on the issue of child custody, and most particularly on relocation. Donald S. Eisenberg is a certified family law specialist whose practice also emphasizes child custody matters, representing parents and children. He is the president of the California Chapter of the Association of Family and Conciliation Courts (AFCC). We submitted *amicus* briefs on behalf of the child in *Montenegro v. Diaz* (2001) 26 Cal.4th 249. Ms. Shear also appeared as *amicus* in *Marriage of Buzzanca* (1998) 61 Cal. App. 4th 1410 and *Marriage of Kelso* (1998) 67 Cal.App. 4th 197. We work in large and small family courts throughout this state, and consult in custody matters in many jurisdictions.

Relocation and alienation cases are heard by California's family courts on a daily basis. They present the two most difficult areas of child custody practice, and those where the decision makers (families, advocates, mediators, evaluators, and trial judges) are most in need of wise guidance from this Court.

We have read with dismay the recent Court of Appeal decisions in this matter and in *Marriage of Lasich* (C039957), which are sadly representative of the way trial courts and appellate courts have distorted the holding of *Marriage of Burgess* (1996) 13 Cal.4th 25, 51, placing many of California's children at serious risk.

In *Montenegro* this Court indicated its interest in a thoughtful revisiting of the changed circumstances doctrine in light of modern social science recognition of the critical importance of children's multiple attachments, and their changing developmental needs and capacities. Many of the trial court and appellate decisions we see demonstrate a woeful ignorance of child development. Others tend to employ oversimplified analyses, which do not serve children well. We were greatly encouraged by this Court's remarks in *Montenegro v. Diaz*. There is an urgent need for further action by this Court. *LaMusga* offers an opportunity for the Court to follow up

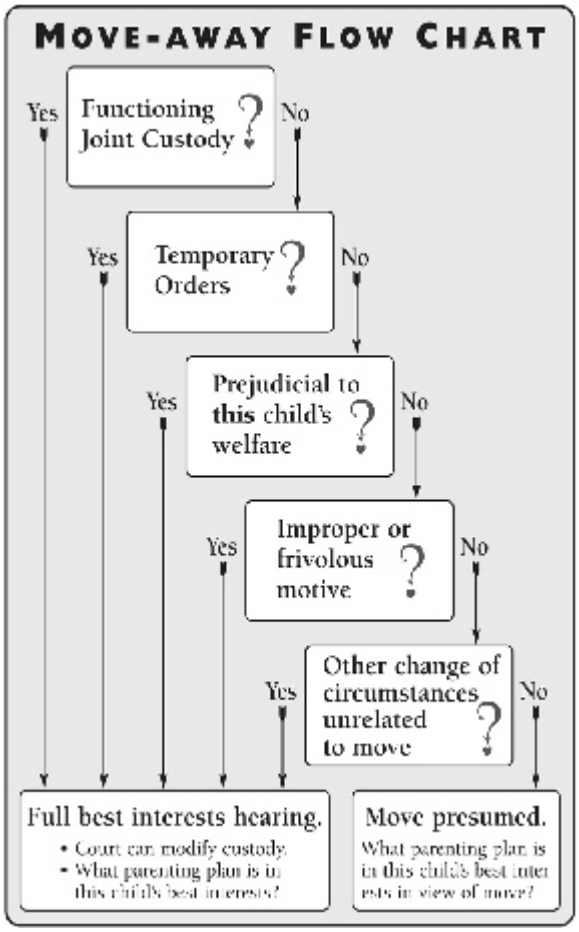
on the ideas and concerns expressed in that decision and ensure that California custody law reflects contemporary social science research about the impact of

divorce on children. This Court noted the summaries of that research presented in the *amici* briefs, and reserved consideration of how the changed circumstances doctrine should be applied in light of that research to another day. Delay in reaching that other day adversely impacts thousands of children and families in our state.

The post-B*urgess* decisions of California's appellate courts leave California's children poorly protected in our family courts. Despite this Court's clear statement that B*urgess* was not intended to create a bright line test in relocation cases, appellate courts have reduced the attachment analysis of that decison to a formula based on timeshare, and have deprived trial courts of discretion to act in each individual child's best interests. Recent cases are particularly troubling. For example, in M*arriage of* W*illiams* (2001) 88 Cal. App. 4th 808, the Court of Appeal held that sibling relationships must receive special protection, while reading B*urgess* as stripping it of power to protect parent-child relationships. A California evaluator recently told members of the national child custody list-serv that a trial court interpreted that W*illiams* to weigh a child's relationship with a 20-month-old half sibling who the child barely knew over an important, and well-established relationship with the child's father. In M*arriage of* B*ryant* (2001) 91 Cal.App. 4th 789, the children were left with the second-best option, because the courts read B*urgess* to preclude a best interests order. Such outcomes are clearly contrary to legislative intent.

Last month's decision in M*arriage of* L*asich* is cause for serious concern. The Third District held that a family court is precluded from engaging in a best interests analysis even in the context of an international relocation. While M*arriage of* C*ondon* (1998) 62 Cal.App. 4th 533 set forth special criteria for international relocations, L*asich* treated a move which will permanently deprive California of modification and enforcement jurisdiction, and which makes frequent and continuing paternal caretaking impossible as if it was the same as the short "convenience" move in B*urgess*.

Historically, child custody determinations consisted of a binary choice between two parents. Today child custody determinations entail developing, implementing and adapting a detailed parenting plan which meets the changing needs of the child, and reflects the changing circumstances of the family. Appellate law has not kept up with this paradigm shift. Thus application of appellate doctrines to the actual tasks of family law courts entails a forced fit, and a shift of focus away from the impact of the outcome on the child's well-being. The Legislature has clearly established that the child's health, welfare and safety are all California courts' paramount concerns, that all child custody determinations must be based on children's best interests, and that children are entitled to *frequent and continuing* caretaking experiences with each parent. Those clear legislative dictates are largely ignored by California trial courts as they expand the judicially created changed circumstances doctrine so that the exception to the best interests rule has ended up swallowing the rule.



While mothers generally take a larger role in caretaking during the first three years of life, research indicates an overall increased involvement of fathers with their children in the past two decades, including with young children. Involved fathers provide unique and important contributions to children's overall development over time. As children begin to venture into the larger world, the role of physical caretaking is diminished, and each parent contributes to children's social and emotional development. Children's custodial arrangements should not be forever based on their needs (or the decisions of their parents) in their first few years of life. Focusing on the preservation of one parent-child dyad, to the exclusion of other factors, does not promote children's best interests.

Most California family law courts and appellate courts grant virtually every relocation request presented. In *LaMusga*, despite a clear judicial finding of detriment, the Court of Appeal has reversed one of the rare decisions not supporting a move. Few trial courts or appellate courts follow the full analysis required by current California law. In a recent article published simultaneously in the California newsletters of AFCC and the Association of Certified Family Law Specialists (See www.afcc-cal.org, click on Newsletter and navigate to p. 11 – see also the accompanying article on *Montenegro v. Diaz* which begins at p. 10), Shear presented this chart of the steps required to determine whether a Court is allowed to consider a child's best interests (we find it gravely troubling that a Court should ever be allowed to disregard a child's best interests).

We are also disturbed by the amount of family and court resources which are devoted to litigating legal issues which have no *nexus* to the child's welfare, such as whether the last parenting plan was labeled temporary or final. The adverse impact on the child's well-being of not revising a parenting plan which no longer meets the child's needs remains unchanged, no matter what the procedural posture of the case. The outcome of cases determining the fate of children must be controlled by child-centric factors, or California's children are betrayed by the legal system.

We do not believe that the Legislature truly intended for trial courts to summarily refuse to consider all aspects of children's best interests other than continuity of their relationships with a parent who had a greater custodial timeshare (which often includes substantial time in the actual care of nonparents). The best interests standard is a statutory mandate, while the changed circumstances doctrine is judicially-evolved. Nonetheless, that has been the fate of many hundreds of

California children since the 1996 B*urgess* decision. The apparently unintended consequences of B*urgess* have been grave. We are aware of at least three other relocation cases now pending before the courts of appeal in the state, and we are certain there are many more. Few in the family law community believe that a static view of children's best interests, which severely restricts modifications, is sound public policy. In M*ontenegro* this Court recognized that children's needs change based upon their age, stage of development and family circumstances. Family courts must not be prevented from fashioning parenting plans which serve children's best interests.

A very recent study by Sanford L. Braver, Ira M. Ellman, William V. Fabricius (*Some New Data Suggesting That Current Legal Rules May Not Serve the Interests of Children Whose Parents Relocate After Divorce*, submitted for publication to Journal of Family Psychology (see full text at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=313759) at Arizona University and U.C. Berkeley examined the long term consequences of relocation after divorce. They found "a preponderance of negative effects associated with parental moves by mother or father, with or without the child, as compared to divorced families in which neither parent moved away." Braver, Ellman and Fabricius conclude,

> ...[T]here is no empirical basis upon which to justify a legal presumption that a move by a custodial parent to a destination she plausibly believes will improve her life will necessarily confer benefits on the children she takes with her.
>
> As noted earlier, some courts (e.g., Burgess, Baures), relying on Wallerstein and Tanke's (1996) summary of the social science literature to the effect that "a close, sensitive relationship with the ... custodial parent" had "centrality", and that the relationship with the noncustodial parent could therefore be discounted (p. 311), have recently arrived at the opposite conclusion: that "whatever is good for the custodial parent is good for the child" (Baures, 770 A.2d at p. 222). However, Warshak (2000) has argued that Wallerstein miscast the voluminous social science literature, and certainly the matter appears more nuanced than such judicial language suggests. ... On the other hand, it also appears that noncustodial fathers, at least in past decades, did not usually engage in authoritative parenting, because that kind of relationship is more difficult to maintain for a parent who does not live with the child (Marsiglio, Amato, Day & Lamb, 2000); on the other hand, the child's relocation to a considerable distance from the noncustodial parent may make such a relationship not merely more difficult but essentially impossible. More recently, Kelly and Lamb (2000) have concluded that "there is substantial evidence that children are more likely to attain their psychological potential when they are able to develop and maintain meaningful relationships with both of their parents, whether or not the two parents live together" (p. 11).
>
> Ironically, cases like Baures are also inconsistent with Wallerstein's own conclusions, in publications that precede her brief in Burgess, as Warshak has shown. For example, in 1980 Wallerstein stated that "our findings regarding the centrality of both parents to the

> psychological health of children and adolescents alike leads us to hold that, where possible, divorcing parents should be encouraged and helped to shape postdivorce arrangements which permit and foster continuity in the children's relations with both parents" (Wallerstein & Kelly, 1980, p. 311).
>
> In sum, recent judicial conclusions concerning the impact of the noncustodial father's relationship with the child on the child's development were not entirely consistent with the psychological evidence, nor even with the pre-litigation conclusions of the researcher upon whose description of that evidence they relied. The current study adds to that discrepancy because its comparison of children of divorced families that did and did not move provides no evidence that the child is benefitted by moving away with the custodial parent.

Amato & Gilbreth (1999) found that when children have a close relationship with the father, combined with frequent contact, the combination is associated with more positive adjustment. They also found that two dimensions of father involvement were related to positive child outcomes: active involvement (help with projects, school, talking about problems, emotional responsiveness), and authoritative parenting (setting limits, having appropriate expectations, noncoercive discipline and control). Active involvement and authoritative parenting are extremely difficult or impossible to preserve in long distance relationships. It is also the case that some studies have found a link between frequent contact with fathers and positive adjustment in boys and young children (Stewart, Copeland, Chester, Malley, & Barenbaum (1997) (but not girls or older youngsters).

The family law cases which come before appellate courts almost always involve upper middle class families in which the parents can afford appellate counsel. However the holdings of these cases are applied to thousands of families for whom relocation means rare or no parent-child contact because of scare economic resources. Every case also entails speculation about future availability of funds for travel. The economic fortunes of families are not readily predictable, yet moves are not reversed when funds for contact dry up.

When this Court decided B*urgess*, it did not reduce the concept of preserving children's important attachments (which is the underlying rationale) into a timeshare formula. There is only a minimal relationship between the percentage of time that children spend in the care of each parent, and the importance of each parent's active participation in child-rearing for that child's healthy development.

> ...[I]t is not at all clear that distinctions can be made between primary and secondary caregiving roles in many families with children above age four because of the diversity of children's needs and the multidimensionality of parenting roles and responsibilities. (Footnote omitted.) Because both parents assume meaningful but different roles and relationships with offspring, each parent is a "primary caretaker" of older children in different ways, and custody decisions might better focus on maintaining relationships with each parent rather than just the "primary"one.

> Moreover, it is not at all clear that, when both parents assume some responsibility for the child's bathing, feeding, health, and basic care - the relative extent of their responsibility for these tasks defines the most significant dimension on which to rest a custody decision. In a sense ... criteria for defining "primary caretaker' status are among the least meaningful indices because basic maintenance tasks like meal preparation, bathing and chauffeuring can be readily assumed by either parent regardless of the level of his or her predivorce responsibility for these concerns. Many of these responsibilities are activities done for the child rather than with the child. (Footnote omitted.) The focus of a custody inquiry should properly be the meaning and significance of each parent's relationship with the child, which is far more difficult to assess and which is not easily indexed by inquiring which parent regularly dressed and bathed the child. Substituting quick evaluations of parental responsibility for maintenance of care for a searching inquiry into parent-child relationships does not contribute to valid or meaningful child custody decisions.
>
> Ross A. Thompson, T*he* R*ole of the* F*ather* A*fter* D*ivorce*, 4 The Future of Children: Children & Divorce 210, 217-218 (1994) http://www.futureofchildren.org/cad/index.htm [Emphasis added]

Psychologist Mary Duryee explanation in the *amicae curaie* brief she filed with this Court in M*ontenegro v*. D*iaz* accurately reflects current social science understandings:

> The child development research, attachment research, resilience research, and divorce research all point in the same direction: toward the possibility and the desirability of multiple attachment figures in the lives of children, who each provide unique opportunities for relating, and who inoculate the child from adversity. Each adult is a source of resilience for a child, an 'adaptive system redundancy,' another anchor point, holding up the web in which the child rests. On the other end of the spectrum, children who do not have attachments with any adult, fail to develop.Some fail to thrive at all. [Footnote omitted]. Development in children, it turns out, occurs only in the context of relationships. It could be said, without exaggeration, that development and attachment are so inextricably bound together that one does not occur without the other. T*he sobering fact of family law is that to be in the business of orchestrating parent-child relationships is to be directly influential on a particular child's developmental path*.
>
> This is important, because there has been a way in which an unintended consequence of the older developmental theories tended to confine our thinking about what a family should look like in ways which had policy implications.Often these idealizations were steps taken beyond the intrapsychic focus of the original research and the limits of the data. Thus the idea of a primary caretaker has become a legal concept with the apparent weight of psychological research behind it,

> comforting decision-makers that deciding between two parents was sufficient, rather than entering the messy, uncomfortable, often unrewarding task of helping parents re-sort their roles and relationships with their children after divorce. [Footnote omitted]. [Emphasis added]

It is extremely difficult to construct a long distance parenting plan which does not sacrifice either the depth and meaning of the child's relationship with the left-behind parent, or the child's normal developmental need for continuity of peer relationships, enrichment activities, etc. It is impossible to construct a long distance parenting plan for an infant, toddler or preschooler, which preserves and promotes the strong attachment, attunement and reciprocal connectedness necessary for a beneficial relationship. Young children have not yet mastered the concept of time, and cannot sustain relationships with people they do not interact with extremely often. Even for older children, the loss of a parent's frequent and involved participation in the child's home and community life cannot be adequately remedied by summer and holiday visits. Their relationships with good parents are strained by lack of familiarity, and difficulties integrating into a different peer group, community and activities infrastructure. Their relationships with less attuned or skilled left-behind parents can be nightmarish. Parents who could function well within a structure of child care, camp, peer relationships, health care and other resources, often cannot build or maintain such a structure for the children in the absence of the parent who played that role prior to the move. Distance also makes it impossible for the custodial parent to know if the person who meets the children's plane has decompensated and has emotional or substance abuse problems, or other impairments which place children at risk.

Parents who do not have deep and important relationships with their children are less likely to oppose a move. Parents who really appreciate the other parent's importance in their children's lives are far less likely to choose career or life paths which entail relocation when their children are young. When that is impossible, such families are more likely to resolve the issue of the move through negotiation or mediation. Consequently the pool of move-away cases which come to family courts disproportionately appear to involve a parent with a deep and important connection to the children opposing a move by a parent who undervalues that parent's importance in the lives of the children. Almost all of the cases we have seen involve moves by mothers who attained "primary" custodial status when the children were very young. When we meet with families a year or more after the relocation, we find that most children did not spend the full amount of time with the left behind parent which was contemplated by the move-away order.

Relocation should not be readily permitted where the relocating parent does not have a reliable history of promoting the children's relationship with an involved or adequate parent who is to be left behind. Only with the active and enthusiastic support of the relocating parent do the children have a reasonable chance of sustaining a meaningful relationship with their left-behind parent,

> The willingness of relocating parents to facilitate the relationships between adequate nonmoving parents and their children

must also be considered, because relocating parents should be willing to encourage communication between such parents and their children and to facilitate transportation arrangements. Maternal hostility can significantly affect children's continuing relationships with their fathers, as it results in fewer visits, including overnights, three years after divorce (Maccoby & Mnookin, 1992), and maternal sabotage of visits (Braver & O'Connell, 1998). Maternal dissatisfaction with fathers' visits, independent of level of conflict, is also a factor, and is associated with poorer adjustment in children (King & Heard, 1999) although King and Heard (1999) did not indicate whether the mothers' dissatisfaction was caused by poor fathering or by their own upset and anger with former spouses.

Although the effects of relocation were not addressed specifically in these studies, the hostility or dissatisfaction of custodial mothers is likely to be an even larger barrier in relocation cases. Young children need a great deal of assistance in refreshing and retaining the memory of absent parents. Mental health professionals serving as mediators, or court-appointed arbitrators, consistently report that angry mothers who do not value their children's continued contact with attentive fathers are less likely to help their young children stay in touch, often interfere with communication, discourage discussion of the nonmoving parent in their homes, and find trivial reasons to cancel visits at the last moment.

Joan B. Kelly and Michael E. Lamb, *Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?* Journal of Family Psychology (in press)

CHILD OUTCOMES OF INVOLVED FATHERING

Behavioral

- Reduced contact with Juvenile Justice
- Delay in initial sexual activity, reduced teen pregnancy
- Reduced rate of divorce
- Less reliance on aggressive conflict resolution

Educational

- Higher grade completion and income
- Math competence in girls
- Verbal strength in boys and girls

Emotional

- Greater problem-solving competence, and stress tolerance
- Greater empathy, moral sensitivity and reduced gender stereotyping.

Divorce Researcher Mavis Hetherington's rigorous and well-constructed longitudinal study of families after divorce found that most of the children resided hundreds of miles away from their fathers a few years after the divorce. Those fathers did not register on the children's "emotional radar screen." In other words, their influence on the children's development was virtually nil. Mavis Hetherington, *For Better or For Worse: Divorce Reconsidered* (*Surprising Results from the Most Comprehensive Study of Divorce in America*) 2002. What did the loss of their fathers as meaningful participants in childrearing mean for these children? Yale Child Study Center Psychiatrist Kyle D. Pruett, and Marsha Kline Pruett, a psychologist at the Yale Medical school have reviewed the research to identify the difference in outcomes for children with and without involved fathering. Their findings are summarized in the accompanying chart. (Institute on Parenting Plans for Young Children presented to judges, lawyers

and mental health professionals on June 5, 2002 at the annual international conference of the Association of Family and Conciliation Courts, Waikoloa, Hawaii).Relocations which deprive children of involved fathering have adverse behavioral, educational, and emotional consequences, and thus create greater problems for society, and for courts.

If the two recent decisions of the California Court of Appeal stand, neither the LaMusga children nor the Lasich children are likely enjoy the benefits of involved fathering. The intervention of the California family courts will have increased, rather than ameliorated, the family supports essential for the children's healthy development.

To those of us working day after day in family law courts, the interpretations of B*urgess* which govern the decisions we see appear to be a restitution of the maternal preference repealed by the legislature three decades ago. The intervention of this Court is essential to ensure that children's futures are shaped by individualize determinations which show appreciate for the complex variables which will determine the developmental impact of court decisionmaking.

Granting review in L*aMusga* will enable the Court to engage in a thoughtful, child-centered examination of how the statutory best interests mandate can best be applied for the protection of children over the many changes which occur in their lives and family situations. Such an exploration must balance the need to prevent unnecessary litigation with the need to address the multiple variables which comprise a true best interests analysis.

The Court of Appeal decision in L*asich* is fatally flawed for two reasons. First, the opinion misunderstands the Hague Convention. Second, the opinion fails to recognize the importance of frequency of caretaking experiences in sustaining the kind of attachment, attunement, and intense familiarity necessary for a meaningful parent-child relationship, particularly with young children.

No language in any California order purporting to maintain the United States as the children's habitual residence will have any force and effect in a subsequent Hague proceeding in Spain for return of the children to the U.S. Habitual residence is defined by the Hague Convention itself, and by the Court of the jurisdiction hearing the proceeding. The day that the children arrive in Spain accompanied by a parent who was authorized to relocate there with them, the U.S. judgment is null and void. Spain will have become the children's habitual residence under international law. Spain will be free to substitute its own child custody order. The parenting plan ordered in L*asich* is inadequate to preserve a true father-child relationship.

Braver, Ellman and Fabricious offer the following advice to policymakers:

> We must note that no data can free the judicial system from the difficult problem of finding a workable and acceptable remedy for the parent who reasonably objects to the other parent's move. The problem arises from the law's understandable resistance to orders that directly restrict a parent's right to move. A court may change the

custodial arrangement because of the move, effectively controlling the child's mobility by moving primary custody to the parent who does not move, but it will not bar the initial custodial parent from moving by herself. For the same reason, it will not bar a noncustodial parent from moving, even if the move effectively precludes that parent from exercising his visitation rights, and even if it were persuaded that the child suffers detriment from that parent's move away. In extreme cases, of course, the law can terminate the parental status of a reluctant parent. The man who, for example, moves far from his child, never sees or acknowledges her, and does not contribute to her support, may have his parental rights terminated, freeing the child for adoption by the mother's new husband. But the law has no effective method for requiring a man (or a woman) to nurture and love a child.

This reality means that the primary tool available to courts that believe a proposed move is not in the child's interests is the strategic use of a conditional change-of-custody order. Such orders have disadvantages. They are of no value in restraining moves by noncustodial parents, which appear from our data generally as harmful to the child as custodial parent moves, and (as explained in the introduction) their use may seem doctrinally inconsistent with the prevailing view that nonconsensual changes in primary custody are disfavored, and perhaps ordered only when needed to protect the child from some demonstrable detriment in the existing custodial arrangement. For these reasons, recent legal trends discourage their use ...

Yet perhaps our data suggest a reconsideration of this trend. From the perspective of the child's interests, there may be real value in discouraging moves by custodial parents, at least in cases in which the child enjoys a good relationship with the other parent and the move is not prompted by the need to otherwise remove the child from a detrimental environment. And other recent data (Braver, Cookston & Cohen, in press) suggest that these conditional orders would in fact prevent the move in up to two-thirds of the cases.

The dilemma resulting from the modern trend is well-exemplified in Marriage of Bryant (2001), a California appeals court case applying Burgess. At their divorce the mother, who had always been the children's primary parent, sought primary custody and announced her intention to move with them from Santa Barbara to New Mexico, where her family lived. Since the parents' separation, the father had seen the children, 6 and 9 years of age, three or four times weekly, as well as talking with them daily on the phone. All agreed that his relationship with the children was important to them as well as to him, but all also agreed that the mother was a good parent with a close emotional bond with her children. Father earned a good income and had the financial capacity to fly regularly to New Mexico to visit the children, but could not move there without considerable financial sacrifice. It seemed clear that the episodic paternal contact that would be possible if the children moved to New Mexico would be a poor substitute for the daily

> involvement in his children's life that the father maintained in Santa Barbara. Mother was the beneficiary of a trust fund and had no financial pressure requiring her move, which the court's appointed expert described as motivated by her desire to "escape a failed marriage." Her move to New Mexico was not badly-intentioned, although a bad parenting decision according to both the court's expert and the parties' therapist. The trial judge observed:
> There are two realistically possible scenarios in this case. The court could conditionally grant physical custody of the children to the father (with liberal visitation to the mother) if the mother moves away, with joint physical custody if the mother remains in Santa Barbara. In all likelihood, the court could force the joint-physical-custody scenario, since it is unlikely that mother will move away if it means she thereby becomes the non-custodial parent. This would be the optimum scenario for the best interests of the children, since it would preserve their lifelong social structure in the Santa Barbara area with very successful schooling, church, sports, paternal extended family and maternal aunt and would maximize the children's frequent and continuing contact with both parents.(110 Cal.Rptr.2d at 797).
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> But the trial judge nonetheless concluded he was compelled by Burgess to deny the father's petition for the conditional change of custody order, and "select what is next best in the children's interest"–maintaining primary custody with the mother in New Mexico. The intermediate court of appeals, also bound by Burgess, agreed and affirmed the trial judge: "Having found that [mother] was not acting in bad faith and that it is in the best interests of the children for custody to be with [her], the trial court was bound to rule as it did. We agree with the dissent that Burgess is disquieting because in cases such as this one it leaves the children with the second best solution." (Id.).
>
> Clearly, no court should issue a conditional change-of-custody order if it believes that any custodial change would yield important disadvantages for the child. But on the other hand, it may also be poor policy to insist that such orders be denied unless the noncustodial parent shows that the current custodial parent's home has some detrimental impact upon the child, as is often required for ordinary petitions to change a child's primary custody. Certainly, if further studies were to support the causal inference -- were to show that moves by custodial parents have a substantial harmful causal impact on their children -- then the child's separate interests would seem to require this reconsideration.

More than half of the children in our state will be subject to California's child custody laws at some point in their lives. Most of these children are very young at the time of their parents' separation (some of their parents never lived together). The roles and importance of each parent shift often in the lives of children, both in married and binuclear families. Thus the custody decisions of this Court have a powerful impact on the health and character of our future adult population.

We would welcome the opportunity to fully brief these issues if this Court grants review.

Sincerely,

Leslie Ellen Shear, J.D., CFLS (State Bar of California #72623)

Joan B. Kelly, Ph.D. (California Psychology License #PSY4026)

Donald S. Eisenberg, J.D. (State Bar of California #68859)

Word Count

I certify that this letter brief contains 5,362 words, as calculated by Corel WordPerfect ™ 10.

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Leslie Ellen Shear