

IN THE SUPREME COURT OF CALIFORNIA

In re the Marriage of

SUSAN POSTON NAVARRO (LAMUSGA)

Appellant

and

GARY LAMUSGA,

Respondent - Respondent

Supreme Court
Case No. S107355

Court of Appeal
Case No. A096012

Contra Costa County
Superior Court
Case No. D95-01136

**APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF OF
RICHARD A. WARSHAK, PH.D., SANFORD L. BRAVER, PH.D., JOAN B.
KELLY, PH.D., JAMES H. BRAY, PH.D., WILLIAM G. AUSTIN, PH.D.,
ET AL., ON BEHALF OF LAMUSGA CHILDREN**

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Attorney for Amici Curiae,
Richard A. Warshak, Ph.D.; Sanford L.
Braver, Ph.D.; Joan B. Kelly, Ph.D.; James H.
Bray, Ph.D.; William G. Austin, Ph.D., et al.

TO THE HONORABLE CHIEF JUSTICE AND HONORABLE
ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF
CALIFORNIA:

Amici curiae, Richard A. Warshak, Ph.D., Sanford L. Braver, Ph.D., Joan B. Kelly, Ph.D., James H. Bray, Ph.D., William G. Austin, Ph.D., et al, through their attorney Donald S. Eisenberg, hereby apply for leave to file an amici curiae brief in the above-entitled cause. The amici curiae brief accompanies this application and has been served on all parties to this case contemporaneously with its lodging in this Court.

Amici realize that this brief is being submitted well after the expiration of the normal deadline for amici curiae briefs. However, the urgent need for this brief was not apparent until after the brief by Amici Judith Wallerstein et al. was circulated. That brief presents information and conclusions from the scientific literature that substantially diverge from mainstream views of the vast majority of clinical, forensic and scholastic experts who study divorce and work with divorcing families. Amici therefore believe this brief is necessary to provide the Court a more-balanced and comprehensive account of the relevant scientific

literature, an account that is endorsed by a consensus of leading experts on divorce. Thus, Amici urge the Court to accept and consider their brief.

Amici believe that the participation in this brief by so many leading experts from the social and psychological sciences is a reflection of the widely-shared conviction in their respective fields that it is important this Court not be misled by opinions and conclusions that are not shared by most eminent scholars, researchers, and practitioners who have spent long years conducting, evaluating and applying the research. The information provided in this Brief is different than that placed before this Court by other briefs filed in this case, and in *In re Marriage of Burgess*. Amici believe it will be of significant assistance to the Court in appreciating the profound impact that move-away orders have on children who are affected by them, as well as society as a whole.

Amici have no connection with the parties in this case and no personal interest in its outcome. In their proposed amici curiae brief, they present the Court with the latest research available and the consensus thinking of the majority of social scientists on the causes and effects of unhealthy parental alignment with children, the consequences for families of parental relocation, the reasons for caution in considering children's opinions, and many other issues that are highly relevant to the issues in this case.

If the Court relies only on the amici briefs that have been filed, it will have a distorted picture of the state of the research and of the views of the vast majority of experts in the field today.

A total of 28 experts, including 18 Researcher/Authors or Practitioner/Authors and 10 Practitioners who apply research in their Family Forensic Practice have asked that their names be included as signers of this brief.

The following is a brief description of their expertise:

Researcher/Authors or Practitioner/Authors

Constance R. Ahrons, Ph.D., MSW, is Professor Emerita of Sociology, former director of the Marriage and Family Therapy Doctoral Program at the University of Southern California (USC) and is currently senior research scholar at the Council on Contemporary Families. She is the principal investigator of The Binuclear Family Study, a 20-year longitudinal investigation of postdivorce families, funded by the National Institutes of Mental Health and the Center for Families and Children, Judicial Council of California. She is the author of The Good Divorce, Divorced Families , the forthcoming Divorce and Remarriage: The Children Speak Out and has numerous articles published in professional and academic journals.

William G. Austin, Ph.D. is a practicing clinical and forensic psychologist in Northwest Colorado. He is the author of numerous articles on forensic methodology for conducting child custody evaluations that are research based with practical applications. He has developed forensic models of risk assessment for child custody evaluation for the two instances of relocation and domestic violence. These models are currently being widely applied by custody evaluators across the country. Dr. Austin provided the scientific and technical basis for the Colorado Senate Judiciary Committee on the change in the Colorado relocation statute from

a presumption in favor of relocation by the residential parent to a best interests of the child standard. **Dr. Austin's vitae is attached hereto as Exhibit A.**

Sanford L. Braver, Ph.D. is Professor of Psychology at Arizona State University, where he has been for over 30 years. For over 20 years he has explored the dynamics of divorcing families with the support of 15 peer-reviewed Federal research grants, totaling almost \$15 million. He has published nearly 80 peer-reviewed professional articles and chapters and has written three books, including Divorced dads: Shattering the myths, and the forthcoming The Legacy of Divorce: Controversies, Clarifications and Consequences. He is in demand as a speaker and presenter, and as a consultant to numerous state and federal entities. He is on the Editorial Board of *Fathering and Family Court Review*, and regularly peer-reviews grant proposals for Federal grant agencies. **Dr. Braver's vitae is attached hereto as Exhibit B.**

James H. Bray, Ph.D. is an Associate Professor in the Department of Family and Community Medicine, Baylor College of Medicine in Houston, Texas. Dr. Bray has published and presented numerous works in the areas of divorce, remarriage, and adolescent substance use. He was the principal investigator of the NIH study, *Developmental Issues in Step-Families Research Project*. He has received numerous awards including election to National Academies of Practice for Psychology and the Heiser Presidential Award for Advocacy on Behalf of

Professional Psychology from the American Psychological Association. Dr. Bray is on the Council of Representatives for the APA and was a candidate for President of the APA. **Dr. Bray's vitae is attached hereto as Exhibit C.**

Dr. David Demo is a researcher who has studied divorce, single-parent families, and parent-child relationships for over 20 years. He is currently Professor and Chair of the Department of Human Development and Family Studies at The University of North Carolina-Greensboro. He has published extensively on children's and parents' adjustment to divorce, single-parent families, and stepfamilies. Dr. Demo has also worked in divorce education programs for divorcing parents. He is a Fellow of the National Council on Family Relations and a member of the editorial board for the Journal of Marriage and Family.

Robert Emery, Ph.D. is Professor of Psychology and Director of Clinical Psychology Training at the University of Virginia and Director of the University's Center for Children, Families, and the Law. He has or is serving on the editorial board of eight professional journals and has been a member of the Social Sciences and Population grant review study section of the National Institutes of Health.

Dr. Emery's research focuses on family relationships and children's mental health, including parental conflict, divorce, child custody, family violence, and associated legal and policy issues and he is the author of over 90 scientific publications. He also has written the following books: Marriage, Divorce, and

Children's Adjustment, Abnormal Psychology, Essential of Abnormal Psychology and Renegotiating Family Relationships: Divorce, Child Custody, and Mediation. He continues to engage in a limited practice as a clinical psychologist and divorce mediator.

Dr. William V. Fabricius is Associate Professor of Psychology at Arizona State University. He studies children's social-cognitive development, young adults' perspectives on their parents' divorces, and the impact that fathers have on adolescent development. He has published 35 scholarly articles, and has been the principal investigator on research grants totaling over \$250,000 from the National Institute of Child Health and Human Development and the National Institute of Mental Health for basic research in social-cognitive development. He is a co-investigator (with Dr. Sanford Braver) on a research grant totaling over \$1.6 million from the National Institute of Mental Health to study Anglo-American and Mexican-American fathers and step-fathers over a 5-year period as their children enter their teenage years.

Dr. Michael Gottlieb practices forensic and family psychology in Dallas. He is Board Certified in Family Psychology and is a Fellow of the American Psychology/Law Society. He is a Clinical Associate Professor at The University of Texas Southwestern Medical School. He is a Past-President of the Dallas and Texas Psychological Associations, The American Board of Family Psychology

and The Academy of Family Psychology. Dr. Gottlieb writes on applied ethics and the psychology/law interface and is a member of the Editorial Board of six scholarly journals. He has written or co-written over twenty five peer-reviewed articles and book chapters, presented over seventy-five professional papers and given over eighty-five workshops locally, nationally and internationally, including to the American Bar Association Family Law Section and the National Judicial Institute of Canada.

Dr. John Guidubaldi is Professor of School Psychology at John Carroll University, Professor Emeritus from Kent State University, and Psychologist at Western Reserve Academy--an independent secondary school. He has authored more than 70 scholarly publications. He served as editor of Highlights Magazine's Newsletter of Parenting, editor of The School Psychology Digest, President of the Portage County Family Counseling Agency, President of the National Association of School Psychologists, and Director of several research grants, including a longitudinal study of divorce with 699 children from 38 states, studies of father involvement in urban centers, a study of divorce in China involving 2,000 families, and a study of judicial deviations from child support guidelines in 1,000 Ohio families. He was a U.S. Commissioner of Child and Family Welfare, a member of the Ohio Task Force on Family Law and Children, and a member of the Ohio Advisory Council for Child Support Guidelines.

Dr. Joan B. Kelly is a researcher and forensic psychologist and for 18 years was mediator and Director of the Northern California Mediation Center in Corte Madera, CA. Her research and practice has focused on children's adjustment to divorce, custody and access issues, child development issues in parenting plans, and divorce mediation. She has published more than 70 articles and chapters in these areas of interest, and her book, *Surviving The Breakup: How Children and Parents Cope with Divorce*, coauthored with Dr. Judith Wallerstein, remains a classic. Joan received the Distinguished Mediator Award from the Academy of Family Mediators, the Stanley Cohen Distinguished Research Award and Meyer Elkin Award from the Association of Family and Conciliation Courts, and is a Fellow of the American Psychological Association. **Dr. Kelly's vitae is attached hereto as Exhibit D.**

Marsha Kline Pruett, Ph.D., M.S.L. is Research Scientist in Law and Psychiatry at the Yale School of Medicine in the Department of Psychiatry and the Yale Child Study Center. She has twenty years of clinical experience with individuals, couples, families, and children, as well as certificates in both Family Therapy and Divorce Mediation. Dr. Kline Pruett has been Primary Investigator on numerous state and federal grants, and is also known nationally for the development, implementation, and evaluation of preventive interventions. She was a member of the original research team headed by Judith Wallerstein and Janet Johnston, with

whom she spearheaded early research on joint custody and marital conflict in California. Her writings include numerous original articles published in scientific journals, and book chapters. She recently co-authored a book, *Your Divorce Advisor*.

Dr. Michael E. Lamb is Head of the Section on Social and Emotional Development at the National Institute for Child Health and Human Development (National Institutes of Health/Department of Health and Human Services) and was previously Professor of Psychology, Psychiatry, and Pediatrics at the University of Utah. He has published more than 30 books and approximately 500 peer-reviewed articles and chapters on parent-child relationships, child development and adjustment, and forensic interviewing of allegedly abused children. In recognition of his scholarly contributions, he has received a number of awards including an Honorary doctorate from the University of Goteborg, Sweden, and the James McKeen Cattell Award from the American Psychological Society.

Dr. Jay Lebow is a Senior Therapist and Research Consultant at The Family Institute at Northwestern and Adjunct Associate Professor at Northwestern University. He is a diplomate in Family Psychology of the American Board of Professional Psychology. He is President-Elect of the Division of Family Psychology of the American Psychological Association and has served on the board of directors of the American Family Therapy Academy and the American

Board of Family Psychology. He has written over 100 articles and book chapters. His writing on the evaluation and treatment of families in which there are disputes over child custody and visitation includes a chapter describing issues in remarriage families in *The Scientific Basis of Child Custody Decisions*, and chapters describing his model for intervention in the *Comprehensive Handbook of Psychotherapy* and *The Journal of Family Psychology*. He also has presented on the subjects of child custody evaluation and methods of intervention in these disputes at numerous national and international meetings.

Dr. Patrick McKenry is a professor of human development and family science at the Ohio State University. He has been conducting research in the area of divorce for over 25 years. His research has focused on the etiology of divorce, divorced mediation, divorce education, gender and ethnic variations in divorce adjustment. He has published over 100 journal articles and book chapters on divorce and related topics. In addition, he has co-authored three books: Divorce: A Major Life Transition, Families and Change, and Families Across Time: A Lifecourse Perspective. He is a fellow of the National Council on Family Relations and has won the Ohio State University Alumni Award for Research Excellence. He serves on the editorial board of four major journals in his field: *Family Relations*, *Journal of Adolescent Research*, *Marriage and Family Review*, and *Journal of Family Issues*.

Dr. Kay Pasley (Associate Dean for Research and Graduate Studies, School of Human Environmental Sciences, and Professor of Human Development and Family Studies, University of North Carolina at Greensboro) has been involved in the study of marital transitions since 1977. Her research has focused on marital processes in remarried families and fathering after divorce with a focus on men's motivations for continuous involvement. She has published more than 50 articles and 30 book chapters, as well as three books on remarriage and stepparenting. She is a Fellow in the National Council on Family Relations, and currently serves as Editor of *Family Relations: Interdisciplinary Journal of Applied Family Science*.

Isolina Ricci has over 30 years of experience as a practitioner, author, researcher, and administrator in the field of divorce, custody, parenting, mediation, research, and family law. Her book, *MOM'S HOUSE, DAD'S HOUSE*, remains a classic. In addition to her research and work with families, she also headed the Statewide Office of Family Court Services and was the Assistant Director of the Center for Families, Children and the Courts for the CA Judicial Council. She is the recipient of the Distinguished Service Award for Mediation from the Academy of Family Mediators, was one of the first eight "Masters" selected for the American Association of Marriage and Family Therapists inaugural series, and is a Rockefeller Bellagio Scholar.

John W. Santrock, Ph.D. is Professor of Psychology at the University of Texas at Dallas, where he has served as Chair of the Psychology Program. His divorce and custody research is widely cited and emphasizes the complexity of factors in children's adjustment to divorce. He is formerly a member of the editorial boards of the two leading research journals in child development and the recipient of a National Institute of Mental Health grant to study children in stepfamilies. Dr. Santrock is perhaps the leading author of psychology textbooks, having authored 70 texts including *Child Development, 10th Ed.*(2004), *Life-Span Development, 9th Ed.* (2004), *Adolescence, 9th Ed.* (2003), *Educational Psychology, 2nd Ed.* (2004), *Children, 6th Ed.* (2002), and *Psychology, 7th Ed.* (2003).

Dr. Richard A. Warshak is a clinical, consulting, and research psychologist and Clinical Professor at the University of Texas Southwestern Medical Center. He has written two books and more than forty articles and chapters published in scientific and legal journals and books, including four specifically on relocation. He serves on the Editorial Board of the Family Court Review, and is an Editorial Reviewer for two more professional journals. He directed the Texas Custody Research Project and was Co-Principal Investigator of the NIMH Stepfamily Project. His landmark custody research is cited often in the scientific literature and in courtrooms and legislatures throughout the world. He has more than a quarter century of experience evaluating and treating children, adults, and families and

consulting to attorneys and custody evaluators. **Dr. Warshak's vitae is attached hereto as Exhibit E.**

Practitioners Who Apply Research in Their Family Forensic Practice

Sidney J. Brown, Ph.D. has been a psychologist in private practice in California for 22 years. For the past 15 years he has conducted numerous child custody evaluations. Currently he is on panel of custody evaluators Los Angeles Superior Court. The majority of his practice is in the area of providing forensic service to custody cases

James R. Flens, Psy.D. is a Forensic Psychologist and has been in private practice for the last 16 years. Approximately ninety-five percent of his practice is devoted to family law related matters. He has conducted in excess of 500 child custody evaluations, and has been involved in approximately another 500 in other capacities. He is a member of the American Psychological Association, Association of Family and Conciliation Courts, Society for Personality Assessment, and American Bar Association and is also active on the Child Custody Listserv.

Michael A. Fraga, Psy.D. was one of the founders of the California Association of Batterer's intervention Programs (CABIP), and has provided training to both the judiciary and mental health communities in this state and nationally on domestic

violence, child abuse, practice, ethics and implementation of child custodial evaluations and forensic (capitol) psychological assessment. His agency is a functional member of California Psychological Internship Council (CAPIC) and provides clinical training in a variety of concentrations to both pre- and post-doctoral students.

Lyn R. Greenberg, Ph.D., specializes in work with children and families involved with the courts. She performs child custody evaluations, evaluations of alleged abuse, and specialized treatment for court-involved children and families. She has written and presented both locally and nationally on forensic psychology, professional ethics, child custody evaluation, facilitating the adjustment of children and divorce. and court-related treatment. Her publications include (with Jonathan Gould) “The treating expert: A hybrid role with firm boundaries,”, and she has articles in press on interviewing children in child custody evaluation, professional ethics, and treatment of court-involved families . Dr. Greenberg chairs the Forensic Committee of the Los Angeles County Psychological Association, and is a Member of the (Southern) Children’s Issues Committee of the CA State Bar Association.

Dr. Neil S. Grossman maintains a forensic/clinical practice. He is Chair, Forensic Task Force of the Division of Family Psychology; Co-Editor, Special Issue on Family Psychology and Family Law, Journal of Family Psychology; presented many workshops and trainings in the areas of forensic psychology. Dr. Grossman is active in education, training and accreditation in psychology as: Vice President for Education,

Division of Family Psychology; President, Council of Specialties in Professional Psychology; Representative, Interorganizational Council for Accreditation of Postdoctoral Programs in Psychology; and President, Academy of Family Psychology; Dr. Grossman has taught at the undergraduate, doctoral and postdoctoral levels and directed internship and postdoctoral training programs.

Leslye Hunter, M.A., LPC, LMFT has a private practice in the New Orleans area dedicated to marriage, divorce and child custody. She is the President-Elect of AFCC (Association of Family and Conciliation Courts). She is the Past President of the Family Mediation Council of Louisiana, New Orleans Chapter and is on their training faculty. Ms. Hunter is active with the local and state Bar Association Committees to Implement Family Courts. She co-drafted Guidelines for Child Custody Evaluators which were unanimously accepted as statewide guidelines by the Louisiana State Bar House of Delegates, and frequently lectures and teaches workshops for other mental health professionals, attorneys and judges.

Eva Baranoff McKenzie, Ph.D. is a clinical and forensic psychologist in the state of California who has conducted custody evaluations for the past 16 years. She has conducted over 500 custody evaluations. She invests significant time in staying current with the research on child development, trauma, parenting and custody arrangements in order to provide the most informed recommendations possible regarding families experiencing divorce.

Nancy Williams Olesen, Ph.D. is a licensed psychologist who has worked with divorcing families for more than twenty years. She conducts custody evaluations, trains professional in the best methods of evaluating divorcing families, and serves on a variety of professional boards and advisory committees. She is on the Board of directors of the Judith Wallerstein Center for the Family in Transition, and the Board of the California Chapter of the Association of Family and Conciliation Courts. Dr. Olesen has been invited to speak on topics regarding custody evaluation at many national and international conferences.

Gary R. Rick, Ph.D. has been conducting child custody evaluations and performing other forensic tasks for 22 years. He has conducted about 300 evaluations and his practice has been 95% custody for the past several years.

Dr. Jan Tyler is a forensic psychologist, licensed in the State of Vermont, with over fifteen years of clinical and forensic experience. She has performed over 150 custody evaluations, and testified numerous times as an expert witness in child development, parenting, child sexual abuse, and custodial matters. Dr. Tyler on the Editorial Board of the Journal of Child Custody. She has given several workshops on child custody and visitation for the National Business Institute, presented at the Association of Family and Conciliation Courts Fifth Annual Symposium on Child Custody Evaluations, and given several local presentations in these matters.

Although Amici realize that this brief is late, hopefully the Court will understand that it was not until the Wallerstein Brief was circulated that a groundswell occurred that resulted in the drafting of this brief. In addition, the research and work that has been put into this brief is extraordinary, as are the qualifications of the co-signers. This is a remarkable work that Amici believe will be of significant benefit to this Court and to the children affected by its decision.

Dated: July 24, 2003

Respectfully submitted,

Donald S. Eisenberg
Attorney for Amici Curiae
Richard A. Warshak, Ph.D., et al