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# Parental gatekeeping forensic model and child custody evaluation: Social capital and application to relocation disputes

William G. Austin<sup>a</sup> and Sol Rappaport<sup>b</sup>

<sup>a</sup>Austin Child Custody Services, Lakewood, Colorado, USA; <sup>b</sup>Counseling Connections, Libertyville, Illinois, USA

## ABSTRACT

The parental gatekeeping, forensic evaluation model for child custody evaluators and other family court practitioners is presented. Gatekeeping refers to the ability of each parent to support the other parent–child relationships. The gatekeeping concept represents a common best interest statutory factor. Patterns or subtypes of gatekeeping are defined: facilitative, restrictive, and protective. A justification analysis is required when a parent is not supportive and/or restrictive on the other parent’s access to the child. The restrictive parent needs to identify the reasons for being restrictive/protective and show the nature of the harm. Relevant research is reviewed on joint parental involvement and gatekeeping. The gatekeeping model is applied to the context of relocation disputes. Relocation is framed as restrictive gatekeeping and the child custody relocation analysis is presented as a justification analysis in terms of the facts, context, reasons for moving, advantages/disadvantages, and legal factors that need to be assessed and considered.

## KEYWORDS

Custody; divorce; facilitative; forensic; gatekeeping; protective; relocation; restrictive

## Overview on parental gatekeeping

### *Gatekeeping and child custody evaluation*

The concept of parental gatekeeping and the developing forensic evaluation model appear to have become well-integrated into the professional lexicon and is a useful analytical tool for child custody evaluators, judges, and family law practitioners. Gatekeeping has a variety of practical uses for courts and practitioners. It is both a metaphor and scientific concept, which is supported by an extensive research literature. The literature is not reviewed here as it has been extensively reviewed in other publications. Gatekeeping appears now to be a central part of the analysis used by custody evaluators as they make recommendations to courts concerning the type of parenting plan that is predicted to be in the best interests of the child.

Gatekeeping refers to the pattern of parenting behaviors each parent displays that is or is not supportive of the other parent–child relationships (SOPCR), in the context of the postseparation and postdivorce family system. The gatekeeping concept also embodies a common best interest statutory factor found in the majority of U.S. states and other Western countries on the issue of mutual support. In child custody disputes, courts want to know how supportive each parent is and can be of the other and how to shield the children from conflict. Gatekeeping can be either positive or negative as a set of coparenting behaviors, and these behaviors can have expected effects on the quality of parent–child relationships.

Gatekeeping partly refers to behaviors that serve to either facilitate or hinder the other parent’s involvement with the child and opportunity to participate in active parenting of the child. The assessment of gatekeeping behaviors is essential because of the extensive research that shows the importance of joint parental involvement. Studies show that children of divorce show the best long-term adjustment and wellbeing when they enjoy quality relationships with both parents (Amato & Sobolewski, 2001; Nielsen, 2014; Warshak, 2014). There is also an extensive and parallel literature that shows the value of fathers for children’s development (Amato & Sobolewski, 2004; Lamb, 2010).

The purpose of this article is to describe the parental gatekeeping forensic evaluation model for child custody evaluation, and for other potential uses by family law practitioners, such as by judges, mediators, coparenting educators, and parenting coordinators. It then is applied to the context of child custody relocation disputes. It is part of a series of articles on the gatekeeping model for application to child custody disputes. The articles are designed to be applied to specific types of custody issues and forensic contexts. For example, the model has been applied to the context of disputes concerning overnight care by fathers with young children (Austin, 2018).

### ***History of the concept***

Parental gatekeeping has been a prominent conceptual and research issue in the literatures on family studies, coparenting, and divorce conflict for many years. It overlaps with the complementary concept of coparenting. The term “Gatekeeper” was first coined by the eminent psychologist Kurt Lewin, one of the early leaders in social and applied psychology, in 1943 in his study on food habits (Lewin, 1943). Lewin addressed how mothers are the gatekeeper of what foods the family eats.<sup>1</sup> The gatekeeper was the parent who was responsible for managing the flow of resources within a family domain or “channel.” Lewin’s early model addressed the importance of considering the psychology of the Gatekeeper. In 1947, Lewin expanded the concept of gatekeeping and applied the concept to group dynamics (Lewin, 1947).

For example, he explained that “discrimination against minorities will not be changed as long as forces are not changed which determine the decisions of the gatekeepers” (p. 146). Lewin raised the importance of understanding the values and beliefs of the gatekeeper, as this helps determine how the gatekeeper behaves.

Development of the gatekeeping concept was then applied to the coparenting relationship in intact families. It was proposed that “women serve as gatekeepers, overtly or covertly, excluding fathers from participating in child care because of fear of loss of power (Pleck, 2010) or threat to personal identity” (Pruett, 1987, cited in DeLuccie (1995), p. 116). These writings became the origin of research into maternal gatekeeping that continues to be an active area of research in the field of family studies. Researchers began to demonstrate how fathers’ involvement in the parenting process was significantly affected, positively or negatively, by the mother’s attitudes and actions about her husband’s involvement (Pedersen, 1981).<sup>2</sup>

Later, the concept of gatekeeping was examined in intact families, primarily focusing on a mothers’ influence of the father–child relationship based on the concept that the mother, as primary caregiver, has more control over how much access the father has to the child. Allen and Hawkins (1999) describe maternal gatekeeping as “beliefs and behaviors that ultimately inhibit a collaborative effort between men and women in family work by limiting men’s opportunities for learning and growing through caring for home and children” (p. 200). The trends in the research suggest that mothers make significant contributions to facilitating the father–child relationship after separation (Cannon, Schoppe-Sullivan, Mangelsdorf, Brown, & Sobolewski, 2008). The gatekeeping research literature is substantial and active in the field of family studies. It will not be extensively reviewed here as there are extensive literature reviews available (Austin, Fieldstone, & Pruett, 2013; Austin, Pruett, Kirkpatrick, Flens, & Gould, 2013; Ganong, Coleman, & Chapman, 2016; Pruett, Arthur, & Ebling, 2007).

## **Forensic model**

### ***Definitions***

Parental gatekeeping is defined as “how parents’ attitudes and actions affect the involvement and quality of the relationship between the other parent and child, either in a positive or negative way” (Austin, Fieldstone, et al., 2013, p. 2). Gatekeeping can be part of cooperative coparenting or represent the unpleasant psychological dynamics when there is parental conflict and dysfunctional coparenting.

The forensic model identifies types of gatekeeping, or gatekeeping behavioral patterns. Facilitative Gatekeeping (FG) “occurs when a parent

acts to support continuing involvement and maintenance of a meaningful relationship with the child [by the other parent]. Facilitating behaviors are proactive, inclusive, and demonstrate for the child that the parent values the other parent's contributions" (Austin, Pruett, et al., 2013, p. 5). Restrictive Gatekeeping (RG) "refers to actions by a parent that are intended [or expected] to interfere with the other parent's involvement with the child and would predictably negatively affect the quality of their relationship" (Austin, Pruett, et al., 2013, p. 5). Research shows that about 20% of mothers are restrictive gatekeepers in intact families (Allen & Hawkins, 1999), and it is expected that this would be a much higher percentage following separation and divorce (Fagan & Barnett, 2003) and involve gatekeeping by both parents (Austin, 2011; Austin, Pruett, et al., 2013; Ganong et al., 2016; Pruett et al., 2007; Puhlman & Pasley, 2013; Saini, Drozd, & Olesen, 2017).

It is important for evaluators to keep in mind that coparenting and gatekeeping behaviors are part of the quality of parenting practices. There are "secondary effects" due to gatekeeping such as the quality of gatekeeping attitudes and behaviors are expected to have an impact on children's adjustment and sense of wellbeing (Whiteside, 1998) just as the level of parental conflict has such predictable effects (Davies & Cummings, 1994). In fact, Amato (2010) found that the quality of the coparenting affects parents' and children's physical and mental health. Research has found that the quality of parenting is more important for children's adjustment, but the quality of coparenting also affects child adjustment (Russell, Beckmeyer, Coleman, & Ganong, 2016). Lamb (2016) concluded in his literature review that when there is a higher quality of postdivorce coparenting, then it is expected the children will be healthier and better adjusted.

### ***Gatekeeping as a continuous variable and communication to the court***

Gatekeeping is best (and most scientifically) conceptualized as a continuous variable and occurring within *different behavioral domains*. A custody evaluator can strive to identify the quality and specifics of gatekeeping within each domain. The general degree of gatekeeping quality can be communicated to the Court (e.g., low, medium, high in terms of FG and RG) as to the relevance for the recommended parenting plan.

Examples of behavioral domains include information sharing about the child; parents' willingness to communicate with each other; compliance with the parenting time schedule and spirit of the parenting plan (which can include supporting parental involvement in extracurricular activities), including being flexible as needed; not being critical of other parent to the children or others (i.e., public criticism); and showing to the child an appreciation of value in the contributions of the other parent.

The quality of a person's gatekeeping can be rated within each domain, but the gatekeeping statutory factor requires the evaluator to give an overall or general rating of each parent's quality of gatekeeping. Case law often states that the Court must explicitly consider and address each factor, or in its "factorial analysis" and often emphasizes the gatekeeping factor (In re Marriage of Collingbourne, 2003). We argue it is important to describe each parent's gatekeeping behaviors on various domains, rather than simply label a parent as a specific type of gatekeeper.

### ***Protective gatekeeping***

"Protective gatekeeping (PG)<sup>3</sup> is a form of RG that arises when a parent acts to limit the other parent's involvement or is critical of the other parent's parenting skills because of possible harm to the child. PG is defined in terms of "the reasons a parent wants to limit access of involvement by the other parent" (Austin, Fieldstone, et al., 2013, p. 5). An elaborated definition of PG is attitudes, actions, and/or legal position of parent that are designed to limit the other parent's access, contact, or involvement with child based on stated reasons that parenting time and involvement places the child at risk for harm, emotional distress, behavioral problems, adjustment difficulties, or negative developmental impact. Frequently asserted reasons for PG include allegations of the presence of a Major Mental Illness, past or current Substance Abuse/Alcohol issues, past pattern of intimate partner violence, harsh parenting practices or child abuse, and child sexual abuse. The generic Justification Analysis for PG, as discussed in the following section, then needs to be adapted to each of these contexts with the prominent issue and allegations.

### ***Gate-opening and gate-closing behaviors***

The gatekeeping model encourages evaluators to measure gatekeeping behaviors with behavioral specificity (Austin, Fieldstone, et al., 2013) so as to try to eliminate the danger of doing the analysis by labeling. The model (Austin, Pruett, et al., 2013; Trinder, 2008) discusses specific gate-opening behaviors with FG and specific gate-closing behaviors with RG within each forensic context.

### ***Justification analysis***

When a parent is not supportive of the other parent or wants to restrict parenting time, then the gatekeeping model directs the evaluator to conduct a justification analysis to see if the nonsupportive and restrictive parent's gate-closing behaviors can be justified based on the facts, context,

circumstances, and possibly the professional literature. In cases involving PG, the specific sources of potential harm to the child need to be identified and if justified and then protective measures need to be taken so the risk can be managed. A generic justification protocol for PG has been developed (Austin, 2018a) that can be adapted to different legal contexts, or types of PG. For example, it was adapted to the context of disputes over overnight care by fathers with young children (Austin, 2018b).

When the evaluator's assessment/investigation does not find sufficient data and context to justify the restrictive parent's lack of support and restrictiveness, then it is referred to as Unjustified Restrictive Gatekeeping (URG). Sometimes when the evaluator concludes it is a case of URG, it could be that restrictive parent's concerns are at least "understandable." Conversely, when the parent's restrictiveness is found to be justified, it is case of Justified Restrictive Gatekeeping (JRG). Protective Gatekeeping can be justified or unjustified, as it just refers to the reasons for the parent's concern about a risk of harm to the child.

### ***Restrictive gatekeeping as gender-based?***

It is tempting to treat gatekeeping as a gender-based issue with the focus on maternal gatekeeping. The vast majority of research and theory has focused on gatekeeping by mothers in intact families (Allen & Hawkins, 1999). When the gatekeeping issue surfaces in the context of a dispute over overnight care, it almost always concerns the mother opposing the idea of or extent of overnight care by the father (Austin, 2018b). In a qualitative study of families who had been involved in relocation litigation, in all forty families it was the mother who was seeking to relocate so the researchers concluded it was unavoidable to not conclude that relocation was a gender-based issue (Parkinson & Cashmore, 2015). The gatekeeping forensic model is specifically designed to be gender-neutral. The custody evaluator is directed to assess the quality of coparenting and specific gatekeeping behaviors by both parents during the course of the marriage and in the postseparation context (Austin, Fieldstone, et al., 2013, Austin, Pruett, et al., 2013).

### ***Legal context***

An examination of the quality of coparenting and gatekeeping behaviors is important in child custody disputes due to some important, relevant legal parameters. These parameters show why parental gatekeeping needs to be examined in every child custody dispute and custody evaluation. First, there is a common legislative declaration that it is the social policy of the state to

encourage the continuing contact and involvement of both parents following separation and divorce. For example, in Florida the legislative declaration states:

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage the parents to share the rights and responsibilities, and joys, of childrearing [F.S. § 61.13(2)(c)(1)].

Second, the common statutory best interest factor, for example, the gatekeeping factor, requires the court and custody evaluators to consider the quality of coparenting and gatekeeping behaviors. The gatekeeping factor in Florida states:

The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required [Florida Statute, 6.13 (3)(a)].

Even in those states where there is not a list of factors it is expected that courts will want to know about this process of mutual support (or lack thereof) between the parents. Litigated custody disputes by definition are high conflict cases so mutual restrictive gatekeeping is commonplace. Courts will want to know how this negative process can be contained and the children shielded from conflict, and how the quality of coparenting can potentially be improved.

Domestic violence (DV) advocates have objected to the gatekeeping factor being a required best interest factor to be considered in custody and parenting time disputes. These critics coined the term “friendly parent doctrine” (Dore, 2004) to refer to the gatekeeping factor. Their reasoning is that it is unfair and contrary to the best interests of the children to expect the DV victim-parent to be “friendly” in her coparenting in light of the abuse. Advocates were successful in getting the gatekeeping factor removed from the Australian Family Law Act (2015).

The basic problem with this friendly parent analysis is that there are many patterns of DV, or intimate partner violence (IPV), and in a large percentage of cases the IPV will be minor in severity; often will be mutual or reciprocal with both partners; involve one or a few incidents; and not be very relevant for the custody evaluator (or court) in recommending an appropriate parenting plan. When there is substantial IPV that would be relevant to issues of parenting and coparenting, then the issue can be considered in a straightforward way and addressed in the parenting plan. The victim-parent would not be expected to be a friendly parent and would be expected to be protective of the child and herself. DV advocates were successful in revising the language in the gatekeeping factor in Colorado to address this issue and the language is very helpful to the court and an evaluator.

## Other considerations

### *Complementary concepts*

Coparenting can be described as “parents ability to actively engage one another to share child rearing responsibilities” (Sobolewski & King, 2005, p. 1198). It is possible to describe the coparenting pattern as “cooperative vs. uncooperative coparenting,” or “functional vs. dysfunctional coparenting” as alternative dichotomous terms that could be defined operationally as continuous variables on continua in similar manner to the gatekeeping continuum that is described in the following sections.

Austin, Pruett, et al. (2013) described how the concept of parental conflict becomes intertwined with gatekeeping so that parenting time disputes that lead to litigation become high conflict cases on access issues that can be characterized as “gatekeeping conflict.” Both parents will often be accusing the other of being a restrictive gatekeeper.

Austin and colleagues (Austin, Fieldstone, et al., 2013; Austin, Pruett, et al., 2013) also differentiated gatekeeping from the concept of parental alienation. Parent alienating behaviors (Saini, Johnston, Fidler, & Bala, 2012) can be characterized in the alternative gatekeeping language as “unjustified restrictive gatekeeping” (URG), as previously described with the gatekeeping model. Behavioral examples are found in the “bench book” article (Austin, Fieldstone, et al., 2013). However, most examples of postseparation URG will be part of parental conflict and not represent PABs, or parent–child disturbed relationship dynamics that are often apparent in cases of alienation where children are resisting and refusing contact with a rejected parent (Fidler, Bala, & Saini, 2013), including boundary problems/enmeshments; parents’ active encouraging the child to reject the parent (or “brainwashing”); and encouraging the development of unhealthy parent–child alliances.

### **Social capital perspective**

The concept of social capital has been used by prominent researchers to explain why joint parental involvement and involvement by fathers benefits children of divorce and their level of functioning (Amato & Sobolewski, 2004; Hetherington, 1999; McLanahan & Sandefur, 1994). Social capital also explains why gatekeeping and mutual support between divorced parents is important. Social capital was introduced by eminent sociologist, James Coleman (1990) to explain the effects of residential mobility on school performance. Social capital is a general concept and variable that is widely used in the social sciences to explain a variety of outcomes for children and adults (Field, 2003; Lin, 2001).

Social Capital refers to the quality, richness, breadth, and depth of psychosocial resources a child receives from the important relationships

and activities, experiences, and opportunities expected to be present in his or her family and social environment. Parental capital is expected to be the most important source of social capital for children, especially for younger children (Pleck, 2010).

The social capital perspective is a more social psychological approach, or “tertiary” approach with the emphasis on examining the quality of and benefit to the child from a range of important relationships. In the custody evaluation context, the evaluator is comparing the quality and richness of the family environments and likely experience for the child. It involves an “ecological comparison” (Bronfenbrenner, 1986). In the majority of postdivorce parental residential and living arrangements, the child will face fairly comparable and equally resourceful family environments. In contrast to the social capital approach, the analysis that is commonly found in custody evaluations from the perspective of Attachment Theory (Ludolph & Dale, 2012) is a more individualistic, or a dyadic approach in the assessment of parent–child relationship quality.

There exists positive and negative social capital from parents. When there are issues of potential harm to a child associated with a parent, such as with exposure to IPV, harsh parenting, or substance abuse, then it is negative social capital (Hetherington, 1999). Parents engage in protective gatekeeping when the other parent presents with negative social capital. Unjustified restrictive gatekeeping parental behaviors would also represent negative social capital as it detracts from fostering quality in parent–child relationship when the restricted, unsupported parent has much social capital to offer the child.

### **Gatekeeping research**

Gatekeeping remains an active area of theory and research within the field of family studies (Puhlman & Pasley, 2013). The research and the relevance for postseparation coparenting and gatekeeping has been reviewed (Austin, Fieldstone, et al., 2013; Austin, Pruett, et al., 2013; Ganong et al., 2016; Pruett et al., 2007; Saini et al., 2017). Since most of the research has been conducted on intact families the empirical generalizations need to be extrapolated to the context of postdivorce family systems.

It is useful to consider some examples of the relevant research. McBride et al. (2005) found that mothers’ support for father involvement is associated with fathers’ positive perception of themselves as parents and their level of actual physical involvement with the child. Holmes, Dunn, Harper, Dyer, & Day (2013) found that maternal restrictive gatekeeping and interference with father involvement harmed the mother–adolescent relationships. The adolescent children viewed the mother as controlling and not as involved with them. Cannon et al. (2008) found that fathers were more likely to be involved and interested in parenting when the coparenting relationship was satisfying;

the fathers cited greater encouragement and less criticism from the mother. Whiteside and Becker (1998), in a meta-analysis literature review, reported that children showed better adjustment when there was a cooperative coparenting relationship following separation and divorce. It appears that a significant percentage of mothers simply do not trust the fathers to be competent and keep the children safe following the separation (Sano, Richards, & Zvonkovic, 2008). In another study (Madden-Derdich & Leonard, 2002), it was found that when fathers felt more supported by their ex-spouse they reported being able to better interact with their ex-wife on issues of child rearing and decision-making. In a study involving a sample of divorcing and litigating parents with young children, Pruett, Williams, Insabella, and Little (2003) noted that mothers' more positive feelings toward fathers (e.g., gatekeeping attitudes) was associated with higher father involvement. Beckmeyer, Coleman, and Ganong (2014) also found that the quality of coparenting styles were associated with the level of child adjustment. The gatekeeping theory and research literature thus seems to lend scientific grounding to the application of the forensic model to child custody litigation and research.

## **Gatekeeping and relocation**

### ***Psycho-legal dilemmas***

When following divorce a parent wishes to relocate a substantial geographical distance with the child and away from the other parent, it creates numerous psycho-legal dilemmas as described by many writers (Austin, 2000a, 2000b, 2008a; Parkinson & Cashmore, 2015; Stahl, 2013;). There are even competing constitutional rights (In re Marriage of Ciesluk, 2005) that pit a parent's right to travel with the other parent's right to exercise "care and control" over his or her child. Case law in all of the U.S. states and in other Western countries establishes that it is social policy to recognize relocation with a child as a legitimate life decision in order to pursue new life opportunities. The most common scenario seems to be when a mother as the residential parent wishes to return to her home community to receive the support and benefit from the resources, e.g., social capital of her family (Parkinson, Cashmore, Taylor, & Austin, 2016). It needs to be recognized that the United States and other Western countries have high rates of mobility though the rate in the United States had dipped somewhat in the United States with the last census data (Parkinson et al., 2016). The census data show that separated parents with young children are the most highly mobile group. It also needs to be kept in mind that with divorced families it is not at all unusual for the nonresidential parent to move away from the child for legitimate reasons (e.g., new job offer, remarriage).

Relocation by a parent with a child seems to contradict the common legislative declaration that encourages frequent and continuing contact with the children by both parents following separation and divorce. Relocation cases frequently result in child custody evaluations for the court because such cases are difficult to successfully mediate. There is no way to compromise on the ultimate issue of relocation. Relocation inevitably changes the quality of the nonmoving parent–child relationship due to the obstacles presented to allowing the nonmoving parent to exercise regular and substantial involvement with the child (Parkinson et al., 2016; Shear, 1996).

Relocation law in two states (California and Colorado) requires the court and evaluator to assume each parent will be living in the location that they designate so it has to be assumed it will be a long distance parenting arrangement. The case has to focus on designating a residential/custodial parent for long distance. This legal context starkly juxtaposes the social policy of joint involvement and the demands required by the state relocation law. There are ambiguities in the relocation law in most states, but generally the case law is written to address the possibility that the moving parent will likely move and there may be a change in primary custody if relocation is denied (Tropea v. Tropea, 1996).

Relocation cases are filled with challenges. The chief one is how to establish a long distance parenting arrangement that is practical and feasible to allow for meaningful contact between the distant parent and child. Relocation disputes are unique in that the parties usually largely agree on the fact pattern compared to other types of custody cases. It also often the case that one can usually tell from the fact pattern if the relocation of the parent makes sense or is a “cogent move.” That is, a mother may have remarried to a man who lives in distant location or she want to return home to be near family.

Research shows that relocation, especially multiple moves or a high degree of residential mobility, is a general risk factor for children of divorce, just as divorce itself is (Austin, 2008b). Relocation creates the risk of two types of harm. First, there is risk to the quality of the nonresidential parent (most often the father) and child relationship, or “relationship harm,” due the diminished involvement by the parent. Second, there is the risk of “developmental harm” to the child also due to the diminished involvement and lessened exposure by the child to the nonmoving parent’s social capital (Austin, 2010).

### ***Legal standards and ambiguities***

There is tremendous variation in the structure and specifics of relocation law in the U.S. states. However, there has been a movement over many years so that the legal standard is generally that of the court determining the best interests of the child with consideration of best interests and/or relocation factors from statute and/or case law (Atkinson, 2010). In Colorado, the court must

explicitly consider 11 best interest and 9 relocation factors. In Florida, the same rule applies for 20 best interest and 10 relocation factors. New Jersey was one of the few remaining states that had a legal presumption concerning the relocation issue (e.g., in favor of relocation when it was a postdecree, modification case with a primary custodial parent). The New Jersey Supreme Court recently reversed that standard in favor of the typical best interests of the child standard with consideration of the relevant best interest factors. The Court pointed out that the previous controlling decision (*Baures v. Lewis, 2001*) relied upon a selective and misinterpretation of the relevant social science research (*Bisbing v. Bisbing, 2017*).

There are a number of common ambiguities in the relocation law in the United States and other Western countries. Most state high court decisions and opinions are written with the anticipated scenario of the moving parent being the residential parent in a long distance arrangement versus the comparison with the child not moving and the other parent would become the residential parent (e.g., *Tropea v. Tropea, 1996*). It is ambiguous in most states if the court can just deny relocation of the child without being prepared to change the residential/custodial parent. It is probably the case that the court can do this in most jurisdictions (California and Colorado are clear exceptions).

It is also ambiguous in most states if the court can consider the issue if the moving parent would actually move without the child if relocation was denied. The evaluator's forensic anecdotal experience is that most moving parents/mothers will inform the evaluator about this issue without even being asked. They usually say they would not move without the child. In California, the case law explicitly instructs courts (and evaluators) to not consider this issue, or if the nonmoving parent might also relocate, if relocation was approved (*In re Marriage of LaMusga, 2004*). Finally, it is often an ambiguous (and undeveloped) issue if the court can compare the best interests of the child with relocation versus both parents continuing to live in the same community in a local parenting plan. This type of comparison does not place the parents on equal footing. It results in a biased analysis because of the higher level of social capital that is generally expected for the child with both parents continuing to be locally available and involved, or the status quo.

### ***Anti-relocation bias***

Due to the legislative declaration and what appears to be a general belief in the professional community that it usually benefits children of divorce to have continuing contact and involvement by both parents, our forensic anecdotal experience is to not infrequently encounter an anti-relocation bias among evaluators and judges. The legislative declaration receives scientific support from the joint parental involvement research literature. Writers have

discussed this issue and professional problem (Austin, 2005, 2016; Stahl, 2006). This bias is part of a process of “confirmatory bias” (Martindale, 2005) where the anti-relocation view acts as a preferred hypothesis in the case that causes selective interpretation of the data and circumstances for the evaluator to recommend against relocation. In a recent California case involving a proposed relocation to Texas by a primary caregiver mother with 4-year old to return to her family, the custody evaluator was questioned in cross-examination if she was biased against relocation. She replied, “Well, of course, I think all evaluators hold such a bias. Children need both parents in their lives.” The judge recognized the bias and followed the dictates of California relocation law and approved the relocation.

### ***Forensic models for relocation***

Evaluation models exist for custody evaluators that allow them to take a systematic approach to the relocation case (Austin, 2000a, 2008a, 2015b). The relocation risk assessment model consists of research-based risk and protective factors. A factor can create risk of harm or serve a protective function for child who may relocate depending on the data, or scale value on the factor. It has been recommended to take an integrated approach by combining the relocation risk assessment with a social capital analysis, or for the evaluator to describe the relative advantages and disadvantages associated with relocation versus not relocating and the nonmoving parent would then become the residential parent (Austin, 2015b). Gatekeeping is one of the key risk/protective factors (Austin, 2008a). When the moving parent has been and is likely to be a facilitative gatekeeper, then the factor serves a protective function with long distance. Conversely, when the parent is likely to be a restrictive gatekeeper, then it creates risk of harm to the distant parent–child relationship.

The forensic models serve as a heuristic and framework to assist the evaluator to gather and organize the case data for the analysis for the court. These cases are all very fact and context specific, as many appellate decisions have pointed out. The gatekeeping model complements the relocation models and combined framework (Austin, 2015b). In addition, “forensic guideposts” have been identified for evaluators to consider. These are the many salient issues for the evaluator to be cognizant of and consider in his or her integrated analysis. For example, one guidepost is the “cogency test-revised” in examining the context of the proposed relocation (Austin, 2005, 2015a). This guidepost consists of (1) the moving parent’s stated reasons for moving; (2) the relative advantages or disadvantages associated with relocation; and (3) the moving parent’s degree of relative flexibility on the moving issue; and (4) the moving parent’s demonstrated and expected future capacity for facilitative gatekeeping.

### ***Gatekeeping and relocation custody disputes***

The relocation context may be the clearest example and cleanest application of the forensic model. The relevance to and importance of gatekeeping in relocation disputes and potential long distance parenting arrangements has been discussed at length in the literature (Austin, 2005, 2008a, 2012, 2015a; Parkinson et al., 2016).

Relocation disputes inevitably focus on two central issues. First, the court wants to know how well the children are expected to adjust to relocation and all the accompanying changes and why does the evaluator make his or her predictions on this issue. Second, relocation cases inevitably focus on gatekeeping and how supportive the moving, residential parent is likely to be in the long distance parenting arrangement. Relocation custody trials usually spend a lot of time discussing gatekeeping. If the moving parent has a history of being a facilitative gatekeeper, then it bolsters the moving parent's argument for moving with the child. The parent needs to convince the custody evaluator that he or she will be a proactive coparent in the long distance parenting plan. The parent needs to describe how he or she will be comfortable with the other, distant parent being a consistent present in her residence via electronic communication (e.g., Skype). If the moving parent has a history of being a restrictive gatekeeper, especially on the issue of access to the child, then this is a strong argument against relocation, especially if the nonmoving parent has been an involved, competent parent.

A potentially useful idea and concept is that of a "threshold of concern" on the issue of gatekeeping and relocation. If the evaluator and court have substantial concerns about the moving parent's quality of gatekeeping behaviors, then this may be the pivotal issue in the case. It may be the court will want to have a lower threshold of concern about the other parent being the custodial parent, and deny relocation of the child with younger children and with very long distance moves (e.g., interstate and international moves).

It seems useful for a relocation request to view it as restrictive gatekeeping. The rationale for this view is relocation generally will reduce the amount of parenting time for the nonmoving parent and quality of involvement. The degree of opportunity for involvement will be lower and the type of involvement will be different. Framing relocation as RG brings the relocation analysis under the conceptual umbrella of the gatekeeping model. The moving parent needs to present a "justification analysis" for the relocation and accompanying restrictiveness on the other parent's access to and involvement with the child. The relocation and gatekeeping models are complementary and "go hand-in-hand" to assist the evaluator to organize the data and integrate the analysis for the court.

The proposed parenting plan for long distance by the moving parent (e.g., their legal position on a new parenting plan) can be interpreted in terms of

gatekeeping. Attorneys often advise their clients to offer the “maximum access plan” that for an older school age child would be most of the summer (“compensatory parenting time”); half of Christmas school vacation; all of the school spring break every year; and time in the child’s new community as could be arranged. Moving parents often count the number of parenting time days the nonresidential parent can have with the child if there was relocation. With older children, who can travel more efficiently, then the number of days may actually look similar due to extended summer parenting time compared to the previous local parenting plan. With younger children it generally will be more difficult to keep the distant parent involved.

### ***Justification analysis for the relocation case***

Framing relocation as restrictive gatekeeping elicits the need to conduct a justification analysis for relocation and the reduction in the nonmoving parent’s opportunity for access to and involvement with the child. The evaluator’s relocation analysis and recommendations can be viewed as finding the proposed relocation of the child to be justified (recommending for relocation) or unjustified (recommending against relocation and possibly a change in the residential parent). The Court’s decision on the relocation issue ultimately finds the proposal for relocation to be justified or not justified, in terms of the child’s projected best interests in the future. State high court opinions can be interpreted and the court conducting a justification analysis. For example, in the controlling Illinois case (*In re Marriage of Collingbourne, 2003*), the court noted the mother had remarried; her new husband had no realistic flexibility on the issue of potentially moving to Illinois; the mother had been in a primary caregiver role while being a working mother; had a history of being very supportive of the father as a coparent; supportive of the child’s time with the father’s parents; the quality of educational opportunity would be higher in the move to New Jersey; the mother’s income would increase significantly with a new employment opportunity and overall family income would be much greater; the mother proposed a maximum access plan for the father on a long distance parenting time plan; and the mother was willing to pay for all transportation costs to facilitate the father’s parenting time.

The following is a suggested outline for a forensic justification protocol for the child custody relocation case for the child custody evaluator:

- Consider the totality of the facts, context, circumstances in the case and apply the professional literature;
- Consider and be knowledgeable about relocation law for the jurisdiction, including the ambiguities;
- Provide an analysis of the relative advantages and disadvantages associated with the alternative decisional options for the court on the issues of relocation, custody, and potential parenting time plans, both long distance and local;

- Consider, measure, and communicate with the Court on all of the jurisdiction's best interest and relocation factors from statute and case law, e.g., the moving parent will need to present a cogent case and prevail on the "factorial analysis;"<sup>4</sup>
- Consider applying the available forensic relocation models for risk assessment and a social capital analysis on the relative advantages/disadvantages associated with relocation or with a denial of relocation and change in custody;
- Assess both indirect as well as direct benefits to the child associated with relocation;<sup>5</sup>
- Assess whether the nonmoving parent is a viable candidate to be the custodial parent should the moving parent choose to move without the child if the court would deny the relocation of the child;
- Consider applying the forensic guideposts, including the cogency test-revised;
- Conduct a practical analysis on the feasibility of implementing a long distance parenting plan in light of the logistics; cost/financial ability to pay and time availability for travel;
- Place special emphasis on the data and analysis on the quality of parental gatekeeping in the context of relocation and long distance.

## Summary

The concept and forensic model on parental gatekeeping was described and applied to the context of child custody evaluation and family law disputes. The subtypes and patterns of gatekeeping/coparenting behaviors were presented: facilitative, restrictive, and protective gatekeeping. The gatekeeping continuum was presented as a useful heuristic in applying the analysis to custody disputes. A global rating on gatekeeping is required when there is a statutory best interest, gatekeeping factor. However, the custody evaluator needs to offer a more nuanced analysis on the quality of gatekeeping in the various gatekeeping behavioral domains where gatekeeping by a parent may be more positive or negative in these different coparenting domains.

The forensic gatekeeping and relocation models were described as complementary and applied to the context of child custody relocation disputes. Gatekeeping in a potential long distance parenting/coparenting context and arrangement will always be a focus of the custody dispute. A new idea was suggested to view a proposed relocation, especially one of very long distance, as a context of restrictive gatekeeping. The analysis then needs to turn to whether the relocation can be justified or not, in terms of the child's predicted best interests in the two alternative, long distance living arrangements, and in accordance with the gatekeeping and relocation analyses. Relocation that is

approved by the court, then, can be framed as justified restrictive gatekeeping, and an ordered modification of the court's ordered parenting plan. When relocation is denied in a case, then it can be framed as unjustified restrictive gatekeeping.

Relocation disputes present custody evaluators with the most challenging of cases. It is suggested that a careful gatekeeping analysis will always be a necessary part of the evaluator's analysis and recommendations to the court. It is recommended that evaluators who become involved in such cases be active in their continuing education.

## Notes

1. The authors are sensitive to gender issues concerning the gatekeeping analysis. Most of the research on gatekeeping has concerned maternal gatekeeping in intact families. Previous publications by the authors and others have emphasized that in the context of separation and divorce that the gatekeeping analysis needs to be applied to both parties with a behavioral specific analysis.
2. The reader again is reminded that in the context of separation and divorce that the gatekeeping analysis needs to be applied to both parents.
3. The term Protective Gatekeeping was originally proposed by Leslie Drozd in considering gatekeeping in the context of allegations of intimate partner violence in child custody disputes (Austin & Drozd, 2006).
4. There exists both a conservative (Parkinson & Cashmore, 2015) and a liberal view (Austin, 2016) of benefits of a factorial analysis in a relocation analysis by the court and possibly a custody evaluator.
5. Some state high courts have explicitly addressed this issue and ruled that trial courts should consider indirect (e.g., benefits to the parent that translate to the child such improved standard of living) as well as direct benefits to the child (In re Marriage of Collingbourne, 2003; In re Marriage of Ciesluk, 2005).

## Author note

**William G. Austin**, Ph.D., Austin Child Custody Services and **Sol R. Rappaport**, Ph.D., Counseling Connections.

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