

PLACING CHILDREN'S INTERESTS FIRST:  
DEVELOPMENTALLY APPROPRIATE PARENTING PLANS

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INTRODUCTION

The legal system, broadly conceived, affects children's lives in a variety of circumstances. For example, courts and public agencies intervene when parents appear incapable of caring for their children appropriately, when parents must place their children in the care of others because they are incapacitated, employed, or incarcerated, when parents cannot agree with one another regarding the custody and care of their children following divorce, and when children have been victimized. Although legal intervention in these cases may often be justified by reference to children's best interests, the interventions themselves are seldom informed by reference to developmental theory or the results of scientific research. Instead, political ideology and cultural values tend to guide decision-making and policy development. Furthermore, in the case of divorce, "what's fair for the parents" often obscures or trumps the children's best interests.

The failure of policy and decision makers to take advantage of a burgeoning and increasingly sophisticated understanding of child development is unfortunate and may threaten the quality of social policy. Researchers actually know a significant amount about the ability of young children to tolerate separations from parents and care providers and to be influenced by variations in the quality of the care they receive.<sup>1</sup> They have also developed appreciation for the variability

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<sup>1</sup> See generally Ross A. Thompson, Early Sociopersonality Development, *in* 3 Handbook of Child Psychology 25 (William Damon & Nancy Eisenberg eds., John

among children with respect to their vulnerability and resilience.<sup>2</sup> In addition, years of research on parent-child relationships and on the effects of divorce have created a knowledge base upon which professionals may rely when deciding the living arrangements of children whose parents no longer live together.<sup>3</sup> Although research cannot provide all the answers, it does offer broad guidelines that promise to improve the welfare of many children caught up in the divorce and separation of their parents. The purpose of this article is to articulate those guidelines and elucidate the empirical support for them.

#### UNDERSTANDING THE EFFECTS OF DIVORCE

Although the rates of divorce have leveled recently, about half of the children in the United States will likely experience the separation of their parents before they reach adulthood, and many of them will lose meaningful contact with their fathers.<sup>4</sup> Common sense and scientific research indicate that these experiences are likely to have psychological costs. Controversy and ideology bedeviled acknowledgment and analysis of these costs during the 1970s and 1980s, but there is substantial consensus today that children are better off psychologically and developmentally in two rather than single-parent families.<sup>5</sup>

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Wiley & Sons 5th ed. 1998); Joan B. Kelly, Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research, 39 *J. Am. Acad. Child Adolesc. Psychiatry* 963 (2000).

<sup>2</sup> Ann S. Masten & Norman Garmezy, Risk, Vulnerability, and Protective Factors in Developmental Psychopathology, *in* *Advances in Clinical Child Psychology* 1, 9-10 (Benjamin B. Lahey ed., 1985); Margaret O'Dougherty & Francis S. Wright, Children Born at Medical Risk: Factors Affecting Vulnerability and Resilience, *in* *Risk and Protective Factors in the Development of Psychopathology* 120, 120-137 (Jon Rolf et al. eds., 1990).

<sup>3</sup> Joan B. Kelly & Michael E. Lamb, Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children, 38 *Fam. & Conciliation Cts. Rev.* 297, 303-9 (2000) [hereinafter Kelly & Lamb (2000)].

<sup>4</sup> Frank F. Furstenberg, Jr. & Andrew J. Cherlin, Divided Families: What Happens to Children When Parents Part 11, 17 (1991); Frank F. Furstenberg, et al., The Life Course of Children After Divorce: Marital Disruption and Parental Contact, 48 *Am. Soc. Rev.* 656, 663-4 (1983).

<sup>5</sup> See Paul R. Amato, Children's Adjustment to Divorce: Theories, Hypotheses, and Empirical Support, 55 *J. Marriage & Fam.* 23, 24-7 (1993) [hereinafter Amato (1993)]; Paul Amato, The Consequences of Divorce for Adults and Children, 62 *J. Marriage & Fam.* 1269, 1277-81 (2000) [hereinafter Amato (2000)]; Paul Amato & Bruce Keith, Parental Divorce and the Well-being of Children, 110 *Psychol. Bull.* 26, 26-28 (1991); Douglas B. Downey, The School Performance of Children From Single-Mother and Single-Father Families, 15 *J. Fam. Issues* 129, 144 (1994); Gail S. Goodman et al., Developmental Psychology and Law: Divorce, Child Maltreatment, Foster Care, and Adoption, *in* *Handbook of Child Psychology* 775, 786-7 (William Damon, et al. eds.,

Furthermore, the effects of father loss due to the parents' separation/divorce are greater and more reliable than the effects of father absence due to paternal death.<sup>6</sup> Researchers agree that, on average, children growing up in fatherless families are disadvantaged relative to their peers growing up in two-parent families with respect to psychosocial adjustment, behavior and achievement at school, educational attainment, employment trajectories, income generation, involvement in anti-social and even criminal behavior, and the ability to establish and maintain intimate relationships.<sup>7</sup>

Figuring out why these differences emerge has proven challenging to researchers. Social scientists and commentators such as Biller and Blankenhorn, respectively, have offered a simple and straightforward interpretation, proposing that child adjustment is adversely affected when children lack a father figure—a model, a disciplinarian, and a male

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1998); E. Mavis Hetherington & Sandra H. Henderson, *Fathers in Stepfamilies*, in *The Role of the Father in Child Development* 212, 223-5 (Michael E. Lamb ed., John Wiley & Sons 3d ed. 1997); E. Mavis Hetherington & Margaret Stanley-Hagan, *The Adjustment of Children with Divorced Parents: A Risk and Resiliency Perspective*, 40 *J. Child Psychiatry* 129, 131-2 (1999); Alice M. Hines, *Divorce-Related Transitions, Adolescent Development, and the Role of the Parent-Child Relationship: A Review of the Literature*, 59 *J. Marriage & Fam.* 375, 379-80 (1997); Michael E. Lamb, *Noncustodial Fathers and Their Impact on the Children of Divorce*, in *The Postdivorce Family* 105, 109-10 (Ross A. Thompson & Paul R. Amato eds., 1999) [hereinafter Lamb (1999)]; Michael E. Lamb, *Nonresidential Fathers and Their Children*, in *Handbook of Father Involvement* 169, 171-2 (Catherine S. Tamis-LeMonda & Natasha Cabrera eds., 2002) [hereinafter Lamb (2002b)]; Sara S. McLanahan, *Father Absence and the Welfare of Children*, in *Coping With Divorce, Single Parenting, and Remarriage: A Risk and Resiliency Perspective* 117, 118 (1999); Sara McLanahan & Gary Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 19-38 (1994); Sara McLanahan & Julien Teitler, *The Consequences of Father Absence*, in *Parenting and Child Development in "Nontraditional" Families* 83, 83-87 (Michael E. Lamb ed., 1999); Judith A. Seltzer, *Relationships Between Fathers and Children Who Live Apart: The Father's Role After Separation*, 53 *J. Marriage & Fam.* 79, 79 (1991); Elizabeth Thomson et al., *Family Structure and Child Well-Being: Economic Resources vs. Parental Behaviors*, 73 *Soc. Forces* 221, 221-24 (1994).

<sup>6</sup> Amato & Keith, *supra* note 5, at 44-46; E. Hailey Maier & Margie E. Lachman, *Consequences of Early Parental Loss and Separation for Health and Well-Being in Midlife*, 24 *Int'l J. of Behav. Develop.* 183, 184 (2000).

<sup>7</sup> See Amato (1993), *supra* note 5, at 24-7; Amato (2000), *supra* note 5, at 1277-81; Amato & Keith, *supra* note 5, at 26-8; Downey, *supra* note 5, at 144; Goodman et al., *supra* note 5, at 786-7; Hetherington & Henderson, *supra* note 5, at 223-5; Hetherington & Stanley-Hagan, *supra* note 5, at 131-2; Hines, *supra* note 5, at 379-80; Lamb (1999), *supra* note 5, at 109-10; Lamb (2002b), *supra* note 5, at 171-2; McLanahan, *supra* note 5, at 118; McLanahan & Sandefur, *supra* note 5, at 19-38; McLanahan & Teitler, *supra* note 5, at 83-7; Seltzer, *supra* note 5, at 79; Thomson et al., *supra* note 5, at 221-24.

figure—in their lives.<sup>8</sup> Many social scientists have criticized this interpretation because it fails to acknowledge the many other salient and potentially harmful conditions or events experienced by children whose parents do not live together,<sup>9</sup> and because it cannot account for the diversity of responses to separation and divorce.<sup>10</sup> Notwithstanding group differences between children in single- and two-parent families, only a minority of children in single-parent families are maladjusted; the majority evince no psychopathology or behavioral symptoms, whether or not they experience psychic pain.<sup>11</sup> Such individual differences demand a more precise analysis of the ways in which divorce and single parenthood may affect children's lives, and similarly, the factors that might account for individual differences in children's adjustment following the divorce/separation of their parents.

Four interrelated factors appear to be especially significant. First, single parenthood typically may be associated with a variety of social and financial stresses with which custodial parents must cope, largely on their own.<sup>12</sup> Single-parent families are more economically stressed than two-parent families,<sup>13</sup> and economic stresses or poverty appear to account, statistically, for many effects of single parenthood.<sup>14</sup>

Second, because single mothers work more extensively outside the home than married mothers, parents spend less time with children in single-parent families and the levels of supervision and guidance are lower and less reliable than in two-parent families.<sup>15</sup> Reductions in the level and quality of parental stimulation and attention may affect

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<sup>8</sup> Henry B. Biller, *Fathers and Families: Paternal Factors in Child Development* 3-4 (1993); Henry B. Biller & Jon Lopez Kimpton, *The Father and the School-Aged Child, in The Role of the Father in Child Development* 143, 145-61 (Michael E. Lamb ed., 1997); David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* 25-48 (1997).

<sup>9</sup> Lamb (1999), *supra* note 5, at 26; Lamb (2002b), *supra* note 5, at 170-1; E. Mavis Hetherington & John Kelly, *For Better or for Worse: Divorce Reconsidered* 7-9, 125-149, 228-230 (2002); Robert E. Emery, *Marriage, Divorce, and Children's Adjustment* 3 (Sage Publications 2d ed. 1999).

<sup>10</sup> Lamb (1999), *supra* note 5, at 111-2; Lamb (2002b), *supra* note 5, at 173-74.

<sup>11</sup> Hetherington and Kelly, *supra* note 9, at 228-30. See Emery, *supra* note 9, at 56-61.

<sup>12</sup> McLanahan & Sandefur, *supra* note 5, at 37; McLanahan, *supra* note 5, at 130.

<sup>13</sup> James L. Peterson & Christine Winqvist Nord, *The Regular Receipt of Child Support: A Multistep Process*, 52 *J. Marriage & Fam.* 539, 539-40 (1999); H. Elizabeth Peters et al., *Enforcing Divorce Settlements: Evidence from Child Support Enforcement and Award Modifications*, 30 *Demography* 719, 721-22 (1993).

<sup>14</sup> Hetherington & Kelly, *supra* note 9, at 48-49; McLanahan, *supra* note 5, at 130-5.

<sup>15</sup> Hetherington & Kelly, *supra* note 9, at 132-33; McLanahan, *supra* note 5, at 135-38.

achievement, compliance, and social skills while diminished supervision increases the likelihood of antisocial conduct and misbehavior.<sup>16</sup>

Third, conflict between the parents commonly precedes, emerges or increases during the separation and divorce processes, and often continues beyond them.<sup>17</sup> Inter-parent conflict is an important correlate of filial maladjustment just as marital harmony, its conceptual inverse, appears to be a reliable correlate of adjustment.<sup>18</sup> Unfortunately, the adversarial legal system tends to promote conflict around the time of divorce, and as a result, most divorcing families experience at least some conflict.<sup>19</sup> Anger-based marital conflict is associated with filial aggression and externalizing behavior problems,<sup>20</sup> perhaps because the parents and children have similar difficulty regulating negative affect.<sup>21</sup>

Fourth, divorce commonly disrupts one of the child's most important and enduring relationships, the one with his or her father.<sup>22</sup> Although many social scientists have emphasized the effects of father absence on child adjustment,<sup>23</sup> Amato's research clearly indicates that the bivariate association between the two variables is much weaker than one might expect.<sup>24</sup> Indeed, Amato and Gilbreth's meta-analysis revealed no significant association between the frequency of father-child

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<sup>16</sup> Hetherington & Kelly, *supra* note 9, at 132-33.

<sup>17</sup> See Robert E. Emery, *Interpersonal Conflict and the Children of Discord and Divorce*, 92 *Psychol. Bull.* 310, 314-15 (1982); Hetherington & Kelly, *supra* note 9, at 138.

<sup>18</sup> E. Mark Cummings & Anne Watson O'Reilly, *Fathers in Family Context: Effects of Marital Quality on Child Adjustment*, in *The Role of the Father in Child Development* 49, 49-50 (Michael E. Lamb ed., John Wiley & Sons 3d ed. 1997); Janet R. Johnston, *High-Conflict Divorce, 4 Children and Divorce* 165 (1994); Kelly, *supra* note 1, at 970.

<sup>19</sup> E. Mavis Hetherington et al., *Effects of Divorce on Parents and Children, in Nontraditional Families: Parenting and Child Development* 233, 233-34 (Michael E. Lamb ed., 1982).

<sup>20</sup> Jennifer M. Jenkins, *Marital Conflict and Children's Emotions: The Development of an Anger Organization*, 62 *J. Marriage & Fam.* 723, 723-4 (2000).

<sup>21</sup> Lynn Fainsilber Katz & John M. Gottman, *Patterns of Marital Conflict Predict Children's Internalizing and Externalizing Behaviors*, 29 *Develop. Psychol.* 940, 946-48 (1993).

<sup>22</sup> See Michael E. Lamb, *Fathers and Child Development: An Introductory Overview and Guide*, in *The Role of the Father in Child Development* 1, 11 (John Wiley & Sons, 3d ed. 1997).

<sup>23</sup> Biller, *supra* note 8, at 10-23; Biller & Kimpton, *supra* note 8, at 143. See generally Blankenhorn, *supra* note 8.

<sup>24</sup> Amato, *supra* note 5, at 25-6; Paul R. Amato & Joan G. Gilbreth, *Nonresident Fathers and Children's Well-Being: A Meta-Analysis*, 61 *J. Marriage & Fam.* 557, 557 (1999).

contact and child outcomes.<sup>25</sup> This result may reflect variation in the exposure to other pathogenic circumstances (e.g., changing family economic status, stress, marital conflict).<sup>26</sup> In addition, the statistical association might have been obscured because many of the studies included too few involved fathers.<sup>27</sup> Many of the studies also failed to account for diversity in the types of 'father-present' relationships represented.<sup>28</sup>

One might predict that contact with an abusive, incompetent, or disinterested father will likely have a much different effect than a relationship with a devoted, committed, and sensitive father. Accordingly, Amato and Gilbreth found that the well-being of children was significantly enhanced when their relationships with nonresidential fathers were positive and when the nonresidential fathers engaged in "active parenting."<sup>29</sup> (Positive relationships with custodial mothers were also beneficial, of course).<sup>30</sup> Simons and Associates, Hetherington, Bridges, and Insabella, and Clarke-Stewart and Hayward likewise reported that children benefited when their nonresident fathers were actively involved in routine everyday activities.<sup>31</sup> Similarly, data from the National Center for Education Statistics indicate that both resident and nonresident fathers enhance their children's adjustment when they are involved in the children's schooling.<sup>32</sup> These data imply that active paternal involvement, not simply the number or length of meetings between fathers and children, predicts child adjustment. Furthermore, such research suggests that post-divorce arrangements should specifically seek to maximize positive and meaningful paternal involvement, rather than merely ensure minimal levels of visitation.

Of course, the active involvement of noncustodial parents is not the only important correlate of child adjustment. The level of involvement and the quality of the relationship between each parent and child, the

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<sup>25</sup> Amato & Gilbreth, *supra* note 24, at 557.

<sup>26</sup> Amato, *supra* note 5, at 1272.

<sup>27</sup> Amato & Gilbreth, *supra* note 24, at 561.

<sup>28</sup> *Id.* at 568.

<sup>29</sup> *Id.* at 569.

<sup>30</sup> *Id.* at 560.

<sup>31</sup> Ronald L. Simons & Assoc., *Understanding Differences Between Divorced and Intact Families* 96 (1996); E. Mavis Hetherington et al., *What Matters? What Does Not?: Five Perspectives on the Association Between Marital Transitions and Children's Adjustment*, 53 *Am. Psychol.* 167, 177 (1998); K. Alison Clarke-Stewart & Craig Hayward, *Advantages of Father Custody and Contact for the Psychological Well-Being of School-Age Children*, 17 *J. Applied Dev. Psychol.* 239, 260 (1996).

<sup>32</sup> Amato & Gilbreth, *supra* note 24, at 568.

amount of conflict between the two parents, and the socioeconomic circumstances in which the child resides all affect adjustment to divorce and single parenthood.<sup>33</sup> Thus, it is not surprising to find that 'father absence,' a broad inclusive label for a constellation of factors, has deleterious consequences for children. These factors are interrelated, however, and in the absence of intensive and reliable longitudinal data, it is difficult to discern casual relationships and to establish the relative importance of different factors. Because child adjustment, paternal involvement in decisionmaking, the amount of high quality contact of children with non-custodial parents and the amount of child support received are all correlated,<sup>34</sup> researchers have not been able to determine which factor is most important.

Furthermore, the causal association between these factors may be bi-directional. For example, not only may increased child support foster visitation, and thereby enhance child adjustment,<sup>35</sup> but adequate contact may also strengthen a nonresident father's sense of involvement, and thereby increase his willingness to make child support payments, which may in turn enhance child well-being. And well-adjusted happy children may simply cause non-residential parents to spend time with and support the children financially. These factors also operate together in complex ways. For example, the effects of contact with a non-custodial parent may depend upon the degree of conflict between the parents.<sup>36</sup> Such contact may not have the same beneficial effect on child adjustment

<sup>33</sup> Lamb (2002b), *supra* note 5, at 173.

<sup>34</sup> Amato & Gilbreth, *supra* note 24, at 557, 568; Sanford L. Braver & Diane O'Connell, *Divorced Dads: Shattering the Myth* 168-170 (1998); Sanford Braver et al., *A Longitudinal Study of Noncustodial Parents: Parents Without Children*, 7 *J. Fam. Psychol.* 9, 9-10 (1993); Furstenberg & Cherlin, *supra* note 4, at 9-15; McLanahan & Sandefur, *supra* note 5, at 149; Judith A. Seltzer, *Relationships Between Fathers and Children Who Live Apart: The Father's Role After Separation*, 53 *J. Marriage & Fam.* 79, 96-97 (1991) [hereinafter Seltzer (1991)]; Judith A. Seltzer, *Father by Law: Effects of Joint Legal Custody on Nonresident Fathers' Involvement with Children*, 35 *Demography* 135, 135 (1998) [hereinafter Seltzer (1998)]; Judith A. Seltzer, *Consequences of Marital Dissolution for Children*, 20 *Ann. Rev. Soc.* 235, 239-40 (1994) [hereinafter Seltzer (1994)]; Timothy Grall, U.S. Census Bureau, *Child Support for Custodial Mothers and Fathers* 5 (1997); Christine Winquist Nord & Nicholas Zill, *Non-Custodial Parents' Participation in Their Child's Lives: Evidence from the Survey of Income and Program Participation* 14, prepared for Office of the Assistant Sec'y for Planning and Evaluation, Dep't of Health and Human Serv. (1996).

<sup>35</sup> Nord & Zill, *supra* note 34, at 16-17.

<sup>36</sup> Paul R. Amato & Sandra J. Rezac, *Contact with Nonresident Parents, Interparental Conflict, and Children's Behavior*, 15 *J. Fam. Issues* 191, 204 (1994); Janet R. Johnston, et al., *Ongoing Postdivorce Conflict: Effects on Children of Joint Custody and Frequent Access*, 59 *Am. J. Orthopsychiatry* 576, 588 (1980).

when there is substantial discord between the parents.<sup>37</sup> Step-parenthood and remarriage further complicate efforts to understand the effects of diverse custody arrangements on child well-being.<sup>38</sup>

In addition, many of the crucial constructs are much more difficult to measure than one might think. Overt behavior problems can be measured reliably, although it is unclear how well behavior problems index the "psychological pain" experienced by children after divorce.<sup>39</sup> Possible measures of socioeconomic circumstances abound, but their inter-correlations are far from perfect, and few take into account such crucial factors as the discrepancy between pre- and post-divorce circumstances, the qualitative consequences of divorce (e.g., residential moves within or to other school districts and neighborhoods), the availability and quality of non-economic and economic support from relatives and friends, or even the timing of economic deprivation.<sup>40</sup> Finally, the distinction between voluntary and court-ordered child support may prove to be important: voluntary child support may have more reliable associations with visitation frequency and child well-being than court-ordered support.<sup>41</sup>

Conflict is almost ubiquitous in modern divorces; however, it is uncertain what levels and types of conflict are tolerable and which are pathogenic.<sup>42</sup> Both pre- and post-divorce conflict can be harmful to children, and Kelly has argued, persuasively, that some of the perceived "effects of divorce" are better viewed as the effects of pre-separation marital conflict.<sup>43</sup> Additionally, most experts agree that conflict localized around the time of litigation and divorce is less harmful than conflict, which remains an intrinsic and unresolved part of the parents'

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<sup>37</sup> Amato & Reza, *supra* note 36, at 204; Johnston, *supra* note 37, at 588.

<sup>38</sup> Thomas L. Hanson, et al., *Double Jeopardy: Parental Conflict and Stepfamily Outcomes for Children*, 58 *J. Marriage & Fam.* 141, 153 (1996); Marla Beth Isaacs & George H. Leon, *Remarriage and Its Alternatives Following Divorce: Mother and Child Adjustment*, 14 *J. Marital & Child Adjustment* 163, 168 (1988).

<sup>39</sup> Robert E. Emery, *Renegotiating Family Relationships: Divorce, Child Custody, and Mediation* 201-2 (1994).

<sup>40</sup> See generally *Consequences of Growing up Poor* (Greg J. Duncan & Jeanne Brooks-Gunn eds., 1997).

<sup>41</sup> Peters et al., *supra* note 13, at 721-2; Nord and Zill, *supra* note 34, at 14; Lamb (1999), *supra* note 5, at 114, 127.

<sup>42</sup> Cummings & O'Reilly, *supra* note 18, at 53-54; E. Mark Cummings & Patrick Davies, *Children and Marital Conflict: The Impact of Family and Dispute Resolution* 62-79 (1994). See Kelly, *supra* note 1, at 964-66.

<sup>43</sup> Kelly, *supra* note 1, at 964.



relationship and continues after their divorce.<sup>44</sup> Similarly, conflict from which children are shielded also does not appear to affect adjustment,<sup>45</sup> whereas conflict that includes physical violence is more pathogenic than high conflict without violence.<sup>46</sup>

It is also unclear which reports researchers should use to measure conflict, relationship quality, visitation, child support, and child behavior problems, especially when the informants (as is often the case) are in disagreement.<sup>47</sup> Researchers usually measure stress by assessing exposure to stress-inducing events, but these measures typically ignore potentially important differences in reactivity and coping styles.<sup>48</sup> The question remains whether stress can be measured in ways that capture its phenomenological significance.

Overall, a number of factors help account for individual differences in the effects of divorce, and because they are inter-correlated, it is difficult to assess their relative importance. Nonetheless, as demonstrated in the next section, judicious interventions can take advantage of these inter-correlations and thereby initiate processes that minimize the adverse effects on children's adjustment.

#### MINIMIZING THE ADVERSE EFFECTS OF DIVORCE

The conceptual, interpretive, and methodological issues raised above are much more problematic and disconcerting for social scientists than for jurists and custody evaluators because the best interests of children are usually served by keeping both parents actively involved in their children's lives, and because financial, material, and emotional

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<sup>44</sup> See Cummings & Davies, *supra* note 42, at 144-48. See Cummings & O'Reilly, *supra* note 18, at 53-54.

<sup>45</sup> Hetherington et al., *supra* note 31, at 175.

<sup>46</sup> Cosandra McNeal & Paul R. Amato, Parents' Marital Violence: Long-Term Consequences for Children, 19 *J. Family Issues* 123, 124-26, 135 (1998). See Ernest N. Jouriles et al., Physical Violence and Other Forms of Marital Aggression: Links with Children's Behavior Problems, 10 *J. Fam. Psychol.* 223, 223-25 (1996).

<sup>47</sup> Sanford L. Braver et al., Frequency of Visitation by Divorced Fathers: Differences in Reports by Fathers and Mothers, *in* 61 *Am. J. Orthopsychiatry* 448, 452 (1991); Kathleen J. Sternberg et al., Using Multiple Informants to Understand Domestic Violence and Its Effects, *in* *Children Exposed to Marital Violence: Theory, Research, and Applied Issues* 121, 122 (George W. Holden et al. eds., 1998); Kathleen Sternberg & Michael E. Lamb, Violent Families, *in* *Parenting and Child Development in "Nontraditional" Families* 305, 306 (Michael E. Lamb ed., 1999). See also Seltzer (1991), *supra* note 34, at 83; Nord & Zill, *supra* note 34.

<sup>48</sup> See Ronald E. Smith et al., Life Change, the Sensation of Seeking Motive, and Psychological Distress, *in* 46 *J. Consulting & Clinical Psychol.* 348, 348-49 (1978).

involvement typically go hand-in-hand.<sup>49</sup> Unfortunately, however, most contemporary custody and visitation decrees do not foster the maintenance of relationships between children and their non-custodial parents.<sup>50</sup> In the Stanford Child Custody Project, for example, twenty-seven percent of the children had no court-ordered contact with their non-custodial parents, and an additional eighteen percent had no court-ordered overnight visits; only a quarter of the total were 'ordered' to spend three or more nights per two-week period with their non-custodial parents.<sup>51</sup> There are no nationally representative data, but anecdotal and journalistic accounts suggest that the custody decrees in these two California counties may, if anything, be even more supportive of non-custodial parent-child relationships than typical court orders.<sup>52</sup> For example, in Braver's Phoenix area sample, the average child had two or three overnights per month with his/her noncustodial father.<sup>53</sup>

Even when the amount of contact between children and non-custodial parents is as little as ordered in these California cases, it typically declines over time, with increasing numbers of children having less and less contact with their non-custodial parents.<sup>54</sup> In Furstenberg et al.'s widely cited study of couples who divorced in the 1960s, mothers reported that forty-nine percent of the children, many of whom were adolescents or young adults when surveyed, had not seen their fathers in the last year, and only one-sixth saw their noncustodial father at least once a week.<sup>55</sup> Despite decreases in the proportion of children who have little or no contact with their noncustodial fathers after divorce since Furstenberg's alarming findings drew national attention,<sup>56</sup> the adjustment of many children continues to be jeopardized by the declining involvement of their non-custodial fathers.<sup>57</sup> National statistics suggest that about one-third of non-custodial fathers have no

<sup>49</sup> See Seltzer (1991), supra note 34, at 96.

<sup>50</sup> See Braver & O'Connell, supra note 34, at 156-58; Eleanor E. Maccoby & Robert H. Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* 266-96 (1992); H. Elizabeth Peters, *Child Custody and Monetary Transfers in Divorce Negotiations: Reduced Form and Simulation Results Table 2* (unpublished manuscript, on file at the Department of Economics, Cornell University).

<sup>51</sup> See Peters, supra note 50, at Table 2.

<sup>52</sup> See Braver, supra note 50, 157-75.

<sup>53</sup> Braver, supra note 50, at 44.

<sup>54</sup> Furstenberg et al., supra note 4, at 664-65.

<sup>55</sup> Id. at 663-64.

<sup>56</sup> Braver, supra note 34, at 42-45; Maccoby & Mnookin, supra note 51, at 64-65, 197; Seltzer (1991), supra note 34, at 85-86; Seltzer (1998), supra note 34, at 141.

<sup>57</sup> See Braver, supra note 34, at 190-91; Maccoby & Mnookin, supra note 63, at 4; Seltzer (1991), supra note 34; Seltzer (1991), supra note 34, at 141-45.

contact with their children.<sup>58</sup> These figures may be misleading, however, because they rely on maternal reports, which frequently paint a less generous portrait of paternal involvement than paternal reports,<sup>59</sup> and include both divorced and never - married fathers, even though never-married fathers are more than twice as likely as divorced fathers to have no contact with their children.<sup>60</sup> In Braver's prospective longitudinal study of divorcing families in the Phoenix area, both parents agreed that ninety percent of the fathers had seen their children in the last year, and somewhere between sixty-seven percent and eighty-three percent of the fathers saw their children at least weekly, including essentially all the fathers who still lived in the same town as their children.<sup>61</sup> Furthermore, in this sample, these numbers had not fallen even three years after the divorce.<sup>62</sup>

Although some uninvolved fathers may have been estranged from their children before divorce, many others appear to be victims of legal practices and popular beliefs that place exclusive focus on mother-child relationships and ignore the potential value of father-child relationships. Like the psychoanalysts Bowlby,<sup>63</sup> Freud,<sup>64</sup> and Spitz,<sup>65</sup> many developmental psychologists, custody evaluators, and judges have long focused exclusively on mothers and children, presuming fathers to be quite peripheral and unnecessary to children's development and psychological adjustment.<sup>66</sup> Therefore, when parents separated, these professionals emphasized the importance of strengthening the relationship between young children and their primary caretakers (typically their mothers), frequently at the expense of the relationships between the children and their fathers.<sup>67</sup> In many cases children who were accustomed to seeing both parents each day abruptly began seeing one parent, usually their fathers, for a few hours once every one to two weeks. Such arrangements were often represented by professionals as

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<sup>58</sup> See Nord & Zill, *supra* note 34.

<sup>59</sup> See Braver, *supra* note 34, at 28-33.

<sup>60</sup> See Seltzer (1991), *supra* note 34.

<sup>61</sup> Braver, *supra* note 34, at 43, 45. Regarding weekly contact by the noncustodial father, the mothers estimate (sixty-seven percent) was lower than that of the noncustodial father (eighty three percent).

<sup>62</sup> *Id.* at 44.

<sup>63</sup> John Bowlby, *Attachment and Loss: Attachment* 305-06 (1969).

<sup>64</sup> Sigmund Freud, *An Outline of Psychoanalysis* 91 (James Strachey trans., 1949).

<sup>65</sup> René A. Spitz, *The First Year of Life: A Psychoanalytic Study of Normal and Deviant Development of Object Relations* 122-43 (1965).

<sup>66</sup> Kelly & Lamb (2000), *supra* note 3, at 303-05.

<sup>67</sup> Joseph Goldstein et al., *Beyond the Best Interests of the Child* 31-49 (1979).

being “in the best interests” of the children due to the mistaken belief that young children had only one significant attachment that needed protection.<sup>68</sup> Consequently, continuity in child-father relationships was sacrificed.<sup>69</sup>

In the last twenty-five years, however, systematic research on early social development has flourished, and it has helped generate a more coherent understanding of the normative developmental processes that define the first year of life.<sup>70</sup> Attachment formation depends on reciprocal interactive processes that foster the ability to discriminate parents from others. Infant-parent relationships or attachments are consolidated by the middle of the first year of life and are characterized by the onset of separation anxiety and separation protest.<sup>71</sup> Merely adequate levels of responsive parenting foster the formation of infant-parent attachments, even though some of these relationships may be insecure.<sup>72</sup>

Contrary to Bowlby's initial speculation and widespread “common sense,” most infants form meaningful attachments to both of their parents at roughly the same age, six to seven months,<sup>73</sup> even though most fathers in American culture spend less time with their infants than mothers do.<sup>74</sup> This reality indicates that the amount of time spent together is not the only factor affecting the development of attachments. Although some threshold level of interaction may be necessary, even brief opportunities for regular interaction appear sufficient.<sup>75</sup> Most

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<sup>68</sup> Id. at 6-7.

<sup>69</sup> Id. Contra Kelly & Lamb, *supra* note 3, at 304-305.

<sup>70</sup> See generally Kelly & Lamb, *supra* note 3, at 298-301; Michael E. Lamb and Joan B. Kelly, Using Empirical Literature to Guide the Development of Parenting Plans for Young Children: A Rejoinder to Solomon and Biringen, 39 *Fam. Ct. Rev.* 365, 365-71 (2001).

<sup>71</sup> Mary D. Salter Ainsworth, Object Relations, Dependency, and Attachment: A Theoretical Review of the Infant-Mother Relationship, 40 *Child Develop.* 969, 973 (1969); Bowlby, *supra* note 63, at 199-200, 319-21.

<sup>72</sup> Kelly & Lamb, *supra* note 3, at 298-99.

<sup>73</sup> Michael E. Lamb, The Development of Father-Infant Relationships, in *The Role of the Father in Child Development* 104, 110, 119 (Michael E. Lamb ed., John Wiley & Sons New York 3d ed. 1997) [hereinafter Lamb (1997)]; Michael E. Lamb, Infant-Father Attachments and Their Impact on Child Development, in *Handbook of Father Involvement: Multidisciplinary Perspectives* 93, 100 (Catherine S. Tamis-LeMonda & Natasha Cabrera eds., 2002) [hereinafter Lamb (2002a)].

<sup>74</sup> Joseph H. Pleck, Paternal Involvement: Levels, Sources, and Consequences, in *The Role of the Father in Child Development* 66, 71-73 (Michael E. Lamb ed., John Wiley & Sons New York 3d ed. 1997).

<sup>75</sup> See generally Lamb (2002a), *supra* note 73, at 93-108.

infants come to “prefer” the parents who take primary responsibility for their care, typically their mothers,<sup>76</sup> but this preference does not mean that relationships with their less-involved parents are unimportant. In fact, many toddlers and preschoolers seem to “prefer” their “traditional” fathers, especially in emotionally undemanding situations.<sup>77</sup> There is no evidence that the amount of time infants spend with their two parents affects the security of either attachment relationship, although it does affect the relative formative importance of the two relationships.<sup>78</sup> Nonetheless, both relationships remain psychologically important despite disparities in the two parents’ levels of participation in childcare.<sup>79</sup>

Although some studies of both infant-mother and infant-father attachment fail to reveal significant associations between the quality of parental behaviors and the security of infant-parent attachment,<sup>80</sup> meta analyses reveal that, in both cases, the quality of parental behavior is reliably associated with the security of infant-parent attachment.<sup>81</sup> The association between the quality of paternal behavior and the quality of infant-father attachment appears to be weaker than the parallel association between maternal behavior and the security of infant-mother attachment, but the quality of both mother-and father-child interactions remains the most reliable determinant of individual differences in psychological, social, and cognitive adjustment in infancy, as well as in later childhood.<sup>82</sup> Not surprisingly, therefore, children in both two- and single-parent families appear better adjusted when they enjoy warm

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<sup>76</sup> Id. at 108.

<sup>77</sup> Lamb (1997), *supra* note 73, at 111-12.

<sup>78</sup> See generally *id.* at 107-11, 119; Lamb (2002a), *supra* note 73, at 96-101.

<sup>79</sup> See generally Lamb (1997), *supra* note 73, at 114-19; Lamb (2002a), *supra* note 73, at 103-04; Kelly & Lamb, *supra* note 3, at 304-05.

<sup>80</sup> Marianne S. De Wolff & Marinus H. van IJzendoorn, *Sensitivity and Attachment: A Meta-Analysis on Parental Antecedents of Infant Attachment*, 68 *Child Dev.* 571, 572, 584 (1997); Marinus H. van IJzendoorn & Marianne S. De Wolff, *In Search of the Absent Father - Meta-Analyses of Infant-Father Attachment: A Rejoinder to Our Discussants*, 68 *Child Dev.* 604, 604-07 (1997). See Michael E. Lamb et al., *Infant-Mother Attachment: The Origins and Developmental Significance of Individual Differences in Strange Situation Behavior* 59-97 (1985).

<sup>81</sup> De Wolff & van IJzendoorn, *supra* note 80, at 584; van IJzendoorn & De Wolff, *supra* note 80, at 605.

<sup>82</sup> Amato & Gilbreth, *supra* note 24, at 563-570; Paul R. Amato, *Children of Divorced Parents as Young Adults*, in *Coping with Divorce, Single Parenting, and Remarriage* 147, 154-161 (E. Mavis Hetherington ed., 1999); Lamb (2002b), *supra* note 5, at 171; Lamb (1999), *supra* note 5, at 109-11, 120-21; Ross A. Thompson & Deborah J. Laible, *Noncustodial Parents*, in *Parenting and Child Development in “Nontraditional” Families* 103, 104 (Michael E. Lamb ed., 1999).

positive relationships with two actively involved parents. Nonetheless, children are better off with insecure attachments than without attachment relationships, because these enduring ties play essential formative roles in later social and emotional functioning.<sup>83</sup> Infant-parent attachments promote a sense of security, the beginnings of self-confidence, and the development of trust in others.<sup>84</sup>

Infants and toddlers need regular interaction with their "attachment figures" in order to foster and maintain their relationships.<sup>85</sup> Extended separations from either parent are undesirable because they unduly stress developing attachment relationships.<sup>86</sup> In addition, to ensure that the relationships are consolidated and strengthened, infants need to interact with both parents in a variety of contexts (e.g., feeding, playing, diapering, soothing, putting to bed, etc.).<sup>87</sup> In the absence of such opportunities for regular interaction across a broad range of contexts, infant-parent relationships fail to develop and may instead weaken.<sup>88</sup> For the same reason, it is extremely difficult to reestablish relationships between infants and young children and their parents when these have been disrupted.<sup>89</sup> Accordingly, it is better to avoid these disruptions in the first place.

In general, relationships with parents play a crucial role in shaping children's social, emotional, personal and cognitive development.<sup>90</sup> As noted earlier, children who are deprived of meaningful relationships with one of their parents are at greater risk psychosocially, even when they

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<sup>83</sup> Bowlby, *supra* note 63, at 350-58.

<sup>84</sup> Mary D. Salter Ainsworth et al., *Patterns of Attachment: A Psychological Study of the Strange Situation* 183 (1978); Michael E. Lamb, *The Development of Social Expectations in the First Year of Life*, in *Infant Social Cognition: Empirical and Theoretical Considerations* 155-172 (Michael E. Lamb & Lonnie R. Sherrod eds., (1981).

<sup>85</sup> Lamb (2002a), *supra* note 73, at 99; Michael E. Lamb et al., *Development in Infancy: An Introduction* 371-405 (4th ed. 2002).

<sup>86</sup> See generally 2 Bowlby, *Attachment and Loss: Separation* (1973).

<sup>87</sup> See Thompson, *supra* note 1, at 34-64. See generally Lamb et al., *supra* note 85, at 32-7, 371-405; Ainsworth et al., *supra* note 84.

<sup>88</sup> Ainsworth et al., *supra* note 84. See generally Thompson, *supra* note 87, at 34-64; Lamb et al., *supra* note 85, at 32-37, 371-405.

<sup>89</sup> 3 John Bowlby, *Attachment and Loss: Loss* 19-22 (1980).

<sup>90</sup> Michael E. Lamb et al., *Parent-Child Relationships: Development in the Context of the Family*, in *Developmental Psychology, An Advanced Textbook* 411, 412 (Marc H. Bornstein & Michael E. Lamb eds., 4th ed. 1999).

are able to maintain relationships with their other parents.<sup>91</sup> Stated differently, there is substantial evidence that children are more likely to attain their potential when they are able to develop and maintain meaningful relationships with both of their parents, whether or not the two parents live together.<sup>92</sup> If the parents lived together prior to the separation, and the relationships with both parents were of at least adequate quality and supportiveness, then maintaining both child-parent attachments after separation/divorce becomes the central challenge. This goal is no less important to children's welfare when the divorced parents had "traditional" roles before divorce than when they shared parenting responsibilities more equitably. The focus should remain on the children's best interests, not "fairness" to the parents.

Because most contemporary custody and visitation decrees do not foster the maintenance of relationships between children and their non-custodial parents,<sup>93</sup> declining levels of paternal involvement over time typically follow initially restrictive awards.<sup>94</sup> Perhaps this decline occurs because these fathers are deprived of the opportunity to be parents, rather than visitors.<sup>95</sup> Children may well enjoy fun-filled "visits" with their fathers, and they may not regret the respite from arguments about getting homework done, getting their rooms cleaned up, behaving politely, going to bed on time, and getting ready for school, but the exclusion of fathers from these everyday interactions is crucial, because it ultimately transforms the role of the father, and makes these men increasingly irrelevant to their children's socialization and

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<sup>91</sup> Amato (2000), *supra* note 5, at 1277; Hetherington & Stanley-Hagan, *supra* note 5, at 136-7; Lamb (1999), *supra* note 5, at 109; Lamb (2002b), *supra* note 5, at 171; McLanahan & Sandefur, *supra* note 5, at 1-2; McLanahan & Teitler, *supra* note 5, at 99.

<sup>92</sup> Amato (2000), *supra* note 5, at 1277; Hetherington & Stanley-Hagan, *supra* note 5, at 136-7; Lamb (1999), *supra* note 5, at 109; Lamb (2002b), *supra* note 5, at 171; McLanahan & Sandefur, *supra* note 5, at 1-2; McLanahan & Teitler, *supra* note 5, at 99.

<sup>93</sup> See Maccoby & Mnookin, *supra* note 51, at 1-5; Peters, *supra* note 50, at 13, 18.

<sup>94</sup> Furstenburg et al., *supra* note 4, at 663-64; Maccoby & Mnookin, *supra* note 51, at 44-5.

<sup>95</sup> Braver, *supra* note 50, at 156-59, 195-96; Kathleen Clark & Patrick C. McKenry, *Unheard Voices: Divorced Fathers Without Custody* 16 (1997) (unpublished manuscript, on file with Department of Family Relations and Human Development, Ohio State University); Judith S. Wallerstein & Shauna B. Corbin, *Father-Child Relationships After Divorce: Child Support and Educational Opportunity*, 20 *Fam. L. Q.* 109, 113-14 (1986); Judith S. Wallerstein & Joan Berlin Kelly, *Surviving the Breakup: How Children and Parents Cope with Divorce* 123 (1980).

development.<sup>96</sup> Many men describe this as a sufficiently painful experience that they feel excluded from and pushed out of their children's lives,<sup>97</sup> and few would agree that they have chosen to abandon their children as Blankenhorn has alleged.<sup>98</sup>

Writing on behalf of eighteen experts<sup>99</sup> on the effects of divorce and contrasting parenting plans, Lamb, Sternberg, and Thompson observed:

To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interactions with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines...are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children.<sup>100</sup>

As Kelly and Lamb reiterated, the ideal situation is one in which children have opportunities to interact frequently with both parents in a variety of functional contexts (e.g., feeding, playing, disciplining, basic care, limit-setting, putting to bed, etc.).<sup>101</sup> Spending time with nonresidential parents during the evening and overnight periods, like having extended days with naptimes is especially important psychologically for infants, toddlers and young children. These periods increase the opportunities for crucial social interactions and nurturing activities, including bathing, soothing hurts and anxieties, guiding bedtime rituals, giving comfort in the middle of the night, and providing the reassurance and security of snuggling in the morning that one to two hour long visits cannot provide. According to attachment theory, these

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<sup>96</sup> Braver, *supra* note 50, at 156-59, 195-96; Clark & McKenry, *supra* note 95, at 16; Wallerstein & Corbin, *supra* note 95, at 113-14; Wallerstein & Kelly, *supra* note 95, at 123.

<sup>97</sup> Braver, *supra* note 50, at 149-50; Clark & McKenry, *supra* note 95, at 16; Wallerstein & Corbin, *supra* note 95, at 113-14; Wallerstein & Kelly, *supra* note 95, at 123.

<sup>98</sup> Blankenhorn, *supra* note 8, at 23.

<sup>99</sup> Paul Amato, David L. Chambers, Judge Gary Crippin, E. Mark Cummings, Robert Emery, Phillip W. Esplin, Irwin Garfinkel, Kathleen Gilbride, E. Mavis Hetherington, Guillermina Jasso, Janet R. Johnston, Joan B. Kelly, Michael E. Lamb, Sara L. McLanahan, Kathleen J. Sternberg, Joyce Thomas, Ross A. Thompson, and Nicholas Zill.

<sup>100</sup> Lamb et al., *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 *Fam. & Conciliation Cts. Rev.* 393, 400 (1997).

<sup>101</sup> Kelly & Lamb, *supra* note 3, at 300; Lamb & Kelly, *supra* note 70, at 367.



everyday activities promote and maintain trust and confidence in the parents, while deepening and strengthening child-parent attachments, and thus need to be encouraged when decisions about custody and access are made.<sup>102</sup>

Even young children should spend overnight periods with both parents when both have been involved in their care, even though neo-analysts have long counseled against this result.<sup>103</sup> As Warshak has pointed out, the prohibition of overnight “visitation” has been justified by prejudices and beliefs rather than by any empirical evidence.<sup>104</sup> Solomon and Biringen<sup>105</sup> have challenged this conclusion, citing the results of a study by Solomon and George.<sup>106</sup> These researchers did not find that overnight visits with noncustodial fathers affected the security of infant-mother attachment, however, or that overnights were more problematic for preschoolers than for infants and preschoolers.<sup>107</sup> In addition, many of the infants and toddlers they studied had never lived with their two parents and thus may not have formed attachments to their fathers before the overnight visits commenced. Their situation is much different than that of infants and toddlers who have established attachments to two involved parents prior to separation and divorce.<sup>108</sup> Different steps would be needed when promoting the formation rather than the maintenance of attachments. Solomon and George also noted that some of the infants experienced extended and repeated separations from their fathers, which, as noted above, would have stressed these relationships further.<sup>109</sup>

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<sup>102</sup> Ainsworth, *supra* note 71, at 1011; Kelly & Lamb, *supra* note 3, at 309.

<sup>103</sup> Kelly & Lamb, *supra* note 3, at 306; Lamb & Kelly, *supra* note 70, at 368.

<sup>104</sup> Richard A. Warshak, *Blanket Restrictions: Overnight Contact Between Parents and Young Children*, 38 *Fam. & Conciliation Cts. Rev.* 422, 423 (2000).

<sup>105</sup> Judith Solomon & Zeynep Biringen, *The Continuing Debate About Overnight Visitation: Another Look at the Developmental Research*, 39 *Fam. Ct. Rev.* 355, 359-60 (2001).

<sup>106</sup> Judith Solomon & Carol George, *The Development of Attachment in Separated and Divorced Families: Effects of Overnight Visitation, Parent and Couple Variables*, 1 *Attachment & Hum. Dev.* 2, 25 (1999) [hereinafter Solomon & George (1999a)]; Judith Solomon & Carol George, *The Effects on Attachment of Overnight Visitation in Divorced and Separated Families: A Longitudinal Follow-Up*, in *Attachment Disorganization* 243, 243-64 (Judith Solomon & Carol George eds., Guilford 1999) [hereinafter Solomon & George (1999b)].

<sup>107</sup> Solomon & George (1999a), *supra* note 106, at 25; Solomon & George (1999b), *supra* note 106, at 246.

<sup>108</sup> Solomon & George (1999a), *supra* note 106, at 7; Solomon & George (1999b), *supra* note 106, at 244.

<sup>109</sup> Solomon & George (1999a), *supra* note 106, at 9, 27.

When both parents have established significant attachments and both have been actively involved in the child's care, overnight 'visits' will consolidate attachments and child adjustment, not work against them.<sup>110</sup> Parents who have been actively involved before divorce, but are then denied overnight access to their children are excluded from an important array of activities, and consequently, the strength or depth of their relationships suffer.<sup>111</sup> Again, empirical research on normative child development can guide the design of policies that promote better child adjustment, even in the face of the stresses imposed by parental separation and divorce.

To minimize the deleterious impact of extended separations from either parent, attachment theory suggests that infants should enjoy more frequent transitions than might be desirable with older children.<sup>112</sup> In other words, the parenting schedules for children under age two or three should actually involve more transitions, rather than fewer, to ensure the continuity of both relationships and to promote the child's security and comfort during a potentially stressful period.<sup>113</sup> From the third year of life, the ability to tolerate longer separations begins to increase, so that most toddlers can manage two consecutive overnights with either parent without stress.<sup>114</sup> Schedules involving separations spanning longer blocks of time, such as five to seven days, should be avoided, as children this age may still become upset when separated from either parent for too long.<sup>115</sup>

Interestingly, psychologists have long recognized the need to minimize the length of separations from attachment figures when devising parenting plans, but they have generally focused only on separations from their primary caretakers, typically their mothers, thereby revealing their presumption that young children are not meaningfully attached to their fathers.<sup>116</sup> To the extent that children are

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<sup>110</sup> Kelly & Lamb, *supra* note 3, at 306; Lamb & Kelly, *supra* note 70, at 368; Warshak, *supra* note 104, at 436.

<sup>111</sup> Kelly & Lamb (2000), *supra* note 3, at 304; Joan B. Kelly & Michael E. Lamb, *Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?*, *J. Fam. Psychol.* (forthcoming) (manuscript at 13-14, on file with authors) [hereinafter Kelly & Lamb (in press)].

<sup>112</sup> Kelly & Lamb, *supra* note 3, at 308.

<sup>113</sup> *Id.* at 303-05.

<sup>114</sup> Kelly & Lamb (2000), *supra* note 3, at 305-08; Kelly & Lamb (in press), *supra* note 111, at 17.

<sup>115</sup> Kelly & Lamb (2000), *supra* note 3, at 308-09; Kelly & Lamb (in press), *supra* note 111, at 17.

<sup>116</sup> See Goldstein et al., *supra* note 67, at 31-49.

attached to both of their parents, however, separation from either parent is stressful, and at minimum, generates psychic pain.<sup>117</sup> As a result, parenting plans that allow children to see their fathers “every Wednesday evening and every other weekend” clearly fail to recognize the adverse consequences of weeklong separations from non-custodial parents and attenuate the relationships between non-custodial parents and their children.<sup>118</sup> Instead of promoting parenting plans that marginalize one of the parents, custody evaluators should promote continued involvement by both parents, striving when necessary to increase the participation of those parents, typically fathers, whose prior lack of involvement may make overnight custody initially inappropriate.

#### WHEN SHOULD ACCESS TO NONRESIDENTIAL PARENTS BE RESTRICTED?

Of course, there are some cases in which the possible benefits of keeping both parents involved are outweighed by the costs of doing so. Conflicted or violent relationships between the parents are most likely to trigger such cost-benefit analyses because of the reliable association between high conflict and poorer child outcomes following divorce.<sup>119</sup> Inter-parental conflict should be avoided wherever possible, but litigation-related conflict and conflict triggered by the high levels of stress around the time of divorce do not appear to have enduring consequences for children.<sup>120</sup> Consequently, their occurrence should not be used to justify restrictions on children’s access to either of their parents. Maccoby and Mnookin further caution that minor or isolated instances of domestic violence should not affect decisions regarding custody and visitation. The high conflict found harmful by researchers such as Johnston typically involved repeated incidents of spousal violence and verbal aggression, and continued at intense levels for extended periods of time, often in front of the children.<sup>121</sup> As a result, Johnston has emphasized the importance of continued relationships with both parents except in those relatively uncommon circumstances in which intense, protracted conflict occurs and persists.<sup>122</sup> According to Maccoby and Mnookin, approximately one quarter of divorcing families experience high levels of conflict around the time of divorce, and

<sup>117</sup> Bowlby, *supra* note 86, at 3-24; Emery, *supra* note 39, at 201-02.

<sup>118</sup> Kelly & Lamb (2000), *supra* note 3, at 305-8; Kelly & Lamb (in press), *supra* note 111, at 17.

<sup>119</sup> Johnston, *supra* note 18, at 179; Kelly, *supra* note 1, at 965.

<sup>120</sup> Kelly, *supra* note 1, at 966.

<sup>121</sup> Johnston, *supra* note 18, at 175.

<sup>122</sup> *Id.* at 179.

perhaps ten percent of them may have conflict sufficiently severe and sufficiently intractable that it may not be beneficial for the children concerned to have contact with their non-custodial parents.<sup>123</sup>

A significant number of children are not abused by parents who have violent relationships with one another, so it is important that reports of parental conflict not be allowed to have an undue influence on decisions about parent-child contact.<sup>124</sup> According to Appel and Holden, sixty percent of the children whose parents were violent with one another were not themselves victims of physical child abuse, suggesting that decision-makers need to assess the relationships with parents directly, and not simply assume that children must have been abused because their parents were violent with one another.<sup>125</sup> Unfortunately, however, mere allegations of conflict or even marital violence can be powerful tools in our adversarial system, frequently resulting in reduced levels of court-approved contacts between fathers and children.<sup>126</sup> Furthermore, disagreements about the occurrence, nature, and perpetrators of violence are quite common, and do not always reveal self-serving biases.<sup>127</sup>

The quality of the relationships between non-residential parents and their children is also crucial when determining whether to sever or promote relationships between divorced parents and their children. Regardless of the level of violence, there are many fathers whose psychopathology, substance abuse, alcohol abuse, or other problems are severe enough that their presence and involvement may not be of net benefit to their children. It is unknown how many fathers fit in this category. Unrepresentative data sets, such as those collected by Greif in the course of research designed to study fathers and mothers who lose contact with their children after divorce, suggest that perhaps ten to fifteen percent of parents do not have either the commitment or individual capacity to establish and maintain supportive and enriching

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<sup>123</sup> Maccoby & Mnookin, *supra* note 51, at 141-48; Johnston, *supra* note 18, at 179.

<sup>124</sup> George W. Holden, *Children Exposed to Marital Violence: Theory, Research, and Applied Issues* 11 (George W. Holden et al. eds., 1998). See Sternberg & Lamb, *supra* note 47, at 318-20.

<sup>125</sup> Anne E. Appel & George W. Holden, *The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*, 12 *J. Fam. Psychol.* 578, 598-99.

<sup>126</sup> Kathleen J. Sternberg, *Fathers, the Missing Parents in Research on Family Violence*, in *The Role of the Father in Child Development* 284, 295-96 (Michael E. Lamb ed., New York 3d ed. 1997).

<sup>127</sup> See Sternberg et al., *supra* note 47, at 147-51.

relationships with their children following divorce.<sup>128</sup> Taken together, Johnston's and Greif's estimates suggest that, at most, fifteen to twenty-five percent of the children whose parents divorce might not benefit from regular and extended contact with their non-custodial parent, depending on how greatly the two groups of parents overlap.<sup>129</sup> Stated differently, this estimate suggests that more than three-quarters of the children experiencing their parents' divorce *could* benefit from having and maintaining relationships with their non-custodial parents.<sup>130</sup> Therefore, instead of ordering 'standard' parenting plans, custody evaluators and judges clearly need to evaluate individual circumstances and make plans that are sensitive to the strengths, schedules, and needs of both the parents and the children.

### CONCLUSIONS

Basic research on early social development and descriptive research on the multifaceted correlates of divorce, together have yielded a clearer understanding of the ways divorce affects children and how the welfare of many children could be enhanced by changes in common practices regarding child custody. Most importantly, research indicates that children benefit from supportive relationships with both of their parents, whether or not those parents live together. Furthermore, studies suggest that relationships are dynamic, and thus, dependent on continued opportunities for interaction. In order to ensure that both adults become or remain *parents* to their children, post-divorce parenting plans need to encourage regular and frequent participation by both parents in a broad array of social contexts. Brief dinners and occasional weekend visits do not provide a broad or extensive enough basis for such relationships to be fostered, whereas daytime and nighttime activities during both weekdays and weekends are important for children of all ages. In the absence of sufficiently broad and extensive interactions, many fathers drift out of their children's lives, placing their children at risk both psychologically and materially. Much uncertainty exists regarding the time necessary to ensure that both parents stay involved in their children's lives, but Braver has suggested that at least one-third of the non-school hours should be spent with the noncustodial parent. Most experts would agree that every other weekend visits, which comprise

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<sup>128</sup> Geoffrey L. Grief, *Out of Touch: When Parents and Children Lose Contact after Divorce* 6 (1997).

<sup>129</sup> Grief, *supra* note 128, at 6.

<sup>130</sup> Grief, *supra* note 128, at 6.

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about fifteen percent of non-school hours, almost certainly would not pass muster.