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Attachment in Child Custody: An Additive Factor, Not a Determinative One

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I. Introduction—Attachment

The concept of attachment can readily tip the scales in custody and parenting-time cases involving infants and young children. Unfortunately, attachment is often incompletely understood in both the legal and mental health communities. Attorneys may vaguely associate "attachment" with ideas about tender years, psychological parents, and primary caretakers.[1] Mental-health professionals may misremember key concepts of attachment theorists, or lack time to update their knowledge of current research.[2] Attorneys and psychologists are frequently not talking about the same thing, complicating communications. This article explores basic attachment theory and research, attempts to clarify some of the confusion about the terms and their applications, and offers guidance on the proper use of attachment concepts in custody cases.

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1. Linda D. Elrod & Milfred D. Dale, *Paradigm Shifts and Pendulum Swings in Child Custody: The Interests of Children in the Balance*, 42 FAM. L.Q. 381, 390–402 (2008) (reviewing shifts in the best-interests standard from presumptions—the tender years doctrine, primary psychological parent theory, and primary caretaker—to a model that emphasizes individualized parenting plans).

2. Ginger Calloway & Robert E. Erard, *Introduction to the Special Issue on Attachment and Child Custody*, 6 J. CHILD CUST. 1, 3 (2009) (noting that attachment theorists have "attempted to discourage the casual use and misuse of the concepts 'attachment' and 'bonding' by psychologists, attorneys, judges and others working in the legal and protection systems with children and their parents."). *See also* Jennifer E. McIntosh, *Guest Editor's Introduction to the Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Under-*

Most broadly, attachment theory describes "the propensity of human beings to make strong affectional bonds to particular others. . ."[3] In particular, the theory holds that young children attach to their parents, usually their mothers, and that their later functioning can be explained by the quality of this attachment. Attachment theory appeals as an intuitive, almost romantic theory that has very much captured the imagination of a significant group of mental health professionals in the United States and many other parts of the world. Although numbers of mental health professionals espouse a more moderate view,[4] many have promoted strict attachment theory and advocated its benefits in court.[5] These professionals tell courts that mothers who are afforded the opportunity to care for their infants will most often raise well-adjusted children who grow into well-functioning adults. Those unfortunate infants with insufficient access to their mothers are said to risk problems making close relationships and even in nurturing their own children.[6] Not surprisingly, these mental health professionals often advocate continuity of a child's "primary" attachment figure when parents divorce, which almost invariably requires placement with the mother. Equally expected, courts have frequently been unwilling to question such compelling mental health advice, opting for a conservative approach to avoid risking a young child's future by compromising attachment.[7] In this way, attachment concepts have come to

standings for Family Law, 49 FAM. CT. REV. 418 (2011) (providing examples of "attachment" as a "term of many colors").

3. JOHN BOWLBY, THE MAKING AND BREAKING OF AFFECTIONAL BONDS 151 (1979/1989) [hereinafter AFFECTIONAL BONDS].

4. Calloway & Erard, *supra* note 2, at 5 (noting that "at this early stage of bringing attachment theory and research into forensic applications, there are a host of undecided and controversial issues"); Pamela S. Ludolph, *Answered and Unanswered Questions in Attachment Theory with Implications for Children of Divorce*, 6 J. CHILD CUST. 8 (2009); Benjamin E. Garber, *Attachment Methodology in Custody Evaluation: Four Hurdles Standing Between Developmental Theory and Forensic Application*, 6 J. CHILD CUST. 38 (2009).

5. S. Margaret Lee, Robert L. Kaufman, & Carol George, *Disorganized Attachment in Young Children: Manifestations, Etiology, and Implications for Child Cu*stody, 6 J. CHILD CUST. 62 (2009); Robert S. Marvin & Benjamin M. Schutz, *One Component of an Evidence-Based Approach to the Use of Attachment Research in Child Custody Evaluations*, 6 J. CHILD CUST. 113 (2009); McIntosh, *supra* note 2; Carol George, Marla B. Isaacs, & Robert S. Marvin, *Incorporating Attachment Assessment into Custody Evaluations—The Case of a Two-Year-Old & Her Parents*, 49 FAM. CT. REV. 483 (2011).

6. *See* Judith Cashmore & Patrick Parkinson*, Parenting Arrangements for Young Children: Messages from Research*, 25 AUSTRALIAN J. FAM. LAW 236 (2011) (identifying the "zero sum model" where it is believed that any time away from mother is seen as a deficit or risk to attachment to mother); JOSEPH GOLDSTEIN, ANNA FREUD, & ALBERT J. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 31–34 (1973) (claiming that disruptions in the continuity of the parent-child relationship will cause "inevitable" difficulties in the child's physical, emotional, intellectual, social, and moral growth).

7. Peggy C. Davis, *"There Is a Book Out. . . ." An Analysis of Judicial Absorption of Legislative Facts,* 100 HARVARD L. REV. 1539 (1987). *See also* Terry A. Maroney, *In Family*

approach a determinative status when custody decisions are made for very young children.

Judges might be surprised to learn that some of these ideas arise more from intuition than from science.[8] Attachment research is evolving and complex, and its findings can be contradictory. Well-meaning professionals may lack knowledge about the most recent developments in this fifty-year-old theory and in complementary research in child development.[9] Increasingly, data has shown that it can be detrimental to advocate for the child's singular attachment to the mother above other factors that are also important to the child's development.[10]

This article will address these questions and others, attempting to present a balanced view of the current state of the empirical literature on attachment in young children. Our thesis is that attachment theory has important ideas to offer the court, but that it is far from empirically strong enough to be determinative, by itself, in conceptualizing and formulating parenting plans. For the most part, the discussion focuses on the ideas of formal attachment theory, a psychological theory derived by John Bowlby[11] and promulgated by researchers following in his footsteps. Although notions of the importance of mother-infant relationships have been central to legal approaches to custody, such as the tender years doctrine, the theory of a primary psychological parent, and primary caretakers, these psycholegal notions should not be equated with the work of

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Law, Love's Got a Lot to Do With It: A Response to Phillip Shaver, 16 VA. J. SOC. POL'Y & LAW 471 (2008–2009) (reviewing the history of the law's emphasis on children's attachments and relationships with their parents); David E. Arredondo & Leonard P. Edwards, *Attachment, Bonding & Reciprocal Connectedness: Limitations of Attachment Theory in the Juvenile and Family Court*, 2 J. CENTER FOR FAMS., CHILD. & CTS. 109 (2000).

8. Judith T. Younger, *Post-divorce Visitation for Infants and Young Children—The Myths and the Psychological Unknowns*, 36 FAM. L.Q. 195, 198 (2002) (noting that ". . . courts seek help and inevitably turn to mental health experts. This is the great myth of the title of this article. Mental health experts do not have clear answers; they have theories, opinions and, perhaps, prejudices. They give advice, but as some of them readily admit, research to support that advice remains 'worrisomely small.'"). *See also* Arredondo & Edwards, *supra* note 7; Davis, *supra* note 7.

9. George, Isaacs, & Marvin, *supra* note 5.

10. Marsha Kline Pruett, Rachel Ebling & Glendessa Insabella, *Critical Aspects of Parenting Plans for Young Children: Interjecting Data into the Debate About Overnights*, 42 FAM. CT. REV. 39 (2004) (noting that "Attachment tells only a small frame of a young child's life" and that there are "other important indices in child adaptation"); Arredondo & Edwards, *supra* note 7 (describing, among other things, the concept of "reciprocal connectedness" to capture the dynamic exchanges in relationship between infant and parent, extending beyond the notion of the child's attachment to his parent).

11. JOHN BOWLBY, ATTACHMENT AND LOSS, VOL. 1: ATTACHMENT (2d ed. 1969/1982) [hereinafter ATTACHMENT I]; JOHN BOWLBY, ATTACHMENT AND LOSS, VOL. 2: SEPARATION (1973) [hereinafter ATTACHMENT II]; JOHN BOWLBY, ATTACHMENT AND LOSS, VOL. 3: LOSS (1982) [hereinafter ATTACHMENT III].

Bowlby and formal attachment theory. Bowlby focused on security-seeking to the relative exclusion of other aspects of human relationships.[12]

II. History and Definition of the Attachment Concept

John Bowlby, a child psychiatrist, began his observations of children in the 1940s, eventually leading to his renowned theorizing in a trilogy published beginning in 1969.[13] Mary Ainsworth, Bowlby's most prominent disciple and colleague, refined his ideas with the invention of the "Strange Situation" procedure, which measured security of attachment, dividing infants in three groups: one secure and two insecure.[14] Later researchers identified a third insecure group, infants with "disorganized attachments." Infants with disorganized attachment patterns often had troubled histories, fraught with abuse, neglect, and other serious difficulties.[15]

Bowlby saw attachment as an enduring emotional bond between one individual and another. In early childhood, attachment status refers to the bond between two specific people, not an individual attribute of either parent or child. Bowlby believed that most infants developed an attachment to a "preferred" or "principal" attachment figure, noting, "[t]he more experience of social interaction an infant has with a person the more likely is he to become attached to that person."[16] Bowlby believed that attachment bonds are created hierarchically, "towards one or a few specific individuals, usually in clear order of preference."[17] The bond that has been

12. *See* Arredondo & Edwards, *supra* note 7 (citing Michael Rutter and noting that "the attractiveness of attachment theory has been rather a neglect of these other features, together with an implicit tendency to discuss relationships as if attachment security was all that mattered. . . . If we are to understand the interconnections between relationships, it will be necessary for us to take into account the range of dimensions that seem to be involved.").

13. BOWLBY, I, II, and III, *supra* note 11.

14. MARY D. SALTER AINSWORTH, MARY C. BLEHAR ET AL., PATTERNS OF ATTACHMENT: A PSYCHOLOGICAL STUDY OF THE STRANGE SITUATION (1978).

15. Mary Main & Judith Solomon, *Procedures for Identifying Infants as Disorganized-Disoriented During the Ainsworth Strange Situation in* ATTACHMENT IN THE PRESCHOOL YEARS: THEORY, RESEARCH, AND INTERVENTION 121 (Mark T. Greenberg, Dante Cicchetti, & E. Mark Cummings eds., 1990). *See also* Dante Cicchetti & Sheree L. Toth, *Child Maltreatment and Attachment Organization: Implications for Intervention in* ATTACHMENT THEORY: SOCIAL, DEVELOPMENTAL, AND CLINICAL PERSPECTIVES 279 (Susan Goldberg, Roy Muir, & John Kerr eds., 1995); R. Phillip R. Shaver, Mario Mikulincer & Brooke C. Feeney, *What's Love Got to Do With It? Insecurity and Anger in Attachment Relationships*, 16 VA. J. SOC. POL'Y & LAW 491 (2008–2009); Mary Main, Nancy Kaplan, & Jude Cassidy, *Security in Infancy, Childhood, and Adulthood: A Move to the Level of Representation, in* GROWING POINTS OF ATTACHMENT THEORY AND RESEARCH 66 (Inge Bretherton & Everett Waters eds., 1985); MONOGRAPHS OF THE SOCIETY FOR RESEARCH IN CHILD DEVELOPMENT, 50, 66–104 (1–2, Serial No. 209) (1985).

16. BOWLBY, AFFECTIONAL BONDS, *supra* note 3, at 155.

17. *Id*. at 154. *See also* BOWLBY, ATTACHMENT I, *supra* note 11, at 309:

> Because the bias of a child to attach himself especially to one figure seems to be well established and also to have far-reaching implications for psychopathology, I believe it merits a

empirically and clinically studied by his followers has almost always been that between a child and the mother. The father was initially posited to be a much more secondary attachment figure, in the same category as regular babysitters and grandparents.[18]

Bowlby described the mother as serving as a "secure base" from which the child could draw affective sustenance and begin to move out to explore the world. He and his followers strongly believed that the first two or three years are a sensitive period for relationship growth and that a child might suffer grave emotional harm if his attachment needs were not adequately met during that time.[19] Bowlby often likened the importance of attachment to the infant's mental health to the need for adequate measures that ensured a young child's physical health. Separation from the mother was as psychologically devastating to infants as life-threatening diseases like tuberculosis or polio were to a child's physical health.[20] Conversely, there were (and are) thought to be distinct advantages to the child in many areas of development, if that child saw his mother as a reliable "safe haven" who would protect and guide him as he grew.[21]

Critics of Bowlby's theory and data interpretation have argued for years that attachment theory should not be the central organizing principle of early development. These researchers have sought a more flexible view, stressing the resilience of the child and the multiple paths to psychological health, even when an infant demonstrated early difficulties. Formal attachment theory sometimes fails to sufficiently explain the rapidly expanding knowledge about the social and emotional lives of the very young child.[22] For example, fears about the devastating effects of separa-

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special term. . . . I [refer] to it as "monotropy."

18. Vicky Phares, *Where's Poppa? The Relative Lack of Attention to the Role of Father in Child and Adolescent Psychopathology*, 47 AM. PSYCHOLOGIST 656 (1992); Michael E. Lamb, *Fathers: Forgotten Contributors to Child Development*, 18 HUMAN DEV. 245 (1975). *See also* JOHN BOWLBY, A SECURE BASE: PARENT-CHILD ATTACHMENT & HEALTHY HUMAN DEVELOPMENT 10–11 (1988) [hereinafter A SECURE BASE] (noting that "[T]he pattern [the child] develops with his father is the product of how his father has treated him").

19. BOWLBY, A SECURE BASE, *supra* note 18; Everett Waters & E. Mark Cummings, *A Secure Base From Which to Explore Close Relationships*, 71 CHILD DEV. 164 (2000); BOWLBY, ATTACHMENT I, *supra* note 11. *See also* Inge Bretherton, *The Origins of Attachment Theory: John Bowlby and Mary Ainsworth*, 28 DEV. PSYCH. 759 (1992).

20. JOHN BOWLBY, MATERNAL CARE AND MENTAL HEALTH, WORLD HEALTH ORGANIZATION MONOGRAPH SERIES NO. 2. GENEVA: WORLD HEALTH ORGANIZATION (1951) (noting that children subject to "maternal deprivation" could become psychopathic: "a source of social infection as real and serious as are carriers of diphtheria and typhoid.").

21. Mary D.S. Ainsworth & John Bowlby, *An Ethological Approach to Personality Development*, 46 AM. PSYCHOL. 333 (1991).

22. *See* Michael Rutter, *Maternal Deprivation, 1972–1977: New Findings, New Concepts, New Approaches*, 50 CHILD DEV. 283 (1979); Michael Rutter, *Maternal Deprivation Reconsidered*, 16 J. PSYCHOSOMATIC RES. 241 (1979); Ross A. Thompson, *The Development of the Person: Social Understanding, Relationships, Self, Conscience in* HANDBOOK OF CHILD

tion are inconsistent with studies that show some children deprived of their mothers in early childhood demonstrate substantial recovery.[23] Empirical research has also documented the formative nature of attachment to fathers as well as to mothers.[24]

III. Early Attachment Status as a Predictor of Later Functioning

Although solid studies soon emerged supporting the general importance of early sensitive care,[25] Bowlby became cautious in his statements about the likelihood that early attachment status could fully predict later functioning. For instance, he concluded the first volume of his trilogy with the following comment on securely attached infants:

> Thenceforward, *provided family relationships continue favourable*, not only do these early patterns of thought, feeling and behaviour persist, but personality becomes increasingly structured to operate in moderately controlled and resilient ways, and increasingly capable of continuing so despite adverse circumstances.[26] (emphasis added).

This optimistic view about the positive effects of secure attachment does allow for the importance of continued family care and support in later childhood. In 1988, Bowlby, acknowledging the developments in attachment thinking and research, made a similar point:

> Since the course of subsequent development is not fixed, changes in the way a child is treated can shift his pathway in either a more favourable direction or a less favourable one.[27]

Nonetheless, many of Bowlby's followers seemed to expect that attachment security had extraordinary protective powers, well beyond those with which Bowlby had endowed it. Few connected the dots to discern that

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PSYCHOLOGY: 3 SOC., EMOTIONAL, AND PERSONALITY DEV. 24 (William Damon & R.M. Lerner series eds.) & N. Eisenberg (vol. ed., 6th ed. 2006); Ross A. Thompson, *The Legacy of Early Attachments,* 71 CHILD DEV. 145 (2000); Karin Grossmann, Klaus E. Grossmann, & Heinz Kindler, *Early Care and Roots of Attachment and Partnership Representations: The Bielefeld and Regensburg Longitudinal Studies in* ATTACHMENT FROM INFANCY TO ADULTHOOD: THE MAJOR LONGITUDINAL STUDIES 98 (Klaus E. Grossmann, Karin Grossman & Everett Waters, eds. 2005) [hereinafter MAJOR LONGITUDINAL STUDIES].

23. *See* ANN M. CLARKE & ALAN D.B. CLARKE, EARLY EXPERIENCES: MYTH AND EVIDENCE (1976) (finding that children who had spent their earliest years deprived of mothers demonstrated remarkable recovery).

24. Michael E. Lamb, *The Development of Mother-Infant and Father-Infant Attachments in the Second Year of Life*, 13 DEV. PSYCHOL. 637 (1977); Michael E. Lamb, *The Development of Father-Infant Relationships*, *in* THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 104 (Michael E. Lamb ed., 3d. ed. 1997); Michael E. Lamb, *Father-Infant and Mother-Infant Interaction in the First Year of Life*, 48 CHILD DEV. 167 (1977).

25. Thompson, *The Development of the Person*, *supra* note 22, at 42.

26. BOWLBY, ATTACHMENT I, *supra* note 11, at 378.

27. BOWLBY, A SECURE BASE, *supra* note 18, at 136.

there was little pattern to the findings of many isolated studies, and many were not replicated.[28] The more solid research has widely confirmed Bowlby's restraint.

A small number of longitudinal studies have examined the same children and families for twenty or more years using the Strange Situation to assess attachment during toddlerhood with follow-up as to social and emotional functioning in adolescence and adulthood. The Minnesota Study of Risk and Adaptation from Birth to Adulthood studied 180 high-risk families for nearly thirty years, and confirmed a link between early attachment security and measures of emotional health and positive relationships in adulthood.[29] Early disturbances in attachment security, however, showed variable outcomes, with cumulative measures of care and negative life events more strongly predicting adult psychiatric disturbance. Even in the secure group, the probability of later emotional health was enhanced by continuing quality care. In addition, a study of fifty-seven young adults in a high-risk subsample within the larger Minnesota study failed to confirm continuity of attachment from toddlerhood to age nineteen, with many subjects transitioning to insecurity.[30] The lead researcher of the Minnesota study now argues that attachment can no longer reasonably be considered the only variable of importance in child outcome. He has stated:

> Variations in infant-caregiver attachment do not relate well to every outcome, nor do they relate inexorably to any outcome whatsoever. They are related to outcomes only probabilistically and only in the context of complex developmental systems and processes.[31]

Other longitudinal research has not supported a long-term link between attachment status and social and emotional outcome variables, or even the maintenance of secure or insecure attachment status over time. Two twenty-year studies found some indicators of continuity, but did not find an association between results of the Strange Situation administered in toddlerhood and measures of attachment and relationship quality in young adults.[32] Although parental divorce had a significant impact on attachment security during adolescence, young people seemed to have come to terms

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28. Ross A. Thompson, *Early Attachment and Later Development in* HANDBOOK OF ATTACHMENT: THEORY, RESEARCH, AND CLINICAL APPLICATIONS 265 (Jude Cassidy & Phillip R. Shaver eds., 1999).

29. L. ALAN SROUFE ET AL., THE DEVELOPMENT OF THE PERSON: THE MINNESOTA STUDY OF RISK AND ADAPTATION FROM BIRTH TO ADULTHOOD (2005).

30. Nancy S. Weinfield, L. Alan Sroufe, & Byron Egeland, *Attachment From Infancy to Early Adulthood in a High-Risk Sample: Continuity, Discontinuity, and Their Correlates*, 71 CHILD DEV. 695 (2000).

31. L. Alan Sroufe, *Attachment and Development: A Prospective, Longitudinal Study from Birth to Adulthood*, 7 ATTACHMENT & HUMAN DEV. 349, 365 (2005).

32. Grossmann, Grossmann, & Kindler, *supra* note 22.

with the divorce by adulthood, such that it was no longer a major factor for many.[33]

While two other longitudinal studies reported that nearly two-thirds of their samples maintained the same attachment classification over time, these authors also emphasized the importance of negative life events as moderators of attachment status. In one study, divorce in early childhood was particularly likely to result in the maintenance or creation of an insecure attachment, especially when there were high levels of parental conflict.[34] In the second study, several factors tended to increase the likelihood of a change in attachment status over time, including divorce, loss of a parent, life-threatening illness of a parent or child, parental psychiatric disorder, and physical or sexual abuse by a family member.[35]

The authors of three of the above studies wrote an article together concluding that attachment status could be stable from infancy to early adulthood, but also seemed influenced by the child's subsequent experience of stressful and negative life events. They advocated that other potential moderators of attachment status be considered, like temperament and the child's unique influence on the parent-child dyad through inherited personality traits and early experience. They speculated that marital problems and divorce might well produce variable mood or emotional instability in the caregiver that could, in turn, have adverse effects on the attachment and adjustment of a young child. They discussed the complexities inherent in determining trajectories that adult outcome might take.[36]

Finally, recent longitudinal research on infant-mother attachment has found significant variability of outcome for children reared in similar circumstances and has pointed to the importance of cumulative stressors in predicting attachment status. These findings support the idea that significant portions of attachment outcome may be due to inborn characteristics. Temperament and other genetically determined factors may mediate attachment in significant ways by making some children more and less susceptible to environmental effects, like good parenting or frank maltreatment.[37] Other research reviewers have found evidence for a relationship between molecular and genetic findings and attachment security and

33. *Id. See also* Michael Lewis, Candice Feiring, & Saul Rosenthal, *Attachment Over Time*, 71 CHILD DEV. 707 (2000) (finding no continuity of attachment status and noting that parental divorce was related to insecure attachment at age eighteen).

34. Claire E. Hamilton, *Continuity and Discontinuity of Attachment from Infancy Through Adolescence*, 71 CHILD DEV. 690 (2000).

35. Everett Waters, S. Merrick et al., *Attachment Security in Infancy and Early Adulthood: A Twenty-Year Longitudinal Study*, 71 CHILD DEV. 684 (2000).

36. Everett Waters, Nancy S. Weinfield, & Claire E. Hamilton, *The Stability of Attachment Security from Infancy to Adolescence and Early Adulthood: General Discussion*, 71 CHILD DEV. 703 (2000).

37. Jay Belsky & Michael Pluess, *The Nature (and Nurture?) of Plasticity in Early Human*

disorganization, as well as for the idea that the same genetic factor not only increases risk in susceptible children exposed to negative environments, but also decreases risk for children in favorable environments.[38] Attachment status is evidently influenced by much more than a secure early relationship with one parent.

What then is the descriptive and predictive value if attachment security may often be of less importance than factors like negative life events and genetics in predicting the well-being of children when they are grown? First, early attachment status can be a measure of the warmth and supportiveness of the early relationship between parent and child. It is, indeed, *one* of the factors that courts should closely bear in mind in making decisions about the best interests of children. Second, attachment researchers have begun to set their sights differently. Instead of attempting to find data to prove that infant attachment absolutely predicts adult behavior, researchers are more reasonably focusing on shorter-term outcomes. Attachment status does seem to have a robust contemporaneous and short-term association with the social and emotional adjustment of children.[39] For example, one study found that young boys who were securely attached at eighteen months had developed better control of their anger two years later than children who were less securely attached.[40]

Among the contemporaneous findings are studies that relatively consistently show that preschoolers with secure attachments are better at identifying complex emotions in others, surely a correlate of later relationship capacity. Securely attached preschoolers tended to have mothers who had talked to them about emotion in a more elaborated, rich, and detailed way.[41] A securely attached relationship between parent and child

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Development, 4 PERSPECTIVES ON PSYCH. SCI. 345 (2009). *See also* Jay Belsky, *Attachment Theory and Research in Ecological Perspective: Insights from the Pennsylvania Infant and Family Development Project and the ICHD Study of Early Child Care, in* MAJOR LONGITUDINAL STUDIES, *supra* note 22. *But see* Brian E. Vaughn et al., *Attachment and Temperament: Additive and Interactional Influences on Behavior, Affect, and Cognition During Infancy and Childhood, in* HANDBOOK OF ATTACHMENT: THEORY, RESEARCH, AND CLINICAL APPLICATIONS (2d ed. 2008) [hereinafter HANDBOOK OF ATTACHMENT 2D].

38. Marian J. Bakermans-Kranenburg & Marinus H. van IJzendoorn, *Research Review: Genetic Vulnerability or Differential Susceptibility in Child Development*, 48 J. CHILD PSYCHOL. & PSYCHIATRY 1160 (2007).

39. *See* Ross A. Thompson, *Early Attachment & Later Development: Familiar Questions, New Answers, in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37 (reviewing research about the predictability of attachment status and short-term adjustment benefits).

40. Miles Gilliom, Daniel S. Shaw et al., *Anger Regulation in Disadvantaged Preschool Boys: Strategies, Antecedents, and the Development of Self-Control*, 38 DEV. PSYCHOL. 222 (2002).

41. Lenna L. Ontai & Ross A. Thompson, *Patterns of Attachment and Maternal Discourse Effects of Children's Emotional Understanding From 3 to 5 Years of Age*, 11 SOC. DEV. 433 (2002).

predicts a harmonious short-term relation between parent and child, particularly between infancy and toddlerhood. One reviewer of several studies concluded that mothers of secure infants, for instance, tend to be more attuned and appropriately supportive of the different developmental needs of their toddlers.[42] While these predictions do not guarantee a well-adjusted adulthood, they do provide important information about whether competent parenting will likely continue in the short term.

A second and very different line of research has addressed the continuity of attachment problems in institutionally-reared children. Bowlby was interested in the outcome of children reared in orphanages from the outset of his work, theorizing that these children should do poorly because they had endured maternal deprivation, or separation from the mother.[43] There were some early troubling findings in regard to infants reared in orphanages in the midtwentieth century, though subsequent research did not consistently support a negative outcome for these children if adopted into good homes. Indeed, though early studies documented the emotional and cognitive delays of institutionally-reared children, they also provided good evidence of an often startling tendency of many children to show "catch up" effects after adoption that continued well into childhood.[44]

Very recently, social scientists have been studying the outcomes of children who spent their earliest years in grossly deprived circumstances, often in international orphanages. These children have been studied from infancy until adolescence by now and have been found to show marked deficits in attachment and relationship capacity and, sadly, not to improve a great deal after adoption.[45] Researchers have also found children adopted early from inadequate institutional care are less likely to show marked and persistent ill effects than later adopted children. Children who are adopted later than the first year from situations where profound maltreatment is commonplace experience chronic symptoms that include quasi-autistic patterns, hyperactivity, cognitive impairment, and attachment disorganization and disorder.[46] Such children often show signs of Reactive

42. Thompson, *The Development of the Person*, *supra* note 22.

43. BOWLBY, ATTACHMENT II, *supra* note 11; Bretherton, *Origins of Attachment Theory*, *supra* note 19; BOWLBY, MATERNAL CARE AND MENTAL HEALTH, *supra* note 20.

44. CLARKE & CLARKE, *supra* note 23; Marinus H. van IJzendoorn & F. Juffer, *The Emanuel Miller Memorial Lecture 2006: Adoption as Intervention. Meta-Analytic Evidence for Massive Catch-up and Plasticity in Physical, Socio-emotional, and Cognitive Development*, 47 J. CHILD PSYCHOL. & PSYCHIATRY 1228 (2006).

45. Jana Kreppner et al., *Developmental Course of Deprivation-Specific Psychological Patterns: Early Manifestations, Persistence to Age 15, and Clinical Features, in 75* MONOGRAPHS OF THE SOC'Y FOR RES. IN CHILD DEV. 79 (2010) [hereinafter CHILD DEVELOPMENT MONOGRAPHS].

46. Michael Rutter & Edmund J. Sonuga-Barke, *Conclusions: Overview of Findings from the ERA Study, Inferences and Research Implications*, *in* CHILD DEVELOPMENT MONOGRAPHS,

Attachment Disorder (RAD), a psychiatric diagnosis often found in maltreated children, involving serious difficulties in social relationships and related to "grossly pathological care."[47] Children diagnosed with RAD often also show signs of disorganized attachment[48] or "nonattachment."[49] These children are seriously impaired, showing no history or signs of the positive effects of a nurturing relationship with any adult.

These data appear to provide support for the establishment of a chronic and maladaptive pattern of attachment in seriously abused and neglected children who are not removed from the maltreatment by six to twelve months of age. The presumptive cause of the difficulties of infants adopted out of grossly inadequate institutional care is abuse and neglect while in care, not the initial loss of the biological mother, which generally happened before infant was cognizant enough to experience maternal deprivation as a loss.[50] The principal usefulness of these findings is providing protection to children who are subjected to sustained and extraordinarily abusive or neglectful care, whether in a maltreating birth home or before adoption by fit parents who later elect to divorce.

IV. Problems in Assessment for the Forensic Community

Two reasons support a review of attachment measures. First, all attachment research is based on these measures. If the measures are questionable, then so is the research. Second, some have recently advocated for the use of attachment measures in child custody evaluations.[51] While the volume of assessment research can seem impressive, this should not lead attorneys and courts to assume that all attachment assessments are equal,

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supra note 45, at 212; *compare* Jana Kreppner, Michael Rutter et al., *Normality and Impairment Following Profound Early Institutional Deprivation: A Longitudinal Follow-up into Early Adolescence*, 43 DEV. PSYCH. 931 (2007) (finding six months the cut off) *with* van IJzendoorn & Juffer, *The Emanuel Miller Memorial Lecture*, *supra* note 44 (finding twelve months the critical time).

47. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, (DSM-IV-TR) (4th ed. 2000).

48. Karen Zilberstein, *Clarifying Core Characteristics of Attachment Disorders: A Review of Current Research and Theory*, 76 AM. J. ORTHOPSYCHIATRY 55 (2006).

49. Charles H. Zeanah & Neil W. Boris, *Disturbances and Disorders of Attachment in Early Childhood in* HANDBOOK OF INFANT MENTAL HEALTH, 353 (Charles H. Zeanah ed., 2d ed. 2000).

50. Michael Rutter, *Maternal Deprivation*, *supra* note 22; Everett Waters & Donna M. Noyes, *Psychological Parenting vs. Attachment Theory: The Child's Best Interests and the Risks of Doing the Right Things for the Wrong Reasons*, 12 N.Y.U. REV. L. & SOC. CHANGE 505 (1983–1984).

51. George, Isaacs, & Marvin, *supra* note 5; *See also* Marla B. Isaacs, Carol George, & Robert S. Marvin, *Utilizing Attachment Measures in Child Custody Evaluations: Incremental Validity*, 6 J. CHILD CUSTODY 139 (2009).

or that all attachment measures are reliable enough for forensic psychological practice.

A. Ainsworth's Strange Situation Methodology

Mary Ainsworth's Strange Situation measure is widely touted in the field as the best of the attachment measures, certainly the first designed, and the one against which all others have subsequently been measured.[52] One author likened it to the "Rosetta Stone" in its ability to decipher the infant's experience.[53] Nonetheless, it presents a number of methodological problems.

The Strange Situation is a relatively brief procedure that requires a laboratory setting. Parent and young toddler are briefly separated several times, moderately stressing the young child. Reunions are carefully observed. Categories of attachment security or insecurity are measured by the nature of the reunions. Although some have noted that indicators of the reliability and validity of the Strange Situation are "marginal,"[54] others have pointed out that the Strange Situation has been more extensively used than almost any instrument in developmental psychology.[55] These validations are overwhelmingly in regard to mothers only.[56] Indeed, though there are some studies assessing the relationships of toddlers with their fathers, there is also evidence that the Strange Situation is not as useful as a measure of attachment quality in fathers.[57]

In one longitudinal study in which the Strange Situation was administered with both parents, attachment status with mothers in toddlerhood predicted attachment status in ten-year-olds, but not when the children reached adolescence. There was no such predictive effect with fathers. On the other hand, the play sensitivity of fathers in toddlerhood predicted

52. Mary Main, Erik Hesse, & Siegfried Hesse, *Attachment Theory & Research: Overview with Suggested Applications to Child Custody*, 49 FAM. CT. REV. 426 (2011) (noting that the Strange Situation, Attachment Q-Sort, and Adult Attachment Interview are the gold standard methods of attachment assessment).

53. ROBERT KAREN, BECOMING ATTACHED: FIRST RELATIONSHIPS AND HOW THEY SHAPE OUR CAPACITY TO LOVE 172 (1998).

54. Judith Solomon & Carol George, *The Measurement of Attachment Security in Infancy and Childhood in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37.

55. Ross A. Thompson & H. Abigail Raikes, *Toward the Next Quarter-Century: Conceptual and Methodological Challenges for Attachment Theory*, 15 DEV. & PSYCHOPATHOLOGY 691 (2003).

56. *See* Main, Hesse, & Hesse, *supra* note 52.

57. Grossmann, Grossmann, & Kindler, *supra* note 22. *See also* Lise M. Youngblade & Jay Belsky, *Parent-Child Antecedents of 5-Year-Olds' Close Friendships: A Longitudinal Analysis*, 28 DEV. PSYCHOL. 700 (1992) (hypothesizing that behavior that appears secure on the Strange Situation with mother may actually be enmeshed or dependent with father, given the premium on exploration and play that has been demonstrated in the father-infant relationship).

attachment status in both ten-year-olds and adolescents. These researchers concluded that a measure of attunement to the young child at play is a much better attachment instrument to use with fathers than the Strange Situation, and that mothers and fathers shape attachment security in very different ways. They hypothesized that mothers may be the prominent parenting force in earliest infancy, providing comfort and care, whereas fathers become critical in toddlerhood, as they foster a sense of agency and growing independence through play.[58]

The Strange Situation has other limitations, particularly for forensic purposes. The short twenty-one minute sample of behavior may be too brief to capture an accurate picture of a complex relationship. Solomon and George, renowned experts in attachment assessment, have questioned the clarity of the Strange Situation in describing the many dimensions and subtleties of attachment classifications and have noted that the construct validation of the instrument remains incomplete.[59] Extensive and costly training is required for certification in the intricacies of the method, making its use unrealistic for many. The Strange Situation requires a uniquely trained laboratory to which most practitioners do not have access. The few child custody evaluations that have used the Strange Situation tend to involve uniquely trained experts brought in to administer attachment measures, presumably at significant expense.[60] The Strange Situation has a very narrow age range to which it is applicable: approximately twelve to twenty months. Earlier and later than this, the young child is not as likely to exhibit the reunion behaviors the instrument measures. Studies that have tried to link attachment status on the Strange Situation to parenting behavior have yielded equivocal results. Perhaps most importantly, studies indicate a relationship between family stress, divorce, and attachment security, making the administration of the Strange Situation at the time of an acrimonious divorce quite questionable.[61] While the Strange Situation may be described by some as a "gold standard" methodology for attachment assessment, "legitimate questions have lingered."[62]

Whatever its scientific properties, the narrow applicability of the Strange Situation as to age and its prominent use of reunion behavior to

58. Grossmann et al., *The Uniqueness of the Child-Father Attachment Relationship: Fathers' Sensitive and Challenging Play as a Pivotal Variable in a 16-Year Longitudinal Study*, 11 SOC. DEV. 301 (2002).

59. Solomon & George, *supra* note 54; AINSWORTH, BLEHAR ET AL., *supra* note 14.

60. George, Isaac, & Marvin, *Incorporating Attachment Assessment*, *supra* note 5; Isaacs, George, & Marvin, *Utilizing Attachment Measures in Child Custody Evaluations*, *supra* note 51.

61. Ross A. Thompson, Michael E. Lamb, & David Estes, *Stability of Infant-Mother Attachment and Its Relationship to Changing Life Circumstances in an Unselected Middle-Class Sample*, 53 CHILD DEV. 144 (1982).

62. KAREN, *supra* note 53, at 266.

make judgments about attachment makes its usefulness as a predictor of subsequent attachment equivocal, as measures used for older children must be differently conceptualized.[63] For example, a kindergarten child would likely be seen as somewhat disturbed if he became overly troubled when his mother left him with a friendly observer and a room full of toys for three minutes. And how would one think about a twelve-year-old who wanted to suck his thumb comfortably in mother's lap when he saw her again? The answers to such questions are easy, but the harder ones query what *is* appropriate and equivalent behavior in the assessment of attachment in older children, if one wants to capture developmental indicators of attachment. The issue becomes even more complicated when one considers that the responses of older children may actually better capture attachment phenomenon than those of toddlers.[64] Older children can also express themselves verbally, likely making their responses more accurate and interpretable.

B. Attachment Measures for Older Children and Adults

Various measures have been developed for older children, all of which have advantages and disadvantages. There are, indeed, measures that assess reunion and exploration in much the same way the Strange Situation does, with modifications for older children. There are semi-projective measures, in which children tell stories that are then coded according to attachment criteria. All of these methods have some promise, but their psychometric properties remain uncertain. There are also concerns about the appropriateness of reunion procedures for older children, as well as about the usefulness of projective measures, particularly in a forensic context.[65]

The Attachment Q Sort (AQS) has gained a degree of consensual acceptance in the research community for use with older children as it is

63. Klaus E. Grossman, Karin Grossmann & Peter Zimmermann, *A Wider View of Attachment and Exploration: Stability and Change During the Years of Immaturity in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37.

64. Thompson, *The Legacy of Early Attachments*, *supra* note 22 (suggesting that the utility and stability of measures administered after toddlerhood may be more robust than those administered earlier because of the more complex, stable, and differentiated emotional capacities of older children).

65. For a variety of such measures, *see* Solomon & George, *supra* note 54 (reviewing attachment measures used with different aged children); Jude Cassidy & Robert S. Marvin, *Attachment organization in preschool children: Coding Guidelines*, unpublished manuscript (MacArthur Working Group on Attachment 4th ed. 1992); P.M. Crittenden, *Preschool assessment of attachmen*t, unpublished manuscript (Family Relations Institute 2d ed., 1994); Inge Bretherton, Doreen Ridgeway, & Jude Cassidy, *Assessing Internal Working Models of the Attachment Relationship: An Attachment Story Completion Task for 3-Year-Olds, in* ATTACHMENT IN THE PRESCHOOL YEARS, *supra* note 15, at 273.

an available manual and a solid research base.[66] The AQS is a home observation procedure used with children aged one to five. It requires no laboratory or extensive training or certification, though training is preferred, especially for research purposes. The measure uses ninety descriptors of young children's behavior during interactions with their primary caregivers, focusing on issues of comfort during distress and ease of exploration. It requires two to four hours of observation. Like most other attachment measures, the AQS has been little tested on fathers.

Recently, some have discussed the use of the AQS, with minor modifications to more clearly assess play as an attachment behavior, as an approach worthy of consideration for assessments of infant-parent relationships in child custody evaluations.[67] The instrument's author has suggested that attachment-based observations (like the AQS) of parents and children can provide useful information to the child custody evaluator without relying on formally scored procedures.[68]

Some have advocated the use of various kinds of adult measures of attachment, such as the Adult Attachment Interview (AAI), in child custody work based on the theory that the children of securely attached parents will become securely attached.[69] There is limited research indicating that a parent's attachment capacity measured by the AAI prior to the child's birth predicts an infant's attachment status a year after birth.[70] The link between infant and adult attachment is, however, far from invariant. Studies have not shown that parental behavior accounts for much of the

66. *See* Everett Waters & Kathleen E. Deane, *Defining and Assessing Individual Differences in Attachment Relationships: Q-Methodology and the Organization of Behaviors in Infancy and Early Childhood, in* GROWING POINTS OF ATTACHMENT THEORY, *supra* note 15; Marinus H. van IJzendoorn, Carolus M.J.L. et al., *Assessing Attachment Security with the Attachment Q Sort: Meta-analytic Evidence for the Validity of the Observer AQS*, 75 CHILD DEV. 1188 (2004) (noting 139 studies using the AQS that examined 13,835 children and established acceptable levels of validity and reliability).

67. Pamela S. Ludolph & Jennifer Rhodes, A preliminary model for relationship assessment of very young children in child custody evaluations, Workshop, Forty-eighth Annual Conference of the Association of Family and Conciliation Courts in Orlando, Florida (June 2011) (noting the volume of empirically derived work on the importance of play and exploration to the interactions of fathers and young children); Garber, *supra* note 4.

68. Everett Waters & Jennifer E. McIntosh, *Are We Asking the Right Questions About Attachment?* 49 FAM. CT. REV. 474 (2011).

69. George, Isaacs, & Marvin, *Incorporating Attachment Assessment*, *supra* note 5; Isaacs, George & Marvin, *Utilizing Attachment Measures in Child Custody Evaluations*, *supra* note 51. *See* Mary Main, Nancy Kaplan & Jude Cassidy, *Security in Infancy, Childhood, and Adulthood: A Move to the Level of Representation in* GROWING POINTS OF ATTACHMENT THEORY, *supra* note 15; Erik Hesse, *The Adult Attachment Interview: Protocol, Method of Analysis, and Empirical Studies in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37.

70. Diane Benoit, Kevin C.H. Parker, & Charles Zeanah, *Mother's Representations of Their Infants Assessed Prenatally: Stability & Association with the Infants' Attachment Classifications*, 38 J. CHILD PSYCHOL. & PSYCHIAT. 307 (1997).

variance in infant attachment, creating a substantial conceptual problem for attachment theorists.[71] The AAI also requires extensive and costly training, and its manual is not readily available. Consequently, even when the measure can be shown to be methodologically sound, this measurement approach is less useful for courts.

More useful for forensic purposes are measures with reasonable face validity in which the parent describes his or her child and the relationship with the child. The Working Model of the Child Interview (WMCI) uses ideas from attachment theory and the AAI, but focuses on an index infant-adult relationship, not the parent's own childhood. The WMCI has been validated in several published studies and is widely available. It can be formally coded, but its authors suggest its use in both formal and uncoded modes.[72] The WMCI has recently been advocated for use in a protocol to assess infant-parent relationships in child custody evaluations.[73]

Regardless of the measure used, even the best can be distorted when administered at the time of divorce. Preoccupied, angry, and worried divorcing parents make for shaky attachment figures, though not necessarily for very long. In particular, an infant who is usually good-natured and securely attached may well develop signs of insecurity when assessed in a child custody evaluation with anxious parents who cannot help communicating their worry in all kinds of ways to their baby. When formal attachment measures are used in these kinds of evaluations, attention should be drawn to the perhaps fleeting utility of the approach. Other methods, like talking with collateral sources and assessing parenting skills on interview should certainly also be used.

Finally, the issue of assessment becomes particularly difficult for the court when attachment experts use no recognized means of evaluation or description. Often even the most basic attachment-related phenomena remain undefined and unclear. Some well-meaning expert witnesses have little knowledge of the current progress in attachment research. They testify about their impressions of the unique contribution of mothers to security. They may then speak in generalities and overstate the impor-

71. Marinus H. van IJzendoorn, *Adult Attachment Representations, Parental Responsiveness, and Infant Attachment: A Meta-Analysis on the Predictive Validity of the Adult Attachment Interview*, 117 PSYCHOL. BULL. 387 (1995). *See also* Carol George, Judith Solomon, & Jennifer E. McIntosh, *Divorce in the Nursery: On Infants and Overnight Care*, 49 FAM. CT. REV. 521 (2011).

72. Charles H. Zeanah & Diane Benoit, *Clinical Applications of a Parent Perception Interview*, 4 CHILD PSYCHIATRIC CLINICS OF NORTH AMERICA 539 (1995); L.J. Berlin, Charles H. Zeanah, & Alicia F. Lieberman, *Prevention and Intervention Programs for Supporting Early Attachment Security, in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37; Alicia F. Lieberman, Charles H. Zeanah & Jennifer E. McIntosh, *Attachment Perspectives on Domestic Violence and Family Law*, 49 FAM. CT. REV. 529 (2011).

73. Ludolph & Rhodes, *supra* note 67.

tance of attachment security in the context of intricate family and legal issues. Judges also should be cautious about putting too much weight on a child custody report that determines a school-aged child is securely attached, based predominantly on a comfortable "reunion" with a parent in the waiting room after the child's interview with the evaluator. There is no established protocol for these idiosyncratic reunion procedures, and no means of assessing the meaning of a child who cries (or who does not) when transferred from evaluator to parent or between parents. Such simplistic assessment can cause great misunderstanding and unfortunate outcomes for families.

Sometimes experts may instead speak of "bonding," a term that is bandied about regularly but has no consensual definition within psychology. Originally, the term came into use as a derivative of Bowlby's first ideas about maternal deprivation. He thought that there must be a critical period in which bonds are made between mothers and infants, much as ethologists were then showing that ducks and geese required "imprinting" in specific hours after birth to function normally in adult life. Following this model, Bowlby's work implied a critical period for attachment in the first years.

Eventually, the bonding concept went much further. One reviewer presented the lengths to which some women went in the 1970s and 1980s to "bond" with their infants just after birth, in a misguided belief that desperate harm would come to the mother-child relationship if that critical opportunity was lost.[74] In truth, there is no evidence for a fixed, brief, critical bonding period in humans, and those early bonding ideas were eventually debunked. There is currently no commonly used assessment tool for "bonding" or even a common understanding of the meaning of the term. Nonetheless, attorneys and judges frequently order "bonding assessments" of unknown quality to help them make important decisions in the best interests of children.[75]

V. Mothers—The Feminist Perspective

Mothers are certainly the heroines of traditional attachment theory: if anything goes wrong, however, they are also the scapegoats. Therein lies the feminist critique of attachment theory. If mothers are the central organizing principle in the life of a young child, then some would hold them responsible for all ill that comes to the child. If the infant will be harmed if the mother is not tethered to him, then tethered the mother should be. Bowlby thought that even short maternal separations could do

74. DIANE E. EYER, MOTHER-INFANT BONDING: A SCIENTIFIC FICTION (1992).

75. *See* Arredondo & Edwards, *supra* note 7.

great harm to an infant. Noting that separation caused by a mother's going to work could lead to much-feared symptoms of maternal deprivation in the child, Bowlby believed that if a woman had to work outside the home, she should be home by the time her school-aged children were out of school.[76] These ideas permeated the popular culture for decades, idealizing motherhood and proclaiming the dangers of even brief maternal absence to the vulnerable child. For instance, the beloved and renowned pediatrician T. Berry Brazelton, interviewed in 1988, advised women to stay home from work during their infants' first year, lest the children become school failures, delinquents, or terrorists.[77] Bowlby and his followers have understandably not been much loved by feminists and working women. One summarized the feminist position on attachment theory as follows:

> Attachment pretends to explain social development as an evolutionary and biologically determined phenomenon, and as such, it represents the tradition of predetermining and controlling women's reproductive tasks and children's child-rearing needs. It is imbedded in a history of misogynist discourse; and has emerged historically from that discourse.[78]

There does exist a subgroup of mothers, often the more traditional "stay-at-home moms," who repudiate the feminist arguments and embrace Bowlby's view. This group tends to argue that children, and infants in particular, are best cared for by their mothers, citing a number of reasons. For instance, Western cultural norms most often assign mothers the childcare role. Many young mothers choose to stay home if family circumstances allow. Additionally, biological factors inherent in pregnancy and breastfeeding may often cause mothers to be looked upon as preferred caregivers for infants.

Bowlby's early work, deeply rooted in the mores of the 1950s, saw fathers as economic and emotional supports for mothers, and not much more. If there were more than one attachment figure, for instance a father or a grandparent, Bowlby saw them as arranging themselves into a hierarchy below the mother.[79]

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76. John Bowlby, *The Nature of the Child's Tie to His Mother*, 39 INT'L J. PSYCHOANAL. 350 (1958); Bowlby, MATERNAL CARE & MENTAL HEALTH, *supra* note 20. *See also* KAREN, *supra* note 53.

77. EYER, *supra* note 74, at 4.

78. S. H. Franzblau, II. *Historicizing Attachment Theory: Binding the Ties That Bind*, 9 FEMINISM & PSYCHOL. 23, 29 (1999).

79. BOWLBY, ATTACHMENT I, *supra* note 11. *See also* KAREN, BECOMING ATTACHED, *supra* note 53; Michael E. Lamb, *The Changing Faces of Fatherhood and Father-Child Relationships: From Fatherhood as Status to Father as Dad, in* HANDBOOK OF FAMILY THEORY: A CONTENT-BASED APPROACH (M.A. Fine & F.D. Fincham eds., 2012).

VI. Fathers: Perhaps a Different Kind of Attachment

The past five decades have brought extensive research on the role of fathers in the lives of young children. Empirical studies, beginning as early as the 1960s, have consistently confirmed that infants are attached to their fathers in ways that are similar to their attachments to their mothers and that the father-child relationships can be as important as mother-child relationships in determining the future functioning of their child. Late in life, even Bowlby came to include fathers in his secure base concept, writing in 1988:

> This brings me to a central feature of my concept of parenting—the provision by both parents of a secure base from which a child or an adolescent can make sorties into the outside world and to which he can return knowing for sure that he will be welcome when he gets there, nourished physically and emotionally, comforted if distressed, reassured if frightened.[80]

Most recent attachment research fails to confirm Bowlby's earlier notion of hierarchical or primary attachments.[81] Overall, it is clear that infants form attachments to both their mothers and their fathers at an early age. Infants in their first year appear to form distinct attachments to both their mothers and their fathers, despite having three or four times more interaction with their mothers.[82] Studies in the 1970s demonstrated that toddlers protest separation from both their mothers and their fathers, and that the majority of young infants were most distressed by separation from their mothers, but that a large minority either preferred their fathers or showed no preference.[83] By the second year, boys often developed a distinct preference for their fathers, though, girls showed no distinct preference for either parent.[84] It may be that there is a brief period around the end of the first year and the beginning of the second when many children prefer their mothers for comfort, while often preferring their fathers for play.[85] Some of this difference seems to be accounted for by the different ways mothers and fathers typically interact with their infants, with fathers

80. BOWLBY, A SECURE BASE, *supra* note 18, at 11.

81. Thompson, *The Development of the Person*, *supra* note 22 (finding neither empirical nor further theoretical evidence to support Bowlby's notion of hierarchical attachments over the course of early childhood).

82. Michael E. Lamb, Marc H. Bornstein, & Douglas M. Teti, *Development in Infancy: An Introduction, in* THE ROLE OF THE FATHER IN CHILD DEVELOPMENT (Michael E. Lamb ed., 4th ed. 2002).

83. *Id*. (noting when stressed, toddlers of twelve and eighteen months preferred their mothers to their fathers, though nine and twenty-one month olds showed no preference).

84. Lamb, *The Development of Mother-Infant and Father-Infant Attachments in Second Year*, *supra* note 24.

85. Michael E. Lamb & Charlie Lewis, *The Development and Significance of Father-Child Relationships in Two-Parent Families, in* THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 94 (Michael E. Lamb ed., 5th ed. 2010) [hereinafter ROLE OF THE FATHER].

preferring playful interactions and mothers soothing ones. Thus, it makes sense that by toddlerhood many children might prefer the more active, playful parent to the one whose common approach is more to soothe and protect.

Regardless of cultural context, just under two-thirds of the attachments to either parent are rated secure, with no differences in the average levels of infant-mother and infant-father security.[86] A child's attachment relationship can vary between the father and the mother, such that some infants can show better and more secure attachments to their father than to their mother, just as other infants can prefer their mother to their father.[87] There is also evidence that secure attachment to one parent offsets insecure attachment to the other.[88]

Although some studies have demonstrated that mother-child relationships can be more predictive of subsequent behavior, others have shown that both attachment to the mother and to the father, and, even more powerfully, to both, predict contemporaneous and later behavior.[89] In 2005, the London Parent-Child Project, which studied father-infant attachment as well as mother-infant attachment, reported follow-up data when the children were eleven years old. These researchers found that early indices of attachment security in the mother predicted the child's understanding and resolution of internally experienced emotional conflict at age eleven, whereas attachment security with the father influenced the child's understanding of and security in peer and sibling relationships in the external world.[90] Two twenty-year studies noted earlier also assessed early attachment to both mothers and fathers. In these studies, for both mothers and fathers, sensitive but firm parenting during the first three years foretold better representations of close relationships in young adulthood.[91] In addition, a father's early attachment to his infant, as measured by the father's sensitivity to the child's play, was a powerful predictor of psychological security into early adulthood.[92]

It is true that attachment studies support Bowlby's original idea that the mother frequently provides a secure base of comfort and security in earli-

86. Lamb & Lewis, *supra* note 85 (suggesting beginning with the assumption that fathers and infants regularly form attachments, and moving on from there).

87. Mary Main, *Recent Studies in Attachment: Overview, with Selected Implications for Clinical Work, in* ATTACHMENT THEORY, *supra* note 15, at 407.

88. Lamb & Lewis, *supra* note 85.

89. *See generally* Lamb, *The Development of Mother-Infant and Father-Infant Relationships*, *supra* note 24.

90. Howard Steele & Miriam Steele, *Understanding and Resolving Emotional Conflict: The London Parent-Child Project, in* ATTACHMENT FROM INFANCY TO ADULTHOOD, *supra* note 22, at 137.

91. Grossmann, Grossman, & Kindler, *supra* note 22, at 127.

92. Grossmann, Grossman, & Zimmermann, *supra* note 63.

est childhood.[93] Mothers often do appear to convey knowledge about feelings and internal states. The surprise seems to be that it is fathers who emerge by toddlerhood to promote play, exploration, and, years later, relationships with the world outside the family. Fathers not only play an important role in attachment relationships with their young children, but their role seems a distinct, and arguably necessary, one that is different from that of mothers. The research taken as a whole strongly indicates that both mothers and fathers play individual and critical roles in the development of their children.

VII. Attachment, Conflict, and Divorce

There is a substantial body of literature on the harmful effects of family conflict on children and a much more modest one on the effects of conflict on attachment status per se. Conflict can confound and complicate studies of the effects of marriage and divorce on children because of its detrimental effect, an effect that can overwhelm other variables. As early as 1971, Michael Rutter wrote that divorce-related conflict negatively influenced child behavior. He believed that it was conflict, not parental separation, that caused the harm to children of divorce, noting that children were much more able to manage separations from their parents than Bowlby had thought: "For the most part, the child is adversely affected by the tension and disharmony; the break-up of the family is only a minor influence."[94] Many subsequent studies have supported the idea that marital conflict is predictive of attachment difficulties and emotional insecurity in young children and that marital harmony contributes to security.[95] Others have emphasized the deleterious effects of heightened conflict on parent-child relationships and on emotional security in the child.[96] Researchers on father–infant attachment have also frequently described "the cancerous effects of predivorce and postdivorce marital conflict" on infant-father relationships.[97]

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93. Bowlby, A Secure Base, *supra* note 18.

94. Michael Rutter, *Parent-Child Separation: Psychological Effects on the Children*, 12 J. Child Psychol. & Psychiatry 182, 233 (1971).

95. Margaret T. Owen & Marsha J. Cox, *Marital Conflict and the Development of Infant-Parent Attachment Relationships*, 11 J. Fam. Psychol. 152 (1997); Cynthia A. Frosch, Sarah C. Mangelsdorf, & Jean L. McHale, *Marital Behavior and the Security of Preschooler-Parent Attachment Relationships*, 14 J. Fam. Psychol. 144 (2000); E. Mark Cummings & Patrick T. Davies, Marital Conflict and Children: An Emotional Security Perspective (2010).

96. Robert E. Emery, Marriage, Divorce, and Children's Adjustment (2d ed. 1999); Janet R. Johnston, Vivienne Roseby & Kathryn Kuehnle, In the Name of the Child: A Developmental Approach to Understanding and Helping Children in Conflicted and Violent Divorce (2d ed. 2009) (noting that high-conflict divorce and violence can disrupt the normal development of attachment patterns in young children).

97. Michael E. Lamb, *Introduction*, The Role of the Father in Child Development, *supra* note 82.

Studies of the effects of divorce on the attachment status of children have yielded equivocal results.[98] For instance, one study found that preschoolers from families of divorce had lower attachment security scores than those from intact families.[99] Another study found that children from divorced families who were over six months of age showed less secure attachment and other signs of emotional and cognitive problems, compared with children from intact families. Once socioeconomic factors like family income and education were controlled, however, all differences among children related to marital status disappeared.[100] By contrast, the long-term attachment studies have almost uniformly remarked on the deleterious effects of divorce on attachment status in children.[101]

Divorce involves major separations from important attachment figures, so why do children of divorce not show more clearly defined attachment insecurity across studies? One reason may be that the attachment measures are not adequate to the task, making the results less meaningful. Many researchers have also hypothesized about moderating factors that might influence the formation of attachments in young children of divorce. Clearly, the quality and sensitivity of parenting moderates the deleterious effects of divorce.[102] Maternal education and family income also mediate the effects of divorce.[103] As evident in the research on children reared in conditions of extreme deprivation, the immaturity of earliest infancy is protective against the enduring effects of early severe trauma and it also seems protective against the undue traumatic influence of the losses of separation and divorce.[104]

In addition, much has been written about the effects of father absence on child development. A frequent consequence of divorce is an adverse impact on the attachment relationship of father and child. Many children who grow up without fathers, particularly boys, demonstrate significant difficulties in "sex-role and gender-identity development, school performance, psychosocial adjustment, and perhaps in the control of aggres-

98. B.C. Feeney & J.K. Monin, *An Attachment-Theoretical Perspective on Divorce in* HANDBOOK OF ATTACHMENT 2D, *supra* note 37.

99. Hira Nair & Ann D. Murray, *Predictors of Attachment Security in Preschool Children from Intact and Divorced Families,* 166 J. GENETIC PSYCHOL. 245 (2005).

100. K. Allison Clarke-Stewart, Deborah L. Vandell et al., *Effects of Parental Separation and Divorce on Very Young Children*, 14 J. FAM. PSYCHOL. 304 (2000). *See also* Cheryl Kier & Charlie N. Lewis, *Infant-Mother Attachment in Separated and Married Families*, 26 J. DIVORCE & REMARRIAGE 185 (1997) (showing no differences in attachment status between infants from intact and divorced families).

101. *See* SROUFE, *supra* note 29; Grossman, Grossman, & Kindler, *supra* note 22.

102. Nair & Murray, *supra* note 99.

103. Clarke-Stewart, Vandell et al., *supra* note 100.

104. Kier & Lewis, *supra* note 100.

sion."[105] Yet research has failed to confirm the hypothesis that children need a male role model to develop normally.[106] Instead, many have pointed instead to the toxic effects of continuing conflict,[107] the economic and social stressors commonly experienced by single mothers,[108] and the stresses associated with relocations during early childhood when parents divorce.[109]

Others have written about "father loss," the concept of "paternal deprivation" so present in divorce, and noted the distress of children who have been actually abandoned by a beloved parent or who believe they have been abandoned.[110] If an infant has had a significant relationship with a parent and that parent leaves or is excluded from the child's life, the infant may become upset and even depressed. The ongoing mourning of the lost father and the consequent loss of possibilities may be ultimately more important to the young child than the initial loss, especially if the father becomes a peripheral influence or falls out of the child's life altogether.[111]

Courts sometimes confront the task of determining if conflict is so extreme that the influence of one parent must be limited. Judges may, for instance, decide to vest decision-making about the child in one rather than both parents, or to exclude a parent from contact with the child. Such decisions are obviously made with great caution and with attention to the individual family and children. For most children, a moderate amount of conflict is probably more tolerable than the loss of a parent.

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105. Lamb, Bornstein, & Teti, *supra* note 82.

106. Joseph H. Pleck, *Fatherhood and Masculinity*, *in* THE ROLE OF THE FATHER IN CHILD DEVELOPMENT, *supra* note 82.

107. MITCHELL A. BARIS & CARLA B. GARRITY, CHILDREN OF DIVORCE: A DEVELOPMENTAL APPROACH TO RESIDENCE AND VISITATION (1988).

108. Patrick Parkinson, *Another Inconvenient Truth: Fragile Families and the Looming Financial Crisis for the Welfare State*, 45 FAM. L.Q. 329 (2011); SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS (1994).

109. William G. Austin, *Relocation, Research, and Child Custody Disputes, in* PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT 540 (Kuehnle & Drozd ed., 2012) [hereinafter PARENTING PLAN EVALUATIONS]. *See also* Joan B. Kelly & Michael E. Lamb, *Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?* 17 J. FAM. PSYCHOL. 193 (2003).

110. Lamb, *supra* note 97.

111. Mary F. Whiteside, *Custody for Children Age 5 and Younger*, 36 FAM. & CONCILIATION CTS. REV. 479 (1998). *See also* Paul R. Amato & Juliana M. Sobolewski, *The Effects of Divorce and Marital Discord on Adult Children's Psychological Well-Being,* 66 AM. SOC. REV. 900 (2001).

VIII. Overnight Parenting Time for Nonresidential Parents

A. Framing the Debate

The contentious debate about overnight care, especially for the youngest children of divorce, has occupied attachment theorists, psychological researchers, child-custody evaluators, and attorneys alike. Overnights in parenting plans for infants have become highly disputed, with many warning against dire harm to infants if separated from their mothers,[112] and others voicing strident concerns about dangers to the children if their fathers are gradually extruded from their lives by having little time or impossible parenting arrangements.[113] Unfortunately, neither attachment theory nor attachment research can provide a simple answer regarding overnight care with noncustodial parents for infants of divorce.

Attachment is, however, an important factor in considerations about overnight care. It follows that what decision-makers accept about the attachment of infants and young children unquestionably shapes parenting plans. Two Australian researchers have recently suggested that attachment theory and research have been applied to the question of overnights in three different ways: (1) the zero sum model, in which virtually any time away from the mother is seen as a risk; (2) the value-add model, which focuses on the father and challenges the idea that separations from the mother are a unique risk when compared to separations from the father; and (3) the family systems model, which focuses on the child's overall behavior and relationships with mother, father, and other caregivers.[114] These conceptualizations provide an excellent starting point from which to consider the impact of attachment theory on parenting time for families of divorce.

For increased clarity, these three models can be relabeled as the "Primary Caregiver Model;" the "Two-Parent Model;" and the "Cooperative Parenting Model." All three are heavily informed by aspects of attachment theory, but none is an attachment model per se. The first is much based on Bowlby's early notion of the centrality of one primary figure in a baby's life; the second is based on the more recent and widely accepted ideas of researchers on the value of attachment to the father; and

112. *See also* Main, Hesse, & Hesse, *supra* note 52 (claiming consensus among writers in special issue that overnights should not occur until children are at least age three); For a review of age guidelines on overnights, *see* Richard A. Warshak, *Blanket Restrictions: Overnight Contact Between Parents and Young Children*, 38 FAM. & CONCILIATION CTS. REV. 422 (2000) (noting that the thresholds recommended vary from one-and-a-half years of age to elementary-school age).

113. *See* Warshak, *supra* note 112; Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Chi*ldren, 38 FAM. CT. REV. 297 (2000); Cashmore & Parkinson, *supra* note 6.

114. *See* Cashmore & Parkinson, *supra* note 6.

the third incorporates diverse developmental and social research into a more revisionist form of attachment theory. The third approach comports with the recommendations of theorists who believe that attachment theory should begin to look beyond its borders to broaden its perspectives and its impact.[115] These models provide a frame for considering the state of the current literature on overnight care. The choice of model for an individual family may depend more on family circumstance than any theory. One model might be preferred for a family with a young infant and a father who lives at a distance, and quite another one for a preschooler who has had a robust attachment to both parents for some time before a relatively amicable divorce.

The Primary Caregiver Model assumes that children need a secure and stable attachment to their primary caregiver, usually their mother, and that any time away from the mother is a risk to this attachment, which endangers current adjustment and later socio-emotional functioning. This model derives directly from Bowlby's concept of maternal deprivation. Strict proponents of Bowlby's attachment theory oppose the separation of the child from the mother for virtually any reason, citing a belief that "separation is dangerous and whenever possible should be avoided."[116] At its extreme, this view holds that anything that separates mother from baby is a "loss," including occurrences like naps or a few hours with a babysitter.[117] Nighttime sleeps have been described darkly as times of "special vulnerability,"[118] fraught with "innate fears,"[119] because of claims about the infant's neurology, genetics, and ethologically-based tendencies, all of which remain far from empirically validated. Overnight visits are said to be tolerable only when other considerations make that kind of extreme risk necessary. For some, these other considerations might include supporting an established attachment between the child and the other parent, or accommodating parenting time that involves long distance travel.[120] For others, overnights should be avoided "unless of benefit to the primary caregiver."[121]

115. Waters & Cummings, *supra* note 19; Mary Dozier, Melissa Manni, & Oliver Lindheim, *Lessons from the Longitudinal Studies in* MAJOR LONGITUDINAL STUDIES, *supra* note 22, at 305.

116. Bowlby, ATTACHMENT II, *supra* note 11, at 22. *See also* McIntosh, *supra* note 2 (recommending no overnight visits with nonresidential parents until the child is age three). *See also* Pamela S. Ludolph, *The Special Issue on Attachment: Overreaching Theory and Data*, 50 FAM. CT. REV. (forthcoming 2012).

117. Younger, *supra* note 8.

118. George, Solomon, & McIntosh, *supra* note 71, at 524.

119. Richard Bowlby & Jennifer McIntosh, *John Bowlby's Legacy & Meanings for the Family Law Field: In Conversation with Sir Richard Bowlby*, 49 FAM. CT. REV. 549, 552 (2011).

120. WILLIAM R. HODGES, INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS AND PSYCHOTHERAPY 176 (2d ed. 1991).

121. McIntosh, *supra* note 2, at 424.

In the 1970s, when the best-interests standard replaced the maternal and tender-years presumptions, the absence of alternate professional opinion and empirical data allowed these kinds of ideas of attachment to dominate public policy about the care of young children.[122] For example, the primary psychological parent theory and primary caretaker model draw heavily on the principles of traditional attachment theory.[123] In many jurisdictions, mothers were awarded the large majority of the parenting time of infants and toddlers. Courts commonly recommended that the nonresidential parent, almost always the father, have frequent visits to maintain a relationship with his young child, but not overnights, which were thought to endanger the attachment to the mother.[124] This perspective treats the child's "primary" attachment to one parent as the determinative factor in decisions about custody, residency, and parenting time, and certainly as the determinative factor in overnight decisions.

More revisionist attachment theorists have adopted the Two-Parent Model, noting that voluminous research has not much affirmed Bowlby's early ideas about a primary caregiver. This view holds that infants form early attachments to a small number of individuals, initially almost always to both mother and father. These theorists emphasize the importance of "maintaining and deepening attachments" to provide growing children "with a diversity of social, emotional, and cognitively stimulating experiences that promote adaptability and healthy development."[125] This more revisionist group speaks of the softening of Bowlby's early position on the need for a single primary parent and the decades of research on the formation and positive influence of solid attachments between young children and their fathers.[126] From within this perspective, overnights for infants are encouraged because they provide infant and parent with potentially rich and valuable experiences:

> The ideal situation is one in which infants and toddlers have opportunities to interact with both parents every day or every other day in a variety of functional contexts (feeding, play, discipline, basic care, limit setting, putting to bed, etc.). To minimize the deleterious impact of extended separations from either parent,

122. *See* Davis, *supra* note 7; Younger, *supra* note 8.

123. GOLDSTEIN, FREUD, & SOLNIT, *supra* note 6. *See also* Pikula v. Pikula, 374 N.W.2d 705 (Minn. 1985) (finding placement with the primary caretaker was in the best interests of children as a matter of policy); Garska v. McCoy, 278 S.E.2d 357 (W. Va. 1981); David Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 MICH. L. REV. 477 (1984) (indicating that the primary caregiver presumption is not discriminatory with respect to gender, but mother will turn out to be the primary caregiver in the majority of cases).

124. Cashmore & Parkinson, *supra* note 6; Younger, *supra* note 8, at 199–200.

125. Kelly & Lamb, *supra* note 113.

126. Ludolph, *supra* note 116. *See also* BOWLBY, A SECURE BASE, *supra* note 18; Lamb, *The Development of Father-Infant Relationships*, *supra* note 24.

> there should be more frequent transitions than would perhaps be desirable with older children.[127]

This perspective argues against the marginalization of fathers in traditional attachment theory and cites research in attachment and child development as supporting recommendations that parenting plans should allow young children regular access to both parents "in a broad array of contexts," including overnight care.[128] Others note research that has shown that infants who are cared for by relatives when their mothers work show an enhanced attachment relationship with their mothers compared with infants who are in the full-time care of their mothers.[129] This kind of research argues against the idea that time with the father would interfere with the attachment relationship with the mother.

The Cooperative Parenting Model moves beyond the exclusive focus on attachment relationships to a more ecological view, which understands all child development as occurring within the context of a restructuring family, potentially a binuclear family.[130] In this view, attachment represents only a small frame of the child's life[131] and attachment status is something that can (and often does) change as development proceeds and circumstances change. This accords with the recent work on the important effects on early attachment status of changes, both positive and negative, in the environment of the growing child.[132] This approach allows for the possibility that, for instance, caregivers outside the family have influence on children, as well as for the importance of external factors like the stability of the parenting schedule.

From this perspective, the coparenting partnership mediates a host of child-adjustment outcomes,[133] including, but not limited to, the attachments of the child. The sensitivities of the children to parental conflict—both predivorce[134] and postdivorce[135]—are viewed as powerful influences,

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127. Kelly & Lamb, *supra* note 113.

128. *Id*. *See also* Warshak *supra* note 112 (finding it illogical to encourage young children to sleep during the day while with fathers or other caregivers, and then prohibited from overnights sleepovers at fathers' homes).

129. Abraham Sagi et al., *Shedding Further Light on the Effects of Various Types of Early Child Care on Infant-Mother Attachment Relationship: The Haifa Study of Early Child Care*, 73 CHILD DEV. 1166 (2002).

130. *See* CONSTANCE AHRONS, WE'RE STILL FAMILY: WHAT GROWN CHILDREN HAVE TO SAY ABOUT THEIR PARENTS' DIVORCE (2004).

131. Pruett, Ebling & Insabella, *supra* note 10.

132. Waters, Merrick et al., *supra* note 35; *Sroufe* et al., *supra* note 29.

133. Laurie A. Van Egeren, *The Development of the Coparenting Relationship Over the Transition to Parenthood*, 25 INFANT MENTAL HEALTH J. 453 (2004).

134. CUMMINGS & DAVIES, *supra* note 95.

135. *See* JOHNSTON, ROSEBY, & KUEHNLE, IN THE NAME OF THE CHILD, *supra* note 96. *See also* Joan B. Kelly, *Risk and Protective Factors Associated with Child and Adolescent Adjustment Following Separation and Divorce: Social Science Applications, in* PARENTING

given the positive empirical connections between coparenting and parent-child relationships.[136] Differential child outcomes are expected as a result of harmonious coparenting versus hostile-competitive parenting, characterized by conflict, verbal criticism, and undermining the other parent's actions towards the child.[137] The presence or absence of parental conflict has often been used to justify sole rather than joint custody[138] and is, almost without exception, considered a crucial factor in making decisions about overnight care for infants. This view also recognizes significant family and contextual influences like power and control dynamics between the parents,[139] facilitative and restrictive gatekeeping behaviors,[140] and exposure and triangulation of the child into the parents' conflicts.[141]

B. The Empirical Research on Overnight Care

The empirical work on overnight care and attachment is too sparse and too wanting in its research design to help attorneys and judges very much, or even clinicians working with the families. Indeed, the authors of one of the most recent studies, in a subsequent review of their own work and those of their colleagues, concluded that the research on overnight care can only be termed, "embryonic."[142] While most researchers and scholars agree with this assessment, a review of the available research serves to inform decision makers considering overnight issues.

Attachment theorists, Solomon and George, conducted one study of 145 infants, age twelve to twenty months,[143] with a follow-up a year later.

PLAN EVALUATIONS, *supra* note 109, at 49.

136. Paul R. Amato & Juliana M. Sobolewski, *The Effects of Divorce on Fathers & Children: Nonresidential Fathers & Stepfathers, in* THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 341 (Michael E. Lamb ed., 4th ed. 2004).

137. James P. McHale & Jeffrey L. Rasmussen, *Coparental and Family Group-Level Dynamics During Infancy: Early Family Precursors of Child and Family during Preschool*, 10 DEV. & PSYCHOPATHOLOGY 39 (1998).

138. *See* Linda D. Elrod, *Reforming the System to Protect Children in High Conflict & Custody Cases*, 28(2) WM. MITCHELL L. REV. 495 (2001) (noting that "Joint custody can harm the child if one parent is abusive, extremely rigid, or 'emotionally undivorced' and manipulative to the other parent.") (*citing* Janet R. Johnston, *Children's Adjustment to Sole Custody Compared to Joint Custody: Families and Principles for Custody Decision Making*, 33 FAM & CONCILIATION CTS. REV. 415, 420 (1995)).

139. Leslie M. Drozd & Nancy W. Olesen, *Is It Abuse, Alienation, and/or Estrangement? A Decision Tree,* 1 J. CHILD CUSTODY 65 (2004).

140. Lawrence Ganong, Marilyn Coleman, & Graham McCauley, *Gatekeeping After Separation & Divorce, in* PARENTING PLAN EVALUATIONS, *supra* note 109, at 369.

141. Michael Saini, Janet R. Johnston et al., *Empirical Studies of Alienation in* PARENTING PLAN EVALUATIONS, *supra* note 109, at 399.

142. Jennifer E. McIntosh & Bruce Smyth, *Shared-Time Parenting: An Evidence-Based Matrix for Evaluating Risk, in* PARENTING PLAN EVALUATIONS, *supra* note 109, at 155, 180.

143. *See* Judith Solomon & Carol George, *The Development of Attachment in Separated and Divorced Families: Effects of Overnight Visitation, Parent and Couple Variables*, 1 (1) ATTACHMENT & HUMAN DEV. 2 (1999).

Subjects were children from three groups: intact families; separated families with children who spent no overnight time with their noncustodial fathers; and separated families with children who did have overnight time with their noncustodial fathers. Both studies had notable limitations. Children in all groups, including the group of intact families, oddly showed very high levels of disorganized attachment. Mothers in all groups reported very high levels of psychological services, and the divorcing families showed indications of very substantial conflict about custody and visitation. These demographic data imply that the sample was quite unusual and not likely to generalize well to average divorcing families. The numbers in many groups were also small, especially for subgroups of interest like those of fathers with overnighting children, making statistical analysis and interpretation more inexact.

Most data were based on maternal report, though attachment to fathers was assessed at the time of the first study. For instance, mothers were the only reporters in regard to maternal and paternal aggression as well as communication between the parents. Differences between overnighting and nonovernighting groups often did not reach statistical significance. There were a number of post hoc changes in the manner the data were grouped and statistically analyzed, in ways that are not common in scientific research, including other attachment research. For example, children who are virtually always thought to be "insecure" in the attachment literature were strangely grouped after-the-fact with the secure group and compared only to those with disorganized attachment, the most serious form of insecure attachment, one that has often been found in families characterized by frank abuse, neglect and other very serious dysfunction. The first study concluded that overnights with fathers were sometimes, but not always, linked to disruptions in mother-infant attachment. Attachment problems in the overnighting children were more likely when there was conflict and poor communication between the parents, and low maternal psychological protection of the child.

The follow-up study used two previously untried procedures, and otherwise employed many of the methodological approaches of the first study. Based on significant findings in one of the two untried procedures and post-hoc analyses, the authors concluded that regular overnight visits could negatively affect attachment to the mother. The authors acknowledged, however, that their findings should only be deemed partial and tentative, as a result of the lack of clarity about whether the children's attachment problems were the result of short-term family stress reflective of the parents' separation, or of a longer-term lack of maternal availability and vulnerability in the children.[144]

144. Judith Solomon & Carol George, *The Effects on Attachment of Overnight Visitation in*

There have been critiques of the Solomon and George studies on wide-ranging grounds. Lamb and Kelly noted that there were other reasons to believe that the sample was not a good one to measure the variables being assessed.[145] They pointed out that the first study showed no differences in the proportions of secure infant/mother attachments between the groups of children with and without overnight visits to their fathers. They noted that the children of divorce who were studied had often never lived with their fathers before overnight visits began and some experienced many protracted separations from their fathers after visits started. Thus, it would not be surprising that they experienced stress and attachment problems when they spent time with fathers to whom they had formed no initial attachment. Cashmore and Parkinson pointed out other confounding factors. They emphasized that the first study lacked some validity because all measures having to do with the family circumstances were completed only by the mother. They also observed that there were important differences in conflict levels between the divorced groups, in that there were many more indices of hostility and conflict in the overnighting group than in the separated group without overnights.[146] Pruett and her colleagues discussed the follow-up study only, noting again that information was provided only by the mothers, and that the authors acknowledged that the measures they used had no established validity, making it difficult to draw meaningful conclusions from the data.[147]

In 2010, McIntosh, Smyth and Kelaher presented another set of data in regard to overnight visits in young children of divorce and interpreted these data through "an attachment lens."[148] Three groups of children with varying amounts of overnight time with their noncustodial parent (almost always the father) were considered: children under two; two- and three-year-olds; and four- and five-year-olds. Unlike the Solomon and George studies, however, formal attachment measures were not used; instead,

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Divorced and Separated Families: A Longitudinal Follow-up, *in* ATTACHMENT DISORGANIZATION 243 (Judith Solomon & Carol George eds., 1999).

145. Michael E. Lamb & Joan B. Kelly, *Using the Empirical Literature to Guide the Development of Parenting Plans for Young Children: A Rejoinder to Solomon and Biringen*, 39 FAM. CT. REV. 365 (2001).

146. Cashmore & Parkinson, *supra* note 6.

147. Marsha Kline Pruett et al., *Supporting Father Involvement in the Context of Separation and Divorce, in* PARENTING PLAN EVALUATIONS, *supra* note 109, at 123

148. Jennifer E. McIntosh, Bruce Smyth & M. Kelaher, *Overnight Care Patterns and Psycho-emotional Development in Infants and Young Children, in* POST SEPARATION PARENTING ARRANGEMENTS AND DEVELOPMENTAL OUTCOMES FOR CHILDREN: COLLECTED REPORTS; REPORT TO THE AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL'S DEPARTMENT: CANBERRA 85 (Jennifer McIntosh et al. eds., 2010), *available at* http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyRelationshipServicesOverviewofPrograms_ResearchProjectsonSharedCareParentingandFamilyViolence.

indices of emotional and behavioral regulation were substituted. The authors concluded that children under two with overnight visits at least once weekly showed somewhat more irritability and an inclination to monitor their mothers more than some of the other groups. These findings seemed to have been used as a proxy for attachment problems in parts of the discussion. This study also reported some differences between the group of twenty-three two- and three-year-olds with regular overnights and the other groups, in that the children with more overnights showed signs of lower persistence and other problematic behaviors. No differences of any kind were reported between children with and without overnights in the four- and five-year-old group. McIntosh and her colleagues then used their data to make policy recommendations that advocate caution in considering overnight care for noncustodial parents of preschoolers.[149]

Cashmore and Parkinson expressed concern that like the work of Solomon and George, the study did not attempt to factor in whether the children had a relationship with the noncustodial parent before the separation.[150] They also noted problems with the statistical treatment, with the definition of some of the groups and variables, and with the small number of children in some of the groups, limiting the conclusions that can be drawn. Lamb pointed out that the study was not longitudinal, despite the fact that some of the children were studied at younger ages, and that nothing was known of the parent's behavior before the marital separation. He noted cautiously that there were "possible behavioral problems on the part of some two- to three-year-olds in shared-care arrangements and some ambiguous differences among the infants who had overnight visits."[151] Pruett indicated problems with the small number of children in the shared-care groups and noted that the use of measures of emotional dysregulation and not attachment limits the ability to generalize the data.[152]

A single research article in 2004 addresses itself to overnight parenting time in very young children without an emphasis on attachment concepts, specifically stating that the attachment frame was too narrow and too unstable over time to best conceptualize overnight parenting.[153] Instead, the study assessed family relationships and conflict as predictors, and used well-standardized measures. The authors studied 132 families with children age six and younger, assessed fifteen to eighteen months after the

149. *Id.*

150. Cashmore & Parkinson, *supra* note 6.

151. Michael E. Lamb, *Critical Analysis of Research on Parenting Plans and Child Well-Being, in* PARENTING PLAN EVALUATIONS, *supra* note 109.

152. Pruett et al., *supra* note 147.

153. Pruett Ebling & Insabella, *supra* note 10.

parents filed for divorce, and both parents provided data on the family. The authors found that the quality of the parent-child relationship as reported by both parents best predicted the child's adjustment. Conflict influenced child outcome, but to a lesser extent. Mothers and fathers reported that children with overnights and consistent parenting schedules had fewer social problems. Girls benefitted from overnights and more caregivers, while boys did not. Children who were four to six years old at the time of the marital separation had fewer problems a year and a half later, as compared to younger children. These researchers concluded that it is not the overnights themselves that are most important to child well-being, but the context of the parenting plan, for instance its consistency, the number of caregivers in the child's life overall, and the degree of each parent's support of the child's development.

A recent study investigated the impact of overnights on twenty-four children, aged one to six years.[154] Mothers and children participated in the study. Age at the onset of overnight stays did not predict attachment security with the mother. The only variable that related to attachment security was a measure of the mother's emotional availability to the child.

Imbedded in these complex findings is an interesting message about the effect of parenting variables and conflict on the adjustment of very young children of divorce. Solomon and George noted that low maternal protectiveness, parental conflict, and poor parental communication were related to disorganized attachment in young children. McIntosh and her colleagues found that mothers without overnight care arrangements for their young children reported more distant and conflicted relationships with the fathers than did those whose young children had some overnight care. The authors concluded that their data supported the importance of considering family dynamics in decisions about parenting plans for young children. Pruett and her colleagues found that poorer parent-child relationships were related to negative child outcomes, and parental conflict to some child behavior problems and symptoms. The study of Altenhofer and her colleagues found that only the mother's emotional availability to the child related to attachment security in children of divorce. Indeed, after reviewing these studies themselves, a group of prominent attachment theorists and clinicians concluded that the most important consideration for decision makers in regard to parenting time schedules for young children should be "the level and nature of inter-parental conflict."[155] It is hard not

154. Shannon Altenhofen, Katie Sutherland & Zeynep Biringen, *Families Experiencing Divorce: Age at Onset of Overnight Stays, Conflict, and Emotional Availability as Predictors of Child Attachment*, 51 J. DIVORCE & REMARRIAGE 141 (2010).

155. Gwynneth Smith et al., *Attachment and Child Custody: The Importance of Available Parents, in* PARENTING PLAN EVALUATIONS, *supra* note 109, at 5.

to conclude that the quality of parent-child relationships, as well as conflict between the parents, are variables of great interest in considering what is good for an individual young child of divorce.

In regard to overnights in particular, there are no compelling empirical or theoretical reasons to believe that overnight parenting time in itself will create difficulties for a young child who has experienced a meaningful relationship with the noncustodial parent before the parental separation.

IX. Individualized Decision-making Informed by Attachment

Doing what is best for an individual child is complicated. Attachment will be an important part of decisions for very young children, but attachment is not a sufficiently robust concept to replace the individualized best-interests approach of considering all relevant factors. One distinguished attachment researcher and clinician has recently noted, "[t]heory cannot make law. Theory can guide legal thinking, but no theory accounts for the multiplicity of influences that are enacted in each particular situation."[156]

The best interests of the child represents the willingness of the court and law to consider children on a case-by-case basis rather than adjudicating children as a class or homogeneous grouping with identical needs and situations.[157] The best-interest standard means that each recommendation and decision considers the individual child's developmental and psychological needs at the time of the determination, taking into account the characteristics and dynamics of the family and its changed structure.[158]

As applied to decisions about infants and young children, best-interests determination must include consideration of all relevant factors. Table 1 offers guidance for thinking about the parenting plans for infants and young children of divorce.

156. Alicia Lieberman, Charles Zeanah, & Jennifer E. McIntosh, *Attachment Perspectives on Domestic Violence and Family Law*, 49 FAM. CT. REV. 529, 531 (2011).

157. Joan B. Kelly, *The Best Interests of the Child: A Concept in Search of Meaning*, 35 FAM. & CONCILIATION CTS. REV. 377 (1997).

158. *Id*. at 385.

Table 1: Five Factors to Consider for Determining Custody, Residency, & Parenting Time for Young Children of Divorce[159]

1. The parent's relationship history with the child.

- Has the parent made adequate time for the child?
- Has the parent been regularly available to the child for play and comfort?
- Has the parent been available for caretaking by day and at night?
- Are there indications of empathy and attunement with the child?
  - For instance, does the parent describe the child in ways that sound attuned, involved, and knowledgeable about the child's unique qualities and temperament?
  - Alternatively, does the parent speak of the child in a way that conveys distance, for instance, by descriptions that are generic or unelaborated?
  - Does the parent describe the child in ways that are insensitive or inconsistent, such that there may be a lack of real connection?[160]
- How do the parent and child (if verbal) describe their interactions?
- Does the parent have any mental or physical health problems that might interfere with the ability to care for a very young child?
- If there has been a parenting-time schedule, has the parent followed it consistently?

Although history is significant, divorce may cause a parent to change his or her past routines with the child. An engaged parent may become depressed and less attentive. A parent who has been less available may reduce or rearrange working hours to allow for more parenting time.

2. The child's relationship with each parent and others.

- Is there evidence that the child readily uses the parent as a secure base for comfort and reassurance?

159. For previous lists, *see* Jonathan W. Gould & Philip M. Stahl, *Never Paint by the Numbers: A Response to Kelly and Lamb (2000), Solomon and Biringen (2001), and Lamb and Kelly (2001)*, 39 FAM. CT. REV. 372 (2001); Frederic W. Norris, *Decision-making Criteria in Child Custody Disputes That Involve Requests for Overnight Visits in Infants and Toddlers: Derived from a Review of the Literature*, 4 J. CHILD CUSTODY 33 (2007). *See also* Everett Waters, Attachment Q-set (Version 3): Items and Explanations (1987), *available at* http://www.psychology.sunysb.edu/attachment/measures/content/aqs_items.pdf. Everett Waters & K. Deane, *Defining and Assessing Individual Differences in Attachment Relationships: Q-Methodology and the Organization of Behavior in Infancy and Early Childhood, in* GROWING POINTS OF ATTACHMENT THEORY, *supra* note 15, at 41–65.

160. Charles H. Zeanah & D. Benoit, *Clinical Applications of a Parent Perception Interview in Infant Mental Health*, 4 CHILD & ADOL. PSYCHIATRIC CLINICS OF NORTH AMERICA 539 (1995); Charles H. Zeanah, Diane Benoit, & Marianne Barton, *Working Model of the Child Interview* (1986), *available at* http://www.oaimh.org/newsFiles/Working_Model_of_the_Child_Interview.pdf

- Does the child readily use the parent for play, as a resource for exploration and learning, or for both?
- What is the child's temperament, and how does the parent accommodate it?
- Does the child have an attachment relationship with someone other than the parent, for instance a babysitter or a grandparent, that should be taken into account in a parenting plan?
- Is the child close to siblings whose presence will help ease transitions from one parent's home to the other's, or, less often, who are old enough and competent enough to meet some attachment needs?

With a very young child, much of this information is best obtained in a direct observation that is long enough for the behaviors of interest to emerge. Home observations are ideal. A formal attachment assessment is not necessary or usually advisable. Children vary widely in their developmental readiness to be interviewed directly, but many can provide some reliable information by age three or four. Play is a useful tool to develop rapport with a child, but inferences from play therapy are not reliable enough for a forensic purpose.[161]

3. The parent's future commitment to rearing the child, including specific plans for supporting this commitment.

- What is the parent's proposed parenting plan and how does it accommodate the needs of the child, the parent, and the coparent?
- What is the specific childcare arrangement that is planned if the parent is working outside the home?
- Will the plan allow adequate time to support all facets of the parent-child relationship, given the parent's work and the childcare arrangement?

Parents should attempt to be realistic about their schedules after the divorce, and anticipate changes that may be necessary.

4. The level of family violence and abuse.

- Are there allegations or reports of abuse or neglect of the child in question or any other child?
- Are older siblings inappropriately abusive with a young child?
- Are there allegations or reports of intimate partner violence, physical or psychological? Has the child been witness to this?

Young children are particularly endangered by physical abuse and very psychologically vulnerable to psychological abuse or exposure to conflict.

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161. David A. Martindale, *Play Therapy Doesn't Play in Court*, 3 J. CHILD CUSTODY 77 (2006).

Measures should be used that are specific to divorcing families.[162]

5. The nature of the coparenting relationship.

- Does the parent readily share information about key developmental information, like the child's patterns for sleeping, eating, and toileting?
- Does the parent attempt to coordinate the child's routines with the coparent?
- Are there signs that the parent is trusting and supportive of the coparent or mistrustful and demeaning?
- How comfortable or strained is parental communication when it occurs?
- Is there any history of open conflict in front of the child? Have such issues been resolved or are they continuing?

Infants and toddlers are not able to know or communicate their needs accurately so that it is of critical importance to their safety and well-being that their parents find ways to communicate.

Table 2: Ten Important Points About Attachment and Child Custody

1. Attachment theory is a powerful set of ideas which posit that early, sensitive care is significant to healthy emotional development in early childhood. The parent is seen as a secure base to whom an infant or toddler will come for comfort and from whom the child will move out increasingly to explore the world.
2. Research demonstrates that infants and toddlers form attachments to both their mothers and their fathers early in life, though these attachments may take somewhat different forms. Toddlers may engage more with their mothers for comfort and with their fathers for exploration. Experiences in both of these attachment relationships can make critical and complementary contributions to the child's emotional and social development.
3. No empirical evidence has emerged for Bowlby's early idea that infants form a single primary attachment to one parent, the mother, and that other attachments, including the attachment to the father, are necessarily less important.
4. While the research does support the usefulness of attachment status as a shorter-term predictor, scholars have failed to establish with consistency that early attachment status predicts adolescent or adult functioning.
5. Attachment status is vulnerable to the effects of continuing care, and

162. Drozd & Oleson, *supra* note 139.

of adverse life events like the loss of a parent, the serious illness of a family member, parental mental illness, and child abuse. The quality of parenting after earliest childhood is important.

6. Divorce itself is frequently a factor in changes in attachment status and child functioning. Pre- and post-divorce conflict particularly affect attachment status and later functioning.
7. Individual characteristics of the child, like temperament and other inherited qualities, may also be of significance in predicting the child's later adjustment and attachment status. Attachment status is not uniquely related to parenting.
8. Attachment measures often lack adequate psychometric properties and should be used cautiously, if at all, for forensic purposes.
9. Much of the sparse research available on overnight parenting time with the nonresidential parent (usually the father) lacks methodological soundness. This research does not support any specific recommendation as to overnight care because the data does not tell us whether such visits are good or bad for the child, or at what age they should occur.
10. Attachment is an additive and relevant factor in best interests of the child determinations, but it should not, by itself, be used to make complex decisions about custody, residency, or important elements of parenting plans, such as overnight visits.

X. Conclusions

Attachment theory has, beyond doubt, made great contributions to the understanding of the emotional and relational lives of young children. Perhaps more than any single body of knowledge, Bowlby's ideas and those of his colleagues have moved the field of child development forward in the last fifty years. They have definitively taught us a basic truth: very young children require more than food and shelter to thrive. They require relationships.

But, like all theories, attachment theory needed testing that would build on its strengths and "redress errors of emphasis and analysis."[163] Some of this research is now available, as we have seen, but much of it has not yet been interpolated into modifications of the theory. This is, in part, because attachment researchers have not always been open to the possibility that research would disconfirm some of their ideas. When writing about the multiple problems with attachment assessment research, prominent researchers themselves have voiced "serious concerns" about the some-

163. Waters & Cummings, *supra* note 19.

times closed nature of the attachment research community;[164] others have warned against "a frontier mentality" in the field that was blinding researchers to the need for careful validation of research instruments.[165] These cautions are certainly relevant regarding the use of attachment measures in forensic settings.

The analyses of the authors of the major longitudinal studies are among the most thoughtful and candid that attachment research has to offer.[166] All these authors confirm the advantages to children of attachment security and the liabilities of insecurity. Even authors whose research showed some long-term stability point out, however, that these studies, taken as a whole, do not confirm a simple pathway from infant security or insecurity to adult attachment status or social-emotional functioning. In particular, researchers have shown, virtually unanimously, that negative life circumstances negatively affect attachment status and psychosocial functioning, particularly in high-risk populations. The strains of divorce on both parent and child can be quite dangerous to secure attachments.[167] Alternatively, insecurely attached children often improve dramatically if stressors in their lives settle down. Levels of conflict in families of divorce generally recede, and stress decreases as time goes on.

Bowlby and subsequent attachment researchers and theorists have been right that mother love is critical to the welfare of infants—but so is the love of fathers. Research on young children has repeatedly demonstrated that mothers and fathers often make different, yet important, contributions to the emotional and social development of their children. Empirical research has far from confirmed ideas about the necessity of a primary attachment figure in the lives of young children. The thorny problem of parenting plans for young children cannot be resolved by a swift determination that simply identifies the parent with whom the child has spent the most time.[168] It is, for better or for worse, just not that simple.

As Michael Rutter put it, "[a]ttachment is not the whole of relationships."[169] While attachment is important, other factors, such as family

164. Dozier, Manni, & Lindheim, *supra* note 115 (noting that attachment researchers resemble a "professional guild" when they are not open to possible disconfirmation of their theory and hypotheses).

165. Solomon & George, *Measurement of Attachment Security*, *supra* note 54.

166. Waters, Winfield, & Hamilton, *supra* note 36; Grossmann et al., *supra* note 58.

167. Grossmann et al., *supra* note 58; Waters, Merrick et al., *supra* note 35.

168. ALI PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION (2002). *See also* Elizabeth S. Scott, *Pluralism, Parental Preference, & Child Custody*, 80 CAL. L. REV. 615 (1992); Katharine T. Bartlett, *U.S. Custody Law and Trends in the Context of the ALI Principles of the Law of Family Dissolution*, 10 VA. J. SOC. POL'Y & L. 5 (2002).

169. Michael Rutter, *Clinical Implications of Attachment Concepts: Retrospect and Prospect, in* ATTACHMENT & PSYCHOPATHOLOGY 17, 37 (Leslie Atkinson & Kenneth J. Zucker

dynamics and community support, are also important, as are qualities of the child, like temperament and intelligence. Relationships themselves are not the only variables of importance in childhood outcomes. Economics and parental education also influence children's development. Indeed, numerous distinguished experts from varied corners of developmental psychology have noted the inadequacy of attachment theory as a unitary explanation for many childhood outcomes.[170]

Individual determinations must be made about the best situation for each child in each family of divorce. Usually these determinations are made by the family, and only occasionally by the court. One does not need attachment theory to know that mothers often spend more time with their infants than fathers. Therefore, they may have enhanced sensitivity and parenting skills and an increased inclination to remain with their child much of the time after divorce. Such mothers may be better choices as the residential or custodial parent of their infants. This does not mean that mothers are inherently the best parents for very young children, or older children. Mothers (and fathers, too) can be mentally ill, personality disordered, narcissistic, overwhelmingly anxious, or otherwise impaired and not up to the task of parenting a demanding young child. Some parents just do not want to take on the substantial demands of young children. Parents who batter their spouses or abuse their children should not spend much or any time with their children. Polarized thinking that falsely paints competent parents as alienating mothers or as battering fathers is not helpful to this complex discussion.

Attachment theory has not always been well understood in court. Whether the construct is labeled "attachment" or "bonding," experts should be able to explain how they are measuring relationship constructs, the psychometric properties of any formal measure, what the empirical support is for the approach, why the evaluator or clinician is using it in this case, and what its limitations are in this case. Attachment approaches should not be exempt from close scrutiny, nor should credence be given to extremely casual approaches, like only briefly observing the parent and child to determine attachment or other qualities of the relationship. Evaluators can do careful, informed work. They cannot do magic.

Attachment theory retains substantial value and should not be discarded. Properly applied, its measures and approaches can help determine how a minimally verbal child and a parent relate in ways that can help the court make more informed decisions about what is best for the child in the short

eds., 1997). Rutter has spent most of his life working on significant and thoughtful research to provide an empirical base for the theory, confirming some of it, and disputing other premises.

170. Pruett, Ebling, & Insabella, *supra* note 10; *See also* JEROME KAGAN, THREE SEDUCTIVE IDEAS (1998).

term. Research studies have repeatedly found that attachment theory has limitations, including strikingly incomplete validating research within the context of divorce and family dissolution. Courts, judges, attorneys, and mental health professionals must know these limitations when developing parenting plans for young children and their parents. Attachment is a part of the puzzle, but not all of it: an additive *best-interest* factor, not a determinative one.