

5-STEPS TO A HEALTHY DIVORCE THROUGH ELIMINATING PATERNAL DISENGAGEMENT BY LOW-INCOME POST-DIVORCED FATHERS IN HIGH-CONFLICT SITUATIONS

ABSTRACT

This article explores the pressing problem of post-divorce paternal disengagement and how this problem uniquely affects median to low-income families engaged in high-conflict situations. Most studies confirm that paternal-disengagement by fathers has long-lasting negative effects on children which are more pronounced in lower income and/or high-conflict families. For at least the last 30 years there has been much disagreement on the causes and the solutions to the problem of paternal disengagement, and the extent of its effects on children. Due to the sensitivity of the topic, debates about this issue are usually intense and personalized with the battle lines being drawn on the basis of gender. Problematically, children are hopelessly caught in the middle of this conflict, and according to most statistics are still suffering disastrous consequences. The purpose of this Article is to: (1) explore the extent of the problem of paternal disengagement; (2) expose the grave hardship it creates for millions of children; (3) examine the causes of the problem; and (3) suggest a practical and workable 5-step policy that every family court legal system can implement to minimize any further harm to children, and achieve a healthy divorce for the whole family.

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I.

INTRODUCTION

War, by its very definition, is mutual death of two enemies. Not incomprehensible numbers, but individual humans. The question we should ask ourselves is, "Why do we not seek peace, so that no child's father . . . will have to leave their son fatherless in the name of war?" *Author Unknown*¹

Despite the current war in Iraq capturing a great deal of the media attention, much less consideration has been given to the unresolved 30-year-old family conflict between post-divorced mothers and fathers that has escalated into a full fledged war over children.² Both mothers and fathers have won many battles, but it is not yet clear who is actually winning the war.³ Conversely, it is unequivocally clear that over the course of the conflict, children have been, and still are, the outright losers.⁴ While some interested parties estimate that nearly 16, 000 US military members have been wounded in the "War on Iraq",⁵ the latest estimate of the children and their families that have been wounded

¹ *The Enemy Is Human, Too*, Columbus Ledger-Enquirer (GA) (KRT), July 17, 2005, at "Need to Map."

² Susan Dominus, *The Father's Crusade*, N.Y. TIMES, May 8, 2005, at 6 ("Since the early 90's, scores of studies on the subject of joint custody have been fired back and forth between the competing camps . . . Some of the studies, accurate though they may be, can lead to difficult, even distasteful conclusions").

³ *Child-Support, Custody Laws Moving Along*, ST. PAUL PIONEER PRESS (MINN.) March 22, 2005, at 6B.

⁴ *Id.* ("Our present system encourages parents to wage war over the 'ownership' of the children...It gives financial and emotional rewards to the victorious parent . . . It puts the children in the middle, where they lose no matter which parent wins");

⁵ Saad Aberdine et al., *US Death Toll in Iraq Reaches 2000*, available at www.cnn.com/2005/WORLD/meast/10/25/iraq.main/ (last visited Dec. 30th, 2005).

(i.e. physical, emotional, social, behavioral, economical, and psychological injuries) in the family war is over 50,000,000.⁶

The increasingly hostile family war revolves around who should have control over the custody of children and who should bear the bulk of the responsibility for the child's economic stability.⁷ For the last 30 years, mothers have typically won both battles by obtaining sole custody of the children about 85 – 90% of the time⁸ and consigning the responsibility for the child's economic stability on the fathers.⁹ However, in the last 5 – 10 years, the emerging father's rights movement has won some battles by impassioning some state governments to balance the custody of the children more equally between both parents during a divorce.¹⁰ On the other hand, many feminist supporters have won other battles by successfully inciting state governments and family-court judges to increase the pressure on non-custodial fathers to contribute more economic resources for their children.¹¹ Yet, irregardless of who is winning the past or current battles, neither the

⁶ See IRA DANIEL TURKAT, CHILDREN VISITATION INTERFERENCE IN FAMILY LAW LITIGATION: THE HANDBOOK FOR VICTIMS OF CUSTODY AND ACCESS DISPUTES, 7 (2002); Cf. Stephanie Barnes, *Strengthening The Father-Child Relationship Through A Joint Custody Ira Presumption*, 35 WILLAMETTE L. REV. 601, 601 – 602 (1999).

⁷ *Parents Rights Children Must be the Focus of Post-Divorce Support and Visitation Decisions*, OMAHA WORLD-HERALD (NE), February 11, 2004, at 8.

⁸ William C. Smith, *Dads Want Their Day, Fathers Charge Legal Bias Toward Moms Hamstrings Them as Full-Time Parents*, 89 A.B.A. J. 38, 40 – 41 (2003) (“Moms are granted custody in 85 percent of all case”); see also Cynthia A McNeely, *Lagging Behind The Times: Parenthood, Custody, And Gender Bias In The Family Court*, 25 FLA. ST. U. L. REV. 891, 908 (1998) (“mothers receive primary residential custody of children approximately 90% of the time that custody is first determined by the court”)

⁹ Brenda Cossman, *Contesting Conservatism, Family Feuds And The Privatization Of Dependency* 13 AM. U.J. GENDER SOC. POL'Y & L. 415, 443 – 444 (2005).

¹⁰ Patricia Wen, *Activist Gaining Ground On Father's Divorce Rights*, BOSTON GLOBE, November 27, 2004, at B1 (“On Election Day, Fathers and Families scored its most notable political triumph in its effort to end what the group perceives as discrimination against fathers in the courtroom”).

¹¹ Catherine Wimberly, *Deadbeat Dads, Welfare Moms, And Uncle Sam: How The Child Support recovery Act Punishes Single-Mother Families*, 53 STAN. L. REV. 729, 729 – 730 (2000); see also Lori Cox, *Justice For 'Deadbeats' Judge's Alternative Of Vasectomy For Parents Who Fail To Pay Child Support Points Up Issue*, THE CINCINNATI-KENTUCKY POST, June 9, 2004, at K4.

post-divorced parent's success nor the government's intervening actions have minimized the repercussions of the family war on children.¹²

Similar to the Iraq war, this family war may never end, but due to the life-long injuries inflicted on millions of innocent children and their families, the family law legal system ought to give more consideration to providing an immediate and practical solution to minimizing the casualties of this family war.¹³ The Best Interest of the Child” standard,¹⁴ used by most courts to resolve the conflicts between the two divorced parents, has produced inherently biased results¹⁵ primarily because it: (1) mainly focuses on the economic position of the child and the mother; (2) bases decisions on stereotypical roles of men and women; and (3) allows judges to determine which parent is best fit.¹⁶

¹² Cynthia R. Mabry, *Disappearing Acts: Encouraging Fathers To Reappear For Their Children*, 7 J. L. & FAM. STUD. 111, 111 – 112 (2005); see also Andrew Schepard, *Taking Children Seriously: Promoting Cooperative Custody After Divorce*, 64 TEX. L. REV. 687, 689 – 690 (1985) (“children living with a divorced parent . . . contract what may be thought of as a disease of childhood . . . posing a serious threat to a child's emotional, financial, and educational well-being . . . the disease has complex, long-term ramifications from which the child never recovers . . . A divorce-related custody dispute often causes more damage to the affected child than if lawyers and judges had never become involved . . . Contested custody disputes often drag on for years without resolution, leaving the child trapped between battling parents, adversarial lawyers, and overburdened courts”).

¹³ JoAnne Pedro-Carroll et al., *Assisting Children Through Transition: Helping Parents Protect Their Children From The Toxic Effects Of Ongoing Conflict In The Aftermath Of Divorce*, 39 FAM. CT. REV. 377, 377 – 378 (2001) (“children are innocent bystanders, casualties in divorce wars fueled by ongoing hostility between parents and acrimonious legal battles. . . Such children are at risk for a lifelong negative legacy of divorce, including higher rates of school dropout, out-of-wedlock pregnancy, marriage during adolescence, reduced life satisfaction, and eventual disruption of their own marriages”).

¹⁴ Jacqueline Pons-Bunney, *Non-Custodial Fathers' Rights: State's Lack Of Incentives For The Father To Remain In The Child's Life*, 19 J. JUV. L. 212, 214 – 215 (1998). (“The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including: (1) the wishes of the child's parent or parents as to his custody; (2) the wishes of the child as to his custody; (3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest; (4) the child's adjustment to his home, school, and community; and (5) the mental and physical health of all individuals involved. . . The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child”).

¹⁵ *Id.* at 216 (“The term “best interest of the child” promotes an inherent bias”).

¹⁶ *Id.* at 216 (“The term implies that whomever the court determines should have custody is the better parent”).

Enigmatically, a more accurate “Best Interest of the Child” standard,¹⁷ would primarily assure children have an opportunity to have both divorced parents highly involved in their life.¹⁸ Moreover, most studies show that families and our society may also reap incontrovertible benefits from assuring children maintain substantial quality relationships with both post-divorced parents.¹⁹

The prime obstacle to achieving a “Best Interest of the Child” standard that ascertains children experience quintessential relationships with both of their biological post-divorced parents is the crisis of paternal-disengagement by post-divorced fathers.²⁰ Paternal disengagement by fathers is considered by many researchers to be the leading cause of declining children’s well-being in our society.²¹ Society also unambiguously recognizes²² that paternal-disengagement among post-divorced fathers is one of

¹⁷ The American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations*, 95 – 96 (2002).

¹⁸ Glendessa M. Insabella et al., *Individual And Co-parenting Differences Between Divorcing And Unmarried Fathers*, 41 FAM. CT. REV. 290, 292 (2003) (“Research has highlighted . . . children’s hungering for their fathers as paternal presence changes in the aftermath of divorce”); *see also* Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers To Parent*, 153 U. PA. L. REV. 921, 927 (2005) (“Children consistently report that they wish they had more contact with their fathers”).

¹⁹ *See* Mark D. Matthews, *Curing The “Every-Other-Weekend Syndrome”: Why Visitation Should Be Considered Separate And Apart From Custody*, 5 WM. & MARY J. OF WOMEN & L. 411, 418 – 420 (1999).

²⁰ Insabella, *supra* note 18, at 292 (“Father absence and depreciation are now understood as major contributory factors to family poverty and instability and child behavior problems”).

²¹ DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM*, 1 (1995).

²² Domeena C. Renshaw, *Fathering*, PSYCHIATRIC TIMES, October 1, 2004, at 54 (“A surprise result in a 1999 poll taken in the United States by The National Center for Fathering revealed that 72.2% of respondents saw fatherlessness as the most significant social problem facing America”).

America's most urgent problems.²³ Perplexingly, with so much consensus and corroborating research confirming the countless and disastrous negative effects on post-divorced children emanating directly and indirectly from paternal-disengagement by post-divorced fathers²⁴ and the imperiousness of a discoverable solution to this problem,²⁵ a practical solution for children is frequently ignored or denied.²⁶

The crisis of paternal disengagement among post-divorced fathers affects over half of the 1.1 million divorcing families in the United States every year.²⁷ As with many societal issues, the problem disproportionately affects minorities²⁸ and lower-income²⁹ families.³⁰ Even more importantly, children suffer even more nefarious effects from

²³ BLANKENHORN, *supra* note 21, at 1 (“Fatherlessness is the most harmful demographic trend of this generation”); *see also* Maldonado, *supra* note 18, at 946; Frank F. Furstenberg Jr., *Fathering in the Inner City: Paternal Participation and Public Policy*, 7 FATHERHOOD: CONTEMPORARY THEORY, RESEARCH AND SOCIAL POLICY 119, 120 – 121; Laura Curran, *Social Work And Fathers: Child Support And Fathering Programs*, 48 SOC. WORK 219 (2003) (“Both political liberals and conservatives understand men's absence from the lives of children as inherently problematic”).

²⁴ Mabry, *supra* note 12, at 113.

²⁵ Gilbert A. Holmes, *The Tie That Binds: The Constitutional Right Of Children To Maintain Relationships With Parent-Like Individuals*, 53 MD. L. REV. 358, 359 – 360 (1994). (“Children are the most important foundation of every society . . . As the sole source of tomorrow's leaders and participants, children are the link between the past, the present, and the future”).

²⁶ TURKAT, *supra* note 6, at 211.

²⁷ Maldonado, *supra* note 18, at 924.

²⁸ Alfred L. Brophy, *Losing the (Understanding of the Importance Of Race: Evaluating the Significance of Race and the Utility of Reparations*, 80 TEX. L. REV. 911, 914 – 915 (2002).

²⁹ Ron Haskins et al., *The Decline in Marriage: What To Do? Policy Brief Fall 2005*, THE FUTURE OF CHILDREN, (2005), at 2, available at <http://www.brookings.edu/dybdocroot/es/research/projects/wrb/publications/pb/200509foc.pdf> (“the families who have experienced the greatest decline in marriage . . . are minority and low-income . . . Already suffering from numerous disadvantages, poor and minority children are disproportionately reaping the negative effects of family dissolution”) (last visited October 22, 2005).

³⁰ Centers for Disease Control, National Center for Health Statistics, *Advance Report for Final Divorce Statistics, 1989 & 1990*, 43 MONTHLY VITAL STATISTICS REPORT NO 9 SUPPLEMENT, March 22, 1995, at 4 – 5, available at http://www.cdc.gov/nchs/data/mvsvr/supp/mv43_09s.pdf. (last visited October 21, 2005).

paternal-disengagement from high-conflict divorces.³¹ In fact, researchers have consistently noted that high conflict divorces are the single best predictor of a poor life outcome for between 20 – 25,000,000 post-divorced children.³² This Article examines the profundity, magnitude, and urgency of the crisis of paternal-disengagement among low-income post-divorced fathers in high-conflict situations (hereinafter “disadvantaged-fathers”).³³

Part II of this Article discusses the past and potential future harmful effects that occur when a disadvantaged-father loses contact with his children following a divorce (hereinafter “paternal-disengagement”). The key social and legal factors that have made significant contributions to the problem of paternal-disengagement by disadvantaged-fathers is explored in Part III and Part IV of this Article. Finally, Part V suggests a practical five-step multidisciplinary approach to solving the pertinacious predicament of paternal-disengagement by disadvantaged-fathers.

A. DEFINITIONS

1. Paternal-Disengagement

The term “paternal-disengagement,” as used in this Article, refers to the state of affairs following a divorce when a biological non-custodial parent has infrequent,

³¹ Linda Elrod, *Reforming The System To Protect Children In High Conflict Custody Cases*, 28 WMLR, 495, 496 (2001).

³² Maldonado, *supra* note 18, at 947; *See also* Mabry, *supra* note 12, at 112.

³³ Janice, Laakso, *Key Determinants Of Mothers' Decisions To Allow Visits With Non-Custodial Fathers*, FATHERING, March 22, 2004, at 131 (“In spite of ample evidence that fathers are important to children’s development and well-being . . . studies have shown that, over time, non-custodial fathers tend to become less involved in the lives of their children”).

occasional or no contact with his child or children.³⁴ “Infrequent” or “occasional” contact, in this context, means time spent with the child that is less than the court-ordered visitation or that agreed between the parents.

2. Low-Income

The term “low-income,” as used in this Article, is not limited to the standard low-income index determined annually by the US Department of Health and Human Services which averages around \$38,700 for a family of 4, \$32,180 for a family of 3, and \$25,660 for a family of 2.³⁵ Low-Income, as used in this Article, is adopted from the definition of “poverty” contained in the Wikipedia encyclopedia³⁶ and encompasses much more than an economic standard of living. The term will refer to the state of being characterized by need, hardship, lack of resources, deprivations of wealth and/or other resources, and lack of normal social relationships (including social exclusion, dependency, and the ability to live a normal life as accepted by society which may include being capable of raising a healthy family, educating children, and participating in society).³⁷ Single fathers who are at or below the US poverty standard and single fathers who are at or below the middle-class income standard of \$45,000/yr³⁸ are included in the definition of low-income in this

³⁴ Nancy E. Dowd, *Rethinking Fatherhood*, 48 FLA. L. REV. 523, 525 – 526 (1996) (“Single fathers non-economic links with their children range from regular visitation to severing of all except a legal relationship”).

³⁵ See Ayana Douglass-Hall and Heater Koball, *National Center for Children in Poverty’s (NCCP) Annual Demographic Fact Sheet*, at www.nccp.org (last visited, October 21, 2005).

³⁶ Wikipedia, <http://en.wikipedia.org/wiki/Low-income> (last visited October 20, 2005).

³⁷ *Id.*

³⁸ US Census Bureau, *Income Stable, Poverty Rate Increases, Percentage of Americans Without Health Insurance Unchanged*, US CENSUS BUREAU NEWS, US DEPARTMENT OF CONGRESS PRESS RELEASE (“Real median household income remained unchanged between 2003 and 2004 at \$44,389, according to a report released today by the U.S. Census Bureau”), at http://www.census.gov/Press-release/www/releases/archives/income_wealth/005647.html (last visited August 30, 2005).

Article. The reason the definition of low-income is broadened for the purpose of this Article is to account for those fathers whose gross income is above the poverty level, but after deducting taxes and child support payments are still unable to support themselves or their children.³⁹

3. Post-divorced

The term “post-divorced”, as used in this Article, is not limited to the period of time after a valid judgment for the dissolution of marriage is issued by the family-courts.⁴⁰ Rather it includes any period of time after two married biological parents physically separate and reside in two separate households, and the parent without custody in a sole custody⁴¹ arrangement is required to pay child support⁴² either by court order or by some other agreement. This definition is expanded in this Article to encompass the parents who are not yet officially divorced, but nonetheless have court enforced custody and child support order or agreement.⁴³

4. Father

³⁹ Ronald K. Henry, *Child Support At A Crossroads: When The Real World Intrudes Upon Academics And Advocates*, 33 FAM. L.Q. 235, 242-243 (1999) (“There is no current guideline . . . which looks at the true, after-tax economic impact of the [child-support] obligations imposed [on the father] . . . The problem is not limited to the lowest economic tier”).

⁴⁰ See, e.g. CONN. GEN. STAT. § 46B-40 (C) (2005); WASH. REV. CODE § 269.09. 150 (2005); IOWA CODE § 598.17 (2005).

⁴¹ Michigan Court Administrative Office, *Custody And Parenting Time Investigation Manual*, at www.courts.michigan.gov (2002) (“sole custody is defined as when one parent provides most of the day to day care for a child and has the exclusive right to make major decisions for the child”).

⁴² Honorable Mark S. Coven, *Welfare Reform, Contempt And Child Support Enforcement* 30 SUFFOLK U. L. REV. 1067, 1095 (1997) (“A child support obligation is a direct order by the court for the absent parent to support his child”).

⁴³ See generally Hildy Mauzerall, et al., *The 1997 Symposium Edition: Family Law Protecting The Children Of High-conflict Divorce: An Analysis Of The Idaho Bench/Bar Committee To Protect Children Of High-conflict Divorce's Report To The Idaho Supreme Court*, 33 IDAHO L. REV. 291, 310 (1997).

The term “father” or “fathers,” as used in this Article, is limited to men who fathered a child or children within and during the course of marriage, and as a result of a divorce became the non-custodial parent to his biological child or children born during the marriage.⁴⁴ Unwed Fathers, adoptive fathers, and step-fathers are not included in definition of fathers in this Article, because the negative effects of paternal-disengagement on children by these types of fathers may or may not have similar effects on their children.⁴⁵

5. High-Conflict Situations

The term “high-conflict,” as used in this Article, has a broad definition, but does not include circumstances when the relationship between the post-divorced parents is entangled with threats or acts of physical assaults or any other similar types of violence whether towards the children or mother of the children, and whether before or after the marriage.⁴⁶ Parental conflicts that entail threats or acts of violence present special and distinct issues that may require solutions other than those designed with non-violent situations, and thus will not be addressed in this Article.⁴⁷

⁴⁴ See Vermont Office of Child Support, at <http://www.ocs.state.vt.us/Handbook/glossary.htm#N> (last visited October 22, 2005) (“Non-Custodial Parent: The parent who does not have primary care, custody, or control of the child, and has an obligation to pay child support. Also referred to as the “obligor,” “absent parent” or “non-resident parent”).

⁴⁵ Valerie, King et al., *Racial And Ethnic Diversity In Nonresident Father Involvement*, 66 JOURNAL OF MARRIAGE & THE FAMILY 1, 3, 2 (February 1, 2004); See generally *Adoption Of Kelsey S.: When Does An Unwed Father Know Best?*, 24 PAULY 1633 (1993); see also BLANKENHORN, *supra* note 27, at 1.

⁴⁶ Mauzaerall, *supra* note 43, 43, 302 – 303.

⁴⁷ Many authors accept fully that mediation, while helpful in many situations may not be appropriate for couples where there is a history of domestic abuse. See e.g. Andrew Schepard, *The Evolving Judicial Role In Child Custody Disputes: From Fault Finder To Conflict Manager To Differential Case Management*, 22 U. ARK. LITTLE ROCK L. REV. 395, 420 (2000); Nancy Ver Steegh, *Yes, No, And Maybe: Informed Decision Making About Divorce Mediation In The Presence Of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145, 184 (2003); Andrew Schepard, 35 FAM. L.Q. 1, 6 – 7 (2001) *An Introduction To The Model Standards Of Practice For Family And Divorce Mediation*.

Rather the term “high-conflict” will be used to indicate the state of affairs when the relationship between the mother and father of a child after a divorce or separation displays one or more of the following characteristics or parental behaviors:⁴⁸ (1) on-going conflict; (2) self-centeredness and narcissism; (3) harboring angry; (4) self-righteous attitude; (5) exceedingly blaming orientation; (6) inability to tolerate negative or even complex emotions; (7) need to make others experience the negative emotions they themselves feel; (8) inability to recognize their own dependency; (9) disturbed self esteem; (10) statistically deviant and negative perceptions and reasoning processes; (11) lack of insight into their own negative contributions at impasse points; (12) low conflict resolutions skills; (13) lack of interpersonal commitment; (14) desire to humiliate, punish or avenge (i.e. changing the name of the child after divorce); (15) usage of a child as a weapon against the other parent by engaging in patterns of behavior designed to destroy the child’s psychological connection to the other parent; and (16) other similar personality disorders.

II. THE PROBLEM

Paternal-Disengagement by disadvantaged-fathers is usually a gradual process that may take years after the initial divorce is finalized.⁴⁹ Several studies have found that

⁴⁸ See Barry Bricklin & Gail Elliot, *Qualifications Of And Techniques To Be Used By Judges, Attorneys, And Mental Health Professionals Who Deal With Children In High-conflict Divorce Cases*, 507 22, U ARK LITTLE ROCK REV. 501, 507 (2000); See also Barry Bricklin, and Gail Elliot, *Prevention Strategies To Protect Professionals And Families Involved In High-Conflict Divorce*, 22 U ARK LITTLE ROCK REV. 565, 566 – 567 (2000).

⁴⁹ See Katharine K. Baker, *Bargaining Or Biology? The History And Future Of Paternity Law And Parental Status*, 14 CORNELL J.L. & PUB. POL'Y 1, 49 – 50 (2004) (“The chances of a child not having seen his or her father increase with time . . . One study found that ten years after divorce, nearly two-thirds of the children of those divorces had not seen their father at all in the past year”).

50% of post-divorced fathers either completely or partially disengage from their children within three years.⁵⁰ One random study conducted in 1995 found that 2/3 of post-divorced fathers surveyed had not seen their kids in the previous year, and only one in ten surveyed fathers had weekly contact with their children ten years after their divorce.⁵¹ Overall, the studies vary on the actual degree or amount of post-divorced fathers that completely or partial disengage from their children by the end of the gradual process.⁵² However, some studies estimate that up to 49% of non-custodial post-divorced fathers completely disengage from their children after divorce⁵³ and up to 60% at least partially disengage from their children after divorce.⁵⁴

A. Low- Income And Paternal Disengagement

Paternal-Disengagement is even more pronounced among low-income post-divorced fathers.⁵⁵ A study by Irwin Garfinkel and Sara McLanahan estimated that about thirty percent (30%) of the fathers that had trouble paying child support had incomes below the poverty line of \$9573 for a single person in 2003⁵⁶ and twenty percent (20%)

⁵⁰ See Maldonado, *supra* note 18, at 925; see also Andrew Kidde, *Non-Custodial Fathers: Why So Many Drop Out and What Can be Done About It*, 57 MAR OR ST. B. BULL. 15, 15-16 (1997).

⁵¹ DAVID POPENOE, *Life Without Father: Compelling Evidence that Fatherhood and Marriage are Indispensable for the Good of Children and Society*, 31 (1999).

⁵² Maldonado, *supra* note 18, at 946 – 947; see also Kidde, *supra* note 69, at 15.

⁵³ Insabella, *supra* note 18, at 292.

⁵⁴ Maldonado, *supra* note 18, at 946 – 947.

⁵⁵ See King *supra* note 45, at 3; see also Vivian L Gadsden et al., *Situated Identities Of Young, African American Fathers In Low-income Urban Settings Perspectives on Home, Street, and the System Special Issue Separated and Unmarried Fathers and the Courts*, 41 FAM. CT. REV. 381, 381 – 382 (2003).

⁵⁶ See Carmen DeNavas-Walt et al., *U.S. Census Bureau, Current Population Reports, P60-226, Income, Poverty, and Health Insurance Coverage in the United States: 2003*, (2004) at Appendix B, 39.

of the fathers had incomes below \$4000.⁵⁷ These low-income post-divorced fathers tend to experience more unique challenges staying engaged with their children⁵⁸ than middle-to-higher income post-divorced fathers because of:⁵⁹ (1) poor job opportunities; (2) crime; and (3) limited educational opportunities.⁶⁰

Additionally, the legal and social expectations of post-divorced fathers to become solely economic providers rather than foster significant quality relationships with their children⁶¹ poses additional and unique challenges to paternal engagement for low-income post-divorced fathers.⁶² Unlike mothers who benefit from a streamlined governmental enforcement mechanism that ensures child support is paid by the father, low-income fathers have no similar resource in place to ensure they stay engaged with their children.⁶³ Fatherhood for the disadvantaged-father who is without economic resources

⁵⁷ See David L. Chambers, *1995 Symposium New Directions in Family Law Fathers, The Welfare System, And The Virtues And Perils Of Child-Support Enforcement*, 81 VA L. REV. 2575, 2594 – 2695 (1995).

⁵⁸ See Heather L. Koball & Desiree Principe, *Do Nonresident Fathers Who Pay Child Support Visit Their Children More*, NEW FEDERALISM: NATIONAL SURVEY OF AMERICAN FAMILIES, 3 – 4, available at <http://www.urban.org/url.cfm?ID=310438> (last visited October 15, 2005) (“Children who live in poverty were more likely to have an absent father, and less likely to see that absent father”); See also Maldonado, *supra* note 18, at 982.

⁵⁹ See Henry, *supra* note 39, at 235.

⁶⁰ See David Ray Papke, *State v. Oakley, Deadbeat Dads, and American Poverty*, 26 W. New Eng. L. Rev. 9, 24 – 25; see also Kevin M. Roy, *You Can't Eat Love: Constructing Provider Role Expectations For Low-income And Working-Class Fathers*, 2 FATHERING 253, 253 – 276 (September 22, 2004).

⁶¹ Maldonado, *supra* note 18, at 942 (“one commentator has argued that by sending a distinct message to divorced fathers that they are not essential to the raising of children beyond supplying a percentage of their paychecks to the mother and perhaps a couple of hours a week of visitation, the state has encouraged fathers to abandon true fatherhood”); see also Nancy E. Dowd, *Law, Culture, And Family: The Transformative Power Of Culture And The Limits Of Law*, 78 CHI.-KENT L. REV. 785, 792 (2003) (“Despite a gender-neutral legal norm, our cultural definition of fatherhood remains firmly embedded in the breadwinner paradigm of men as economic fathers”).

⁶² See Roy, *supra* note 60, 253 – 276 (“Anyone who has been plundered, vilified, and incarcerated--all on the claim of supporting children who have been taken away from him through no fault of his own--will eventually reach the limits of his endurance”).

⁶³ Maldonado, *supra* note 18, at 982.

to pay for attorney services or to continually appear in court to enforce visitation rights⁶⁴ essentially becomes untenable⁶⁵ resulting in a partial or complete disengagement⁶⁶ from his children.⁶⁷

B. High Conflict and Paternal Disengagement

The economic crisis and corresponding ability for the post-divorced fathers to engage with his children is heightened when the post-divorced relationship with the mother fits in to the category of high-conflict.⁶⁸ In fact, the quality of the relationship between the mother and father is actually the strongest predictor of how frequent the father engages with his child after the divorce.⁶⁹ According to the U.S. Commission on Child and Family Welfare, the high-conflict relationship is an antecedent to the post-divorced father's disengagement from his children.⁷⁰ Therefore, as one family law commentator noted, the high-conflict post-divorced relationship should be one of the

⁶⁴ Baskerville, Stephen, *Is there really a fatherhood crisis?*, 8 INDEPENDENT REVIEW 485, 490 (March 22, 2004) ("In family court, it is not unusual for a father earning \$35,000 a year to amass \$150,000 in attorney's fees, according to Washington attorney William Dawes").

⁶⁵ See BLANKENHORN, *supra* note 21, at 19.

⁶⁶ Ginger Calloway, *Custody and Shared Parenting in North Carolina: Dealing With Difficult Divorce Cases From A Child Psychologist's Perspective*, 5627 NBI-CLE 51, 53 – 54 (October, 6, 2004).

⁶⁷ Maldonado, *supra* note 18, at 982.

⁶⁸ Tom Keith, *Policy Should Include A Father's Role*, COLUMBIA STATE (SC), June 18, 2004, at A9; *see also* Jay Fagan, *A Leg Up Needed For Deserving Dads*, PHILADELPHIA INQUIRER, June 17, 2005, at B02; *see also* Mauzerall, *supra* note 43, at 293.

⁶⁹ Maldonado, *supra* note 18, 979; *see also* Lynn M. Akre, *Struggling With Indeterminacy: A Call For Interdisciplinary Collaboration In Redefining The "Best Interest Of The Child" Standard*, 5 MARQ. L. REV. 628, 646 (1992).

⁷⁰ Mauzerall, *supra* note 43, at 311.

major concerns for our government.⁷¹ The principal reason for the heightened concern in high-conflict post-divorced relationships is because scholars have ascertained that a child who has frequent contact with a non-custodial parent in a high-conflict divorce will suffer long-term outcomes that are much worse for this child than if the child's father had no contact at all with the child.⁷² Essentially, the child in a high-conflict divorce becomes a weapon in the post-divorced parental conflict and an innocent victim of the on-going dispute.⁷³

Unfortunately for children of high-conflict divorces, almost one third (1/3) third of divorced families still remain hostile in child-rearing conflicts three to five years after separation.⁷⁴ Haplessly, in many of these high-conflict post-divorces, the father lacks control of the relationship between him and his child because the custodial mother insidiously interferes with the father's visitation rights.⁷⁵ Research confirms that as many

⁷¹ See Chambers, *supra* note 57, at 2593.

⁷² See Bricklin, *supra* note 48, at 507 ("One of the most important findings comes from a study of sole and joint custody families involved in chronic custody disputes for a period of one to four and a half years . . . The children with more frequent access to both parents had more behavioral and emotional problems").

⁷³ Mauzarella, *supra* note 43, at 292 ("When parents become embroiled in a legal battle over custody, the children often become the victims and consequently suffer harm to their development . . . Too often children become weapons in the battle, caught in the middle between the two most important people in their lives: mom and dad"); see also Jo-Ellen Paradise, *The Disparity Between Men And Women In Custody Disputes: Is Joint Custody The Answer To Everyone's Problems*, 72 ST. JOHN'S L. REV. 517, 562 ("It is imperative that children's parents are able to cooperate in a joint custody arrangement because they will have more contact with each other than under sole custody. . . Without this cooperation, a joint custody arrangement will not be in the children's best interests").

⁷⁴ See Mauzerall, *supra* note 43, at 310.

⁷⁵ See TURKAT, *supra* note 6, at 6 – 7 ("visitation interference means something more than just denying a parent the right to physically visit with his or her child. . . This definition refers to the denial of the opportunity for the child and visiting parent to continue their relationship without unnecessary obstacles. . . one out of every 5 Americans is touched by the problem of child visitation interference"); see also Andrew Harris, *Court Orders \$60,000 Bond to Ensure Visitation Rights*, NEW YORK LAW JOURNAL, August 10, 2005, at ("under extensive and probing cross-examination, it became evident that plaintiff custodial mother considered that visitation was within her purview to control and that visitation was merely a 'privilege' for the defendant, which he sometimes 'abused' . . . Such an attitude is grossly repugnant to the court and demonstrates an egotistical, narcissistic personality").

as one-third (1/3) to one-half (1/2) of custodial mothers interfere with the non-custodial father's visitation rights by: (1) forgetting appointments; (2) insisting on rigid schedules; (3) denying visitation if the father's girlfriend will be present; and (4) making the children feel guilty for seeing their father.⁷⁶ Although the Children's Rights Councils in Washington D.C. estimate that as many as 6,600,000 children are denied access to their non-residential parents in this way, other studies that account for parents, friends, cousins, aunts, and uncles say that over 50 millions people are also affected by this behavior.⁷⁷ Notably, post-divorced fathers have reported that this high-conflict is often a major reason why they disengage from their children.⁷⁸

C. The Negative Effects of Paternal Disengagement

The problem of paternal-disengagement by the disadvantaged-father, whether in low-income or high-conflict post-divorced families, effectuates adverse consequences for the entire divorced family,⁷⁹ but the more disastrous consequences of paternal-disengagement are encountered by the children of the divorce.⁸⁰ In fact, paternal-disengagement is considered by many as the leading cause of declining child well-being

⁷⁶ Maldonado, *supra* note 18, at 980.

⁷⁷ TURKAT, *supra* note 6, at 7 – 9.

⁷⁸ Paradise, *supra* note 73, at 542; *See* Barnes, *supra* note 6, at 618 – 619.

⁷⁹ POPENOE, *supra* note 51, at 52.

⁸⁰ Ross Mackay, *The Impact Of Family Structure And Family Change On Child Outcomes: A Personal Reading Of The Research Literature*, 24 SOCIAL POLICY JOURNAL OF NEW ZEALAND 111, 112 (March 1, 2005), available at <http://www.msd.govt.nz/documents/publications/msd/journal/issue24/24-pages111-133.pdf> (last visited October 21, 2005).

in our society,⁸¹ affecting a child's social, emotional, and physical behavior throughout the child's lifetime.⁸² More specifically, paternal-disengagement is believed to be a strong contributor to children's: (1) drug addictions; (2) poor school performance; (3) dropping out of high school; (4) teen parenting; (5) idle behavior (out of work and school); (6) antisocial and criminal activity; (7) future divorces; and (8) attempted or actual suicides.⁸³

1. Youth Violence

The primary consequence and strongest negative effect on children of paternal-disengagement by disadvantaged-fathers is youth violence.⁸⁴ A statistical review of the major studies comparing family structure with juvenile delinquency found that children were 10 – 15% more likely to commit crimes in “broken homes” than in “intact families.”⁸⁵ Similarly, a review of the significant studies comparing the impact of divorce on children's anti-social behavior consistently found that children of divorce are more prone to anti-social behavior.⁸⁶ Even more discomfiting is the data indicating that in America, 60% of the rapists, 72% of adolescent murders, and 70% of long term prison inmates come from fatherless homes.⁸⁷ Moreover, experts prospectively predict that the

⁸¹ BLANKENHORN, *supra* note 21, at 1.

⁸² McNeely, *supra* note 8, at 921.

⁸³ Maldonado, *supra* note 18, at 925; *see also* Mackay, *supra* note 80, at 113.

⁸⁴ BLANKENHORN, *supra* note 21, at 26 & 31; *see also* Maldonado, *supra* note 18, at 951 (“According to a 1990 study commissioned by the Progressive Policy Institute, the relationship between crime and one-parent families is so strong that controlling for family configuration erases the relationship between race and crime and between low income and crime”).

⁸⁵ BLANKENHORN, *supra* note 21, at 62.

⁸⁶ *Id.*; *see also* Mabry, *supra* note 12, at 113.

⁸⁷ *See* POPENOE, *supra* note 51, at 63; *see also* Scott Altman, *A Theory Of Child Support*, 17 INT'L J.L. & POL'Y & FAM. 173, 185 (2003).

crime wave of young murderers is expected to increase exponentially in the next ten years⁸⁸ and a significant contributor to this trend will be the paternal-disengagement of disadvantaged-fathers.⁸⁹

2. Teen Pregnancy

Teenage pregnancy is considered another major distressing effect of paternal-disengagement by disadvantaged-fathers.⁹⁰ Whereas one of the primary effects of paternal-disengagement for boys is juvenile violence; one of the primary effects of paternal-disengagement for girls is juvenile and out of wedlock child bearing.⁹¹ Judith Wallerstein found, in her 25-year long study of divorce, that the sexual activity of girls was directly affected paternal-disengagement by the post-divorced father because he is such a powerful and protective influence over her expectation of herself and her future choices of men.⁹² Other scholars have also concluded that there is a formidable and

⁸⁸ See POPENOE *supra* note 51, at 633; *But see* Sacha M. Coupet, *What To Do With The Sheep In Wolf's Clothing: The Role Of Rhetoric And Reality About Youth Offenders In The Constructive Dismantling Of The Juvenile Justice System*, 148 U. PA. L. REV. 1303, 1331 (2000) (“In fact, juvenile crime is on the decline”).

⁸⁹ BLANKENHORN, *supra* note 21, at 25-28; *Cf.* Tami Scarola, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding Of Justice*, 66 FORDHAM L. REV. 1029, 1036 – 1037 (1997); *and* Francine T. Sherman, William Talley, Jr., *Struggling for a Future: Juvenile Violence, Juvenile Justice*, 36 B.C. L. REV. 889, 892 (1995) (“Though controversy remains over the causes of juvenile crime, the articles in this Symposium reflect consensus that those causes are multiple and complex”).

⁹⁰ POPENOE, *supra* note 51, at 63; *see also* Merlene Davis, *COMMENTARY: Fathers Can Make All The Difference Children Raised Apart From Dad Are Prone To Problems*, LEXINGTON HERALD-LEADER (KY), June 12, 2005, at B1 (“The statistics scare me. Children from fatherless homes account for the majority of...teenage pregnancies”).

⁹¹ BLANKENHORN, *supra* note 21, at 45 (“one primary result of growing fatherlessness is more boys with guns...Another is more girls with babies”); *see also* See Bruce J. Ellis et al., *Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?*, 74 CHILD DEVELOPMENT 801, 801 – 802 (May/June 2003) (“Many studies have identified the absence of the biological father from the home as a major risk factor for both early sexual activity and teenage pregnancy”).

⁹² See JUDITH WALLERSTEIN, et al., *THE UNEXPECTED LEGACY OF DIVORCE: THE 25 YEAR LANDMARK STUDY*, 194. (2000).

direct correlation between a teenage girl's choice to engage in sexual activity, the resulting teen's pregnancy, and paternal-disengagement.⁹³ The latest research also shows that teenage girls are twice as likely to become pregnant outside of marriage than teens that have two married parents due to paternal-disengagement.⁹⁴

Currently, over twenty-five percent (25.6%) of 15-year old girls had sexual intercourse in 1988 compared to just over four percent (4.6%) in 1970.⁹⁵ Twenty-one (21%) of these girls become pregnant each year which has contributed to the United States having the highest teen pregnancy rate in the industrialized world.⁹⁶ Fifty percent (50%) of those pregnancies end in births, and of the children from those pregnancies eighty-one (81%) are born out of wedlock.⁹⁷ In 1991, sixty-two (62%) of all girls were teen mothers, two-thirds (2/3) of the teen mothers were unmarried, and teen mothers accounted for nine percent (9%) of all births.⁹⁸ Although the teen pregnancy rate has notably dropped in the last ten years, there is still a high correlation that exists between teenage mothers and low-income.⁹⁹ For instance, according to a Congressional Budget

⁹³ BLANKENHORN, *supra* note 21, at 46.

⁹⁴ Tom Buggiey, *Kids Living Without Dad Face Higher Hurdles*, MEMPHIS COMMERCIAL APPEAL (TN), June 20, 2004, at B5.

⁹⁵ POPENOE, *supra* note 51, at 63

⁹⁶ *Id.*; But see THE NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, *U.S. Teenage Pregnancy Statistics With Comparative Statistics For Women Aged 20-24* (2004), at <http://www.teenpregnancy.org/resources/data/pdf/TeenPregnancyRatesOnePager.pdf> (last visited October 16, 2005) ("The U.S. teen pregnancy rate for teens aged 15-19 decreased 28 percent between 1990 and 2000. . . After reaching 117 pregnancies per 1,000 females aged 15-19 in 1990, the pregnancy rate has decreased to 84 pregnancies per 1,000 females aged 15-19 in 2000").

⁹⁷ POPENOE, *supra* note 51, at 64.

⁹⁸ See BLANKENHORN, *supra* note 21, at 46.

⁹⁹ See <http://www.teenpregnancy.org/resources/data/genlfact.asp> (last visited October 16, 2005) ("The teen birth rate has declined slowly but steadily from 1991 to 2003 with an overall decline of 33 percent for those aged 15 to 19").

Office Report in 1990, 50% of all adolescent mothers and over 75% of unmarried teen mothers have such a lack of resources that they must receive governmental benefits within 5 years after giving birth.¹⁰⁰

Furthermore, teen mothers, their children, and society¹⁰¹ suffer long lasting harmful effects throughout their lifetime from paternal disengagement.¹⁰² The statistics show that only one-third (1/3) of teen mothers receive a high school diploma, 1.5% of teen mothers have a college degree by age 30, and nearly 80 percent (80%) of unmarried teen mothers end up on welfare.¹⁰³ In addition, the children of teenage mothers are more likely to perform poorly in school, are at a greater risk of abuse and neglect, and more likely to become teen mothers themselves.¹⁰⁴ In a detailed study of the correlation between father involvement with children and teenage pregnancy and early teenage sexual activity in New Zealand and the United States, researchers came to a definitive conclusion that these negative outcomes will greatly decrease through a father's involvement with his children.¹⁰⁵

¹⁰⁰ Lucy A. Williams, *The Ideology Of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 746 n.111 (1992).

¹⁰¹ See *infra* note 103 (“teen pregnancy poses a significant financial burden to society at large — an estimated \$7 billion per year”).

¹⁰² Planned Parenthood, *Pregnancy & Childbearing Among U.S. Teens*, available at <http://www.plannedparenthood.org/pp2/portal/files/portal/medicalinfo/teensexualhealth/fact-pregnancy-teens-us.xml> (last visited October 22, 2005).

¹⁰³ <http://www.teenpregnancy.org/resources/data/genlfact.asp> (last visited October 16, 2005)

¹⁰⁴ *Id.*

¹⁰⁵ See Ellis, *supra* note 91, at 818.

3. Domestic Violence¹⁰⁶

Paternal-Disengagement by disadvantaged-fathers is also seen as a noteworthy reason for the rise in domestic violence in the United States.¹⁰⁷ Domestic violence is the number one source of injury to women in the United States causing more injuries than rapes, auto accidents, and muggings combined.¹⁰⁸ Overall, among people who are or have been married, the rate of domestic violence is highest among recently separated but still-married couples, followed by divorced women, never married women, and the lowest rate is for married women.¹⁰⁹ According to research, at the time of separation or divorce, women are more vulnerable to domestic violence than at any other time.¹¹⁰ Ostensibly, separation from a partner triggers abuse even when domestic violence was not previously present in the marriage and as a result 75% of spouse-on-spouse assaults occur after separation or divorce.¹¹¹

The most conservative estimates of domestic violence puts the number of women annually assaulted by an intimate partner at one million, while other surveys project that

¹⁰⁶ See Lynn D. Wardle, *Marriage And Domestic Violence In The United States: New Perspectives About Legal Strategies To Combat Domestic Violence*, 15 ST. THOMAS L. REV. 791, 793 (2003) (“The term domestic violence is commonly used in the United States to refer to violence occurring in relationships between current or former partners . . . and involves a continuum of behaviors ranging from degrading remarks to economic exploitation, from beating to sexual abuse, from threats to homicide . . . There is no standard definition of domestic violence in American law . . . Each state has its own domestic violence law”).

¹⁰⁷ BLANKENHORN, *supra* note 21, at 32 – 39; *Id.* at 38 (“As marriage weakens, more and more men become isolated and estranged from their children and from the mothers of their children . . . One result in turn, is the spread of male violence”).

¹⁰⁸ Judith S. Kaye & Susan K. Knipps, *Judicial Responses To Domestic Violence: The Case For A Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 3 (1999 – 2000).

¹⁰⁹ See Wardle, *supra* note 106, at 794 – 795.

¹¹⁰ Victoria L. Lutz & Cara E. Gady, *Necessary Measures And Logistics To Maximize The Safety Of Victims Of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363, 363 – 365 (2004).

¹¹¹ Wardle, *supra* note 106, at 794 – 795.

as many as four times this number are battered each year.¹¹² In addition, the National Institute of Justice reported that 1.5% of women were assaulted in the last 12 months by an intimate partner, and over their lifetime approximately 25% of all women report being assaulted by a current or former spouse, cohabiting partner or a date.¹¹³ Other studies have found that more than 960,000 incidents of violence against a current or former spouse, boyfriend, or girlfriend occur each year, and approximately 85% of those victims are women.¹¹⁴ Although the data on the frequency and incidence of domestic violence varies, most studies show that in general, male violence is less likely when fathers have made an investment in their children.¹¹⁵

In nine out of ten cases of domestic violence children are present in the same or next room while the violence is occurring; and children themselves incur violence in 50% of the recorded cases of domestic violence between adults.¹¹⁶ As a result, for many children, physical abuse between parents is an ongoing and expectable part of life.¹¹⁷ Unfortunately, the evidence suggests that this ongoing observation of parental conflict by children causes them to suffer even more serious long-term negative effects.¹¹⁸ For example, between thirty percent (30%) to eighty percent (80%) of the women who report

¹¹² *Id.*

¹¹³ See Wardle, *supra* note 106, at 793 – 794.

¹¹⁴ Leslie A. Hagen & Kim Morden Rattet, *Communications And Violence Against Women: Michigan Law On Privilege, Confidentiality, And Mandatory Reporting*, 17 T.M. COOLEY L. REV. 183, 187 (2000).

¹¹⁵ BLANKENHORN, *supra* note 21, at 34 – 35.

¹¹⁶ *Silent victims of Domestic Violence*, BATH CHRONICLE, May 14, 2004, at 14.

¹¹⁷ See JUDITH S. WALLERSTEIN AND JOAN B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE, 16 (1979).

¹¹⁸ *Id.*

being battered report having witnessed domestic violence as a child, and men who witnessed domestic violence as a youth are one hundred percent (100%) more likely to abuse their partners.¹¹⁹ During 50% of these domestic violence cases, children become the targets of physical abuse and are correspondingly psychologically and emotionally damaged.¹²⁰ Unfortunately, the domestic violence problem worsens and is more common in post-divorce low-income situations where various studies suggest that up to 80% of women on welfare have suffered some form of domestic violence, compared to 22% of the general population.¹²¹

4. Child Abuse

In addition to domestic violence directed towards the mother, child abuse is also a serious problem that commentators have attributed to post-divorced fathers paternal-disengagement.¹²² Studies show that when fathers lose regular contact with their children, the children experience less parental supervision and a discontinuance of human and social capital which renders a higher likelihood of parental neglect.¹²³ Nearly every investigation on the subject matter of child abuse has revealed that one of the greatest risk

¹¹⁹ See Lois Schwaeber, *Domestic Violence: The Special Challenge In Custody And Visitation Dispute, Resolution*, 10 NO. 8 DIVORCE LITIG. 141 (1998).

¹²⁰ Nancy Ver Steegh, *The Unfinished Business Of Modern Court Reform: Reflections On Children, Courts, And Custody By Andrew I. Shepard*, 38 FAM. L.Q. 449, 455 (2004) (“These children suffer from “hopelessness and helplessness, anxiety, and an increase in somatic complaints . . . They are ten times more likely to become batterers or victims of abuse as adults”).

¹²¹ Sarah Olson, *Marriage Promotion, Reproductive Injustice, and the War Against Poor Women of Color*, DOLLARS & SENSE, January 1, 2005, at 14.

¹²² POPENOE, *supra* note 51, at 65 (“As fathers have left the home, the rates of child abuse have increased, and reported sexual abuse has increased at a faster rate than all other forms of child maltreatment”).

¹²³ See Don Kerr, *Family Transformations and The Well-being of Children: Recent Evidence from Canadian Longitudinal Data*, JOURNAL OF COMPARATIVE FAMILY STUDIES, January 1, 2004, at 73

factors in child abuse is family disruption.¹²⁴ In 2002, approximately 2.6 million referrals were reported to Child Protective Services for suspected child abuse and neglect, and approximately 903,000 children were confirmed victims of child maltreatment.¹²⁵ Of these children, 61% suffered neglect; 19% were physically abused, 10% were sexually abused; and 7% suffered emotional abuse.¹²⁶ Also, American Indian, Alaska Native, and African American children had the highest victimization rates when compared to the national population.¹²⁷

Surprisingly, most of the reported abuse does not come from the biological fathers; to the contrary, children are most seriously at risk of child abuse from post-divorced mothers.¹²⁸ Sixty-four percent (64%) of the non-parental abuse in single mother households originate from the mother's boyfriend, and children are found to be 40 times more likely to be abused by their stepparents.¹²⁹ Overall, children living with a single parent have a seventy-seven percent (77%) increased risk of being harmed by physical abuse, an eighty-seven percent (87%) increased risk of being harmed by physical neglect, and an eighty percent (80%) increased risk of suffering serious harm or injury from abuse or neglect.¹³⁰ In high-conflict situations, children are more at risk and experience more

¹²⁴ POPENOE, *supra* note 51, at 66.

¹²⁵ Massey-Stokes Marilyn & Lanning, Beth, *The Role Of CSHPs In Preventing Child Abuse And Neglect, Communications, Coordinated Health Programs*, 74 JOURNAL OF SCHOOL HEALTH, 193, (August 1, 2004).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *See* POPENOE, *supra* note 51, at 69.

¹²⁹ *Id.* at 70.

¹³⁰ *See* Mauzerall, *supra* note 43, at 294; *see also* BLANKENHORN, *supra* note 21, at 1.

child abuse due to a less than adequate level of emotional support, less responsive and/or more punitive parenting styles among other potential problems.¹³¹

5. Sexual Abuse

Sexual abuse is also a well-known consequence of paternal-disengagement by disadvantaged-fathers.¹³² Fathers, when not engaged with their children, are believed to be responsible for making children vulnerable to the ploys of sexual abusers.¹³³ Studies show that children become more vulnerable once there is no quantity or quality supervision, less protection, and no emotional support from the father.¹³⁴ In the ensuing aftermath of sexual abuse, children may experience post-traumatic stress disorder, anger, aggressive behavior, poor self-image, depression, suicidal ideation, anxiety disorders, antisocial personality disorders, paranoia, and dissociation.¹³⁵ Although some symptoms of sexual abuse may be short-lived, others become ingrained altering even a child's physiology, which underscores the profound and sweeping impact that sexual abuse may have on a child.¹³⁶ Low-Income mothers are at an even higher risk of sexual abuse because they fail to prevent their boyfriends from showing a sexual interest in their

¹³¹ See Kerr, *supra* note 123, at 206.

¹³² BLANKENHORN, *supra* note 21, at 39 – 40 (“What magnifies the risk of sexual abuse for children is not the presence of a married father but his absence”).

¹³³ POPENOE, *supra* note 51, at 66.

¹³⁴ *Id.*

¹³⁵ Robin Fretwell Wilson, *Children At Risk: The Sexual Exploitation Of Female Children After Divorce*, 86 CORNELL L. REV. 251, 277-278 (2001).

¹³⁶ *Id.*

daughters which often leads to the boyfriend threatening, forcing, coercing, or seducing their daughters into sexual activity.¹³⁷

Approximately one out of six women who had a stepfather as a principle figure instead of a biological father were sexually abused by their step-father, whereas only one out of forty women were abused by their biological father.¹³⁸ Of those children experiencing intercourse, nearly half (45.4%) were raised in a stepparent household; and a community survey of 933 women in San Francisco found that girls that lived with a stepfather were over seven times more likely to be sexually victimized than girls living with both biological parents.¹³⁹ Even more disturbing, forty-seven percent (47%) of the stepfather sexual abuse cases were classified as very serious, versus only twenty-six percent (26%) of the sexual abuse cases by biological fathers.¹⁴⁰ In addition, even when stepfathers are not involved after a divorce, there is a substantially elevated risk of sexual abuse when a young child is left alone with a mother's boyfriend.¹⁴¹

6. Child Poverty

Notwithstanding the many inimical consequences of paternal-disengagement, many family-law authors have surmised that the most tangible and immediate consequence of paternal-disengagement by disadvantaged-fathers is the loss of economic resources for the child.¹⁴² In Wallerstein's 25 year study of divorce, she found that three-

¹³⁷ *Id.*

¹³⁸ POPENOE, *supra* note 51, at 68.

¹³⁹ Wilson, *supra* note 135, at 267.

¹⁴⁰ *Id.*

¹⁴¹ BLANKENHORN, *supra* note 21, at 40-41.

¹⁴² POPENOE, *supra* note 51, at 53.

fifths (3/5) of men's and three-fourths (3/4) of women's income substantially declined following divorce which severely affected their children.¹⁴³ Paradoxically, the decline in income was true even when fathers paid child support on a more or less regular basis.¹⁴⁴ The children of low-income families, immediately upon a divorce experience a more serious, erratic, and unsettling decline in economic status than children of higher-income families.¹⁴⁵ Exemplar are Black and Latino children who experience rates of poverty much greater than the total child population at 33% and 28% respectively compared to 10% for white children.¹⁴⁶ Studies have also shown that the poverty of children due to this paternal-disengagement by post-divorced fathers causes: (1) limited access to good nutrition; (2) inadequate housing; (3) frequent moves; (4) heating and utility shut-offs; (5) poor plumbing; (6) exposure to insects, vermin and lead paint; (7) numerous health and developmental problems; and (8) poor educational opportunities.¹⁴⁷

The gravity of the crisis of child poverty cannot be overstated. According to Irwin Garfinkel and Sara McLanahan, “families headed by single women with children are the poorest of all major demographic groups.¹⁴⁸ In 1991, the statistics revealed that the poverty rate among children in female-headed families was more than five times the

¹⁴³ WALLERSTEIN, *supra* at 117, at 22 – 23.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 151.

¹⁴⁶ NATIONAL CENTER FOR CHILD POVERTY, http://www.nccp.org/pub_cpt05b.html (last visited 10/17/2005). (“however overall white children comprise the largest group of poor children”).

¹⁴⁷ See Mauzerall, *supra* note 43, at 310.

¹⁴⁸ IRWIN GARFINKEL & SARA McLANAHAN, SINGLE MOTHERS AND THEIR CHILDREN: A NEW AMERICAN DILEMMA, 11 (1986).

rate among married-couple families.¹⁴⁹ In 1992, statistics showed that: (1) while thirteen percent (13%) of all children under the age of six lived in poverty, sixty-six percent (66%) of young children in single-mother families lived in poverty; (2) while the median family income in married-couple homes with preschool children was approximately \$41,000, the median income in single family homes with preschool children was \$9,000; (3) while only six percent (6%) of married couple families lived in poverty, thirty-five percent (35%) of female-headed households lived in poverty; and (4) fifteen percent (15%) of black married couples with children under 18 lived in poverty, while fifty-seven percent (57%) of black mother headed homes lived in poverty.¹⁵⁰

Albeit, all researchers do not agree that the child poverty crisis derives from paternal disengagement by disadvantaged-fathers, but rather attribute child poverty to the post-divorced father's refusal to pay child support.¹⁵¹ The studies proffer that children raised by highly educated and relatively affluent single mothers fair better emotionally, educationally, and socially than those raised by two married parents with fewer economic and educational resources.¹⁵² The adumbrated conclusion from these studies is a quality father-child relationship is not essential to a child's economic well-being, but rather it is

¹⁴⁹ Marion Dobbs, *Current Status of Support Determination: Recent DEVELOPMENTS*, DETERMINING CHILD AND SPOUSAL SUPPORT DETERMINING CHILD & SPOUSAL SUPPORT, January 2005, at § 1:3.

¹⁵⁰ BLANKENHORN, *supra* note 21, at 42 – 43.

¹⁵¹ Curran, *supra* note 23; *see also* Maldonado, *supra* note 18, 926-927 (“When studies have found a positive correlation between paternal absence and an increased risk of behavioral, mental, and social problems among children, some commentators have argued that such correlation results from father's failure to pay child support, not father absence per se”).

¹⁵² *See* Maldonado, *supra* note 18, at 955.

only the father's consistent payment of a large amount of child support that is necessary to eliminate child poverty.¹⁵³

Maldonado suggested that the studies that these researchers relied on may be flawed because they do not distinguish between families in high-conflict and those with little conflict.¹⁵⁴ Studies show that fathers who maintain contact with their children (mostly in situations where there is little to no conflict) after divorce are more likely to pay child support.¹⁵⁵ Correspondingly, alleviating the high-conflict by disadvantaged-fathers may remove the primary barrier between a post-divorced father and his involvement with his child and ultimately reduce poverty.¹⁵⁶ Therefore, removing the conflict will result in more fathers paying child support, which is more likely to significantly decrease child poverty than developing more punitive measures to attract larger sums of child support from non-custodial fathers.¹⁵⁷ Moreover, research shows that many poor children after a divorce were also poor before their parent's divorce.¹⁵⁸ Therefore child poverty may in fact not be solely due to parental disengagement, but just

¹⁵³ *Id.* at 926.

¹⁵⁴ See Maldonado, *supra* note 18, at 956; see also Mackay, *supra* note 80, at 119.

¹⁵⁵ See Kidde, *supra* note 50, at 18 – 19.

¹⁵⁶ See Levy, *infra* note 478 (“It is human nature to contribute to the welfare of a spouse or a child who is an intimate part of your life”).

¹⁵⁷ See Maldonado, *supra* note 18, at 927; see also BLANKENHORN, *supra* note 21, at 43 (“Fatherlessness has become the single most powerful determinant of child poverty—more important than race, region, or educational attainment of the mother”).

¹⁵⁸ *The Effects of Marriage and Divorce on Families and Children: Presented Before the Science, Technology and Space Subcommittee of the Committee on Commerce, Science, and Transportation, United States Senate*, (May 2004) (testimony of Gordon Berlin, Executive Vice President, MDRC), available at <http://www.mdrc.org/publications/386/testimony.html> (last visited October 21, 2005) (“Not surprisingly, low-income couples have fewer resources to cope with life's vagaries . . . As a result, they face greater difficulty than middle-class individuals in forming and sustaining marriages”).

as likely due to a disproportionate amount of poverty-stricken families obtaining divorces.¹⁵⁹

D. Positive Effects of Eliminating Paternal Disengagement

There may be even more important and compelling reasons to provide immediate and palpable solutions to the immense problem of paternal-disengagement such as: (1) there is a well established principle that *both parents* have a "fundamental liberty interest" in the care, custody and management of their children; (2) children desire and have a right to the care, guidance, and companionship of *both parents* unless access to one of the parents is harmful to the child; (3) quality contact with *both parents* is deemed to be in the children's best interest; and (4) the loss of *either parent's* love, care, companionship and guidance can severely impact a child's development and have a major influence on a child's welfare and personality throughout the child's life.¹⁶⁰ However, the foremost reason to alleviate the effects of paternal-disengagement on children is simply that behavioral research indicates that children greatly benefit from a high level of post-divorce father involvement.¹⁶¹

The immediate advantages to the post-divorced child from meaningful contact with both parents after divorce are: (1) allowing a child to understand the nature of the new familial relationships; (2) reducing the child's fear that the divorce means the loss of a parent; and (3) relieving the child's misdirected sense of personal guilt for causing the

¹⁵⁹ *Id.*

¹⁶⁰ *Mabry*, *supra* note 12, at 115; *Schepard*, *supra* note 12, at 691 ("the child's interests in reducing the emotional trauma of divorce and receiving adequate financial support are best served if society promotes the long-term involvement of both parents in the child's post-divorce life")

¹⁶¹ *POPENOE*, *supra* note 51, at 147.

divorce.¹⁶² Furthermore, a father's engagement with his child naturally: (1) produces a role model for both his daughter and son; (2) provides protection and economic support for the children; and (3) offers a gendered-differentiated parenting style that psychologists find important for the healthy development of both children.¹⁶³

Unfortunately, the positive effects of eliminating paternal-disengagement are limited. For example, the non-custodial parent father must spend quality time rather than just quantity time with the child¹⁶⁴ because the contact with both parents is the strongest predictor of the well-being¹⁶⁵ of the child.¹⁶⁶ Conjointly, the positive benefits that flow from eliminating paternal-disengagement are limited to biological fathers.¹⁶⁷ Children that live with their stepfathers tend to exhibit the same type of disordered behavior that flow from paternal disengagement.¹⁶⁸ Even more important, the positive effects of eliminating paternal-disengagement are limited to the situations when the divorced parents get along.¹⁶⁹ Children who are the subject of lengthy post-separation disputes

¹⁶² See Shepard, *supra* note 12, at 705.

¹⁶³ See generally POPENOE, *supra* note 51 at 139 – 151.

¹⁶⁴Michael E. Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 VA. J. SOC. POL'Y & L. 98, 103 (2002) (“active paternal involvement, not simply the number or length of meetings between fathers and children, predicts child adjustment”).

¹⁶⁵ POPENOE, *supra* note 51, at 163.

¹⁶⁶ Maldonado, *supra* note 18, at 949 – 950.

¹⁶⁷ See Mackay, *supra* note 80 at 115 (“Children are often suspicious of their mothers' new partners and slow to open up to the benefits the new relationship might confer on them, while stepfathers are often uncertain about how to respond to the children of their new partner... Typically, this uncertainty results in lower levels of involvement”); see also Joshua Fischman, *Stepdaughter Wars: Boys Can Adjust To Stepfamily Life Fairly Quickly, But Girls Often Turn Their New Home Into An Emotional Battleground*, 22 PSYCHOLOGY TODAY 38 (November, 1988).

¹⁶⁸ See Christopher Marlborough, *Evolution, Child Abuse And The Constitution*, 11 J.L. & POL'Y 687, 694-695 (2003).

¹⁶⁹ Maldonado, *supra* note 18, at 950 & 956; see also Shepard, *supra* note 12, at 705.

between their parents have been identified as the most at-risk children among the divorcing population.¹⁷⁰ Therefore, in order for child to receive the necessary positive benefits from paternal engagement, the child must have quality contact with the biological father and be shielded from the continuous exposure to the conflict of the divorced parents.¹⁷¹ In order to accomplish this goal, the family legal system must first understand the social and legal factors contributing to the child's lack of quality time with the post-divorced father and continuous exposure to the parental conflict.

III. SOCIAL CONTRIBUTIONS TO PATERNAL DISENGAGEMENT

“Social ideological culture” refers to what people think, value, believe, and hold as ideals.¹⁷² Our society's familial social ideological culture of family (hereinafter “family-culture”) relating to what people value and believe about family is strong and maintains itself through non-legal sanctions.¹⁷³ For example, the potency of the marital commitment between a man and a wife used to be the product of family-culture and as a result uniformly reinforced through non-legal sanctions.¹⁷⁴ The non-legal sanctions that emanate from the family-culture heavily influence family laws and have an intrinsic ability to change family laws, although family laws do not have a strong enough

¹⁷⁰ See Mackay, *supra* note 80 at 123.

¹⁷¹ See Mackay, *supra* note 80, at 128 (“extensive parental cooperation is . . . the most important means by which to reduce the negative effects of divorce for children”).

¹⁷² Frances Raday, *Culture, Religion, and Gender*, 1 INT'L J. CONST. L. 663, 666 (2003)

¹⁷³ See ERIC A. POSNER, *LAW AND SOCIAL NORMS*, 68 (2000).

¹⁷⁴ See Elizabeth S. Scott & Robert E. Scott, *Marriage As Relational Contract*, 84 VA. L. REV. 1225, 1256-1257 (1998).

influence by itself to change the family-culture.¹⁷⁵ A prime example of this phenomenon is the increase of the non-legal shunning¹⁷⁶ and shamming practices¹⁷⁷ within our family-culture against “deadbeat fathers” within the last few decades. These non-legal sanctions that derive from a family-culture of parents providing for their children have been influential in the prompting the government¹⁷⁸ to create shunning and shaming laws¹⁷⁹ against “deadbeat fathers.”¹⁸⁰ On the other hand, the legal profession’s varied attempts to make family law more gender neutral¹⁸¹ has continually failed due to a strong family-culture that defines fatherhood in terms of a the 1970s paradigm of fathers as “breadwinners” or solely economic providers.¹⁸²

¹⁷⁵ See Dowd, *supra* note 61, at 791.

¹⁷⁶ Geoffrey P. Miller, *Norm Enforcement in the Public Sphere: The Case of Handicapped Parking*, 71 GEO. WASH. L. REV. 895, 904 (2003).

¹⁷⁷ See Hiawatha Bray, *Online Intrusions More Than Criminal*, BOSTON GLOBE, May 10, 2004, at C3.

¹⁷⁸ See Cass R. Sunstein, *Social Norms And Social Roles*, 96 COLUM. L. REV. 903, 913 (1996) (“A good deal of governmental action is self- consciously designed to change norms, meanings, or roles, and in that way to increase the individual benefits or decrease the individual costs associated with certain acts. . . Thus government might try to inculcate or to remove shame, fear of which can be a powerful deterrent to behavior . . . The inculcation of shame operates as a kind of tax; the removal of shame might be seen as the elimination of a tax or even as a kind of subsidy”).

¹⁷⁹ See, e.g., *Most Wanted Delinquent Parents*, L.A. County Child Support Servs. Dep't, at <http://childsupport.co.la.ca.us/dlparents.htm> (last visited Sept. 25, 2005) (listing names of parents wanted for failure to pay child support); *25 Most Wanted, Wanted by the State of New Mexico for Neglecting their Children for Not Paying Child Support*, Child Support Enforcement Div., N.M. Human Servs. Dep't, at <http://www.state.nm.us/hsd/wanted.html> (last visited Sept 25, 2005) (same).

¹⁸⁰ See Baskerville, *supra* note 65, at 495 – 496 (“ deadbeat dads are now the subjects of a national demonology, officially designated villains whose condign punishment is applauded by politicians, press, and public alike”); see also Rebecca Mitchell, *Judge Thinks 'Outside The Box' Readers Like Choice For Deadbeat Dads*, CINCINNATI POST (KY), May 15, 2004. at K4.

¹⁸¹ See generally Martha Albertson Fineman, *Fatherhood, Feminism And Family Law*, 32 MCGEORGE L. REV. 1031, 1031-1032 (2001) (“one of the most profound influences on this transformation to gender neutrality in family law was the gender equality revolution mounted by feminist legal practitioners and theorists in the latter part of the twentieth century”).

¹⁸² See Dowd, *supra* note 61, at 789 – 792.

Even so, family-culture and the family law legal system (hereinafter “family-system”)¹⁸³ are inextricably intertwined and involved in the resolution of family-culture conflicts (hereinafter “conflicts”).¹⁸⁴ When family-culture essentially defines the roles of motherhood and fatherhood, the family law legal system plays a key role in implementing and enforcing these definitions through child custody¹⁸⁵ and child support¹⁸⁶ laws. However, when family-culture’s definition of motherhood and fatherhood become obscure, the family-system becomes partisan. This paradox was clearly manifested in 1999¹⁸⁷ when the family-system was required to decide whether the Cuban boy Elian Gonzalez, whose mother died on a boat traveling from Cuba to America, should be kept in America with his uncle or be sent back to his father in Cuba.¹⁸⁸ The family-system was inexorably entangled in the vehement conflict which resulted in equivocal results.¹⁸⁹

Therefore, the force inciting the family conflict is not primarily the family-system but rather a dubious family-culture implemented and enforced by the family-system.¹⁹⁰ The dubiousness results from the dramatic changes in family structure in the last 30-40 years that have clouded society’s views so that the current definition of motherhood and

¹⁸³ *Family Law Legal System*: the laws concerning family, the family law attorneys, and the family law court system which interprets and implements family law.

¹⁸⁴ See Dowd, *supra* note 61, at 788.

¹⁸⁵ *Id.* at 792 – 793.

¹⁸⁶ Maldonado *supra* note 18, at 935 (“Fathers who do not pay child support are now portrayed as criminals and are clearly ostracized in many communities”); see also Gloria Chan, *Reconceptualizing Fatherhood: The Stakes Involved In Newdow*, 28 HARV. J. L. & GENDER 467, 471 – 472 (2005).

¹⁸⁷ See Monika Leal, *Timeline of Elian Gonzalez’s Time*, MIAMI HERALD, at B2 (April 22, 2005).

¹⁸⁸ *Gonzalez v Reno*, 212 F.3d 1338, 1344 (2000).

¹⁸⁹ See Cathy Young, *The Sadness of the American Father*, THE AMERICAN SPECTATOR, at Feature, (June 2000)

¹⁹⁰ See generally Sunstein, *supra* note 178, at 903.

fatherhood are much less apparent.¹⁹¹ This societal uncertainty of our family-culture has created social norms, social stigmas, and social realities that have gravely contributed to the paternal disengagement of disadvantaged fathers – one of the biggest domestic problems in America today.¹⁹² Unless these three social contributions that derive from an ambiguous family-culture are corrected, any legal intervention by the family-system will remain seriously tendentious.¹⁹³

A. Social Contribution #1: Social Norms

Family-culture begins with social norms.¹⁹⁴ A social norm is a social attitude of approval or disapproval that essentially specifies what ought to be done and what ought not to be done.¹⁹⁵ Because people generally care what others think of them, social norms give community members power and authority to punish those who engage in undesirable behavior.¹⁹⁶ Historically, the conventional social norm for parents was to: (1) rear their children of their marriage to a healthy productive adulthood; (2) feed, clothe, shelter, discipline, socialize, educate, and support their children; and (3) love and protect their children from harm.¹⁹⁷ These social norms were so deeply internalized into our family-

¹⁹¹ See generally McNeely, *supra* note 8, at 891.

¹⁹² See BLANKENHORN, *supra* note 21, at 1.

¹⁹³ See Roy, *supra* note 60, at 270 – 276 (“Anyone who has been plundered, vilified, and incarcerated—all on the claim of supporting children who have been taken from him through no fault of his own—will eventually reach the limits of his endurance”).

¹⁹⁴ See Sunstein, *supra* note 178, at 916 (“Much socially desirable behavior is attributable to social norms . . . in some communities, norms encourage a lack of education, promiscuity, or abuse of alcohol or unlawful drugs”).

¹⁹⁵ Maldonado, *supra* note 18, at 930.

¹⁹⁶ *Id.* at 931.

¹⁹⁷ Elizabeth Scott, *Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1912 (2000).

culture that there was a natural reinforcement of the bond of emotional attachment between the parents and their children which fostered a long-term investment in the parent-child relationship.¹⁹⁸ This family social norm was considered the cornerstone of our society¹⁹⁹ reinforced by the community rather than the family-system.²⁰⁰ However, societal norms about motherhood, fatherhood, and parental relationships with children have undergone many changes from the historical social norms. The change has resulted in a lessening of the importance of these relationships between the father and his child which has ultimately encouraged the paternal-disengagement of post-divorced fathers.²⁰¹

In colonial America children were considered the father's property and as a result the father's social norm involved: (1) primary and irreplaceable responsibility for the care and well-being of his child,²⁰² and (2) primary responsibility for essential parental tasks such as the religious and moral education of their children.²⁰³ During the industrial revolution societal norms changed the father's role from primary caregiver for his children to the role of economic provider and disciplinarian because fathers were typically required to work longer hours.²⁰⁴ Concurrently, because society considered mothers incapable of adapting to the rigorous demands of the workplace, the societal

¹⁹⁸ *Id.* at 1913.

¹⁹⁹ Akre, *supra* note 69, at 634 (1992) (“The family was considered the cornerstone of society”).

²⁰⁰ *Id.*

²⁰¹ McNeely, *supra* note 8, at 892 (“Society's view of fathers has changed dramatically since the days when courts rarely intervened between the father-child relationship”).

²⁰² Smith, *supra* note 8, at 41.

²⁰³ Akre, *supra* 69, at 634 – 635.

²⁰⁴ McNeely, *supra* note 8, at 892 & 900.

norm for mothers changed to the primary caretaker and supervisory role of the children.²⁰⁵

In the 1970's, feminism became one of the more dominant voices in the United States, and as a result societal norms for mothers and fathers changed again²⁰⁶as mothers made a mass exodus into the workplace.²⁰⁷ Some authors believe that during this period extremist feminist ideology tried to usher in a new paradigm that fathers weren't really necessary because mothers or women were capable of providing for all of the children's needs.²⁰⁸ This ideology received support from many researchers and scholars, but with the caveat that mothers and children do need the father's economic support.²⁰⁹ The family-system also began to reinforce this new family social norm by awarding custody mostly to mothers, and enacting more increasingly punitive child support enforcement laws on fathers.²¹⁰ Consequently fathers became excised from their roles as family "breadwinners" and "head of the households" by the new family social norms that were reinforced by the law, but were still held responsible for a majority of the economic support of the post-divorced children.²¹¹

²⁰⁵ McNeely, *supra* note 8, 901.

²⁰⁶ *See generally* Fineman, *supra* note 181, at 1031 – 1032.

²⁰⁷ McNeely, *supra* note 8, at 904.

²⁰⁸ *Id.* at 904 - 905 (“In the 1970's . . . a national study indicated that 40% of custodial mothers admitted that they had refused to allow fathers to exercise visitation as a retributive measure, while 20% believed that fathers should be totally cut out of the lives of their children and sought to achieve such an end”); *see generally* David R Usher, *Fathers Forced From Families Fuel Hyper-Feminist Family*, HUMAN EVENTS, Volume 60, Issue 12 at 18 (April 5, 2004).

²⁰⁹ Maldonado, *supra* note 18, at 953.

²¹⁰ *See* McNeely, *supra* note 8, 926 – 927.

²¹¹ *Id.* at 8, at 905 – 906.

In essence, over the past two hundred years the changing social norms of fatherhood have nullified in full or in part each of its four traditional roles: irreplaceable caregiver, moral educator, head of family, and family breadwinner.²¹² Despite the large body of scholarships that supports the notion that fathers need to be involved with their children, social norms have limited the role of father to an economic provider²¹³ despite the fathers desire to be involved in his child's life.²¹⁴ According to Cynthia McNeely, this socially accepted narrowed view of the role of fathers is largely responsible for the wholesale destruction of the post-divorce father-child relationship and a significant factor in paternal disengagement.²¹⁵

B. Social Contribution #2: Social Stigmatization

In addition to social norms, the propriety of stigmatizing certain fathers as “deadbeat dads” has also become part of the family-culture.²¹⁶ Post-Divorced fathers are often stigmatized as “deadbeat dads”-- fathers who leave their children in the care of their mother but refuse to pay court-ordered child support or monetary payments meant to go

²¹² *Id.*

²¹³ Maldonado, *supra* note 18, at 940.

²¹⁴ See McNeely, *supra* note 8, at 916; see also Maldonado, *supra* note 18, at 938 – 939; Kidde, *supra* note 50, at 15 (“Fathers typically found that lawyers and judges presumed that they would not be interested in custody of the children”).

²¹⁵ *Id.*; see generally Young *supra* note 189.

²¹⁶ See e.g. Joe Nikosey, *State Has Bias Against Non-Custodial Fathers*, PATRIOT LEDGER, at 10 (October 14, 2004); Laura Crimaldi, *Some Deadbeat Dads Deeply Into Denial; Long Gone, Hard To Find, Many Refuse To Ante Up*, BOSTON HERALD, at 5(August 13, 2005) (“The state Department of Revenue plastered the faces of 10 scofflaw dads who bolted the Bay State owing their children a total of more than \$500,000 on its latest poster of “most wanted” deadbeat dads”); M. H. Moore, *Children Services: Hey, You Deadbeat Dads, We're Gonna Get You*, ADWEEK, EASTERN EDITION, at Section *New Campaigns*, (June 24, 1996) (“Deadbeat dads are the focus of a new campaign New York City's Office of Child Support Enforcement has launched to help clamp down on these societal scofflaws”); Margaret Carlson, *The Second Wives Club*, TIME MAGAZINE, at 10 (July 1, 1996) (“There are some matters we can all agree on: motherhood and apple pie--good; deadbeat dads—bad”).

towards the welfare of the children, or a father who abdicates some, if not all, parental duties.²¹⁷ Society's stereotypical view of the "deadbeat dad" is a wealthy surgeon who abandons his children in poverty to squire his new trophy wife around in a shiny red Porsche.²¹⁸ This stereotype was immensely ingrained into the minds of society²¹⁹ by the now-discredited Lenore Weitzman study which reported that women suffer a 73% drop in their standard of living following divorce while men experience a 42% increase in their standard of living after divorce.²²⁰

Weitzman's 10-year California study, by far, had the most influential and widespread impact on instigating society's stigmatization of post-divorced men.²²¹ The data in the study has been widely cited in legislative debates, testimonies before Congress, over 175 newspaper and magazine stories, 348 social science articles, 250 law reviews, 24 court of appeals cases, Supreme Court decisions, and in President Clinton's 1996 budget request.²²² The figures were also ranked as one of the most cited demographic statistics of the 1980s, and some postulate the figures were the most widely known and influential social science results of the last 20 years.²²³ Weitzman's findings were overwhelming successful in

²¹⁷ See generally Thomas C. Gabel, *A Critical Analysis Of The Child Support Recovery Act: Do Deadbeat Dads Have A Leg To Stand On After The Supreme Court's New Commerce Clause Decision?*, 41 ST. LOUIS U. L.J. 353, 355 (1996) ("Take responsibility for your children, or we will force you to do so, because governments don't raise children; parents do, and you should"); see also Kidde, *supra* note 50, at 15.

²¹⁸ See Henry, *supra* note 39, at 236; See also Smith, *supra* note 8, at 43 ("Like drunk drivers and repeat offenders, deadbeat dads are a perennial target for politicians and the press, who play up the image of a shirking father living in a luxurious mansion while his children go hungry in an unheated hovel").

²¹⁹ See Sanford L. Braver, *The Gender Gap In Standard Of Living After Divorce: Vanishing Small?*, 33 FAM. L.Q. 111, 113 – 114 (1999).

²²⁰ See McNeely, *supra* note 8, at 906.

²²¹ Braver, *supra* note 219, 113 (1999).

²²² *Id.*

²²³ *Id.* at 113 – 114.

prompting advocates to stigmatize fathers and to lobby federal and state governments to stigmatize and penalize men for perceived inequities in post-divorce income.²²⁴

In 1996, a scholar obtained Weitzman's computer files and paper records to reanalyze the data and reported that the sample used in Weitzman's report really yielded only a 27 percent drop in standard of living for women and a 10 percent rise in standard of living for men.²²⁵ Weitzman belatedly acknowledged that the original figures were wrong because of a mistake in computer calculations performed by a research assistant, but assumed responsibility for the inaccurate study.²²⁶ However, the results of Weitzman's study were already trumpeted in the news media and various publications as proof that society ought to stigmatize post-divorced fathers.²²⁷ As a result, despite independent researchers, feminist researchers, and Weitzman discovering that the numbers were woefully inaccurate, society continued stigmatizing fathers.²²⁸

Private parties conjoined efforts with federal and state government to stigmatize "deadbeat fathers" through: (1) seizing automobiles;²²⁹ (2) liens on property;²³⁰ (3)

²²⁴ *Id.* at 114 – 115.

²²⁵ Braver, *supra* note 219, 115 – 116.

²²⁶ *Id.*

²²⁷ McNeely, *supra* note 8, at 907.

²²⁸ See Braver, *supra* note 219, at 115; see also McNeely, *supra* note 8, at 908 ("The U.S. Census Bureau later confirmed in a study that Weitzman's 73% number was wrong and inconsistent with her own information . . . Eventually, Weitzman herself acknowledged her study was erroneous . . . Yet the damage was done").

²²⁹ Lynn Langway et al. *Rounding Up Delinquent Dads*, NEWSWEEK, at 76 (August 6, 1984) ("In Tallahassee, Fla., a judge asks fathers who have defaulted on their child support whether they drove to court -- and then seizes their cars").

²³⁰ Peter Charles, *Tilting at Windmills*, 31 WASHINGTON MONTHLY 4 (March 1, 1999) ("In Fairfax County, Va., deadbeat parents are finding their cars booted").

intercepting tax refunds;²³¹ (4) arrests and jail time;²³² (5) revocation of passports; (6) suspension of drivers licenses; and (8) posting “Deadbeat Dads” wanted posters on internet and newspaper sites.²³³

Ironically, society’s stigmatization towards “deadbeat dads” didn’t affect the stereotypical “deadbeat dad” nearly as much as the disadvantaged-fathers²³⁴ who became the actual victim.²³⁵ For example, in one examination of the “most wanted posters” used in several states to stigmatize “deadbeat dads”, one author found that the list of fathers on the posters contained mostly economically disadvantaged, marginal blue-collar, or occasional workers.²³⁶ State government child support enforcement mechanisms were also found to target a large amount of similar classes of workers or non-workers²³⁷ who most likely could not afford significant child support payments or lawyers to help

²³¹ Barbara Dority, *Fathers Have Rights, Too; Civil Liberties*, THE HUMANIST, Vol. 54, No. 2, at 35 (March, 1994) (“ Tax refunds are intercepted . . . these gross violations of civil liberties, which would not be tolerated in any other situation, are also self-defeating methods of collection . . . Nevertheless, "enforcement" continues”).

²³² See Stephen Baskerville, *Q: Is court-ordered child support doing more harm than good?; Yes: This Engine Of The Divorce Industry Is Destroying Families And The Constitution*, INSIGHT ON THE NEWS, at 24, (August 2, 1999) (“Under the guise of pursuing deadbeat dads, we now are seeing mass incarcerations without trial, without charge and without counsel, while the media and civil libertarians look the other way”).

²³³ Baskerville, *supra* note 65, 486 (“In August 2002, Health and Human Services (HHS) secretary Tommy Thompson announced mass arrests of parents he says have disobeyed government orders, calling them the "most wanted deadbeat parents"); see also <http://www.wantedposters.com>.

²³⁴ Stuart Miller & Armin Brott, *Dead-Broke Dads: Why Cold, Hard Cash Just Isn't Enough*, 43 PLAYBOY 40 (February 1996) (“When you consider the number of unemployed, disabled or ill, the portrait of the deadbeat dad as callous falls apart”).

²³⁵ Henry, *supra* note 39, at 235 (“I have seen far more parents who are ordered to pay child support who pay some support but not all they are ordered to pay. . . Many of these parents are engaged in a financial struggle that they cannot win . . . These are the working poor – Hon. Anne Kass. Presiding Family Judge, Albuquerque, New Mexico, District Court”).

²³⁶ *Id.*

²³⁷ Henry, *supra* note 39, at 237 (“According to one news story: "What Maximus and Lockheed Martin learned in the process of tracking down non-paying parents is that most who don't make child support payments are, in a word, broke”).

advocate for them.²³⁸ In fact, family-culture’s stigmatization of the “deadbeat father” mostly affected fathers who had:²³⁹ (1) no housing; (2) no job stability or no job; (3) no education; (4) poor health; (5) a second family; (6) disabilities; or (7) civil disobedience violations in retaliation from the prevention of visitation with their children.²⁴⁰

The stigmatization of “deadbeat fathers” also created long-lasting myths about fathers that had devastating consequences for low-income fathers that still continue today.²⁴¹ Recently, David Braver wrote a book on the impropriety of these myths that developed in the 1970’s through research and interviews of both mothers and fathers.²⁴² Braver was able to credibly dispel several deep-seated “deadbeat dad” myths such as: (1) divorced fathers are runaway dads that impoverish their former wives and children; (2) divorce settlements tilt unfairly in favor of divorced fathers; and (3) fathers mostly abandon their families and responsibilities after divorce.²⁴³ Even so, society’s unjust stigmatization of the low-income post-divorced father has marginalized disadvantaged-fathers and made them to feel insignificant which has only served to increase paternal disengagement.²⁴⁴

C. Social Contribution #3: Social Realities

²³⁸ *Id* at 236.

²³⁹ *Id.* at 240 – 241 (“The problem is, chronic non-supporters do not have dependable jobs, or tax refunds, or seizeable property . . . That’s why they are chronic”).

²⁴⁰ *Id.* at 238 – 240.

²⁴¹ M. Dee Samuels, *Divorced Dads: Shattering The Myths Book Review By Sanford L. Braver, With Diane O’Connell*, 37 *Fam. & Conciliation Courts Rev.* 514, 515 (1999).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *See generally* McNeely, *supra* note 8.

The realities of paternal visitation are a product of our Family-Culture.²⁴⁵ Contrary to wide-spread societal beliefs, to a large extent, paternal-disengagement by post-divorced fathers is due to the legal limitations²⁴⁶ originating from family-culture.²⁴⁷ For example, the typical legally-enforced visitation reality for a non-custodial post-divorced father has been referred to as “Vanilla Visitation.”²⁴⁸ Vanilla Visitation is a boilerplate court order that allows fathers to see their children only one night per week, alternating weekends and holidays, and a few weeks in the summer which may equal 50 days a year.²⁴⁹ Surveys show that the majority of divorcing fathers would like to have at least a joint custody arrangement rather than being relegated to the Vanilla Visitation schedule,²⁵⁰ but most fathers lack the resources for a legal fight.²⁵¹ Fathers also resent the Vanilla

²⁴⁵ See Marsha B Freeman, *Reconnecting The Family: A Need For Sensible Visitation Schedules For Children Of Divorce*, 22 WHITTIER L. REV. 779, 785 – 786 (2001) (“Some of the main reasons for these unintended effects of divorce stem from the traditional visitation schedules between the child and the non-custodial parent, a schedule that supposedly places emphasis on the child’s physical stability but which, in actuality, erodes the emotional ties with the non-custodial parent, and, therefore, the stability of that relationship . . . In effect, many children feel that the non-custodial parent is divorcing them, not just the other parent, while many non-custodial parents feel as if they are being divorced from their children, simply by virtue of being physically cut off from them much of the time”).

²⁴⁶ *Id.* at 786 – 787 (“In practicality . . . most court-ordered custody and visitation arrangements, have traditionally relied on the default visitation schedule . . . The effect, if not the intent, is to promote isolation from the non-custodial parent, and exacerbate the societal image of the non-custodial parent as an unnecessary, almost intrusive, part of the child’s life, with little to no authority”).

²⁴⁷ See Maldonado, *supra* note 18, at 976 (“paternal visitation itself may discourage post-divorced fathers from staying engaged with their children”).

²⁴⁸ See Smith, *supra* note 8, at 42. .

²⁴⁹ *Id.*

²⁵⁰ JEFF ATKINSON, ABA GUIDE TO FAMILY LAW, available at http://www.abanet.org/publiced/practical/books/family/chapter_12.pdf (“A common amount of visitation, however, is: every other weekend-Friday evening through Sunday-; a week night for dinner; half of the child’s winter and spring breaks, alternate major holidays-Fathers’ Day or Mothers’ Day, as applicable; and two to six weeks in the summer”) (last visited October 5, 2005).

²⁵¹ See Young, *supra* note 189, at Feature.

Visitation schedule because it marginalizes them and treats them like "checkbooks" and "visitors."²⁵²

Moreover, Vanilla Visitation falls short of a meaningful parent-child relationship because the visitation schedule:²⁵³ (1) doesn't allow young children enough time to reconnect and reestablish a relationship with their non – custodial parent in between visitations; (2) demeans fathers by taking away their parental authority and relegating them to a visitor rather than a parent;²⁵⁴ and (3) turns fathers into "Disneyland Dads."²⁵⁵ As a result, the social realities of non-custodial paternal visitation creates a superficial parent-child relationship for the post-divorced father which eventually leads to the partial or complete disengagement of the disadvantaged-fathers.²⁵⁶

The de facto paternal visitation for the non-custodial father also generates extreme social and emotional grief for disadvantaged-fathers.²⁵⁷ Although the sense of grief and loss is a very high burden for both parents after a divorce, the non-custodial father incurs the additional grief from the loss of the relationship with his children which many fathers

²⁵² *Id.*

²⁵³ See Maldonado, *supra* note 18, at 976 – 977.

²⁵⁴ See Young, *supra* note 189, at Feature ("As one father who ceased contact with his children after he was denied joint custody expressed: "I'm a parent and parents do not visit their children. If I see my child only every other weekend, I become nothing more than a visiting uncle . . . I am a father in name only at this point").

²⁵⁵ See Maldonado, *supra* note 18, at 948 – 949 ("The majority of nonresidential fathers behave more like uncles, or what commentators refer to as "Disneyland Daddies," . . . Rather than helping their children with their homework or doing routine chores with them, most nonresidential divorced fathers take their children to dinner, the movies, or the mall . . . In other words, they visit with their children, but they do not parent them").

²⁵⁶ *Id.* at 977.

²⁵⁷ See Kidde, *supra* note 50, at 15 (Arditti and Allen, 1983; Arendell, 1992; Dudley, 1991; Dudley 1996; Kruk, 1991; Kruk, 1992; Lund, 1987; Umberson & Williams, 1993).

consider to be the most painful of all the losses following the divorce.²⁵⁸ Fathers also report experiencing feelings of isolation, a sense of being unneeded, and some have even contemplated suicide.²⁵⁹ During and after the visitation with their children, some fathers become emotional wrecks because they dread the anguish they will endure once the visit is over, and are unable to cope with these emotions.²⁶⁰ The emotions are often strong enough to cause a post-divorced father to limit, curtail, or cut off all contact with their children.²⁶¹ Even more, the intense emotional pain encountered by a post-divorced father reinforces the sense of guilt and anger over the divorce and impels him into a permanent paternally-disengaged father.²⁶²

IV. LEGAL CONTRIBUTIONS TO THE PATERNAL DISENGAGEMENT

As we have seen in Part III, family culture significantly contributes to the problem of parental disengagement by the disadvantaged father. In this section, we will explore how the legal system reinforces that family culture and thus, in turn, exacerbates the

²⁵⁸ *Id.* at 15 – 16 (“as another father noted: . . . you are away from your children, and your wife, and they are in the family home . . . they are a threesome and you are an isolated one . . . That can be absolute desolation”).

²⁵⁹ *Id.*; see also Susie O'Brien, *Separated dads fight long odds*, HERALD SUN (AUSTRALIA), February 18, 2005, at 30 (“Some fathers who do not live with their children suffered breakdowns and even contemplated suicide, particularly when contact with their children broke down”).

²⁶⁰ Susan J. G. Alexander, *A Fairer Hand: Why Courts Must Recognize The Value Of A Child's Companionship*, 8 T.M. COOLEY L. REV. 273, 283-284 (1991).

²⁶¹ See Maldonado, *supra* note 18, at 978.

²⁶² *Id.* at 978 – 979.

problem.”²⁶³ Essentially, the family-system intervenes in conflicts whether or not by choice because it is inextricably interconnected with family-culture.²⁶⁴ So far, the family-system’s deliberate intervention has acted as a powerful coercive force to enforce the mother’s custodial relationship with her children and the father’s responsibility for the economic support of his children.²⁶⁵ On the other hand, the family-system’s choice not to intervene in the mother’s ability to unilaterally destroy a father-child relationship has resulted in wide-spread paternal-disengagement by disadvantaged fathers.²⁶⁶ In either circumstance, the adversarial nature of the family-system creates a winner and a loser arbitrated by a judge whose personal sense of morality on some occasions has untenably created decades of unequal family justice.²⁶⁷ As a result, the family-system, heavily influenced by family-culture, directly and indirectly contributes to the already immense problem of paternal-disengagement.²⁶⁸ through the structure of the state law courts (hereinafter “family-courts”) and the implementation of the laws relating to families.²⁶⁹

²⁶³ Barbara A. Babb, *Fashioning An Interdisciplinary Framework For Court Reform In Family Law: A Blueprint To Construct A Unified Family Court*, 71 S. CAL. L. REV. 469, 475 – 476 (1998) (“The judicial system present in most states . . . contributes to the demise of the family unit”).

²⁶⁴ Dowd, *supra* note 61 at 788.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ See Dowd, *supra* note 61, at 785 – 786; see also Barbara A. Babb, *supra* note 263, at 475 – 476 (1998) (“The traditional adversarial nature of court systems is inappropriate for the resolution of family legal matters”).

²⁶⁸ See Kidde, *supra* note 50, at 15 (“In interviews with non-custodial fathers when explaining why they have stopped seeing their children . . . their frustration with this system and their feeling of being devalued by it prompt them to stop trying to obtain the kind of parental role they want”).

²⁶⁹ See Robyn Blumner, *Standing Up For Fathers' Rights*, ST. PETERSBURG TIMES, May 17, 2004, at B9, (“family court has to be the last bastion of legally enforced sexism in our society . . . Traditional concepts of the family -- where the father is breadwinner and the mother controls the domestic sphere -- permeate the process, often putting at a disadvantage men who want an equal opportunity to rear their children”).

A. Legal Contribution #1: The Family-Court

1. The Power of the Family-Court

The family-court is considered one of the most powerful branches of the judiciary due to its almost unlimited power to reach into the deepest part of the private lives of families.²⁷⁰ This power originated during the pre-civil war period²⁷¹ when slave owners argued that the master-slave relationship was a "domestic relation," which the federal government had no authority to regulate.²⁷² Subsequently, the Supreme Court in 1890,²⁷³ declared the husband, wife, and child relationship was also the subject of "domestic relations" and therefore belonged almost exclusively to the laws of the states.²⁷⁴ Thus the "domestic relations exception"²⁷⁵ was created which prevented federal courts from scrutinizing family-court decisions in divorce, alimony or custody decisions.²⁷⁶

The justification for the domestic relations exception was the need of family-courts to monitor a family's compliance with court orders and the presumption of the family-

²⁷⁰ See Baskerville, *supra* note 65, at 488.

²⁷¹ Kristin A. Collins, *Federalism's Fallacy: The Early Tradition Of Federal Family Law And The Invention Of States' Rights*, 26 CARDOZO L. REV. 1761, 1844 – 1845 (2005) ("Attempts by the federal government to determine the rights associated with an individual's status within a family-such as husband or wife-carried an ominous threat for slave owners . . . if the federal government could regulate domestic relations of any sort, then by implication it had authority to regulate the relation of master and slave").

²⁷² *Id.*

²⁷³ *Ex parte Burrus*, 136 U.S. 586, 593-594 (1890) ("As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction").

²⁷⁴ See Collins, *supra* note 271, at 1857.

²⁷⁵ See *Ankenbrandt v. Richards*, 504 U.S. 689, 693 (1992) ("The domestic relations exception . . . has been invoked often by the lower federal courts . . . The seeming authority for doing so originally stemmed from the announcement in *Barber v. Barber* . . . that the federal courts have no jurisdiction over suits for divorce or the allowance of alimony").

²⁷⁶ See Akre, *supra* note 192, at 635.

court's special proficiency in handling conflicts.²⁷⁷ Irregardless of the purpose of the “domestic relations, the aftermath of the concept gave family-court judges unfettered discretion²⁷⁸ when deciding family custody and child support issues.²⁷⁹ Some scholars consider this power given to judges in the family-court detrimental to all parties involved because the broad discretion: (1) jeopardizes the fundamental rights of parents and children; (2) allows for vague and indeterminate standards that lacks predictability; and (3) supports the perception that family-court judicial decisions are arbitrary.²⁸⁰ One patent example is when the family-court has failed to either recognize or adhere to the principle²⁸¹ that parenting is an essential right²⁸² that is far more precious than property rights²⁸³ even though federal case law has recognized this policy as a constitutional

²⁷⁷ See Richards, *supra* note 359, at 704.

²⁷⁸ Murphy, *infra* note 280, at 209 (“Nowhere have judges exercised more unfettered discretion than in family law”).

²⁷⁹ Mark Sappenfield, *A Legal Boost For Noncustodial Parents*, CHRISTIAN SCIENCE MONITOR, at 1 (May 3, 2004) (“Child custody is an area of so much judicial discretion . . . So the more state law you can get on your side, the better”).

²⁸⁰ Jane C. Murphy, *Eroding The Myth Of Discretionary Justice In Family Law: The Child Support Experiment*, 70 N.C. L. REV. 209, 209-211 (1991).

²⁸¹ *Troxel v. Granville*, 530 U.S. 57, 65, (2000) (“the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court”); see also Donald C. Hubin, *Parental Rights And Due Process*, 1 J. L. FAM. STUD. 123, 129 (1999) (“The common law has long recognized parental rights as a key concept, not only for the specific purposes of domestic relations law, but as a fundamental cultural assumption about the family as a basic social, economic, and political unit”).

²⁸² *Duchesne v. Sugarman*, 566 F.2d 817, 825 (C.A.N.Y. 1977) (“Here we are concerned with the most essential and basic aspect of familial privacy the right of the family to remain together without the coercive interference of the awesome power of the state”); see also *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“The rights to conceive and to raise one's children have been deemed 'essential...basic civil rights of man, and right far more precious . . . than property rights . . . The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment . . . the Equal Protection Clause of the Fourteenth Amendment . . . and the Ninth Amendment”).

²⁸³ See *May v. Anderson*, 345 US 528, 533 (1953); see also *Mabry*, *supra* note 12, at 113 (“children have a right to parents' care, guidance and companionship . . . Unless access is harmful to the children, contact with their father is deemed to be in the children's best interest”).

principle.²⁸⁴ Poignantly, when the family-court exercises it's power in this way by the judicially-created "domestic relations exception," the natural succession has been paternal-disengagement by disadvantaged-fathers.²⁸⁵

2. The Detour from the Purpose of Family-Courts

In addition to the broad powers given to family-court judges, the family-court has failed to achieve the purpose envisioned by the drafters of the Standard Family Court Act ("Family-Act").²⁸⁶ In 1959, Congress enacted the Family-Act to provide guidance to states in creating family-courts to deviate from the traditional adversary procedures common to the legal profession.²⁸⁷ The Family-Act's purpose for creating the family-courts were to: (1) resolve family conflicts and decrease the hostility between litigants; (2) integrate child and family legal proceedings so as to administer justice more efficiently; and (3) provide a continuity of judges so they may develop an expertise in family legal matters.²⁸⁸ The drafters of the Family-Act also foresaw the states adopting a

²⁸⁴ See Akre *supra* note 69, at 635 ("United States Supreme Court recognized a "fundamental liberty interest of natural parents in the care, custody, and management of their child").

²⁸⁵ See Kidde, *supra* note 50, at 16 ("As one father said, I feel the justice system as we know it now is a joke . . . The judges are extremely one sided, and most lawyers don't care or represent you properly"); see also JEFFREY M. LEVING, FATHER'S RIGHTS: HARD HITTING AND FAIR ADVICE FOR EVER FATHER INVOLVED IN A CUSTODY DISPUTE, 25 - 26 (1997).

²⁸⁶ See Babb, *supra* note 263, at 480.

²⁸⁷ *Id.*

²⁸⁸ See Babb, *supra* note 263, at 480 ("The purpose of a family court act is to protect and safeguard family life in general and family units in particular by affording to family members all possible help in resolving their justiciable problems and conflicts arising from their interpersonal relationships, in a single court, with one specially qualified staff under one leadership, with a common philosophy and purpose, working as a unit, with one set of family records, all in one place, under the direction of one or more specially qualified judges").

family court structure that included vital social services designed to improve the lives of families.²⁸⁹

A study conducted thirty years after the Family-Act was created found that the family-court greatly deviated from the original intended purpose.²⁹⁰ The predominant short-comings included: (1) time-consuming, expensive, and cumbersome resolution processes; (2) lack of attention to child-related issues; (3) failure to utilize more effective non-judicial resolution techniques; (4) inadequate coordination and consolidation of litigation involving family units; (5) lack of interest, temperament, and an adequate understanding of family law disputes; and (6) lack of apathy and attention to the special needs of low-income people.²⁹¹ Regrettably, the study has not provoked any significant changes (although there have been some)²⁹² in most family-court systems. The family-court's deviation from its original purpose has severely affected the disadvantaged-father and contributed to paternal-disengagement.

3. Judges in the Family-Court

More importantly, an additional contribution to paternal-disengagement by disadvantaged-fathers is the family-court's failure to equip judges to undertake the

²⁸⁹ *Id.* at 481.

²⁹⁰ *Id.*

²⁹¹ See Babb, *supra* note 263, at 492 – 493; see also Baskerville, *supra* 65, at 490.

²⁹² See, e.g. Alicia M. Homrich et. Al., *The Court Care Center For Divorcing Families*, 42 FAM. CT. REV. 141, 141 – 142 (2004) (“the Court Care Center for Divorcing Families, a divorce education intervention program currently being implemented in the Ninth Judicial Circuit in Orange County, Florida . . . offers multilevel interventions designed to address the educational and emotional needs of families going through the transition of divorce”); Pedro-Carroll, *supra* note 19, at 378 (“Assisting Children through Transition (A.C.T.)-For the Children, designed to provide information and skills to help parents reduce the stress of marital breakup on their children”); AFCC Task Force on Parenting Coordination, *Parenting Coordination: Implementation Issues*, 41 FAM. CT. REV. 533, (2003) (“The PC model has been repeatedly recommended by professionals as an intervention to help families structure, implement, and monitor viable parenting plans and to reduce relitigation rates where high conflict threatens the family adjustment process”).

assignment of resolving the most intimate, emotional, and all-encompassing aspects of the personal lives of families.²⁹³ This failure has become particularly important in high-conflict divorces²⁹⁴ because of the increase in high-conflict divorces in the last 5 – 10 years.²⁹⁵ Children of the high-conflict divorcing parents suffer immensely when untrained judges with little background in family dynamics are ill-equipped to adequately handle high-conflict relationships.²⁹⁶ Often these children are used as weapons in these high-conflict divorces causing the child extreme damage both psychologically and emotionally.²⁹⁷

High-Conflict divorces pose significant challenges to the family-system because of the ostensible complexity and dynamics involved in post-divorce relationships; and therefore require the assistance of mental health professionals, psychologist, and social workers.²⁹⁸ In order for a family-court judge to make an informed and accurate decision in high-conflict divorces, the judge must have a strong understanding of the common

²⁹³ See Gary B. Melton, *Children, Families, and the Courts in the Twenty-First Century*, 66 S. CAL. L. REV. 1993, 1993 – 1994 (1993); see also Babb, *supra* note 346, at 471 – 472; Mauzerall, *supra* note 44, at 292.

²⁹⁴ See Bricklin, *supra* note 48, at 506 (“As the criteria of resolution has shifted to a search for the “psychological parent” and “best interests of the child” models, there s much more room to fight”); Bill Ezzell, *Inside The Minds Of America's Family Law Courts: The Psychology Of Mediation Versus Litigation In Domestic Disputes* 25 LAW & PSYCHOL. REV. 119, 119 – 120 (2001) (“Domestic relations cases including divorce, child support, child custody/visitation, adoption, paternity, and domestic violence are presently considered the fastest growing body of state civil court cases throughout the nation”).

²⁹⁵ See Mauzerall, *supra* note 44, at 292.

²⁹⁶ *Id.*; See also Bricklin, *supra* note 48, at 501 (Marital conflict has more negative effects on children's adjustment than has been demonstrated for any other researched variable”).

²⁹⁷ See Bricklin, *supra* note 48, at 502.

²⁹⁸ See Sarah Ramsey, *High Conflict Custody Cases: Reforming the System for Children*, 39 FAM. CT. REV. 146, 146-147 (2001) (“The goal of the family law system should be to give the parties the tools to restructure their lives after the immediate case . . . To accomplish this, judges, lawyers, and mental health professionals need to adopt new models for resolving family disputes that focus on the welfare of children”).

personality disorders that are common to high-conflict divorces which may include: (1) self-centeredness and narcissism;²⁹⁹ (2) self-righteousness; (3) exceedingly blaming orientations; (4) the necessity to make others experience the negative emotions they themselves feel; and (5) statistically deviant and negative perceptions and reasoning processes.³⁰⁰

A family-court judge, unaware of the proven diagnostic tools and procedures for dealing with these types of complex behaviors is highly susceptible to making a gross error in a paternal fitness evaluation. Even more importantly, high-conflict litigants are proficient in manipulation and parental alienation patterns that may easily escape the detection of the judge.³⁰¹ Often these traits are found in mothers who interfere with the post-divorced father's ability to have access to his children.³⁰² Therefore, the family law judges within the family-court, ill-equipped to deal with high-conflict divorces, are at a high risk of making wrong decisions on parental fitness which allows mothers to deny visitation to fathers.³⁰³ The consequence of an uninformed decision by a family-court

²⁹⁹ See Andrew Harris, *Court Orders \$60,000 Bond to Ensure Visitation Rights*, NEW YORK LAW JOURNAL, August 10, 2005, at <http://www.law.com/jsp/article.jsp?id=1123578313007> (“plaintiff considered that visitation was within her purview to control and that visitation was merely a 'privilege' for the defendant . . . Such an attitude is grossly repugnant to the court and demonstrates an egotistical, narcissistic personality”).

³⁰⁰ Briklin, *supra* note 48, at 507.

³⁰¹ See Bricklin, *supra* note 48, at 516 – 517.

³⁰² *Id.* at 507 – 508.

³⁰³ See Mark D. Matthews, *Curing The "Every-Other-Weekend Syndrome": Why Visitation Should Be Considered Separate And Apart From Custody*, 5 WM. & MARY J. OF WOMEN & L. 411, 437 – 438 (1999) (“The courts should consider the entire family situation to ensure that the child has full access to the parenting, nurturing, and care-taking that each parent can provide”).

judge is further frustration by disadvantaged fathers,³⁰⁴ an increase in paternal disengagement, and the accompanying repercussions for children.³⁰⁵

B. Legal Contribution #2: Family Legal System Laws

1. No-Fault Divorce

Family laws affecting divorce, child custody, and child support are also noteworthy contributors to paternal-disengagement by disadvantaged-fathers. Before the 1970s, there were “fault-divorce” laws which required party’s to a divorce to assert sufficient grounds for divorce such as adultery, cruelty, or desertion before a divorce could be granted.³⁰⁶ These fault-divorce laws fostered widespread deception by men and women seeking divorces who were unable to find sufficient grounds upon which to base their requests.³⁰⁷ In the 1970’s, no-fault divorce laws were enacted in most states which allowed one spouse to abrogate the marriage contract without incurring any liability for the consequence or without asserting sufficient grounds for a divorce.³⁰⁸

Feminists advocated for these “no-fault divorce” laws as part of a "gender-neutral paradigm for reform" to the whole family-system so as to eliminate the characterizations of women as inferior to men and the laws that cast the legal rights of women and men in

³⁰⁴ See Blummer, *supra* note 269, at B9, (“In a 1998 Florida State Law Review article on gender bias in family court, author Cynthia McNeely wrote: "If the treatment fathers receive in family court occurred in the workplace, an affirmative action plan would likely be implemented to rectify the pervasive discrimination and barriers fathers encounter as they seek meaningful access to their children”).

³⁰⁵ See Ezzell, *supra* note 294, at 123.

³⁰⁶ See Paradise, *supra* note 73, at 520 – 521.

³⁰⁷ *Id.*

³⁰⁸ See Baskerville, *supra* note 65, at 487.

different lights.³⁰⁹ Subsequently, women sought divorce in record numbers and divorces began to increase.³¹⁰ The family-courts, rather than implement the no-fault divorce laws on a gender-neutral basis, acted as a guardian and protector of women by implementing formal rules, laws, and regulations that favored mothers.³¹¹ For example, the family-system insisted that women be given an economic income that is equal to that of men; in contrast, post-divorced men were required to deal with the social structures available in order to earn an economic income to survive.³¹² Paradoxically, the no-fault divorce laws, in the guise of being gender-neutral, when implemented by the family-system, actually reinforced the prior no-fault divorce law paradigm of extracting financial support from men to support women and children.³¹³

The consequences of the implementation of the “no-fault” divorce laws were marginalization for the disadvantaged-fathers. Practically speaking, the father could be literally severed from his home on a permanent basis, given visitation of his children only four days each month, and still be forced to be the primary financial provider for his children and ex-wife.³¹⁴ Thus a woman could divorce a man because she doesn’t like him anymore, procure custody of their children, require the father to pay economic

³⁰⁹ See Erin R. Melnick, *Reaffirming No-Fault Divorce: Supplementing Formal Equality With Substantive Change*, 75 IND. L.J. 711, 713 (2000).

³¹⁰ See McNeely, *supra* note 8, at 905 – 906.

³¹¹ *Id.* at 915 – 916.

³¹² *Id.* at 916.

³¹³ *Id.*

³¹⁴ See McNeely, *supra* note 8, at 7.

support for her and their children,³¹⁵ and refuse to allow the father to see his children.³¹⁶

The women essentially has protection from the implementation of the “no-fault” divorce laws to act as a primary gatekeeper³¹⁷ for the post-divorced children which significantly contributes to paternal-disengagement by disadvantaged-fathers.³¹⁸

2. Child Custody Laws

The many changes in child custody laws within the family-system have also been a significant contributor to the paternal-disengagement by disadvantaged-fathers.³¹⁹ In the seventeenth century, New England family law was characterized by principles of hierarchical and patriarchal authority, family unity, domestic privacy, and the inviolability of the family.³²⁰ Children were viewed as chattel, and therefore the father maintained sole rights of control over his children and a superior right to custody of his minor children.³²¹ Even more importantly, the family-system rarely, if ever, resolved family disputes of custody or any other familial conflicts.³²² However, a new system of family

³¹⁵ Blumer, *supra* note 269, at B9 (“because of a series of unwritten and unspoken gender-related assumptions, family judges tend to give mothers both decisional control over the children and financial support after a family breakup . . . This gives women an incentive to dissolve their relationships, as demonstrated by the fact that women initiate divorce in about 70 percent of cases”).

³¹⁶ See Reginald Bass and Glenn Sacks, *Fathers Don't Get the Same Chances*, DAILY BREEZE (TORRANCE, CAL.), May 25, 2004, at A11 (“I did the best I could as a father, but the moment I wasn't convenient anymore I was gone . . . The courts didn't care about my kids having time with me . . . All they cared about was my money, and I don't even have much”).

³¹⁷ Vivian L Gadsden et al., *Situated Identities Of Young, African American Fathers In Low-Income Urban Settings Perspectives on Home, Street, and the System Special Issue Separated and Unmarried Fathers and the Courts*, 41 FAM. CT. REV. 381, 395 (2003) (“A number of other studies on fathers have pointed to maternal resistance, or maternal gatekeeping as a barrier to father involvement”).

³¹⁸ Insabella, *supra* note 18, at 292.

³¹⁹ See Barnes, *supra* note 6, at 604.

³²⁰ See Akre, *supra* note 69, at 634.

³²¹ *Id.*; See also Barnes, *supra* note 6, at 604.

³²² *Id.*

law evolved from the realization that the fate of children was in the parents hands, and subsequently states adopted the doctrine of “*parens patriae*”³²³ *Parens Patriae* afforded the state the right and duty to watch over those responsible for a child's care, to limit parental authority, and to intervene in family disputes when necessary for the child's well-being.³²⁴

Once state governments begin intervening into custody determinations, the family-system began basing their custody determinations on which parent was unfit.³²⁵ Initially, the “unfit” custody determinations tended to be biased in favor of fathers mostly because American society: (1) considered children as a father’s property and a woman as not having any property rights (based on principles of property law);³²⁶ and (2) considered fathers as a child’s protector, supporter, and caregiver.³²⁷ However, in the 1800’s, the basis for custody determinations changed from an “unfit” standard to a “tender years” doctrine³²⁸ in the aftermath of the change in societal norms from viewing children as property and fathers as primary providers of children’s need.³²⁹ The result of

³²³ BLACK’S LAW DICTIONARY, 1137 (7th Ed. 1999) (“Latin “*parent of his or her country*” means the states regarded as sovereign; the state in its capacity as provider of protection to those unable to care for themselves”).

³²⁴ Akre, *supra* note 69, at 635.

³²⁵ See Schepard, *supra* note 12, at 695.

³²⁶ *But see* Akre, *supra* note 69, at 638 (“it was not until 1967 that the United States Supreme Court in *In re Gault* finally viewed the child as a person rather than property”).

³²⁷ See Paradise, *supra* note 73, at 525 – 526.

³²⁸ Smith, *supra* note 8, at 40 (“Under the “tender years” doctrine . . . the mother was presumed to be the proper custodian, especially for young children”); *see also* Paradise, *supra* note 73, at 526 (“The tender years doctrine suggests that “where a child is of such tender age as to require the care and attention that a mother is especially fitted to bestow upon it, the mother, rather than the father, is presumed to be the proper custodian, unless for some reason she is unfit for the trust”).

³²⁹ See Barnes, *supra* note 6, at 605.

the change in standards resulted in family-court custody determinations that were predisposed in favor of mothers, and custody determinations that in practice disqualified men as potential custodial parents.³³⁰ Ultimately, in the 1970's, the family-system began basing child custody determinations on a "best interest of the child" standard³³¹ rather than a "tender years doctrine" standard, and this standard is still used by most states today.³³²

The "best interest of the child" standard was adopted by most states to end the conflict between the mother and father,³³³ disregard gender, and put the interest of the child before the parents when making custody determinations.³³⁴ The standard required family-court judges to examine the following factors when making child custody decisions: (1) the emotional, social, moral, material, and educational needs of the child; (2) the home environment that each parent offers; (3) the characteristics of each parent, including age, stability, and mental and physical health; (4) the child's preference; and (5) the expert's recommendations.³³⁵ Ultimately, the decision depended on a case-by-case

³³⁰ *Id.*; see also Paradise, *supra* note 73, at 527 ("The tender years presumption was originally intended to provide the mother only temporary custody of her very young children, who needed a mother's special care during early stages of development. . . The doctrine was eventually expanded to include older children, and mothers gained permanent custody based upon the assumption that children of all ages needed to be with their mothers").

³³¹ See Barnes, *supra* note 6, at 608 ("This doctrine was first discussed in detail in the 1881 case *Chapsky v. Wood* . . . In awarding custody of a five-year-old girl to her grandmother instead of her father, the Kansas Supreme Court reasoned that the needs of the child, who had lived with her grandmother all her life, were better met through continuity of care").

³³² See Akre, *supra* note 69, at 637.

³³³ See e.g. Lisa M. Fitzgibbon, *Campbell V. Campbell: Requiring Adherence To The Correct Legal Standard In Child Custody Proceedings--The "Best Interest of the Child*, 45 ME. L. REV. 471, 473-475 (1993). ("In making custody determinations the trial judge must decide as a "wise, affectionate and careful parent" what custody arrangement will be in the child's best interest . . . These statements indicate that the welfare of the children, not the interests of the parents, remains the overriding consideration of the court").

³³⁴ See Paradise, *supra* note 73, at 531.

³³⁵ *Id.*

analysis³³⁶ whereby the family-court judge had to use his or her discretion.³³⁷ As a result, the “best interest of the child” standard has been criticized³³⁸ and often modified because too often the prejudices, values, and ideas of the family-court judges makes the standard too subjective and unpredictable.³³⁹

The propensity of family-court judges to rely on precedent and societal norms that still view women as primary caretakers and men as economic providers has³⁴⁰ resulted in parental combative custody disputes which typically are resolved in the mothers favor over 90% of the time.³⁴¹ In fact, according to a recent empirical study of contested custody cases in three Colorado judicial districts, fathers, unlike mothers when awarded custody, were only awarded custody when there was mother misconduct.³⁴² These results are incongruous with the studies suggesting that children do not develop better in the care of one parent over the other, but rather children’s psychological development is comparable in both maternal-custody and paternal-custody homes.³⁴³ Therefore, the current child custody laws based on the “best interest of the child” standard which produces biased results does not afford the post-divorced father who wants to remain

³³⁶ See Paradise, *supra* note 73, at 532.

³³⁷ *Id.* at 531.

³³⁸ Schepard, *supra* note 12, at 701 (1985)(“the typical trial court 'best interests' decision becomes a potentially idiosyncratic prediction of which parent is more suitable to be primary custodian based on comparative evaluation of their fitness for the task . . . a presumptive shield from appellate review confirms that wide discretion is given to a trial court's 'best interests' determination”).

³³⁹ See Paradise, *supra* note 73, at 532 – 533.

³⁴⁰ *Id.*

³⁴¹ See Pons-Bunney, *supra* note 14, at 216 – 217.

³⁴² *Id.*

³⁴³ See Paradise, *supra* note 73, at 551.

active in his child's life, the opportunity to do so.³⁴⁴ Moreover, the "best interest of the child" standard fails to encourage parents to resolve their conflicts among themselves and provide guidelines that will refocus attention to the child.³⁴⁵ Consequently, without the changes in the current child custody laws, the child custody laws will continue to have a significant contribution to the paternal-disengagement of disadvantaged-fathers.³⁴⁶

3. Child Support Laws

The dramatic changes in child support laws have also made a significant contribution to paternal-disengagement among disadvantaged-fathers during the last few decades.³⁴⁷ In the past, paternal support was premised upon the theory that in return for child support, the father acquired the children's labor which could assist him in making a living.³⁴⁸ In the rare instance where a father was denied custody of his children, courts and society relieved him of his duty of support for the mother and children since he would not receive the consideration (child labor) for doing so.³⁴⁹ Today, child support and child custody are not intertwined³⁵⁰ and child support laws are used alternatively to demonize and

³⁴⁴ See Barnes, *supra* note 6, at 602.

³⁴⁵ See Pons-Bunney, *supra* note 14, at 216.

³⁴⁶ See Mabry, *supra* note 12, at 115 ("While some fathers aggressively fight for the right of access to their children, others become so frustrated with the adversarial process that they walk out on the court system as well as their children").

³⁴⁷ See Jeffery M. Leving & Glenn Sacks, *Vasectomy Policy Par For Anti-Dad System*, CINCINNATI POST (KY), May 12, 2004, at A13 ("in addition to unreasonably high support levels, Kentucky non-custodial fathers also have to contend with a rigid child-support system which is often impervious to the economic realities of modern life").

³⁴⁸ See Paradise, *supra* note 73, at 525-526.

³⁴⁹ *Id.*

³⁵⁰ See Pons-Bunney, *supra* note 14, at 216.

criminalize³⁵¹ fathers and often turn many children into cash prizes for mothers³⁵² and the government.³⁵³ In addition, since the 1970's, child support laws have been heavily influenced by the mistaken assumption³⁵⁴ that women's income drops by 73% after divorce while men's income increases by 50% which has caused legislators to continuously make child support laws more punitive.³⁵⁵ The punitive child support laws, according to the available evidence, indicates a systemic problem in which existing child

³⁵¹ See generally Baskerville, *supra* note 65, at 489 – 491; see also *By the Numbers*, CINCINNATI POST (KY), June 9, 2004, at K4 (“5 -- The number of years a parent who fails to pay child support could be sentenced in Kentucky . . . Failure to pay child support is a misdemeanor until the arrearage reaches \$1,000 . . . It then becomes a Class D felony with maximum punishments of five years in jail and \$10,000 in fines”); see also Seth Harp, *Equal Time, Child Support Guidelines Flawed*, ATLANTA JOURNAL CONSTITUTION, March 3, 2005, at A15 (“The current laws criminalize a large number of Georgia's parents by placing upon them an excessive financial burden that too often cannot be met . . . Furthermore, many of these non-custodial parents affected by this overwhelming financial responsibility are in the middle-income bracket . . . The current Georgia child support laws inherently alienate the non-custodial parent by establishing unreachable financial responsibilities . . . These parents find it extremely difficult, or even impossible, to meet their obligations and thus become completely uninvolved, financially and otherwise, in the lives of their children”).

³⁵² See Julie Batson, *House Bill 221 Balances Child Support*, ATLANTA JOURNAL AND CONSTITUTION, February 21, 2005, at A15 (“Georgia's guidelines turn children of divorce into a financial prize -- one to be fought for in a winner-take-all situation. . . . The excessive child support awards that are in effect in Georgia encourage divorce and unwed births, as there is a profit above what is actually spent on raising children”); see also Blumner, *supra* note 269, at B9.

³⁵³ Baskerville, *supra* note 65, 495 (“the child support money passes through the state treasury, where it is used to earn federally funded bonuses for the state”); see also Baskerville, *supra* note 106, at 498 – 499 (“Governments, too, can reap substantial profits from child support. . . . Most states make a profit on their child support program according to the House Ways and Means Committee”).

³⁵⁴ See Judith V. Caprez & Micki A. Armstrong, *A Study Of Domestic Mediation Outcomes With Indigent Parents*, 39 FAM. CT. REV. 415, 420 (2001) (“More recent literature regarding spousal income post-divorce reports reveal that the percentage of women in poverty is not as great as previously reported nor the income of husbands as high . . . According to Braver . . . both mothers and fathers one year after divorce are very close to their pre-divorce levels of income”).

³⁵⁵ See Braver, *supra* note 219, at 113 – 116.

support guidelines from child support laws overburden³⁵⁶ non-custodial fathers.³⁵⁷

Counter-intuitively, the United States still spends more than \$3 billion annually on child support enforcement³⁵⁸ due to the government's belief that fathers are responsible for children living in poverty.³⁵⁹

Paradoxically, the government's response to the large amount of children living in poverty through the child support program started out much different: as a response to the Depression and the depletion of state pension programs.³⁶⁰ The federal funds for child support were based on a "worthy person" standard which meant that government funds were distributed to widows with young children due to the death of their father and were unavailable to mothers that were "unworthy" (such as being immoral, employable, having illegitimate children, fathers still alive, or found to be having relations with a "substitute parent").³⁶¹ However, in the 1960's the Supreme Court ruled that states could no longer use the "worthy person" standard, and subsequently welfare eligibility was extended to all mothers of dependent children through the program called Aid to Families with Dependent Children (AFDC).³⁶²

³⁵⁶ Henry, *supra* note 40, at 243 ("the non-custodial parent would have to earn between 50 percent more (one child) and 100 percent more (two children) than the custodian to have an equal standard of living on an after-child-support/after-tax basis")

³⁵⁷ *Id.* at 237; see also Curran, *supra* note 26 ("Critics note that men with low incomes often are required to pay a higher percentage of their earnings in child support than men with middle or high incomes . . . The result is poor payment rates and a large amount of non-paid "arrear" or back-payments, which are exceedingly difficult to adjust under current law").

³⁵⁸ Henry, *supra* note 39, at 239.

³⁵⁹ Chambers, *supra* note 57, at 2586 – 2587.

³⁶⁰ See Roger J.R. Levesque, *Targeting "Deadbeat" Dads: The Problem With The Direction Of Welfare Reform*, 15 *HAMLIN J. PUB. L. & POL'Y* 1, 10 (1994).

³⁶¹ *Id.*

³⁶² *Id.* at 10-11.

The AFDC welfare program soon experienced a substantial increase in the payments made to “fatherless homes” due to: (1) the change in marital behaviors creating more fatherless homes; (2) the Supreme Court’s prohibition against states excluding children from the AFDC program; and (3) the inclusion of the mothers (instead of just children) as the beneficiary of the funds from the AFDC program.³⁶³ Subsequently, the government, in order to find some way to pay for the greatly increased cost of the AFDC program, decided to hold fathers responsible as the new “unworthy person” through enforcement of child support.³⁶⁴ Subsequently, the government has steadily enacted laws to impose increasing exacting federal and state requirements to enforce and collect child support from fathers in order to offset the costs of the AFDC system, and to help mothers who are not welfare recipients to secure support for themselves and their children.³⁶⁵

In 1974, Congress amended the Social Security Act (SSA) to establish the federal government as overseer, standard-bearer, and benefactor of child support enforcement, and left primary enforcement and administrative responsibility to the states.³⁶⁶ A decade later, another series of significant federal amendments required the government to take a more active federal role in the states' efforts to collect child support payments for women on welfare and for states to strengthen child support enforcement.³⁶⁷ In 1988, the federal government adopted the Family Support Act of 1988 (FSA) which brought about even more stringent child support enforcement standards such as state usage of child support

³⁶³ *Id.* at 11.

³⁶⁴ *Id.* at 11-12.

³⁶⁵ *See* Chambers, *supra* note 57, at 2583.

³⁶⁶ Levesque, *supra* note 360, at 8 – 9.

³⁶⁷ *Id.*

guidelines and immediate wage withholding.³⁶⁸ In 1992, the government created the Child Support Assurance Act of 1992 (CSA) to replace AFDC by: (1) setting child support as a percentage of the nonresident parent's income; (2) automatically withholding child support from income; (3) assuring benefits to children if the absent parent defaults on payments; and (4) separating the issue of visitation from the payment of child support.³⁶⁹ In addition, under this Act, it became a federal crime for a father who owed child support of \$5,000 or more and had the wherewithal to pay to fail to make payments for a year or more.³⁷⁰

Congress then enacted that Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which created Temporary Assistance for Needy Families (TANF) (mostly mothers with children) funded by block grants for which states must apply more stringent child support enforcement mechanisms to receive funds.³⁷¹ Finally, in effort to make even stricter child support enforcement laws, Congress amended the Child Support Recovery Act and replaced it with the Deadbeat Parents Punishment Act, which made a first-time nonpayment of child support offense a felony, and also provided for up to two years in prison for an offender owing \$10,000 or more or having failed to pay support for at least two years.³⁷² These increasingly punitive actions and the last 20 years of legislative actions concentrating on enforcement of child support

³⁶⁸ *Id.* at 9-10.

³⁶⁹ *Id.* at 10-11.

³⁷⁰ *See* Papke, *supra* note 60, at 23.

³⁷¹ *Id.* at 23 – 24 (“In order to qualify for block grants, states must undertake a range of measures designed to increase child support collection”).

³⁷² *Id.* at 23.

through fathers, enunciated by political leaders, media commentators, and scholars, were all implemented under the incorrect assumption that child poverty mostly stems from paternal abandonment.³⁷³

Contrary to the government's conventional wisdom, child poverty does not derive from parental abandonment but from paternal-disengagement, and therefore the government's preoccupation with child support enforcement rather than resolving the devastating impact of paternal-disengagement on children actually adds to child poverty rather than helping eliminate the problem.³⁷⁴ For example, the statistics have clearly shown that: (1) the billions of dollars spent annually to enforce child support have only been marginally successful; and (2) fathers who maintain significant contact with their children after divorces are more likely to pay child support.³⁷⁵ Some have suggested that the child support laws are even more suspect when considering that the governmental claims of nonpayment of child support by fathers is produced from surveys of custodial parents rather than compiled data (which do not exist).³⁷⁶ Therefore, in order to ameliorate the effects of paternal-disengagement, the child support laws need a dramatic alteration to reflect the fact that increasing a father's involvement with his children may be a lot less expensive and have a lot more success than the punitive mechanisms.³⁷⁷

³⁷³ *Id.*

³⁷⁴ Maldonado, *supra* note 18, at 942 (“by sending a distinct message to divorced fathers that they are not essential to the raising of children beyond supplying a percentage of their paychecks to the mother . . . and perhaps a couple of hours a week visitation . . . the state has encouraged divorced fathers to abandon true fatherhood”); *see also* Levesque, *supra* note 376, 4 (1994).

³⁷⁵ *See* Maldonado, *supra* note 18, at 927.

³⁷⁶ *See* Baskerville, *supra* note 65, at 496 – 499.

³⁷⁷ Henry, *supra* note 39, at 243 (“Before we criticize runaway fathers who see their children too little after divorce, we need to examine the extent to which the economic burdens we have imposed upon those fathers have made them driven-away or thrown-away . . . Are they deadbeats or dead broke”).

V. SOLUTIONS TO PATERNAL-DISENGAGEMENT

Currently, society's most popular and predominating solutions to rectifying the pervasive problem of paternal-disengagement by disadvantaged-fathers have focused on equalizing custody and child support determinations for post-divorced parents.³⁷⁸ For instance, the father's rights group movement has experienced some success in changing state laws favoring sole custody for mothers to laws that provide for a presumption of joint legal and physical custody for fathers.³⁷⁹ However, these joint custody solutions are usually more feasible with middle-to-high income post-divorced parents³⁸⁰ that have more educational attainment.³⁸¹ Moreover, there is quite a bit of evidence suggesting that joint physical custody is definitely not propitious for the children of disadvantaged

³⁷⁸ See Amy Joi Bryson, *Lawmakers Look To Aid Non-custodial Parents*, DESERT MORNING NEWS, April 22, 2004, at B02 ("Lawmakers are looking at helping divorced parents who faithfully pay their child support but face flagrant denials of their visitation rights . . . the Senate Judiciary Committee pondered the possibility of linking the payment of child support to visitation rights in the most egregious of cases"); see also Elise Castelli, *Changes In Fathers' Custody Rights Urged*, BOSTON GLOBE, November 5, 2004, at B4 ("Armed with voters' approval of nonbinding initiatives in more than 30 legislative districts, a group that wants to increase the parental custody rights of divorced fathers is urging lawmakers to change state laws to uphold the fundamental rights of both parents to the shared physical and legal custody of their children").

³⁷⁹ Paradise, *supra* note 73, at 538 – 539; see also Cathy Young, *Equal Access To Children After A Divorce*, BOSTON GLOBE, October 16, 2004, at A19 ("Fathers' rights groups, which have succeeded in placing the joint custody referendum on the ballot, such as the Fatherhood Coalition and Fathers and Families, point out that the overwhelming majority of divorces involving children result in full physical custody for the mother").

³⁸⁰ Beth Skilken Catlett & Patrick C. McKenry, *Class-based Masculinities: Divorce, Fatherhood, and the Hegemonic Ideal*, 2 FATHERING 165 (March 22, 2004) ("upper-income men in this study were in the best position to effectively negotiate the tension between fathers providing role and those aspects of the father role that entail creating close, nurturing bonds with children").

³⁸¹ Gerald W. Hardcastle, *Joint Custody: A Family Court Judge's Perspective*, 32 FAM. L.Q. 201, 212 – 213 (1998) ("Reviewing the literature, one is left with the feeling that joint custody is an upper-middle class phenomenon . . . Seeking to impose this custody arrangement on young, uneducated parents or socio-economically disadvantaged parents is arrogant and may add stress to the post-divorce process").

fathers.³⁸² Thus, these new solution won't solve the problem of paternal-disengagement by disadvantaged-fathers.

Father's right's advocates have also had limited success persuading family-culture and the family-system of the inherent inequities in how child support guidelines are calculated and applied. Currently, child support guidelines when applied to post-divorced families fundamentally instigate paternal- disengagement by disadvantaged-fathers.³⁸³ Still, less stringent child support laws alone will neither solve the dilemma of paternal-disengagement by disadvantaged-fathers nor minimize the long-term inimical aftereffects of paternal-disengagement on children.³⁸⁴ The root of the problem of paternal-disengagement by disadvantaged-fathers is the "parental conflict" which oft times induces the father to permanently separate from his children.³⁸⁵ Therefore, unless society can either alleviate or mitigate the "paternal conflict", the life-long deleterious

³⁸² Dominus, *supra* note 2 ("The more shared the custody, the argument goes, the more the parents have to interact and the more the children are exposed to nasty exchanges and power plays").

³⁸³ See Jeffery M. Leving and Glenn Sacks, *Child Support Laws Can Hurt Too*, DAILY BREEZE (TORRANCE, CAL.) June 6, 2004, at A17 ("A new study of child support has concluded that most states' child support guidelines are poorly designed, inequitable and in need of reform")

³⁸⁴ See Mackay, *supra* note 80, at 119 ("studies show that the post-separation economic situation of families is not fully responsible for adverse outcomes among children").

³⁸⁵ Judith V. Caprez & Micki A. Armstrong, *A Study Of Domestic Mediation Outcomes With Indigent Parents*, 39 FAM. CT. REV. 415, 416 (2001) ("the most powerful influence on children's post-divorce adaptation is the status of parental conflict . . .Essentially, the longer, the more hostile, the more intense the conflict between parents, the more damage occurs to the children").

ramifications for children³⁸⁶ from paternal-disengagement discussed in Section II of this Article will perpetuate.³⁸⁷

Commentators, court systems, and family law practitioners are all in agreement that family-courts across the country need a transformation because they do not meet the needs of today’s families.³⁸⁸ In September 2000, the Family Law Section of the American Bar Association (ABA) designed an action plan to reconstruct the family law legal system in order to placate “parental conflict” and resolve the problem of paternal-disengagement.³⁸⁹ The plan suggested that since the family-court, attorneys, and mental health professionals have the greatest power to influence how high-conflict cases are handled, they should collaborate to find a solution to family conflicts in order to meet the best interest of the child.³⁹⁰

One of the plan’s key recommendations was to require the family-court to provide, during the divorce and as a fundamental service, non-judicial professionals trained to manage chronic recurring disputes such as visitation conflicts.³⁹¹ Last year, Professor Andrew Schepard also made a similar recommendation that child custody

³⁸⁶ See Mackay, *supra* note 80, at 123 (“among a sample of children whose parents could not agree on arrangements for them, high proportions had significant adjustment problems . . . children of high-conflict divorces scored as significantly more disturbed”).

³⁸⁷ See Pons-Bunney, *supra* note 14, 216 (“ It is critical, then, that if the government is to be involved in family disputes, it must encourage cooperative and efficient methods of . . . The legislature's attempt to facilitate decision-making through the best interest doctrine falls short because it fails to encourage parents to resolve the conflicts among themselves”).

³⁸⁸ Lynne M. Kenney Psy.D and Diana Vigil M.A., *A Layer’s Guide to Therapeutic Interventions in Domestic Relations Court*, 28 ARIZ. ST. L.J. 629, 633 (1996).

³⁸⁹ See generally AFCC Task Force on Parenting Coordination, *Child Protection In The 21st Century Special Report Parenting Coordination: Implementation Issues*, 41 FAMILY COURT REVIEW 533 (APRIL 30, 2003).

³⁹⁰ *Id.*

³⁹¹ *Id.*

professionals create and participate in an interdisciplinary coalition aimed at creating a more humane coordinated child custody dispute resolution system that emphasizes planning for children and responsible conflict management.³⁹² Schepard underscored that these types of supervised visitation and parent coordination specialized services are necessary if high-conflict families are going to have continuing post-divorce contact, but noted that the courts need an effective and efficient way to identify families at risk, and connect them to these services.³⁹³

A. 5-STEPS TO A HEALTHY DIVORCE.³⁹⁴

As a result of these valuable and necessary contemporary suggestions by qualified family advocates to vitiate parental disengagement, I am suggesting a similar interdisciplinary system called “5-STEPS TO A HEALTHY DIVORCE.”³⁹⁵ The overall goal of 5-STEPS TO A HEALTHY DIVORCE is to: (1) moderate the conflict between low-income post-divorced parents in high-conflict situations;³⁹⁶ (2) assist and guide parents into creating their own cooperative “co-parenting arrangement” that is flexible enough to

³⁹² See Nancy Ver Steegh, *The Unfinished Business of Modern Court Reform: Reflections on Children, Courts, and Custody* By Andrew I. Schepard, 38 FAM. L.Q. 449, 450 – 451 & 464 (2004).

³⁹³ *Id.* at 451 – 454.

³⁹⁴ See e.g. Hon. Deborah J. Chase ET AL., *Community Courts And Family Law*, 2 J. CENTER FOR FAMILIES, CHILD. & CTS. 37, 47 (2000) (Jackson County calls its family law court a "community court" to emphasize the court's commitment to community collaboration . . . The court seeks to coordinate with social services to make early identification of a family's needs and to hold the family accountable for compliance with court orders . . . The family may also qualify for . . . a comprehensive family plan including social services . . . The plan is filed with the court and monitored for compliance”).

³⁹⁵ Lucy S. McGough, *Protecting Children In Divorce: Lessons From Caroline Norton*, 57 Me. L. Rev. 13, 18 – 19 (2005) (“In a good divorce, a family with children remains a family . . . The family undergoes dramatic and unsettling changes in structure and size, but its functions remain the same . . . Structuring a good divorce process, family by family, has become absolutely essential”).

³⁹⁶ *Id.* at 29 – 30 (“many family specialists have long been practicing what might be more simply called non-adversarial law, working within the existing system as facilitators through the maze of family dissolution”).

meet the specific needs of their family; (3) ensure the children of the high-conflict divorce are able to see both parents throughout the divorce process;³⁹⁷ and (4) provide continuing contingency services for the family to help maintain a healthy post-divorced family.³⁹⁸ In order to accomplish this goal, 5-STEPS TO A HEALTHY DIVORCE:³⁹⁹ (1) adds a voluntary identification system for post-divorced parents prior to the finalization of their divorce in order to provide any needed or wanted help and for the early protection of the child;⁴⁰⁰ (2) directly addresses parental conflict which is the most critical and primary source of paternal-disengagement⁴⁰¹ and causes the most serious and long-term negative outcomes for children of a high-conflict divorce;⁴⁰² (3) eliminates a neutral decision maker whose discretionary judgments tend to enflame the hostility⁴⁰³ between the

³⁹⁷ *Id.* at 32 (“A hostile, rancorous relationship between parents greatly increases the risk of serious negative consequences for children and thus, justifies reforms tailored to reduce conflict and optimize the possibilities that both parents can remain engaged in relationship with the child”).

³⁹⁸ *Id.* at 29 (“Academics have written about the rise of therapeutic jurisprudence from mental health law and more broadly of the untapped use of the law as a therapeutic agent”).

³⁹⁹ See Babb, *supra* note 263, at 475.

⁴⁰⁰ See McGough, *supra* note 395, at 34 (“The gatekeeper controlling family dispute case assignments is an administrator who sorts cases into three categories: initial filings, such as for divorce; custody judgment modification and enforcement actions; and disputes involving allegations of domestic violence or abuse”).

⁴⁰¹ See Kidde, *supra* note 50, at 15 – 16 (“men often refer to three common themes when explaining why they have stopped seeing their children . . . extreme grief . . . legal system bias . . . and divorcing couples not learning to control the conflict . . . as a result fathers either voluntarily or involuntarily stop spending time with children to shield them from this conflict”).

⁴⁰² Shepard, *supra* note 12, at 689 – 690 (1985) (“children living with a divorced parent . . . contract what may be thought of as a disease of childhood . . . posing a serious threat to a child's emotional, financial, and educational well-being . . . the disease has complex, long-term ramifications from which the child never recovers”).

⁴⁰³ See McGough, *supra* note 398, at 31 (“The larger domain of mediation is more conducive to the resolution of the scores of issues imbedded in the reallocation of parenting roles emanating from the principal decision about the child's residential and access schedule”).

divorcing parties;⁴⁰⁴ (4) assists and guides high-conflict post-divorced parents on creating a cooperative “co-parenting plan”⁴⁰⁵ that is within the “Best Interest of the Child;” (5) allows the high-conflict post-divorced parents to develop their own voluntary custody/child support agreements;⁴⁰⁶ (6) tackles the unique challenges that are common among low-income post-divorced parents;⁴⁰⁷ and (7) changes the current “one-size fits all” post-divorced court-ordered custody and child support arrangements.⁴⁰⁸

5-STEPS TO A HEALTHY DIVORCE assimilates the most contemporary ideas of the family-system, mental health professionals, social workers, and other scholars⁴⁰⁹ in 5 steps which include: (1) pre-divorce identification, assignment, and monitoring;⁴¹⁰ (2)

⁴⁰⁴ Jane C. Murphy, *Eroding The Myth Of Discretionary Justice In Family Law: The Child Support Experiment*, 70 N.C. L. REV. 209, 225 (1991) (“Even the appearance of inequity created by the inconsistent orders inherent in the case-by-case approach can cause resentment and frustration for obligors and obligees alike . . .Obligors’ perceptions of inequitable treatment may be a factor contributing to existing compliance problems with child support as well”).

⁴⁰⁵ McGough, *supra* note 398, at 35 – 36 (“The power of law to achieve cooperative co-parenting is severely restrained by an obvious but often overlooked point: some of these families were unable to cooperate prior to divorce”).

⁴⁰⁶ This is to give both parties a better stake in their own divorce process, limit their opportunities to blame a third party if they are unhappy with *their own agreement*, and require them to take responsibility for their child and the outcome of *their agreement*.

⁴⁰⁷ Ramsey, *supra* note 301, at 147 (“Judges, lawyers, and mental health professionals should work together to raise the status of courts that handle family matters and to ensure that these courts have adequate support and access to services for the families that they serve”).

⁴⁰⁸ See Helen Rhoades & Susan B. Boyd, *Reforming Custody Law: A Comparative Study*, 18 INTL J.L & POL’Y & FAM. 119, 138 (2004) (“there is an argument for setting legislative guidelines that shape the meaning of ‘one size fits all’ in relation to families affected by violence or conflict”).

⁴⁰⁹ See Ramsey, *supra* note 298, at 146 – 147 (“The goal of the family law system should be to give the parties the tools to restructure their lives . . .To accomplish this, judges, lawyers, and mental health professionals need to adopt new models for resolving family disputes that focus on the welfare of children”).

⁴¹⁰ See Bricklin, *supra* note 48, at 515 (“In any area where the persons involved see the stakes of victory versus defeat in extremes, and where lying, misrepresentation, and manipulations are common, the ability of the professional to obtain accurate information is paramount”).

attorney intervention, education, and divorce dissolution preparation;⁴¹¹ (3) judicial review, divorce finalization, and post-judgment assignments;⁴¹² (4) post-divorce monitoring, conflict management, and follow-up;⁴¹³ and (5) enforcement, punitive considerations, and evaluation.⁴¹⁴

1. Step One: The Intervener⁴¹⁵

Step One of 5-STEPS TO A HEALTHY DIVORCE is a prerequisite to the finalization⁴¹⁶ of a high-conflict divorce between low-income parents. Upon filing of a divorce, either party will voluntarily have the option to indicate that they want or need services, or special treatment, from the family-court because of a high-conflict divorce that may negatively affect their children.⁴¹⁷ Once a party from a high-conflict divorce

⁴¹¹ See Karl Kirkland, *Dealing With Difficult Divorce Cases From A Child Psychologist's Perspective*, 13906 NBI-CLE 159, 161 (2004) (“The Association of Family and Conciliation Courts takes the position that lawyers should take a proactive role in preventing and reducing conflict between disputing parents and promoting collaborative problem solving with parents, mental health professionals, and the Courts”).

⁴¹² See Ramsey, *supra* note 298, at 152 – 153 (“Judges handling high-conflict custody cases should have specialized education and training on the dynamics of high-conflict cases and effective ways to manage conflict”).

⁴¹³ See generally Mabry, *supra* note 12, at 123 (“An enormous amount of "hatred, acrimony, and rage" may develop in family members when and after a couple divorces. . . Courts may order counseling as a condition of an order that affects a child”).

⁴¹⁴ See Shepard, *supra* note 12, at 763 (“Devising effective methods for dealing with parental violations of child custody and support obligations is essential. . . A fundamental aim of post-decree remedies and social services should be to make failure to pay child support and interference with parent-child relationships equally serious violations of court decrees”).

⁴¹⁵ Lynne M. Kenney Psy.D and Diana Vigil M.A., *A Layer's Guide to Therapeutic Interventions in Domestic Relations Court*, 28 ARIZ. ST. L.J. 629, 635 (1996) (“an Intervener is clinical in nature and involves some degree of psychological treatment or dispute resolution. Intervener are distinct from child custody evaluators in that the role of the custody evaluator is an expert for the court, not an Intervener for the family”).

⁴¹⁶ Ben Barlow, *Divorce Child Custody Mediation: In Order To Form A More Perfect Disunion?*, 52 CLEV. ST. L. REV. 499, 516 (2004-2005) (“Wisconsin law establishes a mandatory mediation framework for all "actions affecting the family where it appears that issues involving legal custody or physical placement are contested”).

⁴¹⁷ See generally, AFCC Task Force on Parenting Coordination, *supra* note 389 (“Colorado's proposed 1999 legislation would have permitted appointment of a Parenting Coordinator pursuant to the parties' agreement or motion, or by the court upon its own motion”).

indicates on the motion for dissolution of marriage that they are, or possibly will be, in a high-conflict divorce, the family-court will immediately assign an Intervener to assist both parents by performing an initial case study on the parents and the children.⁴¹⁸ The Intervener, after performing an evaluation, will recommend a mediator,⁴¹⁹ individual mental health⁴²⁰ or family counselor,⁴²¹ and/or education classes⁴²² depending on the scope and/or severity of the situation. In addition, the Intervener will work together with the parents to help them develop a co-parenting plan⁴²³ that is flexible enough to be workable for both parties and the children. Optimistically, the plan would allow the children much more interaction with the disadvantaged-father than the standard court-ordered sole custody arrangements⁴²⁴ and at least as much custody as a joint physical

⁴¹⁸ See Mauzerall, *supra* note 43, at 300 (“The mental health expert can identify the needs of the children, recognize harmful intra-parental conflict, and make appropriate recommendations for shared parenting”).

⁴¹⁹ Kenney, *supra* note 415, at 636 (“A mediator serves as a non-adversarial guide toward resolution of the paternal conflicts by assisting parties in reaching a mutually acceptable agreements while allowing for the maximum protection of the child’s best interest”).

⁴²⁰ See generally Kirkland, *supra* note 411, at 85.

⁴²¹ See Mabry, *supra* note 12, at 127 (“Counseling will help these family members to rebuild their relationships in the post-divorce environment and help them to maintain healthy relationships”).

⁴²² See generally Ramsey, *supra* note 298, at 152 (“The following services and programs should be available to all families, without regard to income, through the court or referrals . . . Education programs tailored to meet the needs of different families, such as a program that emphasizes constructive parenting behavior and preserving safety for high-conflict families”).

⁴²³ See Schepard, *supra* note 12, at 753 – 754 (“The cooperative custody system places the state and the courts in the business of 'family crisis management' by helping parents organize their relationship with their child to minimize the harm of divorce . . . The system is based on social acceptance of the tragedy of divorce and the premise that, in most cases, the child will be better off if both parents remain involved in the child's life”).

⁴²⁴ Lamb, *supra* note 164, at 116 (2002) (“Instead of promoting parenting plans that marginalize one of the parents, custody evaluators should promote continued involvement by both parents, striving when necessary to increase the participation of those parents, typically fathers, whose prior lack of involvement may make overnight custody initially inappropriate”).

custody visitation arrangement;⁴²⁵ however since the quality of time rather than the quantity of time is more important to the child, the parenting agreement should be tailored to the specific needs of the parents and children involved.⁴²⁶ Once both of the post-divorced parents agree on a co-parenting plan that is in the “Best Interest of The Child”, the Intervener will monitor the relationship between the parents (including visitation and conflict) for a period of three months.⁴²⁷

During the three month period, the Intervener will: (1) work exclusively with the parents to troubleshoot any visitation problems or obstacles to implementing their agreement; (2) resolve any conflicts regarding the children or visitation; and (3) monitor the relationship similar to a divorce counselor.⁴²⁸ Subsequently, the Intervener will compile a three-month report for the family law judge detailing the parent’s relationship and recommending any necessary on-going intervention services.⁴²⁹ The purpose of the three-month mandatory period in step one of 5-STEPS TO A HEALTHY DIVORCE is to diffuse the hostility and conflict between the parents so as to help parents reach an

⁴²⁵ See Mabry, *supra* note 12, at 121 (“Because it would provide a better opportunity for fathers to establish a meaningful relationship with their children, a joint residential custody order is recommended highly for parents who are capable of cooperating enough to share parenting responsibility”).

⁴²⁶ See Lamb, *supra* note 164, at 113 (“To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interactions with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters”).

⁴²⁷ See Ramsey, *supra* note 298, at 152.

⁴²⁸ See Kenney, *supra* at 415, at 636 – 637 (A conciliation/divorce counselor is a licensed mental health professional who serves in a therapeutic role with the aim of helping couples navigate issues at the time of separation, dissolution, and divorce”).

⁴²⁹ See Bricklin, *supra* note 48, at 525 (“features we believe a good monitoring plan should have are random and unannounced, a variety of different professionals, convince both parents to see that the plan protects each of them, power of the court to implement, and eliciting information from the child as to his or her ongoing adjustment to, and relationship with, each parent and within each family subsystem”).

agreement⁴³⁰ on a co-parenting plan and to ensure that the child is able to have contact with both parents during the co-parenting plan's implementation.⁴³¹ The three-month period will also act as an incentive to the disputing parents to establish a workable parenting plan together because the divorce will not be finalized until they agree to the parenting plan.⁴³²

The three month period also allows the Intervener a reasonable amount of time to monitor the agreed upon co-parenting plan, and assist in any needed modifications to the plan in case the plan does not work for either the parents or the children.⁴³³ In addition, since the conflict between the parents will probably be the most hostile during the initial three-month period, the Intervener will have an opportunity to help diffuse the hostility between the parents, while making certain that the children are not used as weapons in the on-going conflict.⁴³⁴ At the end of the three-month period, the Interveners should

⁴³⁰ Robert H. Mnookin & Eleanor Maccoby, *Facing The Dilemmas Of Child Custody*, 10 VA. J. SOC. POL'Y & L. 54, 61 (2002) ("Our findings suggest that the procedural innovations adopted in California to reduce reliance on adversarial proceedings and promote resolution through negotiation may have proved successful in reducing the number of adjudicated custody cases").

⁴³¹ See AFCC Task Force on Parenting Coordination, *supra* note 389.

⁴³² See Schepard, *supra* note 12, at 755 ("The child's need for a stable emotional and financial environment should cause the state to seek speedy parental agreement on custody and support arrangements . . . The state, however, should operate on the belief that most divorcing parents are concerned about the welfare of their child and can be encouraged to work together for the child's benefit . . . Judges should avoid choosing between parents and, instead, reward parents who can put aside their animosity toward each other for the sake of their child").

⁴³³ *Id.* at 760 ("the dispute resolution system should encourage the maximum number of parental settlements with minimal state coercion and adversary procedure").

⁴³⁴ See ANDREW I. SCHEPARD, CHILDREN, COURTS AND CUSTODY: INTERDISCIPLINARY MODELS FOR DIVORCING FAMILIES, 113 (2004) ("Severely dysfunctional, conflict-ridden families need more careful screening, more intensive services and closer judicial supervision").

have a detailed report for the family-court judge so that he/she has a better ability to make an informed, fair, and binding decision in the best interest of the children.⁴³⁵

2. Step Two: The New Family Law Attorney⁴³⁶

In Step Two of 5-STEPS TO A HEALTHY DIVORCE, attorneys are assigned to the low-income high-conflict parents to provide education and guidance⁴³⁷ towards a co-parenting post-divorce agreement that includes child support.⁴³⁸ This new family law attorney will need training and education in the complex issues common to high-conflict post-divorce situations by law schools⁴³⁹ and on-going continuing legal education classes (CLE's).⁴⁴⁰ Once trained in high-conflict divorce situations, the new family law lawyer should provide education and guidance such as: (1) coaching to the pro se litigant; (2) dispute resolution (especially for financial issues); (3) consultant to the dispute resolution

⁴³⁵ See PHILLIP STAHL, COMPLEX CUSTODY EVALUATIONS, 127 – 129 (1999) ('complex child custody evaluations should include recommendations on: (1) custody, time-sharing, and parental responsibility; (2) therapeutic interventions; (3) alternative dispute resolution mechanisms for the parents; and (4) directing families to move forward').

⁴³⁶ See generally Forrest S. Mosten, *Mediation And The Process Of Family Law Reform*, 37 FAM. & CONCILIATION COURTS REV. 429, 442 (1999) ("In considering reform of the family law system, the following new roles for lawyers should be factored in . . . Therapists, social workers, vocational counselors, accountants, financial planners, and other "divorce professionals" can adapt this unbundled model to their own fields")

⁴³⁷ See Mabry, *supra* note 12, at 116 ("To reduce fathers' dissatisfaction with the court process, fathers should be educated about how the process works").

⁴³⁸ See Kenney, *supra* note 415, at 634.

⁴³⁹ See Andrew Shepard, *Law Schools And Family Court Reform*, 40 FAM. CT. REV. 460, 463 – 464 (2002) ("It is, however, possible to imagine an alternate vision of the law school's role in family court reform--as a positive agent for change over the long term. . . Law schools can create a platform for family court reform in their communities").

⁴⁴⁰ See Martha Kline Pruett & Tamara D. Jackson, *The Lawyer's Role During The Divorce Process: Perceptions Of Parents, heir Young Children, And Their Attorneys*, 33 FAM. L.Q. 283, 306 (1999) ("there is an overall consensus that the attorneys' roles and responsibilities in the divorce process are not translating into actual practice . . . parents and children did not feel they had adequate representation through guidance, information, attention, or quality of service").

process; (4) family advocacy; and (5) preventative legal health care provider.⁴⁴¹ Most importantly, the attorney should assist the post-divorced parents in developing a collaborative co-parenting arrangement that, similar to Australia's and Canada's law reforms,⁴⁴² are broader than the America's contemporary child support/custody orders, so as to tailor the plan to the specific custody/financial support needs and vicissitudes of the whole family.⁴⁴³ Studies show that this type of co-parenting arrangement has a significant effect on the father's parental engagement with his children.⁴⁴⁴ The attorney, similar to a parent coordinator⁴⁴⁵ should also advise and educate the parents on: (1) their legal rights; (2) legal and social services available to assist them in carrying out their agreement; and (3) steps to take if the co-parenting agreement does not work out.⁴⁴⁶

Once the parties come to a co-parenting agreement that includes a fair child support

⁴⁴¹ *Id.*

⁴⁴² See Helen Rhoades & Susan B. Boyd, *Reforming Custody Law: A Comparative Study*, 18 INTL J.L & POL'Y & FAM. 119, 120 (2004) ("Australia replaced its custody framework with a shared parenting regime in the mid-1990s . . . Unlike Australia, Canada recommended against preferring any particular form of parenting arrangement, disavowing the idea that 'one size fits all' families . . . a growing body of sociological research of post-separation life has emerged, much of which suggests that 'adherence to a single principle or rule' is at odds with the lives of children and families").

⁴⁴³ *Id.* at 121 ("Australia's 1995 shared parenting reforms replaced the former custody and access division of roles with a scheme designed to encourage parents who live apart to raise their children collaboratively by removing what was considered to be the proprietary language of custody and access, and introducing the concept of 'parental responsibility' . . . The new scheme established an equality-based model of post-separation parenting, in which each parent retains their pre-separation 'powers, responsibilities and authority' in relation to their children's care, absent a court order to the contrary").

⁴⁴⁴ *Paternal Involvement With Adult Children; Fathers For Life*, EVERYMAN, October 1, 2004, at 45 ("The U.S. Commission on child and Family Welfare recommended abandoning the use of custody and visitation . . . Moving away from traditional notions of custody may be a useful step toward increasing father's incentives and opportunities for positive participation in their children's lives").

⁴⁴⁵ See AFCC Task Force on Parenting Coordination, *supra* at 389 ("The PC model has been repeatedly recommended by professionals as an intervention to help families structure, implement, and monitor viable parenting plans and to reduce relitigation rates where high conflict threatens the family adjustment process").

⁴⁴⁶ *Id.* ("The PC will often find that the parent(s) or children require adjunct services to be provided by third parties . . . However, while technically possessing the power to refer, doing so often does not work well without the authority of the court behind the referral").

amount and is unique to their specific post-divorced family, the attorney should finalize the divorce paperwork and submit it to the judge for a final decision.

3. Step Three: The Family Law Judge⁴⁴⁷

In Step Three of 5-STEPS TO A HEALTHY DIVORCE, the family-court judge reviews the report and recommendations from the Intervener and family law attorney and makes a final decision based on the current law.⁴⁴⁸ However, if there is still an on-going unresolved dispute between the post-divorced parents and/or if a final co-parenting plan has not been achieved, the judge can either schedule a settlement conference or a family law trial.⁴⁴⁹ In the instance of a trial, the parents, their lawyers, and the mediator or evaluator must personally appear and discuss the reports and evaluations of the Intervener and attorney.⁴⁵⁰ The judge, when analyzing the co-parenting and economic support plan agreed to by the divorcing parents, should begin with a presumption of shared legal and residential custody which could be rebuttable in cases of parental incompetence, harm to child, or impracticality.⁴⁵¹ The family-court judge should also keep in mind a “Best Interest of the Child” standard which includes a meaningful and realistic relationship with both parents; and the judges should impose detailed and explicit orders to achieve the

⁴⁴⁷ See Ramsey, *supra* note 298, at 152 – 153 (“Judges handling high-conflict custody cases should have specialized education and training on the dynamics of high-conflict cases and effective ways to manage conflict”).

⁴⁴⁸ See Mabry, *supra* note 12, at 124 (“Judges are the last individuals in the court process who may ensure that responsible fathers maintain contact with their children . . . Regardless of a mother's manipulation or a lawyer's inept representation, judges have the authority to issue orders that are not only in the children's best interest but also protect the father's rights”).

⁴⁴⁹ See Schepard, *supra* note 12, at 761 (“Even in a cooperative custody system, disputes may have to be resolved by a judge after an adversary hearing”).

⁴⁵⁰ *Id.* at 762.

⁴⁵¹ *Id.* at 762 – 763.

goal of maintaining a meaningful relationship with the child and each parent so as to prevent parental disengagement.⁴⁵² Finally, the judge should make a determination, based on the reports from the Intervener and attorney, on whether a “special master”⁴⁵³ should be appointed to extinguish or respond to any likely on-going hostilities between the two parents.⁴⁵⁴

4. Step Four: The Special Master⁴⁵⁵

In Step Four of 5-*STEPS TO A HEALTHY DIVORCE*, if there is on-going conflict, a special master is assigned to the parents in order to safeguard the children, settle disputes, manage hostility, and facilitate and monitor visitation schedule arrangements.⁴⁵⁶ If necessary, the special master may assign a treating clinician,⁴⁵⁷ supervised-visitation clinician,⁴⁵⁸ or an emergency case stabilization clinician⁴⁵⁹ to lessen the hostility between

⁴⁵² See Mabry, *supra* note 12, at 122 – 123.

⁴⁵³ Section VII, Step 4.

⁴⁵⁴ See Kenney, *supra* note 415, at 636 (“a special master is appointed by court order in a quasi-judicial role generally defied by statute or by the rules of civil procedure . . .who acts as a case monitor to whom parents go to with all outstanding disputes that arise after the divorce . . .and collects data, evaluating its worth, and making decisions after hearing all disputes”).

⁴⁵⁵ *Id.* at 636 (“The Special Master is appointed by court order in a quasi-judicial role . . .is like a case monitor to whom the parents go with all outstanding disputes that arise after the case has been adjudicated . . .The Special Master is charged with collecting data, evaluating it’s worth, and making decisions after hearing all sides of a dispute . . .The general goal of assigning a special master to a case is to decrease litigation.

⁴⁵⁶ See Mabry, *supra* note 12, at 120 (“In general, court orders should address the specific needs that a particular family has instead of reiterating the boilerplate provisions that appear in most orders”).

⁴⁵⁷ See Kenney, *supra* note 415, at 637 (“a treating clinician is a licensed master’s or doctoral level clinician who provides therapeutic assessments and treatments to family and children”).

⁴⁵⁸ *Id.* (“a supervised visitation clinician is a licensed mental health profession with training in child psychology, adult psychopathology, and conflict resolution. . .this clinician supervises with the goal of ensuring the child’s physical and emotional safety”).

⁴⁵⁹ *Id.* at 637 – 638 (“an emergency case stabilization clinician is highly trained to maintain objectivity while providing solutions for the family, and if necessary make recommendations to the court for further action in the best interest of the child”).

the parents and protect the child. The special master, in addition to monitoring the relationship between both parents and the child will attempt to be a troubleshooter and a resource for both parents.⁴⁶⁰ For example, if the conflicting parents ask for additional mediation, counseling, or education, the special master will provide these services or refer them to a professional who will provide those services free of charge.⁴⁶¹ The overall goal of the Special Master is to exercise the powers given to him/her by the family law judge to: (1) provide families with court sanctioned decision-making authority to assist parents in implementing and modifying their agreement; (2) enhance the stability and safety of the family and the health, safety, and welfare of the child; (3) reduce familial acrimony; (4) monitor seriously problematic family situations for the purpose of assessment and/or deterrence of the problems at issue; and (5) to ensure that the customs, beliefs, and/or preferences of both parents are respected and implemented insofar as they are not detrimental to the child.⁴⁶²

5. Step Five: Punitive Actions⁴⁶³

Step Five is the final step to 5-STEPS TO A HEALTHY DIVORCE and allows a judge to prescribe punitive action for persistent conflict between the post-divorced parents after the finalized divorce decree, especially if the conflict is either interfering with the non-

⁴⁶⁰ See AFCC Task Force on Parenting Coordination, *supra* note 389 (“In high-conflict cases, where every little issue is a potential source of conflict, this person also serves as a “neutral decision maker” to assist parents with their day-to-day disputes, and to educate parents about the processes of “disengagement” and “parallel parenting”).

⁴⁶¹ *Id.* (“In California, the Santa Clara county model allows the special master authority in “determining and ordering appropriate medical, mental health and counseling treatment including psychotherapy, substance abuse, and domestic violence counseling, batterers intervention programs and parenting classes”).

⁴⁶² See Kirkland, *supra* note 411, at 173 – 174.

⁴⁶³ See Mabry, *supra* note 12, at 124 (Enforcement mechanisms should be utilized for fathers who endure the children's mother's obstacles to visitation”).

custodial parent's visitation schedule or with the father's relationship with the child despite the efforts by the special master to tone down the hostility.⁴⁶⁴ If the special master reports to the judge that the on-going parental conflict is unmanageable and severely affecting the child or his/her relationship with either parent,⁴⁶⁵ the judge should impose sanctions or establish other punitive actions on the offending parent.⁴⁶⁶ The parents should have an additional opportunity to be heard before the judge makes a final decision on punitive actions.⁴⁶⁷ Additionally, the punitive actions should vary depending on the situation, but should include changing custody arrangements, economic sanctions, or jail time.⁴⁶⁸

B. *Financing 5-Steps To A Healthy Divorce*⁴⁶⁹

Paternal-disengagement by low-income post-divorced fathers in high-conflict situations is a serious epidemic, and although numerous experts have suggested similar remedies to the 5-STEPS TO A HEALTHY DIVORCE an equally serious issue is: *Who should pay for this type of program?*⁴⁷⁰ Many scholars that have studied this issue have

⁴⁶⁴ See Bricklin, *supra* note 48, at 507 – 508 (“The possession of high-conflict negative traits interferes with, or stymies, their ability to access and maintain those personality resources crucial to compromise or even negotiation, that is, to multiple-perspective-taking-skills”).

⁴⁶⁵ See Mabry, *supra* note 12, at 124 – 125 (“When a court spends months and years simply warning mothers that it will impose harsher sanctions, the fathers' ability to develop a relationship with their children will be delayed needlessly to the fathers' and the children's detriment”).

⁴⁶⁶ See Schepard, *supra* note 12, at 751 – 755.

⁴⁶⁷ See Mabry, *supra* note 12, at 124 – 125 (“Courts may hold mothers in civil contempt until they comply with valid, existing access orders . . . Because the civil contempt order allows the contemtor to purge herself of contempt, mothers will control whether they are placed in jail away from their children”).

⁴⁶⁸ See Schepard, *supra* note 12, at 763 – 764 (“Remedies for custody plan violations should be graduated in proportion to parental intransigence”).

⁴⁶⁹ See Ramsey, *supra* note 298, at 147 (“These new models also need adequate financial support”).

⁴⁷⁰ See Schepard, *supra* note 12, at 764 (“The system for resolving custody disputes just described is expensive; skilled personnel would be required to operate effectively and to gain the confidence of parents, attorneys, and judges ”)

suggested that the conflicting parents,⁴⁷¹ the family-system,⁴⁷² and society⁴⁷³ in general should pay for the program since all these actors contribute to the problem.⁴⁷⁴ Others believe that high-conflict divorcing families should fund the program since they bring their troubles upon themselves and therefore do not deserve help from public resources. In my opinion, the conflicting parents, the government, and the legal system should be required to contribute to the program. The parents should pay because they are responsible for the conflict, and because it may encourage and give the mother and father incentive to resolve their differences if they are required to pay for the services. Schepard also posited that is the court's responsibility to create a rational, expeditious plan for resolution of the high-conflict disputes incorporating the resources available for such families in its local community because funding is an investment in the future of children and will save judicial resources in the long run.⁴⁷⁵ Most importantly, 5-STEPS TO A HEALTHY DIVORCE will mostly likely have more success and cost much less than the

⁴⁷¹ See AFCC Task Force on Parenting Coordination, *supra* note 289 (“the parties share the expense of the PC in proportions initially set by agreement or by the court, with the PC empowered to alter this percentage where one parent abuses the process or unreasonably consumes more of the PC's time”).

⁴⁷² See Mabry, *supra* note 12, at 132 – 133 (“the federal government has authorized the Administration for Children and Families to award grants for states to "support and facilitate non-custodial parents' access to and visitation of their children . . . Local and state governments should seek and dedicate funding that is sufficient for programs and equipment to enable fathers to connect with their children”).

⁴⁷³ See Schepard, *supra* note 12, at 764 – 765 (“two possible sources of funding suggest themselves: general tax revenues and increased fees for marriage licenses and divorce filings”).

⁴⁷⁴ Section IV and V.

⁴⁷⁵ *Id.*

\$3 billion/yr.⁴⁷⁶ the government currently spends on child support enforcement.⁴⁷⁷

VI. CONCLUSION

Despite the adoption of a more comprehensive interdisciplinary co-parenting family-court system model by some states, the hostile family war still continues in America with post-divorced mothers and their supporters on one side and fathers and father's rights groups on the other. The tragedy is not that both groups are suffering a vast amount of casualties from the war; but that children are suffering the most life-long casualties from the war, and our society overall is accumulating irreparable long-lasting injuries. Since families are the foundations of our society, the present-day relational conflicts concerning post-divorced families represent some of the most challenging, intense, and complex impasse points that we rely on family law judges to resolve. Family law judges are expected to navigate through the narcissism, angry parties, and manipulative behavior in order to render a decision that is fair to both parties. Yet, the family-court judge's decision is predisposed to the creation of a winner and a loser, which only intensifies rather than resolves the parental conflict. Consequently, children and the rest of the society are irreparably damaged by this unresolved and on-going conflict.

⁴⁷⁶ See David L. Levy, *Rethink Child-Support Laws*, WASHINGTON TIMES, July 5, 2005, at A18 ("America spending more than \$3 billion a year to make dads and some moms pay child support . . . Instead of starting with a paycheck as the be-all and end-all, we should offer parents who never married or were separated or divorced the same incentives parents have during marriage-easy access to their children, shared custodial rights and a say in how their children are raised").

⁴⁷⁷ See Mark D. Matthews, *Curing The "Every-Other-Weekend Syndrome": Why Visitation Should Be Considered Separate And Apart From Custody*, 5 WM. & MARY J. OF WOMEN & L. 411, 418–420 (1999) ("It takes fewer resources to make non-custodial parents feel as though they are part of their children's lives and thus willingly pay child support, than to focus upon a child support enforcement system which pursues garnishment of wages and other collection means without any connection to visitation").

Although, it is nearly impossible to know for sure the source of each individual conflict, research studies make clear that the result of the conflict too often results in the paternal-disengagement by disadvantaged-fathers. Current solutions to conflicts in middle-to-upper income families have been successful in some situations, partly because these parents are able to hire skilled attorneys to ensure custody and child support are more equitable. However, disadvantaged-fathers are so overburdened by the punitive child support enforcement mechanisms of the state that they are neither able to hire lawyers to achieve a more equitable custody and child support arrangement, nor able to manage the conflict with the custodial parent. As a result, many of these fathers disengage from their children. The family-system's response or non-response to this predicament has essentially pronounced a sentence of poverty and a host of other psychological and emotional problems on the father and his children to which they will both be confined for the rest of their life.

Studies clearly show that the biggest barrier to paternal-disengagement is parental conflict, and therefore the family-system solution must address paternal conflict in order to mend paternal-disengagement. However, in typical high-conflict divorces, the personalities and behaviors of the warring parents are prone to continuous litigation and tend to compliment the adversarial nature of the family-system. As a result, the family-court judge's attempt to make a definitive decision in the midst of the family conflict is seen by the conflicting parents as an assignment of fault and a declaration of a winner and loser, which tends to enflame the hostility between the warring parents and subsequently drives a larger wedge between the children and the non-custodial parent.

In reality, the family-system by itself doesn't possess the capacity to resolve hostile conflicts between warring parents, but is able to ensure that the obstacles that prevent children from seeing their father are eliminated. However, if the court was just to enforce a father's visitation rights with his children more strictly, the continuing conflict between the parents along with the visitation will have a more damaging effect on children than the vast negative consequences of paternal disengagement. If the court chooses not to get involved with the post-divorced parental dispute, the problem of paternal-disengagement continues which in turn produces life-long consequences which severely affect the well-being of the children. Yet, allowing the family-court to resolve the hostile parental conflict directly is asking a judge to make a moral decision on the parental fitness of both conflicting parents which requires a knowledge of the dynamics of individual human behavior and family relational conflicts so as not to be subjected to manipulation or arbitrariness.

5-STEPS TO A HEALTHY DIVORCE'S APPROACH transfers the moral decision-making authority of the family law judge to the better equipped professional who is trained in identifying and managing interpersonal conflict between individuals and families. The program is a more flexible, cooperative, and focused approach between the legal profession and social services to moderating the common conflictual relationship which is at the heart of paternal disengagement. In addition, the program allows professionals the opportunity to manage or attenuate the hostile conflict between the parents while leaving the responsibility of ensuring that children are not prevented from maintaining contact with their non-custodial parent due to the conflict to the family-system.

Furthermore, the program, instead of choosing a winner or loser in the conflict, encourages and helps parents to resolve their own conflicts with the assistance of professional conflict managers. Most importantly, the program addresses the primary obstacle that perpetuates the serious problem of the paternal-disengagement by disadvantaged-fathers which studies show is parental conflict.

The other advantage to 5-STEPS TO A HEALTHY DIVORCE is its ability to solve the 30-year old family war which favors neither parent and ensures the best interest of the child and society. Since the Family-system is inexorably involved in family conflicts, the importance of the court managing the conflict without bias towards either parent cannot be overstated. The modern “best interest of the child” standard used to neutralize the paternal conflict has been heavily influenced by societal changing views of motherhood and fatherhood which has produced an inherent bias, unequal justice, and detrimental effects to the child which has only enflamed the long-standing family war. 5-STEPS TO A HEALTHY DIVORCE can distill the paternal conflict while ensuring the children are able to see their non-custodial parent. At the very least, 5-STEPS TO A HEALTHY DIVORCE is a good giant step towards resolving one of the most plaguing problems facing America today: the Paternal-disengagement of Low-income post-divorced fathers in High-Conflict situations.