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Kyle D. Pruett
Yale Child Study Center

Marsha Kline Pruett
Yale University, mpruett@smith.edu

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“Only God Decides”: Young Children’s Perceptions of Divorce and the Legal System

KYLE D. PRUETT, M.D., AND MARSHA KLINE PRUETT, PH.D.

ABSTRACT

Objective: To describe research on perceptions of children aged 6 and younger from 21 families of their parents’ divorce, of its impact on their families, and of legal officials. **Method:** Semistructured play interviews were conducted during home visits as parents were conjointly interviewed as part of a larger study on divorce in legal context. **Results:** Children had much misinformation about divorce as an event and process. What they did know was often inappropriate, frightening, and confusing. They resented how the process “ruined their parents’ being friends any more” and proposed reforms based on their wishes and observations. **Conclusions:** Greater awareness is needed of the child’s desire to be heard during the process, to feel safe and less lonely, and to stay in touch with both parents and extended families. Age-appropriate explanations of psychological and legal aspects of the divorce process are likely to support children’s positive adjustment and mental health. *J. Am. Acad. Child Adolesc. Psychiatry*, 1999, 38(12):1544–1550. **Key Words:** divorce, perceptions, young children, legal system.

Since its inception, a primary focus of divorce research has been its impact on child adjustment. The research has drawn predominantly on parental, almost exclusively maternal, self-report of child behavior and adjustment. A few early longitudinal studies (e.g., Hetherington et al., 1982; Wallerstein and Kelly, 1980) have included assessments of children in attempts to understand how the divorce impacts them over the course of their development. Yet even in these assessments, the adjustment of children, especially young children, is examined primarily through the eyes of parent report, standardized tests, and clinician reports (see Whiteside’s meta-analysis, 1996). Actual child reports are much less common. The youngest children are typically examined regarding their potential to manage overnight stays with nonresidential parents (e.g.,

Solomon, in press), dual households (e.g., Whiteside, 1996), or coparenting despite ongoing parental conflict (Johnston and Roseby, 1997). This article describes research from a larger longitudinal project focused on families with children aged 6 or younger (see Kline Pruett, 1998), which explores definitions and understandings children have about the legal system and the process of divorce.

As significant as adults’ perceptions of their children’s views are, understanding children’s perspectives is of equal significance in how children perceive their early family experience. Children of primary years should be consolidating their parental attachments, capacities for intimacy, and trust in order to develop social competence (Bretherton and Waters, 1985; Lieberman and Pawl, 1990; Youngblade and Belsky, 1992). Such competence prepares them for school and peer relationships, and eventually for love relationships. Impulses come under self-control, and behavioral consistency develops, if the child feels safely connected to his parents and other family members.

Children are never too young to be impacted by divorce and the subsequent decisions about their care (Hodges et al., 1991; McKinnon and Wallerstein, 1986). The developmental needs of preschool children are typified by their wish to be cared for and protected by the significant familiar adults who keep their world stable. Ongoing parental conflict destabilizes children and can evolve into significant emotional and behavioral difficulties. Adult reassurance and trustworthy behavior regarding the continuity of

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Dr. Pruett is Clinical Professor of Psychiatry, Yale Child Study Center, New Haven, CT, and Dr. Kline Pruett is a Research Scientist in Law and Psychiatry, Department of Psychiatry, Yale University School of Medicine.

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Reprint requests to Dr. Kyle Pruett, Yale Child Study Center, 230 South Frontage Road, New Haven, CT 06511.

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relationships and safety cannot be overdone in this era. Protective behavior toward one's children while entangled in the legal processes is no small feat, significant though it is to their well-being. This report examines how children's perspectives are influenced both by the legal process of divorce and by what their parents inform them, purposefully or unintentionally, about the legal and mental health professionals who inhabit their world of divorce.

METHOD

The methods and sampling for the larger project from which this article was drawn have been detailed elsewhere (Kline Pruett, 1998; Kline Pruett and Jackson, 1999). Parents and children from 21 divorcing families, and the attorneys representing them, were included in the project. Information identifying families who were completing their divorce was obtained from court clerks. Eligible families were contacted after their divorce was concluded by a letter from the state's Chief Administrative Judge for Family Division, inviting the families to participate. Families were recruited from 10 Connecticut towns representing 6 judicial districts, including urban, suburban, and rural communities. The majority of families (67%) were recruited from one county. They were white and widely diverse socioeconomically. Four levels of family conflict were designated on the basis of the extent of family services utilization and legal system activity during the family's divorce process (see Kline Pruett, 1998, for details). Families who did not fit precisely into one category ($n = 3$) were categorized by 2 senior clinicians on the basis of levels of expressed parental hostility and attorney report. Eight families (38%) engaged in negligible to low levels of legal involvement in their case, and 13 (62%) were designated as higher-conflict families. Twenty-eight percent of the higher-conflict families were engaged in chronic, intense conflict that brought them in regular contact with the legal system. All families shared the common characteristics of a recent divorce (within 6 months of contact), at least one child 6 years or younger, and 2 parents agreeing to participate.

When invited to participate, each parent was told that both parents would need to participate to be accepted. When one parent refused to participate, the other parent was informed that the family was not eligible. Where one parent was reluctant, speaking with the enthusiastic parent or hearing that the other parent wanted to participate usually resulted in a meeting with the researcher. The researcher met with each parent and explained the purpose and nature of the study, including benefits and drawbacks associated with participation, following a university "protection of human subjects" protocol. Each parent then asked questions and signed a consent form.

Participants

The children's data consist of the views of 22 children from 18 families. Eighteen of the children ranged in age from 2.5 to 6.8 years, with the other 4 children already aged 7 or slightly older by the time of the interview. Although the study was focused on children aged 6 years or younger, these older children were invited to participate because they asked to be included along with their younger sibling(s). Parents from 3 families requested that we not talk to their children.

Procedures

Assessment techniques elicited information regarding the child's perceptions about divorce and the legal processes that affect and define it.

Semistructured interviews at the children's homes were conducted by an experienced child and family psychiatrist-clinician and researcher. Parents were not present in the room; they were typically being interviewed simultaneously in a nearby room. In a phone call prior to the interview, parents were encouraged to prepare their children for our visit. Consequently we did not arrive "cold" at the threshold of these complex issues. Only after 15 minutes of free play with the examiner, and a chance to show him their home, did the drawing and evaluative play materials emerge from the examiner's bag and the assessment formally "begin."

After a period of "social" warm-up and clarification of why the visit was occurring, the interview usually lasted an additional hour. A family drawing was done first, followed by semistructured play. The following were supplied for semistructured play: hand puppets; 2 small dollhouses with simple furniture, human figures, and pets; 2 play telephones; 2 cars; Playmobile® police, doctor, and nurse figures; a small musical gong; 2 baby dolls of each gender with bottles; a box of Band-Aids™; a small set of blocks; a dress-up black wrap ("judge's robe"); a toy briefcase ("lawyer's"); and a medical kit. A period of open-ended play also was encouraged toward the end of the interview. Drawings to expand themes that emerged in the play were elicited when appropriate. Usually the child had commented spontaneously on the "characters of divorce" by this time. If not, direct questioning about the child's definitions of the roles of lawyers, judges, and family services personnel followed. The child was asked to recall the visitor's purpose or was prompted about the parents' divorce if recall failed. Three children responded to recall and only one required prompting about the divorce itself.

The clinician took notes of pivotal transitions during the interview and added remaining information immediately after the session. Using the techniques described, predetermined categories were assessed which emphasized the child's response to divorce itself and the child's observations and comments about the legal processes attendant to divorce. For children so young, it was expected that the divorce event and the legal processes surrounding it would usually overlap, but when they did not, the children's perceptions would be especially helpful in understanding what they felt was happening to their family. The categories assessed included play themes, perceptions of the father, how divorce had changed the relationship between the mother and father, definitions of divorce, definitions of the role of judges and lawyers, and suggestions for judges and lawyers. The category "perceptions of the father" was chosen because a majority of the cases involved significant changes in the child's relationship with the father from before to after the divorce, and fathers have been often omitted from divorce research in the past.

Data Analyses

The children's responses within each category were analyzed using a grounded theory approach. The goal of grounded theory is to develop social theory directly from data (Strauss and Corbin, 1990). In this approach, data are analyzed for themes based on language, quotes, or recurring descriptions of behavior found in the data. Using data analysis induction techniques of seeking negative cases as a comparison against data that support the developing theory, each new participant's data are compared with the larger sample to seek confirming and disconfirming evidence of themes being developed through the play and interview material. This process leads to the discarding, refinement, or elaboration of the themes being developed (Strauss and Corbin, 1990; Taylor and Bogdan, 1998).

Recurring content was identified in this study through a reduction process that recorded participant responses, paying close attention to the content and tone of the response. Within each category, recurrent themes were derived from responses given more than once, as distinctions were made between common responses and those contributed by

a just a few children. Individual quotes were selected to illustrate in a more detailed and personalized manner the larger themes articulated by other participants. Simultaneous notation was used to record the data.

RESULTS

The young children had complex, personal ideas about divorce and its legal processes. Despite relying heavily on their parents for information, the children patched together images of the divorcing process that often had poignant, cartoon-like accuracy. The information each child cobbled together from first-hand experience, direct and overheard conversations, and televised depictions of court was always filtered through his or her developmental needs. Not unexpectedly, the children from higher-conflict families showed more signs of stress and anxiety, a more constricted sense of the world and their future in it as a whole, and greater overall fearfulness.

Play Themes

The majority of play sequences grouped themselves into 3 themes: (1) back-and-forth-between-houses, (2) lawyer play and courtroom drama, and (3) safety and security at home. The lower the conflict and the greater the child's emotional resources, the less constricted the play themes and narratives; the greater the stress expressed by the child, the less complex and coherent the play. The "back-and-forth-between-houses" play typically involved setting up 2 comparable houses with a car traveling, or "visiting machine," going back and forth with telephone calls made to the nonresident parent's home. Even in the better-functioning children's play, "accidents" were frequent. One 5-year-old girl procured an ambulance from her own toy box to add to the play sequence to "keep things safe going between houses." Police direct traffic and "keep things even-headed."

The court and lawyer scenarios were less predictable and ritualized. The musical chime was usually appropriated by a black-robed judge and used as a gavel. A generic judge with high emotion often yelled at people variously to, "Keep quiet, and stop arguing . . ." "No Christmas for you. . . . Pay \$85 for child caring, you bum!" "Get a job. . . . You should solve your own problems and stop bothering me. . . ." Or "Since your Mom and Dad can't be nice to each other any more, come live in my house in Florida and go to Disney World." Children explained these scenes by saying that judges are "paid to decide things when nobody else can." "They are 'the orderers,'

"the big boss." "They are supposed to be nice, but you can't tell for sure if they are going to be that way."

Lawyers were sometimes depicted as pirates, vampires, or wolves who scared children (7 different sequences) and stole from parents ("Lawyers take a lot of money from people"). Police would come to jail them (in block jails), and, after a reprimand from the judge, they might get their briefcase back. There were no benign images of lawyers in these children's play, if they contained lawyer depictions at all. The lawyers were more generously portrayed when the children explicitly discussed their roles.

The third play theme involved making homes safe from monsters, beasts, robbers and "baby-kidnappers," assuring children were not lost, kept safe, "not lonely," "watched over," and had "telephones that always worked." This pre-occupied high- and low-conflict children, although there was less urgency when parental conflict was perceived as lower.

Perceptions of the Father

Children's perceptions of how relationships with the father had changed came up in spontaneous play. Every child described a change—some better, some worse—and the older the child, the more objective the description. Higher-functioning, lower-conflict children saw their fathers as different after the divorce: "He sings more" or "He likes being a Dad now." A 4-year-old's summation; "He's not big like he used to be" (he had lost weight, but was calmer as well). Higher-conflict children articulated more negative changes; Sara, 3.9 years old, reported, "He doesn't kiss me much now." "He changed—he doesn't come to school and he breaks promises." Changes in the expression of affection bothered children of both genders and all ages.

How Divorce Had Changed the Relationship Between Mother and Father

Consistent, homogeneous responses regarding how they felt about the impact of the divorce on their parents' relationship abounded. Children in all groups felt deeply about this topic. Sadness and loss over what seemed to them to be the permanent damage to their parents' relationship with each other predominated: "Dad comes back sometimes, but they never kiss anymore. They just talk loud, not soft—it hurts my heart," said a 4-year-old girl. "I don't know who to believe anymore. I don't think they're still friends; I'm pretty sure they're not—do you know? . . . Once they got lawyers, they stopped being friends, just like that!"

Definitions of Divorce

The range of meaning children ascribed to divorce was surprisingly wide and vague. The more verbal the child, the more detailed the definition. Confusion about what a divorce actually was, however, was the rule, not the exception. Blame, loss, and fears of separation and abandonment were frequent themes, especially among the higher-conflict children who seemed particularly emotionally vulnerable. Sam, 3.4 years old: "Divorce is when Mom and Dad hate each other and your family is dead." One slightly jaded 6-year-old explained, "Divorce is when you pay lawyers a lot of money to wreck your family." When asked what divorce was, 4.4-year-old Anne said, "I don't know, I don't care. . . ." Ten minutes later, while drawing, she said, "It means you won't get married again ever, ever, ever." "It's when someone signs a paper, someone leaves home, and then kids cry," said 5-year-old Ben. "It's when your Mom and Dad can't stop pushing each other around and they kill your family," said a bitter and hurt 6-year-old.

Definitions of the Role of Judges and Lawyers

The amount of information that children had about lawyers and judges seemed generally related to their parents' experience with the same players, with the exception of a few higher-conflict families who had succeeded in insulating their children from the legal process. Children have big ears when it comes to the well-being of their families, and they had a lot to say about this issue. Although it is probable that some children confused family relations officers or custody evaluators with attorneys for the child ($n = 5$ in the sample), the child examiner was blind at the time of the evaluation about which children had their own attorneys and was therefore not attuned to potential confusion. For the sake of clarity, "court people" other than judges are grouped under lawyers.

Definitions of lawyers varied widely, with those from higher-conflict families skewed more negatively: "She was a lady with teddy bears that I could talk to because Mom and Dad don't tell the truth all the time anymore. She does." "Lawyers can be good and bad. They help people and give them tips, but they take a lot of money," said Ben, 4.6 years old. "They lie a little bit to help you win; it's someone you can buy," said Sara, 4.1 years old. "The big problem with lawyers is they don't help Mom and Dad stay friends, but they take your money. I'll never like them." Sam, 5.2 years old, said "I talked to one once and I thought she listened, but she took care of the money, not me."

Definitions of judges also were more negative than positive. "They pound a hammer and everyone listens. Glad I didn't have to hear it. They help you get divorced, even if you don't want to," said 5.2-year-old Jamie. "They aren't very nice. They put X's on calenders and make you go on visits when you still want your family in one place," said Anne, 4.4 years old. "He's an orderer with a strong voice that puts people in jail and makes them pay money," 4-year-old Jill told us. From Jeb, the oldest child in the study, "Court doesn't always work. If the judge lets Mom win, it hurts Dad's feelings and I get sad. I'd never want to be a judge; it's like being a fake parent—pretending to do the right thing for your kids, but they're not yours and you don't love them. It's so weird."

Suggestions for Judges and Lawyers

All of the children described ways to improve the process, and they bespoke a certain wisdom. Given the predominantly negative portrayal of judges and lawyers, the children still believe change is possible. Diane, aged 4.8 years, offered, "I don't like being divorced. I would tell them [lawyers and judges] to make Mommy and Daddy get along. I'm too little, I can't. If *they* can't, then don't stretch it out, please." Sam, 5.2 years old, counseled, "Don't take all the money from Mom and Dad—I want a paint-ball gun. Don't scare people about money." "Judges should listen to kids. Adults are smarter, but kids know the truth," pronounced 5.9-year-old David. "Please don't yell and put Daddy in jail. It makes him hate Mommy and us kids. Keep that gray tape for people's mouths in court hall so they don't say stuff that hurts people's feelings," said Sara, only 2.4 years old. "Don't scare people about not seeing each other any more. IT'S TOO SCARY to think you can't see your Mom or Dad any more. God decides that, not people!" said 6.4-year-old Ben. And finally, from the study sage (Alan, 6.6 years): "Fair deciding doesn't mean it's always right. If a person lies, the judge should give more to the person that *didn't* lie. Be careful and listen. Just because a person makes sense, or is more polite, doesn't mean they're telling the truth, or they are a good parent. Mom and Dad both tell some lies, but it's cause they want us more. Lawyers should tell the truth all the time and not try to fool people. The kids know what's happening."

DISCUSSION

Wary as we should be of blurring the distinctions between divorce as trauma and predispositions within a

family that lead to divorce, we can still listen carefully to what the children are showing and telling us about their needs. We were surprised at the depth of detail and the richness of the children's reflections and the relative ease with which this sensitive material was accessed.

These children's first concern is rooted in the developmental agenda of this era: help me feel secure in the relationships I know and trust best. Divorce should not mean, "you never come back." The deterioration in parental competence that temporarily emerges for many parents during the legal process of divorce may be what these children are sensing as "separation," rather than actual physical distancing. During divorce, many custodial parents find themselves with less time and energy to devote to maintaining the child's routines and discipline. In addition, the legal process itself and the threat of one's parenting competence being challenged by the ex-spouse and/or the evaluation process leads many parents to back off from enforcing their standards, out of fear that their discipline will somehow be distorted in meaning and turned against them (Kline Pruett and Jackson, 1999). This erosion of parental confidence and esteem potentially attendant upon the processes of divorce thus distorts or incapacitates many a child-parent bond.

Second, the children are preoccupied with personal safety, both physical and emotional. Even the better-functioning children are interested in the comfort and security of routines, schedules, kept promises, and vigilant public servants. An unfortunate effect of divorce early in one's developmental course is that bedrock experience with 2 loving parents in a web of security and trust is either short-lived or not woven tightly enough in the first place; hence the ongoing concerns about safety and security even in the absence of domestic violence. In fact, safety themes are probably metaphors to contain the heavy affective load of anxiety these children routinely carry. Attention to details and predictability of schedules, transitions, and continuity of caregivers become especially important because of the relatively brief history of a functioning parental coalition. Consequently, it helps to directly address the probability that not *all* promises made to children during divorce and drawing up parenting plans (as in life) can be guaranteed. Parents should err on the detailed side in scheduling coparenting planning for this reason, to maximize the specificity of plans and their likelihood of being implemented regularly.

Third, children should be told what the roles of legal and mental health professionals are so they will have realis-

tic expectations of them. This might reduce the confusion the children have and the distress they feel about what they overhear, as well as what they imagine happening between the adults controlling their lives. Children had too much information that was *not* helpful and not enough information that *was* helpful. They knew about motions, legal fees, and judicial idiosyncrasies but not that the professionals involved were there to listen to both sides and help the family understand what would hurt the least. This lack of useful information typically led kids to conclude that lawyers and judges should spend more time talking to *them*: "You can't trust grown-ups all the time. They get nuts about money, girlfriends, boyfriends and stuff—that's all they talk about. Those things don't matter to me—*that's* what I want to tell the judge—not who I should live with. I sure don't want to decide that!" said Sara, 6.1 years old.

Fourth, these children were most upset with legal processes when they felt the processes interfered with their parents' ability to remain civil, if not friends. Since legal officials can be easy targets for the displacement of the children's anger and blame for the divorce, children repeatedly vilified lawyers and judges in play and dialogue for making, or keeping, mothers and fathers mad at each other. They raised concerns especially if that anger affected the parents' ability to coparent well, which it typically does. Only reunification mattered more to these children than their parents' ability to remain friendly, and they blamed the officers of the court for eroding those foundations. Since many of the study children were just beginning to understand the nature of friendship and loyalty, these concerns were particularly salient in their worries about threats to their parents' friendship.

Fifth, the children rarely had a developmentally appropriate understanding about what the divorce process entailed. Their definitions were weighted in the direction of coping with grief, e.g., "the death of the joining of my parents, and the collapse of the bridge to my family." Just as giving children of differing ages differing amounts of information about a sick relative, or a visit to the doctor, can help them master their worries about the unknown, so too can age-appropriate depictions of divorce processes reduce their longer-term vulnerabilities. Frequently confusing mental health and legal officers, the children hungered for trustworthy information regarding divorce, its procedures, and its characters. Our efforts must help parents, relatives, and mental health personnel to understand what a specific child of a particular age and temperament needs to know *before* we tailor our answers to their hard

questions. These interviews indicate that, with sufficient groundwork and clinical expertise, even an hour spent with a child can contribute greatly to our understanding of the child's cognitive and emotional levels of development.

Sixth, the study children told us they see, hear, and learn from everything, including adult hypocrisies. In an era when they are actively working on mastering right versus wrong, they are confused when they see a parent, who is trying to be honest and "living on the golden rule" (Ben, 5.1 years), undermined by a clever legal maneuver or a postponed hearing. They are equally confused when they observe a parent, who is trying to comply with a judge's order, punished with threatened reductions in visitation for not paying child support. The relevance of a particular punishment escapes the child's reasoning, because *he* feels punished for something that a parent did or did not do, but he cannot be sure because the stories change between households and attorneys. Some of these confusions can be addressed by developmentally appropriate explanations, and some are simply beyond adult as well as child comprehension.

The young child is a rapidly growing segment of the divorcing population, with the largest study to date indicating that one in five 10- to 11-year-olds saw their parents separate before the children were 5 years old (Carey, 1998). These children face risk factors in their development, including the likelihood of living below the poverty level, greater potential for developing attachment disorders in early childhood, and manifesting clinical symptoms such as antisocial behavior and school dropout in adolescence (Achenbach and Edelbrock, 1983; Solomon and Wallerstein, 1996; Teachman and Paasch, 1994). As these data further indicate, they have many fears, and they often doubt even now whether their parents will marry again and, by identification, whether they will marry when grown. Yet they also often have sophisticated understandings of the differences in their parents' capacities to parent or function well emotionally.

Time is not in and of itself the potentially healing variable for children that it is for many adults. Some of them, of course, brought their distress and vulnerabilities into the divorce arena, as did their parents, and these children are especially at risk (Kline et al., 1991; Tschann et al., 1989). Yet they are not the only ones in trouble, as we witnessed in the interviews.

Limitations

Caution about the limitations of these data and their analysis is warranted. Obviously, the sample is relatively

small and the results, though clinically interesting, cannot be generalized without broader replication. The data are particularly rich because of the experience and skill of the interviewer; interviews were attempted with trained but less experienced clinicians and less detail emerged. Interviews were careful inquiries of the child's responses to a particular life event, not full-scale clinical assessments. It is impossible to systematically tease apart the effect of the divorce itself from any predisposing morbidity that these children (much less their families) bring to their understandings or experience of divorce. Whenever possible, such distinctions were made. Moreover, attempts were made to assign a global clinical impression of the child's mental health and the family's level of conflict based on the information collected and the examiner's experience as a diagnostician. No formal instruments were used. The interviewer was blind to the ascribed level of family conflict; only perceptions gleaned from the children were included in the subsequent analysis. However, it is notable that the sample was more representative of higher-conflict divorces (62%).

Clinical Implications

First, reinforcements that sustain the child's sense of being loved and treasured can be bolstered by extended family contact and neighborhood and community connections. Interventions should foster these broader supports for the child's healthy dependent needs.

Second, depictions of divorce processes need to be age-appropriate. Three-year-olds need reassurance that they are not losing their Mommy and Daddy and that divorce means more changing of places than people. Six-year-olds need to know that divorce is about being safe, secure, and connected with Mommy and Daddy while you are learning how to go to school and to read.

We repeatedly heard children tell us in their play and narrative that they need to feel safer and less confused during divorce. One avenue for fulfilling this need is for them to be heard about what they feel is happening to their families. Family relations staff, mental health providers, and the children's attorneys are often reluctant to address these matters directly with children in the preschool and early school years. They are not comfortable or trained in discourse with children so young, or they do not believe that little children understand much of what is happening around them. These children are not given credit for all they do understand or for all of the ways they misconstrue what they *think* they understand. These data indicate that

children are thinking about all they see and hear, starting at very young ages.

Finally, our interventions must strengthen the ability of professionals dealing with this age group to support and inform divorcing parents (1) about their children's many experiences in, and thoughts about, the divorcing process; (2) about how distinctly different children's experiences and thoughts are from those of adults; and (3) about how helpful information at the right time can be to reduce the toxic accumulation of loss that so often characterizes divorce for the young. While these notions emanate from the data and sound clinical judgment, they remain hypotheses to be refined and tested further.

On the basis of the study results, we will conduct an intervention study to test the extent to which timely, appropriate information for parents and children and intervention will promote the development and mental health of young children of divorcing families. We hypothesize from these data that parents of these children will benefit from sensitive parenting plans that (1) account for children's shortened sense of time and need for consistency (Goldstein et al., 1996) and (2) preserve both parents' mutual interest in and responsibility for childrearing, without diluting the children's chance for intimately connecting with both parents and extended families. Most important, we need interventions that remove parents from the potential toxicity of adversarial divorce (Tesler, 1998), maximizing parental support and, when needed, mental health resources.

In creating these interventions, we are ably assisted by the perceptions of these young stakeholders. Their open, cogent ideas for change in the legal and clinical process of divorce encourage adult efforts to find and implement the least detrimental alternatives as their families change.

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