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On the Front Lines: Interview With Judge David B. Mitchell

Juvenile Justice: You have become increasingly recognized as a leading juvenile court judge and as a leader in the area of juvenile justice. Why do you consider this important, and could a nonjudge do the same?

Judge Mitchell: It's important and traditional for the juvenile judiciary to take a leadership responsibility locally and, in some instances, nationally because we're the ones who see the situation in its most difficult form. In other words, the judge is always there and sees what's occurring in the community.

The judge, in most instances, is in the best position to address the needs of the families that come before the court. The judge, in many instances, is in the best position to speak to the issues because he or she is not seeking voter approval for the court's policies. The judge can go before the public and the policymakers and advocate from a position of respect and responsibility for the needs of the system as opposed to setting forth political solutions.

Juvenile Justice: It sounds like a tall order for a juvenile court judge.

Judge Mitchell: True. When you sit in the civil or criminal court, your impact is upon the litigants. That's important; however, you have no real opportunity to effect the changes needed within the

community. You may help streamline the system so that the cases move more smoothly. You may even be able to address some aspects of the problems of the community as they relate to the courts. When you sit in the juvenile court, however, you have the opportunity to speak to the broader social problems of your community, to really participate in making things better overall as opposed to what happens in this one case.

Juvenile Justice: What are the requisites for being a judge?

Judge Mitchell: Maryland has one of the unique statutes on that. It says as a general principle that no person may sit in a juvenile court unless they want to do so. Secondly, the person must have some training, experience, or interest in the field. Finally, the person requires the approval of the chief judge of the State.

Juvenile Justice: There are so many functions in the juvenile court for which the judge is responsible. Many courts delegate some of this work to referees and others. Do you? And is it a good thing?

Judge Mitchell: Unfortunately, we do. Baltimore city historically has been a master-dominated court. We have masters, who in other communities are called referees and in others commissioners. These are nonjudicial authorities. They are competent experts in what they do,

Judge David B. Mitchell is associate judge of the Baltimore (Maryland) City Circuit Court and has long been active in juvenile and family law. The interview was conducted for Juvenile Justice by Irving Slott, former director of OJJDP's Information Dissemination Unit.

Parentally Abducted Children: Roadblocks to Recovery and Reunion

By Linda K. Girdner, Ph.D

"Is my child custody decree worth the paper it is written on?" Faced with the reality that a spouse or former spouse has taken the children and fled, distraught parents may ask this question and others: "Who will help me find my children?" "When will I see them again?" "How can my custody decree be enforced?"

According to the National Incidence Studies on Missing, Abducted, Runaway, and Thrownaway Children, an estimated 163,200 children abducted by parents or other family members in 1988 were taken across State lines, concealed from or prevented from having contact with the custodial parent, or taken with the intention of being kept indefinitely or changing their custody.¹

What are the obstacles to locating, recovering, and returning parentally abducted children? A recent study sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and conducted by the American Bar Association (ABA) indicates that laws enacted to prevent parental abductions and facilitate the recovery and return of abducted children are not working properly.² This article describes these laws, identifies obstacles limiting their utility, and recommends corrective action to enhance their effectiveness.

ABA Study

In 1988 Congress directed OJJDP to conduct a study to identify legal, policy, procedural, and practical obstacles to the location, recovery, and return of parentally abducted children and to recommend ways to overcome or reduce them.³ The subsequent 2-year research project by the ABA Center on Children and the Law addressed legal and social science aspects of the problem.

The Center conducted comprehensive legal research on Federal and State statutes, court rules, and case law pertaining to parental abduction and custody determination, modification, and enforcement. Attorneys, judges, and State missing children clearinghouse personnel were surveyed to review their experiences in custody enforcement and family abduction. Special legal consultants developed papers on the role of law enforcement personnel and prosecutors in civil

Linda K. Girdner, Ph.D., of the American Bar Association's Center on Children and the Law serves as a consultant to the Office of Juvenile Justice and Delinquency Prevention (OJJDP). She directed OJJDP's research project Obstacles to the Recovery and Return of Parentally Abducted Children. Dr. Girdner continues her work on behalf of parentally abducted children and their families as director of OJJDP's project Identifying Risk Factors for Parental Abduction.

enforcement of child custody orders, issues arising in criminal appellate decisions, and procedural changes to expedite custody enforcement.

The Center for the Study of Trauma at the University of California, San Francisco, surveyed a sample of family abduction cases drawn from the files of the National Center for Missing and Exploited Children (NCMEC) and examined child recovery experiences in three communities.

Responses to Parental Abductions

Attempts have been made to address the problem of parental abductions through the civil legal and criminal justice systems. In addition, Federal and State information clearinghouses have been established to help parents locate missing children.

Civil Legal

The civil legal response to the problem of parental abduction was designed to prevent child custody proceedings from going forward simultaneously in more than one State and conflicting custody orders from being issued in more than one jurisdiction. Federal and State laws were enacted to prevent forum shopping by parents seeking more favorable custody determinations and to require every State to honor and enforce child custody orders properly issued by the court of another State.

Three key laws were enacted to address interstate and international parental child abductions: the Uniform Child Custody Jurisdiction Act (UCCJA), the Parental Kidnaping Prevention Act (PKPA), and the Hague Convention on the Civil Aspects of International Child Abduction.

Uniform Child Custody Jurisdiction Act. During the period from 1969 to 1983, the UCCJA was enacted in some form in all States, the District of Columbia, and the Virgin Islands. The UCCJA is primarily a jurisdictional statute that addresses when a court has subject matter jurisdiction in a custody case, whether a court should exercise jurisdiction, and whether a court must enforce the decree of another State or whether it can modify such a decree. The UCCJA sets out four bases of subject jurisdiction and includes provisions to prevent simultaneous proceedings.

Parental Kidnaping Prevention Act. Enacted in 1980, PKPA is a Federal law that gives priority to the home State for subject matter jurisdiction.⁴ Under PKPA, courts are required to enforce and may not modify custody orders of sister States that have exercised jurisdiction in a manner consistent with the Act.

PKPA specifies that the Federal Bureau of Investigation (FBI) can investigate interstate and international parental abduction cases in which a warrant for unlawful flight to avoid prosecution has been issued. PKPA also allows authorized persons to access the Federal Parent Locator Service.

Hague Convention on the Civil Aspects of International Child Abduction.

Signed by the U.S. Government in 1980 and ratified in 1988, the Hague Convention on the Civil Aspects of International Child Abduction is an international treaty that addresses the problem of international parental abduction. Procedures for implementing the Hague Convention in the United States are set forth in the International Child Abduction Remedies Act.⁵

The Hague Convention provides for the prompt return of wrongfully removed or retained children to their country of

“habitual residence.” The treaty governs cases involving countries that have become parties to it.⁶

Criminal Justice System

Federal laws mandate that law enforcement agencies report missing children, including parentally abducted children. State laws and procedures relating to missing children and parental kidnaping vary widely.

Missing Children Act of 1982. To promote the involvement of law enforcement in the location of missing children, Congress passed the Missing Children Act of 1982.⁷ Public Law 97-292 requires the FBI to enter missing children into the National Crime Information Center (NCIC), a computer data base that enables law enforcement agencies across the country to access information about a missing person or fugitive. Under the Act, local law enforcement agencies may enter a missing child into NCIC, depending on State laws, but the FBI must do so if it is not done at the local level.

National Child Search Assistance Act of 1990. Prior to 1990, many State statutes and local law enforcement procedures required a waiting period before a child could be declared “missing” and an investigation begun. Such delays impeded the recovery of children. Congress passed the National Child Search Assistance Act of 1990 to address this problem.⁸ Public Law 101-647 prohibits law enforcement agencies from requiring waiting periods and mandates that missing children be entered immediately into NCIC. The law further stipulates that NCIC entries be made available to State missing children clearinghouses.

State Criminal Laws. All States have criminal parental kidnaping statutes, commonly called criminal custodial in-

terference laws. However, State laws vary as to whether parental kidnaping is a felony or a misdemeanor. In many States, parental abduction becomes a felony only after the child is transported across State lines. The criminal liability of unwed, joint, and sole custodial parents who abduct their children and prevent the other parent from having any access also varies. In some States, parental abduction prior to a custody order may not constitute a criminal violation.

Clearinghouses

Federal and State clearinghouses serve a wide audience, including parents and families, law enforcement personnel, social service professionals, and interested citizens. Clearinghouses provide resources, technical training, and general information on the issues related to missing children. Most help locate missing children by distributing photographs and descriptions. This section describes some of the services a clearinghouse can provide.

Abduction in Historical Perspective

Abduction of children probably has been part of family life since the beginning of history. Among the first child abductions to enter European awareness were the biblical story of King Solomon deciding custody of a child that one mother had taken from another and various tales of classical mythology. . . . Since early times children have been

both economic commodities and emotionally laden targets for revenge by abductors. . . . Recall the story retold by Shakespeare of the two little princesses snatched from their mother and imprisoned in the Tower of London by their uncle because their claim to the English throne thwarted his own ambitions.

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National Center for Missing and Exploited Children. Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974 provided funds for the National Center for Missing and Exploited Children, a private nonprofit organization, to serve as a national clearinghouse and resource center.⁹ NCMEC provides technical assistance in parental abduction and other missing children cases, maintains a toll-free hotline, and provides legal consultation with civil attorneys and prosecutors in abduction cases.

State Missing Children Clearinghouses. Forty-two States and the District of Columbia have State missing children clearinghouses. Most were established by statute and are housed within the State criminal justice agency. Clearinghouses vary in the functions mandated and resources available to them. Customarily their functions include public education and information; communication and coordination with parents, attorneys, law enforcement personnel, and government agencies; and assistance in the location and recovery of parentally abducted children. Many State clearinghouses serve as the contact in international abduction

cases within the purview of the Hague Convention.

Juvenile Justice Clearinghouse. OJJDP created the Juvenile Justice Clearinghouse (JJC) in 1979 to serve as a national resource for information on juvenile crime and missing children issues. JJC maintains an extensive collection of literature on parental abductions and other topics related to missing children. JJC distributes OJJDP publications featuring up-to-date statistical materials, research findings, program descriptions, and evaluations. In addition, JJC provides referrals to other information sources in this field. A component of the National Criminal Justice Reference Service, JJC also offers library services, conference support, and access to an electronic bulletin board for news and announcements.

Obstacles to Recovery and Return

Despite Federal and State laws, major obstacles to locating, recovering, and returning parentally abducted children persist. These obstacles fall into three broad categories: unfamiliarity, non-compliance, and inconsistency and ambiguity.

Unfamiliarity. Lawyers, judges, and law enforcement officers exhibit a vast lack of knowledge and experience in the laws concerning parental abduction. In a national survey of judges, 60 percent of the respondents reported that counsel rarely or never raised the Parental Kidnaping Prevention Act in applicable cases.

Noncompliance. Many law enforcement officers, judges, and attorneys fail to comply with applicable laws. One widespread practice among law enforcement officers is to use marital status, type of custody order, and other criteria such as thresh-

Why Do Parents Abduct Their Children?

Of the many roles children play within families, parental abduction highlights the most tragic. In some abductions children are taken because they have become indispensable to a parent's well-being; in others they are removed from danger by parental acts of courage. One

study of 86 parents who were contemplating abducting their children (only a small percentage had serious plans) found that almost half were motivated by the perceived need to protect the child from physical, sexual, and emotional abuse.

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olds prior to entering a child as missing into the National Crime Information Center. As indicated, this practice violates Federal missing children laws.

Inconsistency and Ambiguity. Federal and State laws relating to missing children, parental abduction, and custody enforcement lack uniformity and specificity. Not only do statutes vary from State to State, but court interpretations of Federal and State laws have led to greater ambiguity and confusion. The lack of clarity and specificity regarding law enforcement's role in enforcing child custody orders has led to a growing concern over civil liability suits.

Corrective Action

Congress, State legislatures, and professional associations representing judges, lawyers, prosecutors, and law enforcement officers must act to improve our effectiveness in addressing parental abduction cases. For this to take place, the public needs to be better informed about the issues involved. Specific recommendations to address particular obstacles to recovery and reunion are summarized below.

Congress

Conflicting Custody Orders. Congress should amend the Parental Kidnaping Prevention Act to include an express Federal cause of action (that is, the right to take a case to Federal court) in cases involving conflicting custody decrees resulting from two or more States exercising child custody jurisdiction.

Lack of Procedures To Determine if Custody Orders or Proceedings Exist. Congress should pass legislation establishing a national computerized child custody registry that would provide

courts ready access to child custody filings and determinations. The custody registry could be combined with a national child support registry.

Ambiguities in the Parental Kidnaping Prevention Act. Congress should amend PKPA to clarify several provisions, including continuing modification jurisdiction, emergency jurisdiction, and the types of cases to which PKPA should apply.

State Legislatures

Lack of Effective Enforcement. States should adopt expedited enforcement procedures that ensure consistent, cost-effective, and timely enforcement of custody orders. These procedures should mandate a role for police officers and prosecutors in the civil enforcement of child custody orders.

Lack of Uniformity and Specificity in State Variations of the Uniform Child Custody Jurisdiction Act. The National Conference of Commissioners on Uniform State Laws should review State enactments of UCCJA and promulgate amendments. State legislatures should amend their UCCJA statutes to achieve greater uniformity and specificity. For example, a provision could be added allowing temporary foster care placement of abducted children, pending return to the lawful custodian.

Lack of Coordination Between Parental Abduction and Family Violence Policies. State legislatures should review laws on parental abduction, spouse abuse, and child abuse to determine how battered spouses and abused children may be further victimized by current laws and procedures in the event of parental abduction. Revisions should conform to the intent of parental abduction laws, protect

victims, and provide due process for all parties.

Need for Additional State Civil Statutes and Rules. State legislatures should pass statutes providing for the flagging of birth and school records of missing children. Then, if a copy of a missing child's record were requested, law enforcement would be notified of the requester's name and address. In addition, State court rules allowing out-of-State attorney appearances should be adopted.

Inadequate Funding for Law Enforcement and State Missing Children Clearinghouses. State legislatures should fund law enforcement agencies and State missing children clearinghouses at levels needed to meet their mandates relating to parentally abducted children. State missing children clearinghouses and police departments should use available Federal assistance.

Liability Risks of Law Enforcement. State legislatures should clearly define the statutory authority under which law enforcement officers enforce custody orders. Procedures for ensuring the validity of the decree should be identified.

Inadequacies in Criminal Statutes. State legislatures should make parental abduction a felony when the child is being concealed, has been taken out of State, or is at risk of harm. These circumstances should apply to any case in which the abduction is in derogation of the custody rights of another parent or family member, whether or not a custody order has been issued.

Law Enforcement Agencies and Prosecutors

Lack of Compliance With Federal Law. Law enforcement officers should be trained to follow the mandates of the

Missing Children Act of 1982 and the National Child Search Assistance Act of 1990 and directed by superiors to follow the procedures of these Acts. Officers should file a missing child report, notify NCIC, and investigate every parental abduction case, regardless of the marital or custodial status of the parents.

Failure To Investigate and Prosecute. Collaborative efforts among professional associations, the American Prosecutors Research Institute, the Missing and Exploited Children Comprehensive Action Program, and NCMEC should promote training and technical assistance in the investigation and prosecution of parental abduction cases.

Attorneys and Judges

Lack of Knowledge of Child Custody and Parental Abduction. Judges and attorneys should be provided continuing education in laws applicable to parental abduction cases. Educational materials should be developed for different practitioners and widely disseminated. Appellate judges should receive continuing education on PKPA and UCCJA. Then, as appellate judges become better informed, lower court judges who want their decisions sustained will ensure that there is no favoritism toward local parties in their courts.

Need for Knowledgeable, Affordable Attorneys. A national referral system for attorneys with experience in parental abduction cases should be maintained. Bar associations should encourage attorneys to take parental abduction cases on a pro bono or sliding scale basis. Legal aid programs should give high priority to parental abduction cases so that more low-income parents can have their children returned. No child should remain missing because a parent is poor.

The Public

Aiding and Abetting Abductors. A media campaign should be undertaken to educate family members and friends about the criminal risks of involving themselves in the abduction or concealment of a child. As appropriate, prosecutors should file criminal charges against accomplices.

Dispelling the Myth That Parental Abduction Is Not Serious. The public, as well as law enforcement personnel, judges, and attorneys, should be informed of research that dispels commonly held myths minimizing the gravity of parental abduction.

Summary

A parent whose child has been abducted by the other parent or another family member often experiences obstacles in having the child located and returned. The parent may find that law enforcement is unwilling to enter parentally abducted children into the FBI's computer data base. The parent may require legal services in separate jurisdictions and may have difficulty finding knowledgeable and affordable attorneys. Parents who are not married or lack custody orders, those with joint custodial or noncustodial status, and those who are economically or otherwise disadvantaged are likely to experience additional difficulties.

Implementation of these recommendations will help return parentally abducted children to their nonabducting parents.

Notes

1. D. Finkelhor, G. Hotaling, and A. Sedlak. *Missing, Abducted, Runaway, and Thrownaway Children in America, First Report: Numbers and Characteristics, National Incidence Studies*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1990.

2. Linda K. Girdner and Patricia M. Hoff. *Obstacles to the Recovery and Return of Parentally Abducted Children*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, forthcoming.

3. 42 U.S.C. § 5778.

4. 28 U.S.C. § 1738A.

5. 42 U.S.C. § 11601 et seq.

6. As of April 1992, 24 nations had implemented the Hague Convention.

7. 28 U.S.C. § 534(a).

8. 42 U.S.C. § 5780.

9. 42 U.S.C. § 5778.

Supplemental Reading

Finkelhor, D., G. Hotaling, and A. Sedlak. *Missing, Abducted, Runaway, and Thrownaway Children in America, First Report: Numbers and Characteristics, National Incidence Studies*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1990. OJJDP's seminal study provides data on children abducted by family and nonfamily members and on other children in crisis. The study is available from the Juvenile Justice Clearinghouse for \$14.40 per copy (NCJ 123668). An executive summary (NCJ 123667) is available free of charge from the Clearinghouse. (See the OJJDP publications order form on page 31 for ordering information.)

Gill, J.L. *Stolen Children: How and Why Parents Kidnap Their Kids and What To Do About It*. New York: Seaview Books, 1981. The author discusses what victimized parents can do to recover their parentally abducted children and describes the treatment of psychological problems abducted children may incur.

Greif, G.L., and R.L. Hegar. *When Parents Kidnap: The Families Behind the Headlines*. New York: The Free Press, 1993. Please see review on page 28.

Office of Juvenile Justice and Delinquency Prevention. *Parental Kidnapping: How To Prevent an Abduction and What To Do If Your Child Is Abducted*. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 1985. This 44-page handbook recommends actions parents can take to prevent and deal with parental abductions.

Wauters, S.M., R. Peck, and J. Mindak. *Interference With Custody: Guidelines for Police*. Toms River, New Jersey: Ocean County Prosecutor's Office, 1989. This 45-page handbook describes guidelines followed by police in Ocean County, New Jersey, in handling parental abduction cases.

JUVENILE JUSTICE CLEARINGHOUSE

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The Office of Juvenile Justice and Delinquency Prevention (OJJDP) offers this comprehensive information resource to assist juvenile justice professionals in meeting the challenges presented by today's diverse issues. The Juvenile Justice Clearinghouse coordinates the distribution of OJJDP publications and disseminates information about agency-sponsored research, program, and training initiatives. Juvenile justice information specialists are available to respond to inquiries by providing publications, literature reviews, referrals, and other resource materials.

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