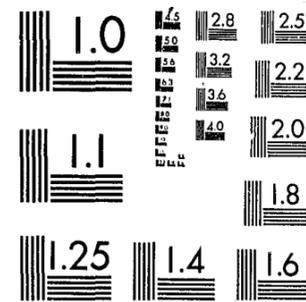


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PARENTAL KIDNAPPING

RESEARCH ISSUES AND PRIORITIES

Annesley K. Schmidt
October, 1980

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Parental Kidnapping

Research Issues and Priorities

Summary of a Conference at the National Institute of Justice, September 5, 1980

Background

The Justice System Improvement Act of 1979 authorizes the National Institute of Justice (NIJ) to conduct research concerning the criminal justice system and specifies that one area of concern is to be the development of "new methods for ... the prevention and reduction of parental kidnapping..." Since this is a new area of concern, a research agenda development effort is a logical first step.

After the review of the area by NIJ staff, the research agenda development effort continued with the commissioning of two papers, followed by the convening of a meeting to discuss these papers and recommend NIJ's initial research activities. This paper briefly summarizes the two papers and reports on the meeting and its recommendations.

In the first paper, "Child Snatching: A Study of American Laws Dealing with the Abduction of Children Before and After Divorce", Professor Sanford Katz, Boston College Law School and Chairman of the American Bar Association's Family Law Section, examined existing state and federal statutory and case laws and decisions related to the problem of parental kidnapping. The Uniform Child Custody Jurisdiction Act, UCCJA, is the focus of the paper since it is the only law that intentionally crosses state lines in child custody cases. The UCCJA is discussed generally. Then, there is specific discussion of the principles set forth for determining jurisdiction in custody cases and in proceedings to modify a previous custody decision, and the recognition expected under the UCCJA of the decrees of one state by the courts of another. The final section of the report examines the particular remedies available to aggrieved parents in specific state courts and the variations in these from state to state.

In the second paper, "Research Issues in the Study of Parental Kidnapping", Dr. Richard Gelles, the University of Rhode Island, discussed research issues in the study of parental kidnapping. Despite the lack of scholarly research, official statistics or attempts to estimate the actual extent of the problem, Dr. Gelles found that there are commonly accepted "facts" all of which lack scientific foundation and are open to serious question. He also found that there is no consistent or precise definition of the phenomena, although research in the area will require a usable operational definition. Dr. Gelles then discussed methodologies for studying the incidence of parental kidnapping, methodological problems that may be anticipated, and other research questions that might be explored.

The Conference on Research Issues and Priorities

These two papers were distributed, in advance, to all conference participants who were chosen to be representative of the various groups concerned about the problem and to provide relevant expertise. Included also were representatives of NIJ and the Law Enforcement Assistance Administration, other government agencies, Congress, and private advocacy organizations concerned with the problem of parental kidnapping. Special efforts were made to provide a balance of the points of view of law and the social sciences as well as expertise in methodology, family conflict and other relevant areas. (List of participants attached.)

The objective of the conference was to recommend to NIJ the most appropriate steps to initiate a research program on the subject of parental kidnapping.

The conference began with an introduction to the problem of parental kidnapping provided by people who became concerned about the problem as a result of personal experience and are now working to change the way in which society responds to it. There were then presentations by the authors of the two papers and by a researcher presently working in the area. The meeting continued with a discussion of major research issues and means by which these might best be addressed.

Presentations

Arnold Miller and Rae Gummel, of Children's Rights, Incorporated (CRI), discussed the problems for the parent whose child is missing and then faces what may be a confused and frustrating effort to obtain help from the criminal justice system. They also pointed out that child snatching may occur after a custody order, but is not infrequent before the custody order, and sometimes occurs before there has been a separation and/or a filing for divorce. They pointed out that the main problem is concealment and that help is needed in locating the child. Only after the child is located is it possible to go into court and have such things as the UCCJA become relevant.

Harold Miltsch, Stop Parental Kidnapping, continued discussion of the problem of locating the child and described his organization's publication sent to 130,000 schools containing pictures and descriptions of "kidnapped" children and asking to be notified if the child is in that school. He described a three phase research program that his organization is undertaking, which examined motivation, incidence and reported versus unreported cases. They are presently examining motivation using 300 cases over the last 10 years in Monroe County, New York, (Rochester) and a companion study in Milwaukee County, Wisconsin. They plan to begin their incidence study about the first of the year.

Both of these speakers stressed two points: the difficulty in locating the child and the fact that there is no consistent policy governing the response of various criminal justice agencies to the victimized parents.

Professor Katz, continued the discussion focusing on the use of government and law in dealing with this kind of problem and the limitations inherent in this approach. Traditionally, the privacy of the family, the rights of parents, and the power of parents over their children have been dominant themes. As a result, he stated, to date the law and the legal system have not been very helpful in dealing with parental kidnapping.

Professor Katz discussed another legal tradition confounding this issue -- "the best interests of the child" -- which may lead to a clash of goals between law and psychology/psychiatry. The snatching parent may turn out to be the parent with whom the child has lived most recently, possibly for a considerable length of time, and with whom the child has strong emotional ties. Hence, the emotional development of the child would sometimes best seem to be served by leaving him with the snatching parent, thus seeming to reward the snatching behavior.

Pointing out the problems associated with the use of extra-legal standards for decision-making, Professor Katz felt that the criminal law may be one of the only ways to deal with the situation and that possibly severe penalties might be necessary.

The discussion then continued with the presentation by Professor Gelles. Drawing on his experience with family violence and child abuse research, Dr. Gelles argued that this effort should take lessons from the experience in family violence research and thereby avoid some of the pitfalls. He particularly pointed out the need for an examination of comparison groups in order to see the situation in context, the problems of finding representative participants and the problems of post-hoc theory building where the lack of total hindsight leads to an inability to examine consequences.

The final presentation was that of Mr. Courtney Elliott, National Catholic School of Social Service, Catholic University of America, whose dissertation is an exploratory study of parental kidnapping. In his study he examined 240 responses to a questionnaire mailed to 400 randomly selected CRI members who are victim parents. The data are now being analyzed so he cautioned that his discussion was impressionistic. However, his strong feeling is that parental

kidnapping is not a single phenomena and does not have a single motivation. Rather, the term parental kidnapping describes a large constellation of events and behaviors. It is not solely a middle-class phenomena, since his respondents ranged from people with less than a 6th grade education, low incomes and low status jobs, to those who have post-graduate educations, high incomes and high status jobs. Some of these respondents were subject to a permanent custody order, some temporary orders and some had no court order at the time of the incident. Motivationally, it may be a strategy for reconciliation or revenge or may have apparently more positive motivation. When asked to indicate the places where they had sought help, 85% of these respondents reported seeking help from police, the largest percentage using any source.

Discussion

The discussion for the remainder of the morning and the afternoon focused primarily on various kinds of research that might, could and should be done, with concern also expressed about the need for action, demonstration projects and for legislation at both the state and federal level.

A significant portion of the discussion focused on definition. On the one hand, the criminal justice system needs a precise definition establishing the parameters within which action can be taken. However, on the other hand, research problems can be created when the definition overly constricts and skews the kind of data that is collected and from which conclusions are drawn.

It was also pointed out that in order to do research the ground rules and sampling base have to be established and this intrinsically requires a definition. However, while this defines the scope of behavior being observed, it provide no assurance of the ability to study the behavior. Additionally,

the definition of parental kidnapping is a social policy question, not a research question, and, therefore, there is no assurance that what is studied is parental kidnapping. The research definition, whatever it is, has direct consequences to cost and sample size, how the sample is determined and how possible respondents will be screened in or out of the sample.

The definitional problems may be compounded when discussion of parental kidnapping is expanded beyond the context of divorce and custody. Kidnappings are apparently occurring in other related and unrelated situations: retaliation for a perceived wrong, extortion "you will only get your children if we get back together" or to escape from a brutal husband. There is no available information about the frequency of the various types but, more importantly, no information about the total cluster of types. Some discussants felt that they had an image of parental kidnapping, but little idea about what was really happening "out there."

The role of the criminal law in parental kidnapping was mentioned in a number of ways. First, by criminalizing the offense, some felt that resources of the criminal justice system, such as investigation, could be made available to victims and that lawyers would have an affirmative duty to advise their clients against the behavior, something they do not presently have. It was also pointed out that an assumption was being made that criminalizing the behavior would have a deterrent value, and this is a dubious assumption. While there is a body of literature about deterrents, it would be important to test the deterrent value in this situation.

Recommendations

Many kinds of research were suggested, ranging from pure incident studies and prevalence studies to studies of the consequences to the participants, studies of law and others. However, as discussion focused on the facts that,

first, base-line information is a necessary first step, and that, second, the National Institute of Justice should focus on the justice system response, consensus was reached on a two-pronged initial approach, an incidence study and an experience study. This would provide two kinds of data: what is happening to people and what are the administrative, practical issues which must concern those who make policy.

Many possible routes for collecting incident data were suggested. One possibility is adding screening questions to an on-going large sample survey, such as the National Health Survey, and interviewing those "screened-in" either at that time or later. Another route would be through the use of one or more of the variety of types of possible informants, lawyers, court officials, police, and organizations concerned about the problem. This latter approach would, however, be more effective for determining the range of types of incidents and for establishing a descriptive base then for determining a reliable incidence rate. Still another approach would be to sample from police blotters or from cases returning to the domestic relations court. This last approach would, at least, provide a sample that was not biased in terms of the initiative of the person to go to a particular organization, by cases being defined prior to reaching the point at which the sample is established or being limited to those who are economically able to participate.

The experience survey was suggested in recognition that there is knowledge available from people who deal with the problem on a day-to-day basis, but that this knowledge is unformulated. The survey will bring them into the research process, drawing on their experience in an attempt to both formulate the problem systematically and examine ways of dealing with it. It would try to identify what are effective practices and what are not. By talking to informed people, one can at least hypothesize what can be done effectively by the policeman, or the prosecutor or the domestic court judge, or other relevant people

within the criminal justice system and those outside of the system but concerned about the problem. Once a potentially effective practice is identified, it would then be important to evaluate whether indeed it is effective.

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