

# Underground Children: A Symptom of Our Beleaguered Courts

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A Georgia court recently acquitted Fran Yager of charges that she had kidnapped and abused children in conjunction with the underground network she has been running for children alleged to have been abused. Mrs. Yager states she has aided over 2,000 families fleeing abusive family members and the courts that they feel have not protected them. Half of these families have entered her underground. Yager admits the courts failed her own daughter, who was abused by her father and returned to him, and that she has no training in assessing the validity of allegations of abuse. Her critics view her as a vigilante who has taken the law into her own hands; her supporters see her as a child saver. I see her underground as a symptom of a failing court system.

In recent years, I have encountered many preschool children alleged to have been abused, who seem to fall through the cracks of the legal system. Typically, the child alleges sexual abuse following her parent's separation or divorce. Protective services refuses to get involved because "the mother is protecting the child," even if in so doing she is held in contempt of court for failing to allow visitations with the father. The district attorney's office will usually not pursue the case because the child is considered to be too young to be a competent witness. The child is left in no man's land with no legal protection. The alleged perpetrator is left with a shadow of doubt hanging over his head.

To cite a recent example, a pediatrician referred a very bright child named Katie, who had just turned 3, for further evaluation after she refused to discuss alleged abuse with him. Her physical exam revealed hymenal tears, and Katie had earlier implicated her father in the abuse. Katie was willing to talk with me about anything except her father, and became mute whenever I mentioned his name. My first dilemma was whether to continue to question her or to pursue treatment for her behavioral problems that seemed related to the abuse. After four unproductive evaluation sessions, I chose the latter course. Three months into treatment she made spontaneous disclosures about her father and, as I'd expected, revealed that he had made threats of harming her and her mother with a gun if she disclosed sexual abuse. My next dilemma was whether or not to testify in court on her behalf. I did,

contrary to my usual dictum that one should separate forensic evaluations from treatment, as it was apparent it might take her another three months to build up enough trust to disclose to an outside evaluator. I recommended against visitation with her father and was overruled by the judge. Supervised visits were disastrous and took their toll in terms of the emotional abuse and neglect inflicted upon my patient and her one-year-old sister. I called a halt to the visits and had to return to court to justify my actions. Once the visits were discontinued, Katie began to talk more openly about sexual abuse by her father. Two hearings and six months later, the mother was awarded full custody, and the father, who had failed to comply with a court-ordered psychological evaluation, was denied visitation.

Protective services would not pay for my testimony in court because it was "the mother's case, not ours" and, needless to say, Medicaid would not. I made a total of four trips to court, travelling two hours each way at my own expense. I billed the mother a token fee for my time in court, which was paid with a loan from a local lobsterman. The experience caused me and Katie's mother to question the ability of the legal system to protect young children from abuse and left me feeling as if I were the only advocate for my small patient. The mother, although a staunch advocate, was a party in the protection from abuse and divorce proceedings, hence her testimony in court was viewed with some suspicion.

I could appreciate how an impulsive, less mature and perseverant woman could have easily fled the system and taken matters into her own hands. However, her patience paid off; she now has the law on her side, the children are protected, and her former husband has demonstrated his true colors to the court. I wonder what the outcome would have been had I not gone to bat for my little patient and how a woman on welfare can expect to get decent legal representation, let alone hire experts to testify on behalf of her child.

Parents who flee the system and go underground may do so in a variety of circumstances, including (1) when they fear they will not be heard in court and flee in advance of a hearing; (2) when they are dissatisfied with the court's findings and orders (this may include valid allegations of abuse as well as parents who remain

convinced that abuse has occurred in absence of evidence); (3) when they are threatened by a former spouse, regardless of the legal outcome; and (4) when the courts will not become involved or render a decision because of the child's young age.

The risks of fleeing the system are high. The parent is in contempt of court, becomes a fugitive, may be charged with kidnapping, and jeopardizes her long-term relationship with the child. The emotional toll on the child is great and typically includes parental alienation, loss of family and friends, disrupted schooling, difficulty trusting, loss of identity, and—in cases where the child is placed with strangers—loss of both parents.

Pediatricians and child psychiatrists need to be alert to the possibility that they may be seeing a fugitive child. Tip-offs may include the child who has not been attending school, has dyed hair, is unsure of her name, has no permanent address, is not accompanied by the custodial parents; or a parent or parent surrogate who seems to be shopping for a doctor who will say her child has been sexually abused. Physicians may be charged with aiding and abetting a kidnapping if they fail to report a missing child or assist in hiding the child. In most situations, physicians must also have the consent of the custodial parent before examining or treating a child.

In terms of the court's response to these difficult cases, we need stronger victim advocate programs that will pay for well qualified experts to assess these children and give expert testimony when parents cannot afford the costs. Good evaluations and justice should not be based upon ability to pay. Judges need to be educated about manifestations of child sexual abuse in the very young. These cases need to be prioritized on the court docket in keeping with the young child's sense of time and need for security. Prompter responses by the legal system would allay parental anxiety and diminish the likelihood of parental kidnapping.

## References

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