

The Birds Nest Game: Thoughts on Bernard Baran
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If you want to visit someone at the Bridgewater State Treatment Center for the Sexually Dangerous, you can't wear jeans or dark pants or sneakers or sandals. Your shirt must have a collar and button down the front and cannot be blue or black or white. To be on the safe side, wear something with a colorful design.

Make sure you have at least two quarters on you because you'll have to leave all your belongings—wallet, coins, jacket, sweater, keys—in one of the coin-operated lockers in the lobby. Sometimes when you approach the metal detector, the guard will remind you that you can't wear your watch, or you'll find you've left something in your pocket, and you'll have to reopen the locker. That's what the second quarter is for. The only items you're allowed to bring into the visitors room are your locker key and an electronic card for use in the vending machines. The card can be bought or refilled at a machine in the lobby but should have no more than \$20 on it.

Over the last few years I've made maybe a dozen visits to the Bridgewater Treatment Center to visit an inmate whose name appears in court records as Bernard F. Baran, Jr., but who prefers to be called Bee. Bee is a little over medium height, with a slender, compact body and unusually erect, even wary, posture. His eyes are dark-brown and his cheeks angular, owing to a strain of Native American in his genealogy. His hair is thinning on top and he wears a long, ponytail. His teeth are broken and crooked. He looks, in short, like an inmate and, conceivably, depending on the mental image you carry of such a thing, like a child molester.

An inmate he certainly is. He was nineteen years old when, on October 6, 1984,

he was arrested on two counts of indecent assault on a child under 14. By the time he was twenty, he was serving three concurrent life sentences for raping or otherwise sexually assaulting five children between the ages of three and five at a day care center, one of many men and women convicted in a rash of such cases in the 1980's. He has spent his entire adult life in prison, and the extent to which this has defined him runs deeper than his inmate's pallor.

Whether or not he's a child molester depends on who's telling the story. And this is important because the day care cases, ultimately, have to do with the stories we tell each other, and on so atavistic a level that they seem to conjure a memory of crouching around a fire dressed in furs.

Once he's decided he likes you, Bee is an engaging personality. He has a gift for mimicry and a sharp eye for the absurd. He has, too, a kind of fragile strength: a strength, in other words, that's always threatened by, but has not over twenty years succumbed to the pressures of a system whose irresistible tendency is to dehumanize, criminalize, and even kill those who pass through it. He has suffered predictable horrors. Weighing less than a hundred pounds when he entered the prison system, he was a convicted child molester and gay.

Indeed, if Bernie Baran, as he was known back then, had not been gay, he might not be in prison today. The role that homophobia played in his arrest and conviction is beyond dispute. Jennifer and Doug Hodge (the names of accusing parents and children have been changed) were well-known to the local authorities in Pittsfield, Massachusetts,

a depressed working-class town at the western end of the state. They were both drug informers for the police, and Jennifer, in particular, had shown up several times at the emergency room to be treated for overdoses. Doug himself had spent a few months in the hospital the previous spring. During an argument with Jennifer, he had, they claimed, stabbed himself in the chest with a pair of scissors. He required open-heart surgery. Jennifer had a son, Richie, from a previous marriage to Doug's cousin. Richie went to the Early Child Development Center, or ECDC, where Bernie worked. In the fall of 1984, Jennifer and Doug found out that Bernie was gay and called the day care center. Years later, in a deposition for a civil suit she brought against ECDC, Jennifer described what happened:

We had some friends over... and one of them said that Bernie was quote "queer." And... Doug called the school and talked to Pat. And she said their personal life was none of their business and that you can't just assume, you know, somebody leads that kind of lifestyle. If we wanted to, we could take Richie out of the school... [W]e were sitting there, the two of us, and Doug got very angry, and he said, that's it, you know, we're not going to have him, that's it. We're taking him out.

Jennifer explained her attitudes towards gay people at the time:

I had [a] feeling that if they're gay, they shouldn't be with kids. They shouldn't get married. They shouldn't have kids. They shouldn't be allowed out in public.

On Monday, October 1, the Hodges removed Richie from ECDC. Four days later, on Friday, October 5, they made a statement to the police. According to their story, Jennifer had been giving Richie a bath the night before and had noticed blood coming from his penis. She asked him what had happened, and he said, "Bernie touched me." Even in its original telling, the story was muddled, and its details would change over the years. But the police interviewed Richie, he repeated his accusation, and the case that

became *The Commonwealth of Massachusetts vs. Bernard F. Baran, Jr.*, began.

It's possible that a more alert police department might have asked how a child's penis could be bleeding on Thursday from something that could have happened no more recently than Monday. They might have been struck by the coincidence that a couple who took their child out of day care because they thought gay people were child molesters should then bring an accusation of child molestation against the very gay man they were objecting to. They might have considered that the story of a couple of mutually abusive drug informers should be vetted rather carefully. Or it might have occurred to them that a four-year-old child who was notably troubled, who had been in and out of foster homes, who lived with a couple whose parenting skills were distressingly sub-par, was not the strongest foundation on which to build a case of child molestation. Richie was on the point of being thrown out of ECDC because the teachers despaired of controlling his anti-social behavior, and Jennifer and Doug were angry about that. This might have given the police pause. The fact that it didn't says less about their competence than about the hypnotic power of the story. Any story that can sweep aside so many objections to its validity exists, potently, already. It is out there, waiting to be told.

And it was already being told. The McMartin scandal in California had been national news for over a year, and closer to home the Fells Acres case in Malden, Massachusetts, had been jump-started with the arrest of Gerald Amirault exactly a month before. Perhaps because it was investigated and prosecuted so quickly—the prosecutor,

Dan Ford, seemed to want to claim the first day-care conviction in the country, and he got it—Bernie’s case pales besides these and other, better-known ones. No animals were sacrificed. No feces or urine was ingested. No forks or knives or Lego blocks were inserted into orifices. There were no robots or secret tunnels or teachers playing the piano naked, and no child pornography rings were alleged. What it did have in common with these cases was the ease with which, once it had been given an opening, the story told itself.

On the evening of October 5th—that is, on the evening of the day the first accusation was made—ECDC’s director called the members of the board, advising them of the situation. Among those called was Dorothy Simpson, the secretary of the board. Dorothy’s daughter Amy had, until two months before, gone to ECDC. But Dorothy was different from most ECDC parents. ECDC was in a poor part of town and catered to a population that was, with varying success, clinging to the fraying social safety net of the Reagan years. Dorothy was middle class. The family had moved from California a few years earlier, and both she and her husband lived and worked at Miss Hall’s School which, as the name might suggest, was a posh private school for girls. Dorothy taught pottery.

When Dorothy heard that Bernie Baran had been accused of molesting a child at ECDC, she immediately went to her daughter’s room to question her. This in itself is striking. Amy had not been at ECDC for two months. She was in no immediate danger. Moreover, there existed as yet only an unsubstantiated accusation against Bernie, an accusation at the time only a few hours old. Many of us, under similar circumstances, might have waited for further developments or outside advice before broaching the

subject of sexual abuse with our three-year-old. The fact that Dorothy didn't bespeaks a well of dread needing only a touch to overflow.

In a statement made to the police a week later, on October 12, Dorothy explains:

When I got off the phone with Carole, I went into Amy's room and asked Amy some questions. I asked Amy if Bernie had ever touched her in a funny way. Amy looked at me at that time and told me that Bernie did, that Bernie and Amy would play the "Birds Nest" game, Amy said sometimes in Amy's hair and sometimes in Bernie's hair. I did not think that Amy at this time knew what I meant so I asked Amy if Bernie had ever touched her fanny. At this time, Amy said to me "he touched my privies sometime."

Dorothy called the director of ECDC and then the police. Two police detectives and a social worker from the Department of Social Services arrived at the house, but Amy was shy and unforthcoming. Eventually she asked to speak to her mother privately. After a conversation in the hall, Dorothy returned with a much more detailed story. The Birds Nest Game, Amy had told her,

was when Bernie and Amy had either found or made a birds nest and Bernie had a baby bird which was dead and still part in the shell. Bernie told Amy that Amy and Bernie could not let the "make believe or pretend Police" know about this bird because the mother bird would be upset if the pretend police came and took the baby bird away.

There was comfort here for Dorothy Simpson if she chose to look for it. Two things stood out. First, the story had to do with an upset mother, the police, and a child that might be taken away. Second, it had nothing to do with hair. This sense that Amy was elaborating a story out of the images presented her might then have been applied to her other revelation: that she and Bernie had played the "Touch Game."

Bernie would take off Amy's shoes and socks but... Amy had to take off her own pants. Amy stated that Bernie would then touch all the parts of her body, ears, eyes, nose, mouth and her privies, meaning her vagina and fanny but Amy wouldn't mention her fanny that night. I also recall Amy saying after being asked by me if Bernie had ever wanted Amy to touch

his penis, that Amy said yes and pointed to her inside of her foot. Meaning that Bernie wanted Amy to touch his “peenie.” This is what it is called in our house and Amy knows the term.

Those last three sentences sit oddly in the mind; they keep eluding sense. Indeed the statement as a whole pulses with questions that are not being asked, incongruities that are not being noted. Why would Amy have to take off her own pants? Why the odd qualifier that “Amy wouldn’t mention her fanny that night”? When did she mention it? Why, when Amy points to the inside of her foot, does that mean she touched Bernie’s penis? And how does this accord with the police report that the detectives drew up a week earlier, on the night of the interview, and in which we are told that “Amy also stated that she would only be allowed by Bernie to touch Bernie’s neck”?¹

Something was happening in this case, here at the beginning. It is something that characterized all the day care cases. Judgment was suspended; the will to question, analyze, confirm, straighten out contradictions, did not operate. Questions were asked, yes, but asked only in the interest of developing the story as it was presumed to exist. Questions which might undercut the story were not asked, did not, it seems, even arise. And so the story grew. New details emerged, which contradicted or overrode earlier details. By the time of the trial, the Touch Game was long forgotten, replaced by more lurid narratives.

The Birds Nest Game, however, was not forgotten. It is, in many ways, emblematic of the case, even of all the day care cases. The story changed depending on

¹ The police reports present other problems in that they are narrative summaries of a narrative summary of an interview with a child. That is, the police are summarizing Dorothy’s summary of her interview with Amy. For the dangers of relying on narrative summaries of interviews, see Ceci, Stephen J. and Maggie Bruck, *Jeopardy in the Courtroom: A Scientific Analysis of Children’s Testimony*, American Psychological Association, 1995. The short version is that, in narrative summaries, children often appear to be volunteering information that, transcripts reveal, was actually produced much more ambiguously and after extended questioning.

who was telling it. Sometimes it was the baby bird who would be taken away, sometimes the mother; sometimes it was Bernie. But it remained, despite repeated questioning, resistant to meaning. It was a story that could never be satisfactorily explained and, perhaps for that very reason, could never be dropped. Its opacity seemed to hide a darker, more sinister story which was always just about to surface but never did. Amy herself seems to have lost interest in it and couldn't be persuaded to talk about it on the witness stand. This allowed Dan Ford to opine in his summation to the jury that it "scared Amy so much she couldn't even talk about it," though why a story about a baby bird and the "pretend police" would have this effect he didn't explain. No one seemed to remember the first mention of the Birds Nest Game, which Bernie and Amy played in each other's hair. When the subject came up at trial, Dorothy Simpson testified that Amy "said something about a birds nest and something about hair and I didn't understand it," thus neatly decoupling the story from its original meaning.²

When I think about the case of Bernie Baran, I am drawn over and over again to the figure of Dorothy Simpson. I imagine the prickling fear she must have felt on first hearing news of the accusation, her panicked rush to her daughter's room to find out—what? That what she had known, what she had dreaded all along was inevitably true? The story existed; it only needed a chance to tell itself.

On a couple of recent trips to my hometown in Massachusetts, I've noticed that

² One possible explanation of the Birds Nest Game is that Bernie was playing the game where you twirl your fingers in a child's hair and say, "The bird's building a nest in your hair!" The day care cases frequently tripped up on the different understandings of adults and children, in this case a different understanding of what makes a touch "funny."

signs have sprung up on certain winding, wooded roads where the houses, spaced comfortably apart, require at least one, if not two, good professional salaries to maintain. The sign says “Please Drive Carefully. We ♥ Our Children.” The sign seems simple enough, and it’s hard to explain why it nags at me, or why I think of Dorothy Simpson when it does. Of course, an earlier version of the sign would have said simply “Go Slow Children,” and it was considered safe to assume that the stranger driving down the road would not want to run over your children whether you loved them or not. This is the first thing then; like the day care cases, the sign exists in a world where there are no safe assumptions. The stranger driving down the road, the stranger to whom you have entrusted your child, cannot be trusted, cannot be known, cannot be imagined to share even such a basic value as the safety and well-being of children. That “we” vibrates with a sense of linked arms, a human fence of both protection and exclusion.

And it hints, too, at a kind of moral self-regard. Behind the statement “We ♥ Our Children” is the implication that you don’t love yours or that you, not having children, are indifferent to and therefore must be taught not to endanger their terrible fragility. In an article about the Baran case in the *Boston Globe Magazine*, a woman who is almost certainly Dorothy Simpson says, “I was a serious mother. I believe in children,” which implies that there are mothers who are not serious, who do not believe in children.

The day care cases were born out of this deep cultural anxiety and its attendant, vaguely hysterical moralism: the idea that grave dangers threatened our children, and that only the strictest vigilance on the part of those who still cared—who still *believed*—could save them.

This was not an atmosphere likely to breed measured analysis, and the day care

cases were marked by the way they lifted free of observable reality, as if the moorings which tied them to it had been cut. They floated above the empirical world, in an ether of metaphor, of nightmare fears, of circular, dream-like logic.

From Dorothy Simpson's trial testimony:

Q: You mentioned earlier an incident where Cassie says she was cut on her foot with scissors.

A: Yes.

Q: Can you describe that?

A: About two weeks ago, she was terribly upset. She said, "I have to tell you something about Bernie." I said, "What?" She said, "When I started bleeding"—she meant from her vagina—"he scraped the blood out with scissors." And she said, "Then he called Stephanie to come clean up the blood."

Q: Stephanie?

A: Yes. Of course, I told her that makes no sense. And she said that he stabbed her in the foot and Stephanie cleaned the blood off her foot.

Q: So Cassie was bleeding from the foot, not her vagina?

A: No, I believe Bernie scraped the blood from her vagina with the scissors and then to cover it up stabbed her foot so there would be justifiable blood.

Q: And then he called Stephanie in and told her to clean up the blood?

A: Yes.

Here I feel it necessary to point out that an adult male could not rape a three-year-old girl and then stab her in the foot with his supervisor in the next room. The child's screams would summon Stephanie long before Bernie did. It's also unlikely that even the most unbalanced criminal would stab a child in the foot to cover up the fact that she's bleeding from her vagina. If he did, he would not ask his supervisor to clean up the blood. And the detail about scooping out the blood with scissors—they were in a bathroom; was there no toilet paper?—is just bizarre. The fact that I feel it necessary to point this out (and am even now unsure that you'll agree) is a sign of how much I've absorbed the logic of the day care cases. For none of these absurdities struck those who investigated the case, those who prosecuted it, those who decided it. Least of all did they

strike Dorothy Simpson who might be supposed to have some stake in believing that her child had not, after all, been brutally raped at a day care center.

It's a central puzzle of the day care cases—and one often used to urge their legitimacy—that the parents themselves believed the stories of what had happened to their children. How, this argument goes, could anyone want to believe such terrible things about their own children unless they were true? The most obvious answer to this is empirical: it can be shown time and again to have happened. Far more bizarre and horrible allegations were made in other day care cases and with as little evidence, and often the parents themselves prompted their children to come up with ever more devastating stories. As one by one these cases have been discredited, many parents still cling to the belief that unspeakable horrors were practiced on their children without leaving a shred of physical evidence behind.

But why? Perhaps this, too, has to do with the story and lost safety and the darkness outside. These parents knew too well that terrible things could happen to their children, and therefore terrible things *had* happened. The day care cases tapped directly into a subterranean well of anxiety, an anxiety that needed to be purged, not by denying it, but by a fantasy of rescue, a final stand—by those who cared, by those who believed—against the stranger and all the harm that he intends.

Here is Dan Ford in his summation to the jury:

You heard Mr. Conway say that Bernard Baran didn't have the opportunity to commit these crimes. But it doesn't take long, ladies and gentlemen. All it takes is one crying child to divert a teacher's attention and he's got the five or ten minutes he needs. He could have raped and sodomized those children whenever he felt the primitive urge to satisfy his sexual appetite.

Even allowing for prosecutorial hyperbole, this is fantastic. But here we see the

face of the stranger most clearly. He is demonic. He is supernatural. His powers are not constrained by time or circumstance. A teacher turns her back and he quickly rapes a child. Her attention restored, she notices nothing, so fiendishly clever is this man.

Another argument made for the veracity of the day care cases is that child molesters do exist, child abuse does happen, and with terrible frequency. This is undoubtedly true.

But the figures presented in the day care cases are child molesters re-imagined as horror-movie villains. They are bogeymen from the darkest realms of nightmare.

It took the jury only a few hours to convict Bernard Baran. The trial had lasted six days. The entire period from arrest to sentencing was only four months. More than once during this period, Bernie was offered a plea bargain: six years in the safer confines of the county jail in exchange for a guilty plea. With parole he would have been out in two. He refused and was instead, on conviction, shipped off to Walpole, the most dangerous prison in the state, with three concurrent life sentences—a high price to pay for refusing to accept the role the story has assigned you.

All stories are true to some extent. They tell us something about ourselves, about our fears and fantasies and the demons lurking within. It's easy enough to track, in the fever dream of the day care cases, the economic and cultural anxieties of the 80's. Now that the fever has died, it's easy to see the horrific injustices that were committed in its delirium. It's less easy to understand why, twenty years later, Bernard Baran is still in prison. One way or another the story keeps its grip on those who played a part in it.

Dorothy Simpson still believes in Baran's guilt as does Amy, who has no memory

of the events. Jennifer Hodge claims to believe, but her role in the case has always been tainted by her determination to sue ECDC. She began investigating a lawsuit almost immediately after making her accusation, though the case did not come to trial until 1995. After lawyers for ECDC's insurance company eviscerated her on the stand, she quickly settled out of court. Doug Hodge, in his deposition for the trial, seemed to back away from the original accusation, implying that Jennifer had egged him on. One of the accusing children later told a caseworker that nothing had happened. She'd only said it had because her mother (a friend of Jennifer's who had also sued) told her they'd get "a lot of money" if she did. In a sad but telling postscript to the story, this child, later in life, seems to have disappeared into prostitution and drug addiction. Children were in danger in Pittsfield, Massachusetts, but the usual culprits, poverty and neglect and domestic abuse, made less compelling villains than a gay day-care worker.

And then there are people like Dan Ford who built his career on this case. He's now a Superior Court judge in Massachusetts. The prosecutors who've replaced him in the Pittsfield District Attorney's office have responded to the evidentiary requests of Baran's lawyer with foot-dragging and stonewalling. It took them four years to turn over videotapes of the children's interviews, despite a judge's order. Why the delay if they're satisfied that justice was done? Perhaps they're so convinced that Baran is guilty that they want to deny him any chance at freedom. Or perhaps they're trying to avoid a reversal in a high-profile case, a reversal that would embarrass a sitting judge and former colleague. At some point belief becomes less a matter of conviction than convenience. This is when the story becomes a lie.

The day care hysteria has been described as an epidemic of moral panic, but here

they enter the realm of moral horror. The day care cases ruined lives, sent innocent people to prison for years. Violet Amirault was sixty when the day care center she had struggled to build was destroyed and she herself arrested in the Fells Acres case. She was seventy-two when her conviction was overturned and she was released. Prosecutors were still fighting to send her back to prison when she died of stomach cancer at seventy-four. Even now among those who fed the flames of panic, there is still an unwillingness to acknowledge mistakes, far less to rectify or atone for them. I think of Tomas's words in *The Unbearable Lightness of Being*: "How can you stand the sight of what you've done? How is it you aren't horrified? Have you no eyes to see? If you had eyes, you would have to put them out and wander away from Thebes."