

INTERNATIONAL CHILD ABDUCTION: IMPLEMENTA-  
TION OF THE HAGUE CONVENTION ON CIVIL  
ASPECTS OF INTERNATIONAL CHILD ABDUC-  
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HEARING  
BEFORE THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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## **INTERNATIONAL CHILD ABDUCTION: IMPLEMENTATION OF THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

**House of Representatives,**

COMMITTEE ON INTERNATIONAL RELATIONS,  
WASHINGTON, D.C.

The Committee met, pursuant to notice, at 10:07 a.m., in room 2172, Rayburn House Office Building, Hon. Benjamin A. Gilman (Chairman of the Committee) presiding.

Mr. CAMPBELL. [presiding] The House International Relations Committee is opening its hearing today and we call to order for the subject of international child abduction, implementation of The Hague Convention on Civil Aspects of International Child Abduction.

My name is Congressman Tom Campbell. I'm filling in for the Chairman, Ben Gilman, who is attending a very important event regarding ethnic diversity. He will join us just as soon as that meeting allows him to. It should be very shortly. But he asked me to open the meeting, lest we inconvenience the witnesses by further delay.

Chairman Gilman has asked the following to be put into the record, and I would like everyone's attention to this for a moment.

We have received sad and disturbing news of the deaths of three United Nations employees who were killed this week in the line of duty in Burundi and in Kosovo. I'd just amend the comment to say that I visited Burundi. I'm on the Africa Subcommittee. The work that is being done there is essential to prevent another genocide.

Luis Zuniga, a 52-year-old Chilean who headed UNICEF's Burundi operation, and 34-year-old WFP logistics officer Saskia Von Maijenfeldt, from the Netherlands, were killed during a visit to a displaced persons camp in Burundi. It's suspected that Hutu extremists did the killing.

In Kosovo, Valentin Krumov of Bulgaria was beaten and shot in the streets of Pristina by Albanian youths. Last year, for the first time, more United Nations civilian workers met violent deaths than did United Nations military peacekeepers. The sad total is 27.

Chairman Gilman asked the Committee to observe a moment of silence in memory of these three international civil servants, so let's do so.

I thank my colleagues, the witnesses, and all in attendance.

[The prepared statement of Mr. Gilman appears in the appendix.]

Mr. CAMPBELL. This morning's hearing is on a very important subject, on the question of international abduction of children and the implementation or failure fully to implement The Hague Convention. We will be hearing from Administration witnesses. We will be hearing from our colleague, Congressman Forbes. We will be hearing from the parents of children who have been abducted, and who have found the implementation of The Hague Convention to be less than efficient.

Some of the questions we will hope to explore are the report that the State Department supplies to the Congress, pursuant to legislation, regarding implementation of The Hague Convention; some criticisms—and some constructive criticisms, I'm certain, among them—for how The Hague Convention can be better applied. We also have witnesses who can speak to the application of The Hague Convention between European nations. We're honored by the presence of the witnesses, particularly, I'd say, the parents, who can tell us from their own personal experiences how this important international convention can be better implemented.

Out of courtesy to the witnesses, that is the end of my opening statement.

I now yield to the Ranking Democratic Member of the Committee, the Honorable Sam Gejdenson.

Mr. GEJDENSON. Thank you, Mr. Chairman.

I join my colleague in commending Chairman Gilman for having this hearing, and thank the witnesses.

Obviously, it's a particularly difficult, emotional issue they bring before us. We as their elected Representatives owe a better international system to people who have suffered so tremendously. We particularly want to thank Lady Meyer for her tireless crusade on behalf of abducted children, and our colleague, Mr. Forbes, who has done so much work in this area.

In my own district, I was confronted with this when a constituent's children were abducted by her husband to Egypt. The woman, an American citizen, traveled with her husband and the children. While there, he divorced her, and took the children. Egypt is not a party to The Hague Convention. The constituent talked to the State Department to get information about the children. She became desperate and hired a mercenary to get her children back. He was captured and jailed.

In the meantime, she discovered she was pregnant and the husband has since threatened to abduct the fourth child. The woman is now in hiding. We in the Congress and the Administration need to work together to come up with a much more effective system.

In the world that we live in today, which is pretty much a world without borders, we are going to see an increase in binational marriages. The need for a Hague Convention that works to deal with child abduction issues is clearly going to increase. U.S. citizens holding passports between 1974 and 1998 went up 171 percent, and passengers traveling from the U.S. overseas between 1960 and 1998 went up 868 percent from 5.5 million to 53.2 million. As this world gets smaller and more people are traveling, there will be more binational marriages.

We in Congress are not guilt-free here. When you take a look at the workload of the State Department individuals that deal with

these issues, the recommendation by the GAO is that they handle a case load of about 35 cases at a time. My understanding is that in the last Fiscal Year, the average case load was 150 cases, not 35, but 150. I'm happy to note that the State Department wants 10 additional slots, but this would still bring the average case load down only to 75, which is still more than twice what is recommended.

Oftentimes, the State Department budget gets caught in all kinds of political side issues, as if there's no impact on American citizens. Whether it's passport or business activity, or national security, or, in this case, parents having access to their children, our failure to adequately fund this account comes home to affect every one of our constituents. We need to make sure that we fulfill our responsibilities to make sure that when the parents who pay taxes expect to have service from their government representatives, that they're staffed at a level that they can at least get the service they should get as American citizens.

Thank you, and I yield back the balance of my time.

Mr. CAMPBELL. Thank you, Mr. Gejdenson.

Mr. Chabot has requested a courtesy to go next up, and we would wish to recognize him for his opening statement.

Mr. CHABOT. Thank you, Mr. Chairman. I'll be very brief, because I know we're all looking forward to hearing the very important testimony of the witnesses here this morning and, perhaps, this afternoon. This is a very important hearing and I want to thank Chairman Gilman and also the acting Chairman, Mr. Campbell, and the Committee staff for their hard work in making this hearing a reality.

I know that all Members of the Committee have made themselves acquainted with the cases of the witnesses that will be on the third panel; those parents of abducted or wrongly detained children.

I am most familiar with the case of Mr. Tom Sylvester who is from Cincinnati, who has, I believe, suffered from a grave miscarriage of justice in the case of his abducted daughter, Carina.

I know that my colleagues, Congressman Rob Portman, who I believe will be here today, and our Senior Senator, Senator Mike DeWine, have also worked on this case, and we're all hopeful that today's Committee action will have some positive impact on what, for Mr. Sylvester, and I know for many other parents in this country, has been a terribly agonizing ordeal.

I look forward to hearing from the witnesses and I thank the Chairman for his commitment to this issue and yield back the balance of my time.

Mr. CAMPBELL. Thank you.

We now begin with the witnesses. We're very pleased to have before us, from the State Department, Assistant Secretary Ryan. Let me just do a bit of an introduction for her first.

She holds the title of Ambassador, Career Ambassador, which is the honorific given to the most senior and most accomplished members of our foreign service. Assistant Secretary of State for Consular Affairs is her present working title. She has been an Administrator for our embassies overseas. She has served as Director of State Department's Gulf War Task Force. She assisted the U.N.

Special Commission for the inspection and destruction of Iraq's weapons of mass destruction. She headed our Consular Affairs Bureau, which contains the authority, under The Hague Convention, for dealing with abducted children, and has been head of that office and the Office of Children's Issues since 1993.

I'll introduce Mr. Rossman at the same time. Richard Rossman is the Chief of Staff for the agency within the Justice Department that deals with their implementation of The Hague Convention within the Department's Criminal Division. Mr. Rossman is part of a high-level panel that's reviewing how our government has responded to international child abductions. He's appearing today as one of the government's top experts. We look forward to both of their testimony.

Ambassador Ryan and Mr. Rossman, you are welcome, in fact, invited to summarize. It's more interesting than reading. We assure you that your complete statement will be made part of the record.

Ambassador Ryan.

**STATEMENT OF MARY RYAN, ASSISTANT SECRETARY, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE**

Ms. RYAN. Thank you, Mr. Chairman. I am very pleased to appear before you today to address the topic of The Hague Convention on Civil Aspects of International Child Abduction, and I appreciate your willingness to have my prepared statement submitted for the record.

Mr. CAMPBELL. Without objection.

Ms. RYAN. I am going to touch on the main points of that statement now.

Mr. Chairman, we are very grateful to you for your focusing on this issue because there is no greater responsibility than the welfare of our children. The protection of Americans abroad is the highest priority of the Department of State. The cases of children victimized by international parental child abduction are some of the most emotional and difficult cases we are asked to resolve. Many of these children are dual nationals of the United States and of the country to which they were abducted, which complicates the situation. I am here today to discuss The Hague Convention, but at least an equal number of children are abducted yearly to countries not party to that Convention.

The United States was instrumental in the negotiation of The Hague Convention to which the United States became party in 1988. While The Hague Convention does not guarantee a particular outcome, it does provide a civil legal tool for parents to pursue the return of their abducted or wrongfully retained children. The Hague Convention is enforced between the United States and 53 other countries. In the first 10 years that the United States has been party to The Hague Convention, treaty proceedings have resulted in over 2,000 children being returned to the United States, and has also deterred an untold number of abductions. Yet thousands more have not been returned, and the question remains, why?

The Hague Convention provides a framework, but it does not assume an outcome. Implementation of The Hague Convention varies

among foreign jurisdictions. We continue to encourage other countries to join The Hague Convention and, in fact, for the last month, in August, when I was in Japan, I met with a Japanese Ministry of Justice official to urge Japan to sign onto The Hague Convention.

In the spring of this year, 1999, the Office of Children's Issues, as the U.S. central authority for the Convention, prepared a compliance report which found five countries noncompliant for different reasons: lack of recognition that they were party to The Hague Convention; inability to locate the children; nonenforceability of orders; or duration of cases. The fact that these countries were found noncompliant is of small comfort to the parents waiting to be reunited with their children, parents who put their faith in a system that failed them.

Three of these American parents—Paul Marinkovich, Tom Johnson, and Tom Sylvester—will testify, along with Lady Meyer, on their experiences later. All of these men are loving fathers who are being denied access to their children, even though they have done everything possible to resolve their cases. In Mr. Marinkovich's case, the situation is compounded because he doesn't even know where his child is.

It is important to remember, however, that The Hague Convention was a dramatic leap forward in helping children. Before the United States was party to The Hague Convention, the return rate of children to the United States was 20 percent. Now it is 72 percent. The rate of children being returned abroad by U.S. courts is even higher. It's 90 percent. Diplomatic initiatives with other countries have helped to ameliorate the situation in some of these countries.

After much criticism from other party countries, Germany legislatively reduced the number of courts that could hear The Hague cases from approximately 600 to 24, and we are hopeful that this change will result in more decisions consistent with The Hague Convention.

In spite of the improvements since we joined The Hague Convention 10 years ago, Federal agencies and, more importantly, parents believe that the Federal response to international parental child abduction is inadequate. Complaints include the inability to coordinate between civil and criminal aspects of their case; lack of information from the country in which their child was located; responsiveness of the central authority; lack of services available from the Federal Government; the lack of an 800 number; and perceived indifference to their cases.

Since the Attorney General's testimony before the Senate Foreign Relations Committee last October, the Department of State, together with the Department of Justice, has made strides to improve services to parents and to develop comprehensive information on this issue. A senior policy group was formed to evaluate the gaps in the Federal response, and prepared a report to the Attorney General on this issue, which addressed the gaps.

I'll go very quickly, Mr. Chairman, just to summarize, because I do want to make the point that we think that we have now developed an action plan to implement the report's recommendations, which I think will be of benefit to the parents and to the children.

But implementing the action plan is going to be expensive. It will have a price tag in the millions, and it will take some years to do.

As a core function of the Department of State, the Office of Children's Issues should be funded with appropriated resources. I am concerned, Mr. Chairman, that the Department's ability to implement these recommendations will be influenced by the outcome of the Congress' consideration of the CJS appropriations bill for Fiscal Year 2000.

I am very concerned that the level of funding in that bill for the Department of State will significantly delay implementation of the action plan. Please note, Mr. Chairman, I am not suggesting that funds be earmarked for children's issues. The problem for the Department of State is the overall funding found in that bill. Considering the complexity of both Hague and non-Hague abductions, we must remember that all of these cases are centered on children and their need to feel secure in their homes and not live in fear of abduction.

Thank you, Mr. Chairman, for the opportunity to address the Committee on this important topic for our children and for their parents.

[The prepared statement of Ms. Ryan appears in the appendix.]

Mr. CAMPBELL. Thank you, Ambassador Ryan.

Mr. Rossman.

**STATEMENT OF RICHARD ROSSMAN, CHIEF OF STAFF,  
CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE**

Mr. ROSSMAN. Mr. Chairman and Members of the Committee, I am very pleased to appear before this Committee on an issue of keen importance to the Attorney General. Last fall, the Attorney General and Secretary Albright formed a policy group to provide senior-level attention to our Federal response to this important problem. I've had the pleasure of being one of the two representatives from the Department of Justice to serve on this group.

I've submitted a written statement and I would like now to concentrate my comments on the criminal enforcement side of the issue, although my statement covers the other efforts made by the Department of Justice on the programmatic side.

Mr. CAMPBELL. Without objection, your statement will be made part of the record.

Mr. ROSSMAN. Thank you, Mr. Chairman.

In 1993, Congress passed the International Parental Kidnapping Crime Act, called IPKCA. I'm aware that there have been questions and concerns raised about whether this has been an effective tool, and I can tell you that it has proven to be an important and useful supplement to the existing State laws which criminalize parental child abduction in all 50 of our States. It can be particularly helpful in those situations where a wrongful abduction or retention is made, even in the absence of a pre-existing custody order; this is not always a criminal act in a particular State, but is, as you know, under IPKCA. It also can be useful in certain situations to use the availability of the FBI's international investigative resources at the earliest stages of an abduction, irrespective of whether a case is ultimately prosecuted at the State or Federal level.

However, it's crucial to understand that the Federal criminal statute is not, was not intended to be, and cannot be a substitute for civil remedies in obtaining the return of internationally abducted children. Prosecutions under this statute, as with any Federal criminal statute, are brought by Federal prosecutors on their own merits. Once prosecutors determine that IPKCA charges may be appropriate under the facts of a particular case, only then is it proper to consider the impact such charges would have on the very worthy but quite different role of obtaining the return of the child.

We agree with Congress, as stated in the Sense of Congress which accompanied the passage of IPKCA, that, when available, The Hague Convention should remain the option of first choice for a parent who seeks the return of a child. Even when the involved foreign country is not a Party to The Hague Convention, it is not necessarily the case that IPKCA charges will facilitate rather than frustrate child recovery efforts.

For example, there is at least some anecdotal evidence that some foreign judges are reluctant to return a child to the United States when one of the parents faces prosecution or potential incarceration.

Moreover, there are real cases, tragic cases, in which the IPKCA prosecutions, even when successful, have not resulted in the return of the abducted child. For example, in 1995, in the eastern district of New York, a father who abducted his children and moved with them to Egypt was arrested, tried, and convicted after he reentered the United States.

That's the Ahmad Amer case. He was sentenced to 24 months incarceration followed by 1 year of supervised release, with a special condition that he return the children to New York. He served his term; was released; violated his probation by not returning the children; and then served his additional time. He is now once again free, and the children remain, tragically, abroad.

Despite these limitations, IPKCA can, in appropriate cases, provide an effective vehicle for charging and punishing parents who abduct their children and take them overseas. While the number of indictments brought during the 5 or 6 years the statute has been in effect is still relatively small, we continue to train agents and prosecutors on its existence and availability, and we expect that number to grow. However, it will remain the case that IPKCA supplements, and was not intended to preempt the statutes of the 50 States that criminalize parental abduction.

Moreover, the resources of the Department of Justice, whether the FBI or the Criminal Division's resources, in securing the arrest and extradition of offenders are equally as available in State cases as they are under Federal cases under IPKCA. Thus we will continue to seek international extradition wherever possible and appropriate for violations of State parental kidnapping laws as well as for the Federal IPKCA statute.

However, once again, it is important to keep in mind that extradition of the abducting parent will often not result in the return of the abducted child. We do make efforts to coordinate the extradition process with Hague Convention or other civil recovery efforts in the foreign country, but there are no guarantees.

The decision to extradite—and, Mr. Chairman, I'll be finished in just a moment, if I may—the decision to extradite is a decision that must be made on the merits, taking into account all the facts, the applicable laws and treaties; and, upon the request of the Federal or State Prosecutor, the Criminal Division's Office of International Affairs will consider asking the State Department to request extradition, even if the prospects for ultimate return of the fugitive are not great.

However, we will do so only if we believe that the parental kidnapping crime is extraditable under the applicable extradition treaty and that other requirements for extradition can be met.

Thanks to recent actions by Congress, extradition for parental kidnapping may now be possible from several countries from which we could not request extradition just a year ago. Last year, Congress passed the Extradition Treaties Interpretation Act of 1998 and, pursuant to it, we may now interpret kidnapping in our old list treaties to include parental kidnapping. So far, officials from 11 foreign countries have responded to a State Department survey indicating that they, too, interpret our existing list treaties to cover these offenses, although some have not yet responded formally.

In short, while Justice Department efforts targeting abducting parents cannot and should not take the place of civil efforts to obtain the return of abducted children, we will continue to make such efforts, charging IPKCA violations and seeking extradition on IPKCA or State parental kidnapping charges whenever appropriate. Moreover, we are committed to assuring that the Department of Justice efforts, whether in the criminal arena or in the significant programmatic support of our Office of Juvenile Justice and Delinquency Prevention, are better coordinated with the Department of State and other agencies, and serve to strengthen our response to left-behind parents.

Mr. Chairman, I see you've now joined us. Thank you for your time. I appreciate the opportunity to appear before this Committee and I would be pleased to try to answer any questions you may have.

[The prepared statement of Mr. Rossman appears in the appendix.]

Chairman GILMAN. [presiding] Thank you, Mr. Rossman.

I want to thank Assistant Secretary Mary Ryan for appearing before us. I regret I was delayed due to a ceremony in the Statuary Hall on One America. Permit me to take a few moments to give some opening remarks and then we'll go to our questions by our colleagues.

This morning's hearing is on an important topic that's received too little attention within our own government in the past in view of the devastating impact it's had on the lives of countless thousands of children and their left-behind parents. The magnitude of this problem of international parental abduction of children in this age of increasing numbers of international marriages, of cheap and easy international travel, and an increase in the stress upon marriage bonds is only going to increase over time.

We've convened this hearing with the hope that we will be able to focus a spotlight on one aspect of this highly complex topic, namely the limitations and the failures of the process set forth



under The Hague Convention on Civil Aspects of International Child Abduction that were intended to provide civil remedies that will lead to the prompt return of an abducted or wrongfully retained child to his or her country of habitual residence. In many cases, The Hague process works, but in too many cases, where it does not, the result is a heartbreaking, financially devastating, and an infuriating experience for the parent attempting to regain his or her child. This observation will be borne out by the testimony that we will be hearing from the parents who have had to endure this tragic experience.

I believe it is incumbent upon the Congress to spotlight this situation, to alert our public to this growing problem, to keep the issue under review, and to consider whatever additional remedies may be available that will better protect the rights of our citizens and our children, as well as those of children all over the world who have a right to know and have contact with both of their parents.

I'd like to review some of the things that the Congress has already accomplished. In 1993, we enacted the International Parental Kidnapping Crime Act, making the removal from our Nation of a child by a noncustodial parent a felony. The United States is one of the few nations that places international parental kidnapping among that category of crime.

Last year, our State Department authorization legislation contained a provision for the Secretary of State to provide a report to Congress on the number of cases under The Hague Convention that were unresolved after 18 months, and to include the list of countries to which children in unresolved cases were believed to be abducted. This year, our State Department authorization asked for this report to be expanded to include the list of Hague signatory countries whose legal systems may lack a prompt and effective method for enforcement of child court orders or a doctrine of comity or where, due to other factors, there is substantial possibility that an order of return or access under The Hague Convention proceeding for United States custody, access, or visitation order is not being promptly enforced.

I'd like to note, too, for the record, and for the benefit of our witnesses for the State Department, that the intent of the Congress in requiring this report is to provide to our parents and to our judicial officials some body of information that will allow a judge, in deciding a custody dispute or settling the terms of a custodial order for a child, to make an informed judgment where there is a significant possibility that one parent may take the child to another country. Congress also believes there should be a publicly available listing of countries that are derelict in fulfilling their international obligations.

As I've already noted, today's hearing is to focus on The Hague Convention, and we certainly recognize that many cases of international child abduction occur in nations that are not signatory to The Hague Convention. We believe, however, that it is important to recognize the weaknesses and the defects of The Hague process in order to correct them so that it may indeed serve the purpose that our government intended when it ratified this Hague Convention. That is our immediate purpose today.

So, in consideration of this matter, I'd like to point out that the issue with which we should be most concerned is the fact that, by and large, our Nation does a good job in assisting foreign parents in return of their children to their habitual place of residence. We expend our taxpayers' dollars to make certain that the National Center for Missing and Exploited Children and our State Department's Office of Children's Issues have adequate resources to carry out their obligations under The Hague Convention.

It is apparent that other governments who have undertaken the same type of commitment under The Hague Convention are failing to live up to the letter and spirit of the law, and so often it is our citizens who are victimized by this failure. So, again, I want to thank our witnesses who are here for their testimony.

Permit me to open up by addressing Secretary Ryan. Our State Department authorization, H.R. 2415 for Fiscal Year 2000 and Fiscal Year 2001, contains the provision for the Secretary of State to continue to report on unresolved Hague cases in an expanded format which includes information on Hague signatory countries which lack a prompt and effective method for enforcement of civil court orders or where, due to the absence of a doctrine of comity or other factors, there is a substantial possibility that an order of return or access, under The Hague Convention proceedings or United States custody, access, or visitation order will not be promptly enforced.

Whether or not the bill is enacted and signed into law by the President, can we obtain a commitment from you today that this report, in an expanded form, will be provided for in the present and next Fiscal Year?

Ms. RYAN. Mr. Chairman, certainly we want to cooperate with you and we want to give you all of the information that you need to make informed judgments about The Hague Convention. My concern on the compilation of this report is that it takes officers and staff away from what I see as their primary responsibility, which is working with the parents to try to effect the return of the children. We will give you all the information that you need and that you want, but expanding the requirement is going to be costly to us in terms of staff time.

Chairman GILMAN. Just how costly would it be?

Ms. RYAN. Putting a report together for the Congress does take people away from what they usually do so that they can compile the report.

Chairman GILMAN. I would think that this is important enough to assign someone to provide that kind of a report so that we can have some kind of an acknowledgement of just how serious the problem is out there, and where the problem lies. So we would welcome if you could give that attention.

Ambassador Ryan, in a series of articles in Insight Magazine last spring, the State Department was criticized for many of the same reasons that the State Department has been hearing about for years concerning the international abduction of our American citizens. You responded to Insight Magazine in a letter published in the April 19 issue, and defended your record, and the performance of the Office of Children's Issues, by asserting that these cases are emotional international parental child custody disputes.

Did you mean to imply by that response that international child abduction in violation of U.S. State and Federal law, and often involving violations of international treaties, is a private matter? Are you aware that many of the governments that haven't been identified as violators of The Hague Convention use this same line of argument to dismiss the rights and claims of our U.S. parents attempting to regain their children?

Ms. RYAN. Mr. Chairman, I'm very proud of the fact that I created the Office of Children's Issues when I came into the Bureau of Consular Affairs and when I came back to the Bureau of Consular Affairs in 1993. I had been briefly in the Bureau in 1990, and I thought that we were not paying enough attention to these issues. So that, when I returned, I created the office. We have been attempting to build the staff of that office over the last 6 years.

The issue of international child abduction is a civil legal matter. It can be a criminal matter if one parent brings criminal charges against the other, but often bringing criminal charges does not result in the return of the child. What we want is the return of the child. We want to work as closely as possible with the parents to effect that return.

Chairman GILMAN. Secretary Ryan, I have a letter that was sent to Mr. John Lebeau, who I believe is in attendance today, by the Director of the Office of Passport Policy and Advisory Services, dated August 19, 1996. That letter is in response to Mr. Lebeau's request for information on whether his two children, who had been abducted by their Danish mother, had been issued U.S. passports.

The State Department's letter says, "A search of our records has failed to locate an application for either child." Subsequently, Mr. Lebeau discovered that passports had indeed been issued in July 1999, a month before the date of the State Department's letter, and the children had already been taken out of the country by their mother.

Was this a failure of the system, or just an extraordinary piece of bad luck for Mr. Lebeau, who probably could have been spared years of anguish and tremendous expense had he received timely and accurate information? Do we need to strengthen the passport issuance and revocation practices to try to preempt abductions, and also explore what can be done concerning foreign passports that the abductor and the children might travel under?

Ms. RYAN. Based on what you've just said, Mr. Chairman, I would have to say it was a failure of the system. We should have known that those passports were issued, and we should have told him that they were issued. I don't know how it happened that we had no information or we couldn't find the information. We are in the process of moving that division from Passports into Children's Issues so that we can keep a better eye on this very type of thing. I can only apologize to Mr. Lebeau, which I really know is woefully inadequate. But it was a failure of ours.

Chairman GILMAN. I just want to correct the record. Mr. Lebeau discovered that the passports had indeed been issued in July 1996. I had recited 1999. I thank you for your response. Mr. Gejdenson.

Mr. GEJDENSON. Thank you, Mr. Chairman. Secretary Ryan, can you just quickly give me the time line for the recommendations from the task force and the resources?

Ms. RYAN. Some we've already started to do. One of the recommendations was to create a tracking system of cases, both incoming and outgoing, and we are well on our way to doing that. We have requested an additional 13 staff members for the office, and we are in the process of waiting to see what happens with—

Mr. GEJDENSON. That request goes to the Secretary?

Ms. RYAN. That request—

Mr. GEJDENSON. Your budget request.

Ms. RYAN. The request for additional positions goes into our budget request, sir, that we make to you all.

Mr. GEJDENSON. Would the State Department forward that additional request?

Ms. RYAN. Yes, we have. We have also, as I mentioned to the Chairman, we are moving the custody part of the Passport Office to Children's Issues so that we will be better able to prevent the kind of tragedy that happened to Mr. Lebeau.

Mr. GEJDENSON. Should Mr. Rossman give you some more of his staff, since he's got people who are expert in this and probably got a large budget with too much money and doesn't know what to do with it?

Ms. RYAN. I'm not sure—

Mr. GEJDENSON. But I mean, is one of the solutions here to take some of your people who already deal with these kinds of issues and lend them to the State Department, can you do that?

Mr. ROSSMAN. Are you addressing the question to me?

Mr. GEJDENSON. Yes.

Mr. ROSSMAN. I believe that we have needs at the Department of Justice in this important area that are also critical and we have our Office of Child—

Mr. GEJDENSON. You're focusing on intrastate—interstate.

Mr. ROSSMAN. No. In this particular area we are focusing on international parental kidnapping. The criminal side—

Mr. GEJDENSON. Just international. Do you have different people working international and interstate at Justice?

Mr. ROSSMAN. We are concentrating, Congressman, in this important area, on the international side, and we concentrate on the criminal statute. We concentrate on supplementing and assisting the State prosecutors and local prosecutors who bring prosecutions under their local laws, through our Office of International Affairs. We have a big job as well, and we devote our resources in that area.

I think the one thing that you should be pleased with is that the cooperation between the Department of State and the Department of Justice in this important area is very strong, particularly since the Attorney General created the policy group on which I sit. We have met at least monthly and, over the last year, have gotten to know each other. I think there was a good working relationship between our working staffs before that. But I think now, particularly at the policy level, we're getting to know each other, work with each other, and understand our mutual problems.

I think that is how we can best assist State with their needs, and they assist us with ours.

Mr. GEJDENSON. The argument that I would make, and I guess others would make, is that if you detailed some of your staff to

State, it would almost institutionalize, you know, that kind of situation where people knew each other and worked with each other and there was better cooperation.

Let me ask another question before my time runs out. In your testimony, Mr. Rossman, you pointed out that the International Parental Kidnapping Crime Act doesn't necessarily result in the return of the children, it's only prosecuting the abducting parent. Is there something we can do in that law that would make it easier to get the kids back? Or is that really—

Mr. ROSSMAN. I really don't think there is, Congressman. It's unfortunate, but the criminal law has not historically been used in a coercive fashion, but in a punitive fashion, so that we have—and I think the Amer case that I referred to in my opening remarks, the tragic case. There are at least two cases, and a third one brewing like Amer now—where we fully used the criminal process.

We prosecute, convict, sentence, and incarcerate the offender, but the children remain abroad. We are powerless, particularly in those cases of non-Hague countries where we won't be able to extradite nationals back here. We are at a loss to get the children back, although we've done everything we can do under the criminal law to prosecute the offending abductor.

Mr. GEJDENSON. I want to thank both of you. I know it's a tough place. Again, I'd say that Congress doesn't give you—either of you—the resources to do the job. If you look at the International Affairs budget, if you look at constant dollars, in 1985, we were somewhere around \$35 billion, and today we're somewhere below \$20 billion, I think. In reality, we haven't even been able to pass that.

These aren't just numbers. I mean, the problem that happens—and in the press there's often this great story about one side wants one number and the other side wants another number—but what it really comes down to is having the personnel to follow up on these cases, to have monitoring systems, to have passport controls in place to make sure that we don't lose children who ought not be taken out of the country.

Thank you.

Chairman GILMAN. Thank you, Mr. Gejdenson.

Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. The title of a recent Reader's Digest article on the issue that's before this Committee today is, "America's Stolen Children: Why Has Washington Turned Its Back on Thousands of Abducted Kids?"

[The information referred to appears in the appendix.]

Mr. CHABOT. I guess that's why I want to ask our witnesses today, has Washington turned its back on these children? Has Washington turned its back on the beleaguered parents of these children? Has our Federal Government been complicit in the circumstances that have led to the terrible ordeals endured by many of these families?

Let me ask our Justice Department witness, Mr. Rossman, a couple of questions, if I may. Mr. Rossman, as I mentioned in my opening remarks, I'm most familiar with the case of Mr. Tom Sylvester, who is from Cincinnati, who will testify before this Committee later on in this hearing. As you know, Mr. Sylvester's

daughter, Carina, was abducted in October 1995, so almost 4 years ago, by Mr. Sylvester's former spouse, and taken to Austria. Mr. Sylvester had previously been awarded custody of his daughter in the United States, and that order was later reaffirmed by Austria's highest court.

I'm very troubled about what has transpired since that time. In my view, it is the obligation of the Federal Government to protect its citizens, in this case, both Tom Sylvester and his child. Yet, when Mr. Sylvester filed Federal criminal charges under the International Parental Kidnapping statute I'm told that the Justice Department did not issue an extradition request to the Austrian government. Mr. Sylvester did not learn of this inaction by his government for more than two long years. That was two long years without seeing his little girl.

When our Senior Senator from Ohio, Mike DeWine, wrote to Attorney General Janet Reno about this lack of effort by the Justice Department, he waited 5 months for a reply, and then that reply, from our Justice Department, was not responsive. Does the Justice Department take this issue seriously? Is it a priority? Or do you consider it a time-consuming nuisance?

Because I can assure you that many of the Members of Congress take the matter of international child abduction very seriously, as I clearly do and does Rob Portman, whose district Mr. Sylvester actually resides in. As a Member of not only this Committee, but also the Judiciary Committee, which has lead oversight responsibility for the Justice Department, I can assure you that I'm going to be paying very close attention as we continue to try to bring these American children back home.

Now, before I ask Ambassador Ryan a question, and then let you both respond, I do want to acknowledge some of the good work that both of your departments have done. We've had another case, not very long ago, where a child from my district was abducted by a parent and taken to Germany. Both the FBI and the State Department worked closely with our office and the child was returned to Cincinnati within a matter of days, with very little assistance from the German government, I might add. That's why, knowing of your capabilities, I'm so frustrated by the Sylvester case.

Ambassador Ryan, I'm terribly troubled with the fact that diplomatic courtesies seem to stand in the way of resolution of some of these cases. The United States, among signatories to The Hague Convention, has an excellent record in returning abducted children to the other countries. Other signatories, including Austria, have terrible records. I'm concerned that our government, in its efforts to maintain good diplomatic relations abroad, is doing so too often at the expense of these abducted children.

Frankly, I'm not a diplomat. I'm not the least bit concerned about ruffling the feathers of the Austrian government or any other government that's stonewalling our efforts to bring abducted American children back home.

Ambassador, can you assure me that the State Department is not, and will not let diplomatic niceties stand in the way of getting these abducted American children back home? Or does Congress need to take legislative action that will encourage countries to honor their obligations under The Hague Convention?

Then just one final thing: In this article that I referred to before, they talk about Mexico as an example where in 3 percent of the cases that make their way through their courts they do return the children home. By comparison, the United States issues orders 80 percent of the time. So it seems like the United States is complying, but many other countries around the world—and the one I'm focused on most specifically is Australia or, excuse me, Austria—are not complying. If you could—

Ms. RYAN. Thank you, sir. Yes, let me just go back to your original question on that Reader's Digest article and the title, "America's Stolen Children," and that the State Department or the government was turning its back on those children, and on their parents. I think that article was really horribly misleading and, in some parts, I think, even untruthful, and really very damaging to parents caught up in this sort of tragedy where they have enough sorrow and concern without being told by a magazine like the Reader's Digest, which does have wide readership, that the government was turning its back on them.

We don't turn our backs on them, but sometimes, despite our very best efforts, we are not able to get the children back. That does not mean that we don't try to get those children returned, or that we don't make representations to the foreign governments.

In the case of Austria, and in the case of Mr. Sylvester's child, we have found Austria to be noncompliant with The Hague Convention and that should demonstrate, I think, that we don't deal in diplomatic niceties when there are children concerned. We have found the country of Austria to be noncompliant. The Austrians are upset by that decision of ours, and have told us that in no uncertain terms.

We think that the Sylvester case is a perversion of The Hague Convention, and we continue to try to work with Austria to lead them to understand what their responsibilities are under The Hague Convention in the case of this particular child. The fact that we have not succeeded doesn't mean that we haven't tried. I think it's important that you, sir, and that this Committee understand that, while we are not always successful, we always do try.

In the case of Mexico—I was in Mexico last month—I spoke to the Under Secretary for Foreign Affairs about Mexico's woeful record in returning children and learned from him that they have only three people devoted to this particular issue. We are encouraging them to identify additional people. Mexico is a large country. What they claim is that they can't find the children, but if you have only three people looking, obviously you're not going to find the children. So we are in a dialogue with them again. We have proposed, and they have agreed to meet on this.

The Office of Children's Issues is going to have a conference next year with common law countries who are signatories to The Hague to try to explore some of these issues of non return of the children when the parent, as in the case of Mr. Sylvester, has done everything right. I hope that something comes of that.

But we're not shy about telling them that we're unhappy with the countries involved at all. There's no diplomatic niceties. We do consular work, Mr. Congressman. I don't have to worry about diplomatic niceties.

Mr. CHABOT. Mr. Chairman, could I ask unanimous consent for 1 additional minute so Mr. Rossman can answer?

Mr. ROSSMAN. Please.

Mr. CAMPBELL. [presiding] Without objection.

Mr. CHABOT. Thank you.

Mr. Rossman.

Mr. ROSSMAN. Thank you. Congressman Chabot, let me assure you that the Department of Justice takes this matter very seriously. The Attorney General and the Assistant Attorney General in charge of the Criminal Division have both personally asked me, as the Chief of Staff for the Criminal Division, to be involved in this project. As I said in my opening comments, I've been involved for a year now on the policy group. I've been having monthly meetings and have put scores and scores of hours into this particular area of tragic problems.

I am familiar with the Sylvester case and my heart goes out to Mr. Sylvester. Every time I review this case, every time I look at the facts of the case, I can't imagine how terrible it must be for him. But there are some circumstances on the criminal law side that are so complicated they are beyond our ability to really do anything about it. There is a warrant that continues to be outstanding from the eastern district of Michigan—my home district, I might add. That warrant does ask for her return for the Federal kidnapping statute. However, Austria bars extradition of its nationals. It's one of several countries that do so, and there isn't much that we can do about that process.

The Attorney General, however, does go around the world dealing with her colleagues around the world, preaching that we should really change extradition laws so that other countries will permit the extradition of nationals. We've had some limited success in that regard in convincing countries, mostly in this hemisphere, to change their laws. Unfortunately, a lot of European countries continue to refuse to extradite their nationals.

Then the next thing we do is we go to the country in question and we try to see if they would prosecute that person domestically for the actions for which they won't extradite their nationals. But in the case of Austria, Austria does not make a criminal offense the activities that occurred here, because at the time, as I understand it, Mr. and Mrs. Sylvester, at that time, were together; they shared custody.

They shared custody at the time that Mrs. Sylvester fled to Austria and that does not constitute, as I understand it, a crime under Austrian law, although it is a crime under IPKCA. Our law is much broader and, I think, much more effective than Austrian law. So, because Austria does not recognize it as a crime, they would not prosecute her domestically.

Also, when the State Department recently made the inquiry under the list treaties as to whether the change in law made by Congress a year ago would give us a definition of kidnapping which would, if you didn't have a nationals problem, permit an extradition, State was told by Austria that they would not consider that an extraditable offense.

So we believe we've run out of options in Austria, but a red notice does stay on record through Interpol, and the FBI does con-



tinue its investigation. If Ms. Sylvester steps foot out of Austria into a country in which there is an extradition possibility, we intend to vigorously pursue that and try to see if we can solve Mr. Sylvester's tragic problem.

Mr. CHABOT. Thank you. I'd ask that you give this particular case the utmost attention, because this has to be an absolute nightmare that he's going through.

Mr. ROSSMAN. I can assure you we will.

Mr. CHABOT. Thank you. Thank you, Mr. Chairman.

Mr. CAMPBELL. Thank you, Mr. Chabot, for your obvious conscientious interest in the issue. The Chairman had to step out for a meeting. He will join us again shortly. At this time, it's my privilege to recognize the distinguished gentleman from Florida, the Honorable Alcee Hastings.

Mr. HASTINGS. Thank you very much, Mr. Chairman. I appreciate it very much, and I appreciate very much your statements Ms. Ryan and Mr. Rossman.

Let me approach this from a more positive point of view and thank the two of you, and the parents that are here, and Lady Meyer and other witnesses, for the extraordinary work that you do in a highly complex, traumatic, frightening, rather complex set of situations dealing with the issue that we are addressing.

Lest anyone in this room think that anybody has turned their back on their children, if anyone has—and I address specifically the parents—then Congress has, for a significant number of years, by asking the people who are appearing here as our immediate witnesses to continue to do more with less. Over a period of time, as has been aptly pointed out by the Ranking Member, Mr. Gejdenson, we've had the 150 account, where the Office of Children's Issues gets its funding decrease over a period from 1985 to date by as much as 40 percent. So I think you all do a great job.

I don't come to this without some experience. I spent 3 years as a juvenile judge, and I spent 9½ years as a Federal judge. While every day these issues were not before me, they were before me and my colleagues at least regularly enough for us to recognize them as a more than significant problem.

So that we don't get too bogged down—and not to suggest that we should not do everything we can on the international front—it's complex enough with parental custody inside the United States; inside a state, inside a city in a state, we have difficulty. Some of that is a lack of training of the people who sit in judicial responsibility, and sometimes it's bureaucratic bungling that takes place.

But, without casting aspersions, the fact of the matter is people are doing the best that they can, and I, for one, thank you all for your efforts. I recognize anecdotal information that has been provided as such, that would cause all of us to shudder if it were happening to us.

I guess what I would want to know mostly is, being as impressed as I am with the policy and working groups that you all have put together, is, explain if you will to all of us what mechanisms are you using today to strengthen the area of preventing the departure of abducted children, recognizing when I say that, that a parent who clandestinely puts their child on a speed boat and goes out of the country didn't go through any Customs. But what are we

doing? And, an addenda to that, what are we doing to address the countries who refuse or act in an intransigent manner to extradite children? Those would be my only two questions, Mr. Chairman. Thank you both.

Ms. RYAN. Thank you, Congressman. One of the things that we are trying to do to strengthen the prevention of removal of children is to, as I mentioned earlier, to move the part of Passports that deals with custody issues into the Office of Children's Issues, where we hope that we will be able to pay much more attention to that particular issue and perhaps stop one parent from taking a child improperly abroad. I would point out, though, that many of the children who are taken abroad are nationals of the other country as well, and frequently travel on that country's passport. So we don't always know that the child is being taken abroad.

I'm trying to get additional staff for the Office of Children's Issues, which they desperately need. I thank you for your remarks earlier, Sir, about the work that we are doing. I really wish to point out to all of you here today that the staff of Children's Issues is there because they are very interested in children. They are not just assigned there. They choose to go there. The fact that they have such a crushing workload is unfair to them, and unfair to the job that they are doing, and that they want to do. So we're trying to get additional staff for that office.

I think that perhaps Mr. Rossman has other measures that Justice is doing to try to prevent children from being taken abroad, but that's what we are doing, Sir.

Mr. ROSSMAN. First, we don't have processes to check people exiting the borders, as we do when they are incoming. But one thing that can happen—I know you often hear that international red notices take several months to obtain one through Lyon, France, and that's true—but it is possible, through our Interpol National Central Bureau here in Washington, to issue an immediate diffusion, either worldwide or targeted at a specific region, which can provide identifying information about a fugitive, leads on his or her possible location, and assurances that we will seek a fugitive's arrest and extradition if he or she is located.

So certainly the message should be—and we're trying to spread this message to not only Federal agencies, because we're involved in a lot of training in this area, but also state and local agencies—that we need to have parents, when this happens, get to the authorities quickly so that we can get it into the system and begin to try to prevent these actions.

Mr. HASTINGS. Thank you very much, Mr. Chairman.

Mr. CAMPBELL. Thank you, Mr. Hastings, and for your obvious interest and concern in the issue. The gentleman from Texas, Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman. When I was growing up, whenever my mom would turn to me and start with the words, "This is going to hurt me more than it's going to hurt you," I never really believed her. When I say the next comments I'm making are going to pain me as much as it pains you, you probably won't believe it either. But the fact of the matter is that we do need to point out some issues that need to be addressed in the state of our efforts today in America, and in how we can work together in Con-

gress. Because it is our responsibility, and not just the State Department, the Justice Department, and the Congress. We are all in this thing together.

Both State and Justice, on the issues of child abduction, have a reputation of being disrespectful to parents who turn to you for help: for having a cavalier attitude toward them, for having poor communications with parents; lack of coordination between each other; and a very weak case tracking system. There seems to be poor enforcement of The Hague Treaty and a weak enforcement of our International Parental Kidnapping Crime Act, which has resulted, as I understand, in only 15 convictions since 1993.

It seems to me, in real life, international agreements are meaningless unless they're enforced aggressively by us. At times, especially when you're dealing with children, that enforcement, that timeliness, is absolutely critical, because one year, two years, or three years is a lifetime for a parent or for a child. At times I know you're trying, but at times it doesn't appear we are trying hard enough.

For example, it was reported recently that the State Department closed 900 cases of child abduction in the last 2 years, but that the State Department considers a case closed when a foreign government merely denies a return request. So when there's a problem, we ask for a return; the government says no; and we close the case. I'm hoping you'll tell me that's not the situation.

It seems to me, too, that, while primarily abduction is a civil effort, in real life that means those who are rich and have means have a chance, and those of more modest means or little who have to turn to you for help can't get it. It seems to me that it's one of our primary roles to stand up for the rights of American citizens who can't stand up for themselves.

On the issue of resources, GAO says, according to the report, that there's no doubt that both departments need additional resources, but that it is difficult to find out what those funding levels are, what the strategy is, how they will be used, and what the results are expected to be. It seems to me that, from a congressional standpoint, pouring more money into a leaky bucket doesn't get us where we need to go. For us to do our part, you need to do your part; to give us better information; to have a stronger strategy. But sit down and identify specific actions that need to be taken with specific resources, because, without that, without your help, we can't help.

I'll come back to my opening statement, which is we all bear responsibility, together, on this issue. We are not doing a good job. Some of these problems mirror exactly what states like Texas are doing; the problems we've had on our child abuse-type cases; almost identical type complaints and problems. I'm just not convinced that we can't do much better than we're doing today, if we will, together, get deadly serious about improving this.

With that, I'll just open to comments or correction, if you would.

Ms. RYAN. Congressman, I think that we are deadly serious, both State and Justice, on this issue of abducted children. I recognize that if a child has not been returned, the parent often thinks that his or her government has done nothing, because the child is not back in their arms, and I understand that. But I am telling you

that that is not an accurate understanding of what the government has done.

We fail if we can't return the child or if we can't get the child back for the parents, but that does not mean that we don't work very hard on all of those cases. We don't close cases. If there's no recourse under The Hague, we keep the case open in efforts to identify other ways that we might be able to get the child, or new arguments that we can use with The Hague countries to which the child has been abducted.

I'm distressed, I guess, by your characterization of us as a leaky boat, because we are doing our utmost, and we do need additional staff, and we do need additional money to do the kinds of things that we all want to do, that you want us to do and that we ourselves want to do. Frankly, Sir, I yield to no one in my concern for the people who are caught up in this kind of tragedy.

Mr. BRADY. Madam Ambassador, I'm not questioning your intent or conviction. Obviously, your life's work proves that out. But actions speak louder than words and intent, and, clearly, we are failing in this effort. The numbers prove it out. The parents prove it out. Unless we are willing to acknowledge we are not doing the job that is our responsibility—Congress is not doing its job as well in this, by the way. You just need to understand that—unless we acknowledge that and have specific plans, together, we aren't going to make progress in this area. I know you're not telling me we're anywhere close to doing the job we should be doing for our citizens.

Ms. RYAN. We're not doing the job the way I would like to have it done, the way I would like to be able to do it, but that, Sir, is not a lack of will or a lack of intent. That is a lack of resources and that is, frankly, as the Ranking Member said in his opening statement, the increase in number of these kinds of marriages which result in children who are often dual nationals, and one parent taking the child back to his or her, often, his or her own home country, where the child is also a citizen. This phenomenon is a recent one and one of the reasons why we have the Office of Children's Issues, why it was created in the last six years, and why we are trying to staff it properly so that we can work more effectively with the parents.

We are exploring, with the National Center for Missing and Exploited Children, ways in which we can give the parents the kind of emotional support, the kind of counseling, that kind of support, which indeed we are failing at doing. Because we've never done it before, we've never had to do it before. We are learning how to do it, with the parents' help, as they tell us what more they need.

Mr. BRADY. Clearly, this is an emotional issue. At times, it gets difficult to stay logical and reasonable because you are dealing with children who belong back with the parents, and for those who don't have the resources, mainly, we're the only hope for them. So whatever we can do. Again, I don't question your commitment or the staff that you've put together, or the initiatives that you are beginning and working on. All I'm saying is that we have a long way to go. We want to provide those resources to help you in this. Thank you, Mr. Chairman.

Ms. RYAN. Thank you.

Chairman GILMAN. [presiding] Thank you, Mr. Brady. Mr. Campbell.

Mr. CAMPBELL. Thank you, Mr. Chairman. Mr. Rossman, you've suggested that, with regard to the Sylvester case, Mrs. Sylvester—it may be not her name any more, but the mother—had gone to Austria, but that there was an Interpol possibility, should she travel. I think your word was “should she set foot outside of Austria.” But Austria's in the EU, so if she travels to any member of the EU, she's not going to need a passport. Am I correct?

Mr. ROSSMAN. That is correct, Congressman Campbell, and that is a problem.

Mr. CAMPBELL. Understood. Not your problem, I just wanted to clarify.

Mr. ROSSMAN. Yes. Easy access throughout the EU by citizens of the EU are complications. Yes, you are right, there.

Mr. CAMPBELL. I'm going to ask specific and short questions, so I appreciate it. Again, it's no criticism; it's just you really can't count on it if it's not there.

The National Center for Missing and Exploited Children apparently has offered to help, particularly in those questions of children taken outside of the United States. I've been told, however—so I want to check it with you, Ambassador Ryan, or maybe with Mr. Rossman. Whoever can speak to the question—that we have not been willing to allow a broader role for the National Center for Missing and Exploited Children with regard to assisting in those cases of children leaving the United States. Is that correct or is that—

Ms. RYAN. No. That's not—that's certainly not my understanding.

Mr. CAMPBELL. Fine. Tell me what is correct.

Ms. RYAN. Or certainly what I want. We are exploring with them how they might expand their role and how we might work more closely together on the cases of children abducted abroad. They do a really phenomenal job when, say, a child is taken to the United States illegally or improperly. We have an agreement with them and we are working with them on ways that they might help us better overseas. So, as far as I know, we have a very good and collegial relationship with them.

Mr. CAMPBELL. Fine. I'm going to give you a chance to respond to that. It may be that we'll hear more on that later. But if your view is they're good and productive colleagues, then, perhaps, we—

Ms. RYAN. It's certainly my view, Sir, yes.

Mr. CAMPBELL. I'm pleased to hear it. Two last questions on the Secretary's report. Again, more to Ambassador Ryan but, Mr. Rossman, feel free to jump in if you'd like. I understand that the Secretary, in identifying closed cases, determined, as in the language of the report—which I'm going to tell you, in a rare moment of candor, I have not read, so I'm not going to pretend that I've read it, and you have. So please correct me if it's wrong. But I understand that she defined “closed cases” as cases that ought to be resolved. That is not necessarily the same thing as a case that the parent thinks is not yet resolved.

Incidentally, we have that same issue in another rather very important field on missing in action, where the family may not agree with the Secretary, in this case, the Attorney General.

So could you speak to that question. Is the Attorney General using a definition of a resolved case that is without criteria?

Ms. RYAN. I think it's a question of semantics, Sir. If I really understand it right. If we have no further recourse or what we understand, if we've tried everything that we possibly can, as has the parent, to get his or her child back through The Hague Convention, and there seems to be no further recourse under The Hague, then that case may be considered closed, but we still keep it open.

Mr. CAMPBELL. In which case—pardon me for interrupting, but an easy suggestion to you might be that you so report. All right?

Ms. RYAN. Yes. I agree with that.

Mr. CAMPBELL. Because otherwise it looks—

Ms. RYAN. It looks awful. Yes.

Mr. CAMPBELL. Right. If you could pass that along to the Attorney General. It's a small suggestion, but I'm sure she wants to do what's most—

Mr. ROSSMAN. I think you mean the Secretary of State.

Mr. CAMPBELL. I apologize. Quite. Of course, if you want, pass it along to the Attorney General, that might be—

Mr. ROSSMAN. I assure you, Congressman, on criminal matters, they remain open, even when we have situations such as the Sylvester case where they're in Austria, and we can't extradite out of Austria.

Mr. CAMPBELL. Sure. Great. I take your correction. Thank you, Mr. Rossman. So my polite suggestion to the Secretary of State.

Ms. RYAN. Yes, Sir. I understand.

Mr. CAMPBELL. A column that says, "Not yet solved, but we can't do anything more."

Ms. RYAN. Yes.

Mr. CAMPBELL. Separate from "Still trying."

Ms. RYAN. "Closed," yes, I agree with you.

Mr. CAMPBELL. Great. Last, I understand—once more, correct me if I'm wrong—that the report does not identify the countries as to which we still have the outstanding cases, so that would be really important for us to know, because if it's one country or two, more than others, that's our business in the International Relations Committee.

Ms. RYAN. Absolutely. One of the problems that we had when we were doing this report was that, apparently, we were providing too much information under the Privacy Act, and our legal advisors told us that we had to be more general. I am happy to make available to the Committee any information that you want on any country, on any case. We were just not able to give you—we had the report already done and we were told that we couldn't send it the way it was done. So, that's—

Mr. CAMPBELL. Here's a suggestion—and I bear in mind your limited resources, so it's not as though I'm now going to request the Chairman to make this a formal request. I will not do that. I'm not—but my thought would be, in helping me do my job, if you might at some point—because I take it you prepare this report—

give some sense of which countries are helping out more than others.

Ms. RYAN. Certainly, Sir.

Mr. CAMPBELL. Then I don't think you've violated anybody's privacy, but that helps us. Because we might be dealing with Austria on another matter, and I could raise that when I'm visiting with some of their diplomats.

Ms. RYAN. Yes.

Mr. CAMPBELL. So, if I have kind of an assurance from you—

Ms. RYAN. You do, Sir.

Mr. CAMPBELL. That's very kind of you. If I have your assurance that you'll provide me that information.

Ms. RYAN. I will give you that information. Yes.

Outgoing Cases Unresolved After 18 Months:

Australia.....	1
Austria.....	0
Bahamas.....	1
Canada.....	0
Chile.....	2
Colombia.....	2
Ecuador.....	2
France.....	1
Germany.....	2
Israel.....	4
Mexico.....	34
Panama.....	0
Poland.....	1
Spain.....	4
Sweden.....	1
Switzerland.....	1

Mr. CAMPBELL. Thank you. My name's Campbell, from California. I'm easy to find.

Ms. RYAN. Thank you.

Mr. CAMPBELL. Thank you both. Thank you, Mr. Chairman.

Chairman GILMAN. Thank you, Mr. Campbell.

Mr. Gallegly.

Mr. GALLEGLY. Thank you very much, Mr. Chairman. I apologize for coming in a little late. As you know, there's always so many issues that we're trying to deal with here and, unfortunately, sometimes they occur at the same time. It really doesn't diminish the focus that we have on this issue. But, as Chairman of the Western Hemisphere Subcommittee, we had a very important meeting with the Vice President and the Foreign Minister of Panama, concurrently. So that's the reason I wasn't in here promptly when the meeting started.

Mr. GALLEGLY. In the interest of time, and so we could move on, I would yield back.

Chairman GILMAN. Thank you, Mr. Gallegly.

I want to thank our panelists. Is there any other question? No further questions? I thank Assistant Secretary Ryan and Mr. Rossman for being here, and for your patience and time. There may be some other questions which we'll submit to you and request a written response.

Ms. RYAN. Yes. Thank you, Mr. Chairman, and thank you, Members of the Committee for your interest in this very tragic situation.

Chairman GILMAN. Thank you.

Mr. ROSSMAN. I thank you, too, Mr. Chairman.

Chairman GILMAN. We'll welcome your continued efforts on behalf of the parents.

I'd now like to introduce our Panel second panel. Mr. Jess Ford, Associate Director for International Relations and Trade, of the General Accounting Office. Mr. Ford has worked with GAO since 1973. Mr. Ford has extensive experience in managing audits of the State Department and the Agency for International Development.

Earlier this year, we requested GAO to do a thorough review of the services provided by our government to parents of internationally abducted or wrongfully retained children. The final report of the GAO, pursuant to this request, has not yet been released, but Mr. Ford has agreed to appear today in order to provide some preliminary findings and recommendations.

We appreciate your testimony, Mr. Ford. You are free to summarize your statement. Without objection, it will be included in its entirety in the record of this hearing.

Please proceed, Mr. Ford.

**STATEMENT OF JESS FORD, ASSOCIATE DIRECTOR, NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION, U.S. GENERAL ACCOUNTING OFFICE**

Mr. FORD. Thank you, Mr. Chairman. Before I begin, I would like to introduce Mr. Boris Kachura. He's an Assistant Director who is responsible for this particular project that we've undertaken for the Committee.

I'm pleased to be here today to discuss our preliminary observations on the Federal Government's response to international parental child abduction. The State Department estimates that about 1,000 children annually are abducted from the United States by one of their parents.

When these cases are reported to authorities, the State Department and the Justice Department assume various roles in locating abducted children, reporting on their welfare, intervening diplomatically to secure their return, and bringing abductors to justice. However, left-behind parents, and others, have raised a number of concerns about the Federal response to these child abductions.

Because of your concerns, you asked us to examine problems with the Federal Government's response to parental child abduction, and to examine how the Federal Government is attempting to improve its response. Today I will discuss several problem areas which have been identified, and what actions the Federal Government plans to take to address them. We plan to complete our work and provide this Committee with a report later this year.

There are a number of problems and issues related to the Federal response on international child abductions. These have been identified by the Departments of State and Justice, the National Center for Missing and Exploited Children, as well as left-behind parents, and others. Together, they present obstacles to left-behind



parents, in their attempts to locate, gain access to, and obtain the return of their children.

There are four particular problems that I would like to discuss this morning. First, there are gaps in Federal services to left-behind parents which make it difficult for them to recover their abducted children. The gaps that we have identified include: a lack of a focal point within the Federal Government to obtain Federal assistance; the lack of financial and counseling services to parents; and the lack of frequent-contact for left-behind parents on the status of their cases.

Second, weaknesses within the existing Federal case tracking process, which can impair case and program management and coordination. The State Department, Justice, and the National Center each have their own data bases which are now not currently integrated, and they use different criteria for categorizing cases, actions, and results. In addition, the incidence of abduction cases, actions taken, and the overall disposition of cases is not readily available and hampers the State Department's ability to determine how to best allocate its resources.

Third, there's a lack of systematic and aggressive diplomatic effort to improve the international responses to parental child abduction. This includes identifying countries that have not fully complied with their responsibilities under The Hague Convention to return, or to provide access to, abducted children.

Finally, Mr. Chairman, I'd like to briefly comment that you asked us to look at the status of the use of the International Parental Kidnapping Crime Act of 1993. Basically, we have found that it has had limited use on the part of the Justice Department.

The State and Justice Departments have developed recommendations which they believe will address many of the problems if they are implemented. We found that some actions have been taken to implement these recommendations, but many await further action and resource commitments. For example, the State Department has added additional staff to reduce case loads and to provide more frequent contact to parents. State is also designing an integrated case tracking system and it is now working with the National Center to expand their involvement in outgoing cases.

However, several other recommendations related to expanding diplomatic initiatives to improve the implementation of The Hague Convention, providing financial assistance and counseling service to parents, and fully implementing a comprehensive case tracking system, await further actions. In addition, some of the recommended actions are not expected to be implemented for another year or longer.

In sum, both the State and Justice Departments have taken positive steps to clarify and describe how they will respond to the problems identified in dealing with international parental abductions. However, without resource commitments, it is uncertain whether they will be able to take additional steps to correct many of these problems. Both State and Justice agree that they need to identify these resource commitments. We expect that, as these recommendations are implemented, a clearer perspective on their efficacy will emerge.

Mr. Chairman, that concludes my summary statement. I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Ford appears in the appendix.]

Chairman GILMAN. Thank you very much, Mr. Ford. What actions are under consideration to improve services to the parents?

Mr. FORD. Some of the services to help parents have already occurred. This includes the additional hiring of staff by the Department of State to reduce the case load burden on the part of individual employees. We think that this will have a positive impact in terms of providing more frequent response to parents on the status of their cases. That's been a complaint that's been raised in the past.

Chairman GILMAN. Are they under consideration now to provide that additional resource?

Mr. FORD. As you have heard from the previous witnesses, the State Department has requested 13 additional staff for the Office of Children's Issues. They have indicated to us that most of those staff will, in fact, be involved in these types of cases, and that they hope to reduce their overall case load burden by more than a half of what it was at the beginning of last year.

Chairman GILMAN. So the additional staff will be provided?

Mr. FORD. They've requested the additional staff. I can't comment on whether the final decision as to whether they will be provided or not has been made.

Chairman GILMAN. That's something we'll have to keep under review.

What do you view as the most serious issues with the implementation of The Hague Convention?

Mr. FORD. Mr. Chairman, I think that the major issues—and some of them you've already heard from the previous witnesses—really have to do with the implementation on the part of some of the signatories to The Hague Convention. As the State Department mentioned earlier, some of the foreign countries have not complied with the general terms of The Hague Convention. The report that they issued to the Congress in May outlined, in particular, I believe it was five countries that they found to be, in general, noncompliance.

There are a number of other issues that were also mentioned earlier that I think are related to this. That has to do with the lack of enforceability of return orders on the part of some of The Hague countries, the lack of enforceability to access for left-behind parents to children, and, in some cases, the lack of cooperation in helping locate these children.

Chairman GILMAN. Mr. Ford, how effective has the 1993 International Parental Kidnapping Crime Act been in having children returned?

Mr. FORD. Mr. Chairman, it is very difficult to determine the effectiveness of that particular piece of legislation. As you heard the earlier witnesses testify, the Justice Department has not used the criminal statute very frequently. In fact, in the last five years, they have indicted approximately 62 individuals and, I believe, they had 13 convictions for that five-year timeframe. We understand they currently have 39 ongoing cases.

As Mr. Rossman testified earlier, there are several reasons why the Justice Department has not increased the use of that particular statute. First, Justice cited a preference to first pursue the civil options under The Hague Convention. Second, to rely on the states, the individual states, and assisting them in their efforts to go after the abductor. Third, they identified problems related to extradition in getting countries to return the abductors. All of those issues combined have contributed to a limited use of the statute. But, at this time, we're not able to determine whether or not the statute is effective or not.

Chairman GILMAN. Mr. Ford, what benefits would an integrated case tracking system have, and what might impede the development of that kind of a system?

Mr. FORD. From our work, we think there are several potential benefits. One is just identifying the nature of the problem so that you can better determine the use of resources. The State Department currently maintains a data base on their cases, but we have found that the information in the data base often tended to be inaccurate, that it wasn't well-coordinated with the data bases of the other Federal agencies.

We think that if they follow through with the current action plan that they have in this area, that they can do a much better job of identifying the nature of the problem, do a much better job of diagnosing what needs to be done to better assist parents, and also to better support diplomatic actions against The Hague countries that don't comply. So we think that, if they follow through with this, it will be very beneficial.

Now, the issue we raised in our statement had to do with the resourcing requirements associated with this. At this point in time, it's not clear to us whether or not the State Department will make those resources available.

Chairman GILMAN. Thank you, Mr. Ford. I have to step out a moment. I'm going to ask Mr. Brady if he would chair momentarily.

Mr. BRADY. [presiding] Thank you, Mr. Chairman. Congressman Nick Lampson of Texas has joined us. Representative Lampson has been deeply involved in the issue of child abduction, domestically and internationally. We're pleased to have him join us today and would invite any comments.

Mr. LAMPSON. Thank you, Mr. Brady. It's a pleasure to be here. It's a pleasure to listen. I wish I had been here for more of the presentation of the other panelists. In the last several minutes that I've been listening, I heard Mr. Ford make a comment that there has been an increase of some 17 personnel for the State Department who are being able to better handle the case load that exists.

My interest was in finding out, if they were able to cut the case load in half, can we provide additional resources that would give State Department the opportunity to cut that case load down even to a greater extent?

Mr. FORD. Let me see if I can answer that. My understanding is they've hired 10 additional staff at this point in time, and that their plan is to hire another 13 in the next Fiscal Year. At the beginning of last year, they were operating at a level of approximately 150 cases per worker. We understand, with their current on

board strength, they are down to approximately 80 cases per worker. So they've almost cut it in half. There was a reference earlier this morning regarding what a desirable case load would be. We contacted a number of social worker organizations who indicated that 35 is a good number.

The State Department has not indicated to us what number they're trying to get down to. However, they did indicate they wanted to reduce their case load at least by one-half from last year's level.

Mr. LAMPSON. What kind of reporting are they making as far as resolution of the cases that they work? For example, we've been, in my office, been working on one particular case now for a little better than 2 years. We're not convinced that that's moving very quickly, and we think that there is an opportunity for progress to be made. Do you have any sense of that?

Mr. FORD. One of the things we tried to determine in reviewing the State Department's process here was how frequently they attempt to contact parents involved in these cases, and whether they had a standard that they were trying to follow. In other words, whether they would try to contact an individual once a month or once every 3 months or whatever. It's our understanding that they currently don't have a precise criteria. They indicated that they like to try to meet or talk to an individual at least once a month for Hague cases, and I believe they used the criteria of once every 3 months for non-Hague cases.

I think that the idea of reducing case load is really for the purpose of more frequent information to parents on the status of their cases. This is an area that has seen a number of complaints on the part of parents. They don't feel that the State Department has been responsive in some cases, and I think that this is a step in the right direction, because if they can more frequently inform parents on the status of cases, it gives the parents a better understanding of what they may need to do in terms of taking further action.

Mr. LAMPSON. I don't know another question right now to ask. Let me pass for a few minutes. Thank you very much for letting me sit in.

Mr. BRADY. You're welcome, and please feel free to join us through the rest of hearing.

Mr. Ford, a couple of thoughts. One, we talked earlier about resources, and it's clear both State and Justice have taken some very positive steps in increased communication, lower case loads. Issues like that are very critical. In your report, as you end it, you point out that it is difficult to know what is needed to solve the problem because you need more information, or we need more information.

For example, according to State Department officials, all of the planned diplomatic initiatives are contingent on additional funding, but they have not provided us with the information about the source and level of funding necessary for these activities. In addition, we don't have funding information yet on nearly all the remaining planned changes in the Federal response, including resources needed to fully implement the case tracking system.

Basically, as I read it, your point is, because we don't know what it will take to make significant improvements—I can't say solve the

problem, but make significant improvements—it will be difficult to make those improvements until we have better information. Your hope is that, by the end of the year at some point, that Congress, Washington, the Federal Government, together, will have a clear idea of what is needed and what those specific actions will result in. Is that correct?

Mr. FORD. Yes, sir. That's exactly our point. You know, when we looked at the number of recommendations that the Department of State and the Department of Justice have come up with to deal with this issue, it's a fairly impressive list of potential areas. The real issue is implementation. Some of these things are going to cost money.

They talk about providing some form of financial assistance to left-behind parents; expanding counseling; developing some mentoring programs. I think Secretary Ryan talked about an international conference later this year that the State Department is considering sponsoring to bring other parties to The Hague Convention together and talk about what can be done about it.

What we're trying to get an understanding of, is what kind of resource commitments are now going to be required and whether or not they are going to be forthcoming. Because if they don't, then many of these actions may fall to the wayside and they may not get done.

Mr. BRADY. Are there any models from the states or others where they have improved the system for communication? For example, I know in some states, because when you're a parent, you call a caseworker, if you don't get a timely response, it tends to create three or four or generate three or four more calls. It tends to add to the case load of someone who's already, you know, up to their eyeballs as it is. Some States moved to a communication-type office where there is a one-stop system. A person can give you a prompt, within privacy limits, of where that case is and then manage that communication more efficiently, effectively. Have you seen any of those recommendations? Or do we have some models?

Because some of these problems we already have existing in states and they're making some good progress. Have we looked at some of those models to apply, not on the international side, but on the operational side?

Mr. FORD. I'm going to let Mr. Kachura answer that, because I'm not aware of the state models, but he says he is, so I'll let him answer that one.

Mr. KACHURA. Sir, we have looked at some states, especially from the perspective of whether they might serve as models for the Federal Government. One state in particular, California, has a very effective mechanism in place to deal with these types of issues. Of course, California may be a bit idiosyncratic in the sense that a fair number of their outgoing cases wind up in Mexico. The state itself has established a very close relationship in trying to work with Mexico to identify the location of the outgoing cases and try to get their return.

So, yes we have looked to see if there are models. Certainly California might serve, to a certain extent, as a partial model. But, for the most part, given all the states, no, there aren't that many out there.

Mr. BRADY. A final question for me, at least, before I return the Chairmanship to Chairman Gilman. In implementing the recommendations or developing the recommendations, are we recognizing that this problem will only grow? That the world is getting smaller; that people are more mobile; that there will likely be a trend in this? Do you think our efforts to reduce case load and deal with diplomatic problems on both ends recognize that it will require even greater resources in the future?

Mr. FORD. I think we heard from the State Department, for instance, this morning. They certainly believe that this is a growing problem. We have no reason to doubt that they are not sincere in trying to improve their overall response to this issue. I think that we need to follow what actions they end up taking in regard to the recommendations. I think that some of the comments made by the Committee this morning regarding overseeing the effort are good steps and should be taken.

Mr. BRADY. Thank you, Mr. Ford. Mr. Chairman.

Chairman GILMAN. [presiding] Thank you, Mr. Ford, and your good associate, for being here with us today. We look forward to utilizing your report for further implementation of some of the recommendations that we discussed.

Mr. FORD. Thank you, Mr. Chairman.

Chairman GILMAN. The panel will be dismissed. We thank for your time.

We are gratified to have four parents of abducted or wrongfully detained children who have volunteered to appear before us to share some of their tragic experiences. These four parents come from diverse backgrounds, illustrating that this problem can occur to anyone in practically any walk of life.

Lady Catherine Meyer is the wife of one of Great Britain's top diplomats, and our good Ambassador here in Washington, Sir Christopher Meyer. The abductor of Lady Meyer's two sons is her first husband, a doctor from Germany. Lady Meyer has authored a book, "They Are My Children Too," which was published in the United States last May. This book should be read by everyone who wishes to understand the profound and devastating effects of this type of situation.

Mr. Thomas Johnson works in the Office of Legal Advisor, at the State Department. He's an expert in international law enforcement and extradition, as well as a wide array of other international legal matters. His former wife, a Swedish diplomat, has wrongfully retained their daughter in Sweden, and Mr. Johnson has been subjected to a series of outrages by the Swedish authorities. I'm going to ask, as I read off these witnesses, if they would take their seats at the witness table. Mr. Johnson has been subjected to a series of outrages by the Swedish authorities who have refused to recognize U.S. court orders regarding the custody of his daughter, and denied his application under The Hague Convention for her return to the United States. Although an employee of the Department of State, I want to emphasize that Mr. Johnson is appearing today at my specific request, and is testifying strictly as a private citizen who is a parent of a wrongfully retained child.

Mr. Paul Marinkovich, of Simi Valley, California, is a commercial real estate appraiser. His ex-wife, an American citizen, abducted

their son to Sweden when he was five years old, in August 1996. Through his own resources, with the assistance of a private investigator, Mr. Marinkovich has been able to discover the location of the abductor. Thus far, the Swedish authorities have maintained that they are unable to assist Mr. Marinkovich because of Sweden's secrecy law that, bizarrely, is being used in this case to protect persons that are the perpetrators of violations of Swedish law.

Mr. Thomas Sylvester is a business executive in the automotive field from Cincinnati, Ohio. His daughter, Carina, was abducted by her mother, an Austrian citizen, when she was barely 1 year old, in October 1995. Despite winning his initial Hague case in Austria, Mr. Sylvester was not able to regain his daughter due to the inability or unwillingness of the Austrian authorities to force the abductor to comply with the rulings of Austria's high court. After this grave miscarriage of justice, Austrian courts ruled that The Hague process for the return of his child no longer would apply in Mr. Sylvester's case, and he has been trying to gain access to his daughter and establish his rights of visitation within the Austrian judicial system for over 2 years.

I would also like to note the presence of Mr. John Lebeau in our audience. Mr. Lebeau was successful last year in regaining his two young children, Luke and Ruth, who are also with him today, after they were abducted to Europe by their mother in 1996. We are pleased to see you here today, Mr. Lebeau.

Mr. Sylvester's Representative, the gentleman from Ohio, Mr. Portman, has requested the opportunity to also say a few words on behalf of Mr. Sylvester. Before giving him the floor, I'd like to express the Committee's gratitude to our four witnesses for their willingness to share some personal and extremely painful experiences with us in the hope that other parents may be spared some of the miseries that they've had to endure. Mr. Portman.

Mr. PORTMAN. Mr. Chairman, thank you very much for the opportunity to testify before your panel, the distinguished minority Representative, Mr. Gejdenson included. I also would like to acknowledge my colleague from Cincinnati, Mr. Chabot, who has been very helpful to me in this matter, in giving me advice.

I'm here to talk about Tom Sylvester, who's with us this morning. He's a constituent of mine. He's already appeared, Mr. Chairman, before the Senate Foreign Relations Committee. As I told him earlier today, it's now time to come where the power resides in the House.

He has had a very difficult time. I think you will find his testimony heart-wrenching. I think that you will find it very enlightening as you begin the process of looking at this issue. His daughter, as you indicated, was taken from him by his Austrian-born wife on October 30, 1995. Although both the Austrian central authority and the Austrian supreme court ruled that Carina should be returned to the United States, to her father, the ruling was never enforced.

I've been working on this for the last year and a half, since July 1998, with the State Department, with the Justice Department, trying to get some resolution of this issue and trying to get these rulings enforced. Unfortunately, as you know, Mr. Chairman, although The Hague Convention on International Child Abduction

has helped in getting this just decision rendered, the United States currently has no way to force another country to enforce its own laws and judicial decisions within its borders. In fact, the United States has no recourse if another participating country does not live up to its obligations under The Hague Convention.

I am pleased, Mr. Chairman, that you are taking a close look at this issue. I think it's very important. I look forward to following it and being helpful where I can in this specific instance but, more generally, in your work and reviewing your findings and proposals. I would hope that you would give Mr. Sylvester's recommendations and the document that he's going to submit for the record full consideration. Again, I thank you very much for allowing me to testify before the panel, and I look forward to following this.

Chairman GILMAN. I thank the gentleman from Ohio, Mr. Portman, for coming to be with his constituent. Thank you for taking your time.

Our next witness is the gentleman from New York, Mr. Michael Forbes, who has requested the opportunity to appear before the Committee today, and I believe with regard to the case of a constituent who's the parent of an abducted child.

Mr. Forbes, you are free to summarize your statement, which will be entered in the entirety in this record. You may proceed.

**STATEMENT OF THE HON. MICHAEL FORBES, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. FORBES. Thank you, Mr. Chairman. I appreciate, along with my colleague, Mr. Portman from Ohio, the opportunity to speak to the panel and for your sensitivity and Mr. Gejdenson and the other distinguished Members of this panel for putting a light on this, what I think, is a really very perplexing problem. My heart goes out to the families who are here today, as well as others across the country who are dealing with this problem.

Frankly, to offer my perspective on The Hague Convention on International Child Abduction and its implementation, I believe it's important that we have to strengthen multilateral cooperation among nations on humanitarian issues, particularly, though, on these issues involving children and international adoption and the heart-wrenching problem of abduction.

My recent experiences on behalf of Vedia Tunga and Cebrail Tunga, the seven-year-old boy who was abducted by his father, showed to me that The Hague Convention is certainly more than just a sterile document. Instead, it is clear that it is a living, breathing, tool that can be used in these instances of abduction particularly. I appreciate the Committee's time and the chance to have my full statement made a part of the record.

Chairman GILMAN. Without objection, it will be made a part of the record.

Mr. FORBES. Thank you, Mr. Chairman. Briefly, back in August, I appealed to the State Department, the White House, and the Republic of Turkey to secure the return of seven-year-old Cebrail Tunga, who had been stolen from his home on Long Island where his mother has legal custody of him, and he was taken to Istanbul by his estranged father. Initially, I thought that the issue was pretty simple. An American citizen, the only child of an American



mother who had been awarded sole custody, had been abducted and taken to a foreign land. Clearly, I figured if we appealed to the State Department, we could correct this wrong rather quickly.

Unfortunately, I was given a quick eye-opener. In fact, because Turkey had not ratified The Hague Convention, the State Department basically said that the United States could not get involved. It was as simple as that. Fortunately, we were able to appeal to the highest levels at the White House and we did, ultimately, have an opportunity to get the State Department involved. But, frankly, it was not enough, initially, that the State Department says that you're just going to have to work with the Turkish courts.

This is a heart-wrenching problem. Not every parent has the ability to go to the highest levels of the White House to get intervention by the State Department. I think that, regardless of whether The Hague Convention has been adopted by that host nation or not, I think that, working with the United States, we should abide by the spirit of this Convention and put as an ultimate goal here our need to make sure of a child's whereabouts and ensure the child's safety and a reuniting of the child with the parents here in the United States. This should guide our actions rather than some bureaucratic response that just says simply they haven't ratified the treaty.

I thank the Committee for focusing tremendous attention on this. Again, my heart goes out to all of the families who are here today. This is a very personal, heart-wrenching problem for so many of them, and I'm hopeful that the Committee may take action so that we can strengthen our ability to return these children who are separated from their legal parents here in the United States. I thank the Chairman.

[The prepared statement of Mr. Forbes appears in the appendix.]

Chairman GILMAN. Thank you, Mr. Forbes. We thank you for your interest in this very critical issue, and we hope you'll assist us as we go along further.

Mr. FORBES. Thank you.

Chairman GILMAN. We'll welcome your comments.

Our first witness is Lady Meyer.

Welcome, Lady Meyer.

#### **STATEMENT OF LADY CATHERINE MEYER, PARENT OF AN ABDUCTED CHILD**

Lady MEYER. Thank you, Mr. Chairman. On behalf of all the parents, thank you very much for listening to us, on what is, for us, a very important issue.

Many of you know about my case, so I won't talk about it too long, but I was married to a German citizen. We had two children. We separated in 1992. I sent my children on their holidays to Germany in 1994. They have not been returned and, since then, I have hardly seen my children. My case is typical of how The Hague Convention does not work, and how some countries do not abide by the terms of The Hague Convention.

The first hearing in England ordered the immediate return of the children under article three of The Hague Convention. A second hearing in Germany ordered the immediate return of the children, but my ex-husband asked for half an hour to bring the children to

the court building and, in defiance of the court order, he bundled the children into a car and vanished.

He then went to the higher court without my knowledge and asked for an appeal on an *ex parte* basis, meaning that I was not allowed to be represented. One month later, the German higher court decided to keep the children using article 13b of The Hague Convention. The idea was that the children were old enough since, and I quote, a seven-year-old child faced with the decision to play football or judo generally knows what to decide. On this basis, the German judges decided that my children were suffering in a foreign environment, “especially since German was not spoken at home or at school” and that I was, in any case, a mother who worked and had no time for them—so they should remain in Germany.

But my nightmare did not stop there. Not only were the children not returned under the terms of The Hague Convention, but, since then, I have been denied normal access to my children.

In the past five and a half years, I have seen my children for a few hours. Not days, not weeks, but just hours. As of today, I have no rights whatsoever, because under German law, (as in Austrian law since it is the same legal system) access rights are not enforceable. So, even when the court gave me very minimal access rights—and three hours a month, which is not terribly convenient since I live in the United States—and my ex-husband refused to bring the children, the court refused to enforce the order.

So the months pass and the years pass and there I am without being able to see my children. My parents have also been denied access to their grandchildren. My father is 87 and he will probably never live to see his grandchildren again.

On two occasions when I saw the children, in 1994 and 1998, I told my eldest son: “I wanted to see you. I love you. I’ve been trying to see you all those years.” His reply was: “You lie. Daddy told us that you could come and see us whenever you wanted, but you never did.”

I just want to say two more things. One is for everybody who is not a victim of parental abduction: I realize how difficult it is to really understand how it feels. But I can tell you that child abduction is probably a parent’s worst nightmare. Simply imagine returning home 1 day where all your children’s possessions are there, but your children are gone. It is a pain that never dissolves, and many parents find that it would be probably easier to come to terms with the shock of bereavement than with a situation marked by prolonged uncertainty and anxiety.

I know about it because I’ve been there. For the past five and a half years I have lived this pain. There is hardly a day that goes by when I do not worry about my children. There is hardly a day that goes by when I don’t dream about them. I, as a mother, can never rest in peace because I know that the ultimate victims are my children.

Since I have been in America, I have been trying to fight to bring attention to the issue of child abduction. I have been approached by many, many other parents who are in the same position as I am. I am bringing with me today over 30 cases—in fact I think 36 cases—of U.S. parents who have written to me. Some of these cases

might have been included in the official figures, but many of them are not, because many parents are too afraid to go to the central authorities. They are too afraid to talk in public about their cases. Because they know, as I found out at the time, that the German courts will use it against you.

Chairman GILMAN. Lady Meyer, we have some of those for the record, and will be made part of the record, those cases.

[The information referred to appears in the appendix.]

Lady MEYER. In my written testimony, I explain in more detail the attitudes of the German courts, and how those other parents have been treated in exactly the same way as I have. The problem is, as we were discussing before, that every country has its own judicial system.

In Germany, for instance, you can make *ex parte* emergency decisions. So when a child is abducted to Germany, the German courts can change the jurisdiction *ex parte*, without the other party knowing. This removes the basis for a Hague Convention case.

Then the German authorities are not being very helpful. The German courts have also consistently used article 13b “the child’s objections” not to return abducted children. In fact, there’s been a report written in England in 1996, the Lowe Report, that found out that every time the abductor used article 13b—since it is one of the only objections to the return of the child, an abductor will, in essence, use it as a defence—the German courts did not return abducted children. Some of these children were three and five.

The other problem with the German courts is that you don’t have enforceable access rights. In this sense, all the parents that I’ve been in contact with are in a similar situation as me: not only were the children not returned, but they have also been denied access to them, their most elementary human right. The authorities often talk about child abduction as being a private matter, but it isn’t a private matter. In my opinion, it is a breach of human rights. Every child should have a right to see both its parents. Every parent should have a right to his or her child.

I have a case, that of Mr. Joseph Cooke, which is available. His children were taken away, abducted to Germany, and they are now in a foster home. But Mr. Joseph Cooke has been unable not only to have his U.S. children returned to America, but also he has been unable to gain access to them. This is a human rights issue.

It is also an issue for governments and authorities to get involved with, because when foreign countries do not abide by international conventions, which Germany, Austria, and some other countries do not, I think it is a matter for governments to be involved with. Mr. Chairman, I know that the German authorities that I have approached on many occasions—as have other parents—constantly come back and say that the German judicial system is independent.

But I know from my husband that your Committee is, for instance, very interested in the affairs of Northern Ireland. I know my husband that your Committee is particularly interested in human rights, and does not hesitate to express its views on the administration of Justice there, although our legal system is independent.

So I urge you to please look into the countries that do not abide by The Hague Convention and raise the matter with them. The only thing we want is our human right to see our children.

[The prepared statement of Lady Meyer appears in the appendix.]

Chairman GILMAN. Thank you, Lady Meyer, for your very poignant remarks. We will be pursuing these issues down the road. I now ask Mr. Tom Johnson if he would proceed with his testimony. You may put your whole statement in the record and summarize or whichever you deem appropriate. Please proceed.

**STATEMENT OF THOMAS A. JOHNSON, PARENT OF AN  
ABDUCTED CHILD**

Mr. JOHNSON. Thank you, Mr. Chairman, it's a privilege to be here today. As you indicated, I'm here in my private capacity, although I've been a Department of State attorney for many years. I've taken annual leave to be here today, and I've used no government resources to prepare this statement.

Mr. Chairman, Congress really is the only hope for us, despite what the Administration officials have told you. We greatly appreciate your efforts and the efforts of your colleagues, despite executive branch opposition and obstruction over the years.

Mr. Chairman, the norm for American parents in the vast majority of these cases is no return of the child under The Hague Convention or otherwise; no possibility of gaining extradition of the abductor because the executive branch has negotiated one-way extradition treaties with countries that will not extradite their nationals; no possibility of enforceable access to, or visitation with the child because, as Lady Meyer just indicated, most foreign legal systems have nothing comparable to contempt of court and cannot enforce their own civil court orders; and no effective assistance from the U.S. Government, which, in fact, stands ready to assist the abductor and his or her supporting government through enforcement of foreign child support orders and the extradition of American parents who rescue their children.

Mr. Chairman, my daughter's case is summarized toward the end of this statement, on pages 22 to 24, but most of the statement concentrates on what necessarily must be the Committee's primary focus, and that is remedial actions that will help all Americans.

Mr. Chairman, that said, it is important at the outset to note the human impact of these cases, and the truly barbaric conduct of governments such as Austria, Germany, and Sweden, that enable their citizens to abduct and wrongfully retain American children with impunity. Amanda has not seen her American family, friends, school, church, and home environment for more than 5 years. She has several grandparents here, but none in Sweden. She has two baby sisters here whom she has never met, with another due next month, but no brothers or sisters in Sweden.

More importantly for this Committee, Mr. Chairman, Amanda's abductor could not have succeeded without the Swedish government's comprehensive financial support and other forms of assistance. Governments such as Sweden, that virtually encourage child abduction and retention by their citizens, could not succeed without the United States Government's silence, refusal to make them pay

any price for their treaty violations and human rights abuses, and failure to protect American citizens. That is what this statement is about, Mr. Chairman.

I would point out, since there won't be time to get into them in detail, that my statement does address what would be the essential elements of any credible GAO investigation and report on this subject; specific recommended Congressional actions on pages 30 to 37 of the statement; specific proposals for the United States and other parties to The Hague Convention to improve implementation on pages 37 to 41; a two-page summary on pages 20–21 of the Swedish government's system of abduction and wrongful retention of children as an example of what the executive branch should be drafting and disseminating nationwide to all U.S. courts and law enforcement authorities; on pages 43 to 45, the latest unsuccessful effort to get the Human Rights Bureau of the State Department to address this matter in the Human Rights Report, as it should be. Finally, Mr. Chairman, on pages 46 to 53, a submission to the United Nations Committee on the Rights of the Child that I prepared, but is the sort of thing that the State Department should be preparing and submitting to the Committee.

It may be of interest to this Committee to know that the Committee on the Rights of the Child has chided Austria and Sweden and told them to review their legislation on respect for foreign custody laws and court orders. If the State Department would take on that sort of role in this area, we would all be greatly assisted.

Mr. Chairman, quickly going through the specific proposals for Congressional action which, as I indicate, is the only hope for American left-behind parents in most cases. First, starting on page 31, with regard to the U.S. central authority, Mr. Chairman, until this function is shifted elsewhere in the U.S. Government, things are not going to improve. The Civil Division of the Justice Department is a possibility. But Congress really needs to mandate a shift of this function away from the State Department.

Second, Mr. Chairman, it is hoped that Congress will direct that the National Center shift its emphasis and work from "incoming" cases and assisting foreign parents to helping American parents in "outgoing" cases. Because at this point, American parents really have no one as an advocate for them.

Mr. Chairman, in the Human Rights Report area, I think I make the case very persuasively on pages 31 and 32 that this subject belongs in the Human Rights Report on its merits, wholly apart from any other considerations. What happens in these cases is contrary to provisions in several international human rights instruments, and that would make a real difference. There's no substitute for publicity.

With regard to bilateral relationships, Mr. Chairman, the State Department should be directed to negotiate bilateral agreements on visitation and access, as is encouraged and promoted by The Hague Convention on the Rights of the Child.

With regard to extradition and mutual legal assistance treaties, Mr. Chairman, my statement addresses several conditions that should be met before we continue our extradition and mutual assistance relationships with certain foreign governments.

Mr. Chairman, you may or may not be aware of it, but the State Department is busily negotiating child support enforcement agreements with many of the countries that are involved in the abduction of American children. Mr. Sylvester and I have already received threatening letters and court orders from the Austrian and Swedish authorities concerning the payment of child support and, quite frankly, Mr. Chairman, there's no way to fix this legislation. It needs to be repealed.

If it's kept in place, then the State Department needs to be prohibited from negotiating any child support arrangements with countries that don't give enforceable visitation to American citizens and to prohibit any arrangements unless they include ironclad exclusions for cases where there's been a violation of U.S. law, crimes committed here, violations of The Hague Convention, and so on.

Mr. Chairman, the 1993 International Parental Kidnapping Crime Act simply is not being implemented generally. Parents like us face three hurdles: the FBI, the U.S. Attorney's Office, and the Office of International Affairs in the Criminal Division, and the chances of success are not good.

Mr. Chairman, documents are routinely denied to American parents that they should have. We have a right to know everything that our government has done and failed to do, and the Privacy Act and the Freedom of Information Act are both being misused. In terms of resources—and I think I'm indicating that resources are not the problem here but rather political will—there's going to be litigation against the State Department because of its violations of FOIA, and that's going to eat up some resources unnecessarily.

Also, Mr. Chairman, I propose an exception to the Foreign Sovereign Immunities Act so that we as private citizens can bring a cause of action against these governments for damages. Bilateral claims should be pursued by the State Department.

Finally, Mr. Chairman, it would be helpful if Congress would direct the State Department to issue an interpretation of The Hague Convention to all U.S. courts that it is a grave risk to return a child to a country where there is no enforceable access or visitation for a U.S. parent. In other words, if a foreign legal system does not have something like contempt of court, then we should not be sending children back to that country.

Chairman GILMAN. Mr. Johnson, I'm sorry to interrupt. I am going to have to go to the Floor to vote. I'm going to declare a short recess. Mr. Chabot's on his way back to continue the hearing, I'll declare a brief recess at this time in order to vote.

[Recess.]

Mr. CHABOT. [presiding] The Committee will come back to order, and I understand that Mr. Johnson was still involved in his testimony, so take whatever time you deem appropriate to continue.

Mr. JOHNSON. Thank you, Mr. Chairman, I realize we have limited time and I don't want to cut into the time of my fellow witnesses too much.

What I had just done, Mr. Chairman, was summarize the specific recommended Congressional actions on pages 30 to 37 of my statement, making the point that really the only hope for American left-behind parents is Congress, because of the failures of the executive

branch and the demonstrated record over the past year, especially, that they're dedicated to the status quo.

Mr. Chairman, I just wanted to make a few more points. Basically, that the situation would begin to change literally overnight if Congress would require the executive branch to take several of the actions that I, and others, have suggested which cost nothing. It really is not a resource problem. It's political will more than anything else.

Mr. Chairman, if nothing else, the past year has indicated that the State and Justice Departments will not take these actions voluntarily. You have a Hague Convention compliance report that does not comply with the letter and spirit of the law that you passed. The task force report to the Attorney General has nothing to do with the realities facing American parents, and is noteworthy for what it omits, what it fails to say. There has been State Department opposition to all pending legislation in this Committee and in the Senate Foreign Relations Committee, with no proposed alternatives. Of course, it's reasonable to quibble, but total opposition to all the efforts of Congress to make things better reveals the State Department's true colors.

The National Center, which is the best player on the field, has been pressured by the State and Justice Departments to continue focusing only on incoming cases, to be responsible for those cases. There's supposedly going to be some new information sharing with regard to outgoing cases, but the case files will remain at the State Department, and the bulk of the National Center's time will be spent helping foreign parents at U.S. taxpayer expense while American parents have no effective advocate whatsoever.

Many of these children brought to the United States are brought here because the American parent cannot get fair treatment in the foreign court and will not be able to get any enforceable visitation or access, because the other countries do not have anything like contempt of court in their legal system.

One point I made just before you came back, Mr. Chairman, was to say that Congress, starting with this Committee, should direct the State Department to interpret article 13b, grave risk, as a basis for not returning children under The Hague Convention, to include situations where a child would be going back to a place where there's no enforceable access or visitation whatsoever.

That is certainly a grave risk to the child, who has the right to have a relationship with both parents. Our legal system can deliver; the foreign legal systems we're talking about cannot, and will not and they've been given no incentive to change their ways by the executive branch.

Mr. Chairman, today there's no accountability within the executive branch, few preventive measures to educate American courts and law enforcement authorities, let alone the public, and no strategy to achieve full compliance with The Hague Convention and other applicable treaties, especially human rights treaties. There is no political will in the executive branch to take effective remedial measures that make foreign governments pay a price for what they've done to American citizens. The reality is that foreign governments provide far more assistance to their citizens who abduct

American children than the U.S. Government supplies to American parents whose children have been abducted.

Mr. Chairman, all of us are here because we've lost our children, but we don't want additional American parents to lose their children. That is a certainty, an absolute certainty, unless Congress takes charge and enacts legislation or takes other actions along the lines that I and others have suggested so that the U.S. Government is carrying out the most fundamental responsibility of any government: to protect its citizens at home and abroad.

Diplomatic and legalistic approaches will not work. They must be backed up by demands for reciprocity and a willingness to impose consequences on foreign governments that continue to provide any form of support to those who abduct and retain American children abroad.

Mr. Chairman, in concluding, the reality that would be helpful for this Committee, and Congress in general, to address is that the problem goes well beyond the fact that foreign governments are violating their treaty obligations to the United States with impunity, refusing to return American children under The Hague Convention, stealing custody jurisdiction from American courts, and awarding sole custody to their citizens who have committed Federal and State felonies.

Even at that point, one might reasonably assume, as I did, that the worst-case scenario is being a noncustodial parent with only 4 to 6 weeks of visitation in the United States each year. Regrettably, the fact is that most American children are completely and permanently lost to their American parents, families, friends, and home environments.

In short, Mr. Chairman, the refusal of a foreign country to grant a Hague return application from the United States means that the child will be lost completely to its American parents.

Finally, Mr. Chairman, I believe it was Mr. Brady who said that actions speak louder than words. I've just indicated how the actions of the State and Justice Departments in the last year with regard to the documents they've supplied to Congress and their opposition to legislation speak louder than their words.

The only other point I would make, Mr. Chairman, is that the GAO report should not focus on resources. It should focus on the adequacy of the performance of the State and Justice Departments in terms of dealing with foreign governments. Is there any strategy for dealing with violator countries? Is there cooperation between the State Department and the National Center? And so on and so forth. Those points are detailed on page 14 of my statement.

With regard to human rights, as Lady Meyer has indicated, this subject belongs in the Human Rights Report on its merits. The leading expert on The Hague Convention, the leading expert in the world, Adair Dyer of Texas, for many years the senior Hague academy official responsible for this Hague Convention, has said, "Of course, The Hague Convention is a human rights treaty." He's right. The First Lady has been right when she has repeatedly said this. She's right legally and morally. Several international treaties cover the subject.

If you look at what is in the Human Rights Report today, devoted almost exclusively to what foreign governments do to their



citizens, in 2,000 pages or so each year, it's not asking too much for the State Department to address what foreign governments do to American citizens, systematically, through their legal and social welfare systems.

Thank you, Mr. Chairman. I don't want to take any more time away from my fellow witnesses. I'd be happy to answer questions later. Thank you.

[The prepared statement of Mr. Johnson appears in the appendix.]

Mr. CHABOT. Thank you, Mr. Johnson.

Mr. Sylvester, would you mind deferring and we'll go with Mr. Marinkovich and go with you after that, if that's OK? If you're ready, sir? OK, thank you. We'll go with Mr. Marinkovich first.

#### **STATEMENT OF PAUL MARINKOVICH, PARENT OF AN ABDUCTED CHILD**

Mr. MARINKOVICH. Thank you, Mr. Chairman, and the Committee. I've really appreciated your Committee and the Congress in general, for standing as a rock in a stream of governmental indifference on this particular issue.

I was sitting here just before I started, very angered when I heard the Justice Department and the State Department's Testimony. When I left town, the headlines in the paper read that a local father is going to Washington to ask the Congress for more than words. At least on one point I want to deliver to you more than words in this following statement.

The Justice Department talked about and gave examples of extradition cases that did not work. Now you know the negative. I want to present to you today, I want you to look in the eyes and the faces of an extradition that did work, and brought home two very beautiful children right over there. They are Mr. Lebeau's children. Isn't this what we're all up here fighting for? Isn't this why we're all here? When I talk to my Justice Department and my State Department, I want to hear about these cases. I want them to fight for children like these.

My 8-year-old son Gabriel was lost to an act of international parental abduction on August 19, 1996, over 3 years ago. Frustrated that the police absolutely refused to act, I hired my own expensive private investigator who found him promptly in Sweden. I immediately then called the State Department and tried to implement The Hague Convention. I was given a booklet that stated that The Hague Convention was a 6-week process. My application was held 6 weeks before it was even sent to the Swedish government, so we chewed up that time really quickly.

But little did I know that for the next 3-plus years, I'd spend over \$200,000; I'd travel to Sweden 8 different times; Denmark 2 times; and Washington, D.C., this is my fourth trip—and I'm sure I'll be back again—and wait for over 2 years before I got my court decision in Sweden; and have to singlehandedly work to expose the corrupt system in Sweden of handling American abducted children. I had to send an investigator to Sweden on my own personal funds twice because the Swedish government told me they were going to close my case unless I could prove that they were still in Sweden.

I now spend the majority of my awake time working to change an inefficient American system of retrieving our abducted American children. After all of this, I stand before this Committee today with just the memories of my son, Gabriel.

Gabriel was illegally taken out of the United States and registered into Sweden with a fraudulent passport and a fraudulent birth certificate. These documents provided a different name for my son and a fictional father. Concerning these fraudulent documents—the Swedish central authority was well aware that this information was falsely submitted because a Hague application had already been presented to them with the correct name for my son and the correct name of myself, his father and sole legal guardian.

They chose to participate in this fraudulent act by actually registering my son under the fraudulent name with the government and opening The Hague file under the correct name, as submitted by the State Department. To add insult to injury, the same Swedish government then granted the abductor of my son, an American child, Gabriel Marinkovich, secrecy protection, which is the equivalent of our witness protection program.

Now, according to Swedish law, secrecy protection can only be issued in extreme instances where one's life is in danger. But these Swedish officials chose to bypass their own law, which requires this protection to be stringently reviewed by Swedish police, and, ultimately, the law was completely ignored and the Swedish government chose to actively assist in this illegal abduction of my son, an American citizen, Gabriel Marinkovich.

Then the cover-up began, when the Swedish government flat out lied in documents, in letters to the American government that this action had ever taken place. They denied that they ever issued secrecy protection for 334 consecutive days. I sent my investigator back to Sweden and he uncovered documents that were stamped "secrecy protected" by the Swedish Tax Authority. This proof was presented to the Swedes through the State Department, 334 days later, the Swedes admitted to this scandal.

Now, just prior to that, on July 1, 1997, the Swedish central authority said that they would close my case if I couldn't demonstrate that my son had physical ties to Sweden and left the burden of proof up to me to prove that he was there. This action directly violates The Hague Convention, article 7a. It becomes even more ironic when considering that they were secrecy protecting the very same people who they said no longer have any ties to Sweden.

At this point, again I was forced to send my private investigator to Sweden. In spite of running into a wall of protected identities and secret documents, my investigator found the abductor's husband and daughter living in an apartment in central Helsingborg. Ironically, it was mere blocks away from the station of police who claimed they could not find them. In a recorded telephone conversation with my investigator, the abductor's husband boldly reveals the abductor being absolutely amazed that anyone knew where she was because she claimed that the Swedish government had placed them under strict secrecy protection and then went on to indicate that they were already registered with the tax authority and the police who were supposedly looking for them.

Digging deeper, we found that my son was registered in a local school three blocks from the police station under his correct name and Swedish ID number, during the time the police were looking for him. My investigator then called the Tax Authority and inquired about the abductor and my son. He was told that they'd return his call, but, instead, he got a phone call from a Swedish police officer, ironically enough, the same one who was in charge of finding my son. He demanded that he come down to the police station immediately or be arrested.

My investigator went down to the station and found he was being interrogated about why he was calling on persons whose identity was protected by the government, instead of asking questions about where my son is. Now here we were, just steps away from actually finding my son, and my investigator had all his investigation material confiscated by the Swedish government and was told to leave the country immediately.

I only have a few minutes to talk to you. This is a mere token of what I have been dealt from the country of Sweden. I've won all my Hague cases. I've won all my court cases. I'm the only legal guardian of my son, Gabriel Marinkovich.

Over the last 3½ years, the only plan of action that the State Department could offer has been—and I'm going to quote the words I hear time and time again—"We are continuing engagement in talks with Sweden on many different levels."

No actions, no threats of action have ever been presented. With over 3½ years of inaction and lack of holding Sweden accountable, we have actually taught Sweden, by example, that their assistance in the abduction of American children will never, ever, bring any reprise. We've taught them this. It's not their fault; it's our fault. We have firmly educated them that as Americans we're willing to sacrifice our children to maintain good diplomatic relations. The OCI has repeatedly told me that there is nothing they can do except for simply talk to the Swede, which has proven time and time again never to work.

I could tell you what has worked, though, and what has worked are these hearings and interest by Congress. I thank you for that. As a result of notifying the State Department that I was testifying before this hearing, they all of a sudden released documents that they've been holding for over 2 years, namely a diplomatic note, that they refused to release to me. They released it approximately 2 weeks before these hearings. A coincidence? I don't think so.

As a result of Sweden finding out about my testimony before the hearing and finally being declared noncompliant to the Congress, they finally agreed to sponsor my son on a show after 3½ years of my insistence. This is a show that's very similar to America's Most Wanted but it's aired in Sweden. It's called *Efterlyst*. I have been pressing for this for 3 years. It requires sponsorship by the government or a police official.

Today, at 1 our time, the show is going to be broadcast. The people of Scandinavia will see my son and his abductor for the first time in 3½ years since he's been abducted from the United States. I want to thank this Committee for making that possible.

Also I've found that help from the media has been instrumental. In the United States, the Advo Program, an incredible program, is run by the National Center for Missing and Exploited Children.

It's been very successful. In my case, it produced hundreds of leads in the United States and, if they were here, I know that they would have been found. The problem is that, internationally, we don't have this resource. We're left at the mercy of how governing authorities choose to act. Forming relations with international media and promoting interests in this matter will greatly help in bringing home American children. In fact, as a result of my work with the Swedish media, we have been able to show a strong context in our government. This media coverage is showing Sweden a resolve to find American missing children when our State Department has refused to deliver this context to the Swedes.

I feel that we need public relations people outside of the State and Justice Departments who have the sole responsibility to get photos and information out about our internationally abducted children to newspapers and television stations abroad. We're missing this tool. It's incredible and it's free. They can also form relations within the countries, with businesses and companies, to assist in the printing and distribution of information about these missing children, much like our Advo Program here in the United States works.

Now, in addition, this same group of civilians who could oversee this could also be granted the right from Congress to gain information to these files from the State and Justice Departments and provide the Congress with independent oversight as to what is wrong in these cases. Today we have the conflict of the Justice and State Departments coming down here before Congress with the No. 1 context and concern of covering their rear ends.

It's at the expense of our children. We're not hearing the real stories. This type of civilian oversight would provide the much-needed accountability that we need to do a better job. Independent oversight is the only measure that would ensure an accurate portrayal of what really is happening.

Finally, we have to act in our role as world leaders and be willing to take action to hold those countries and people accountable who abduct our children. We take tough action with countries for copyright infringement, for illegally copying music and movies, and for other economic reasons. Why are we at odds with doing anything less for America's most precious resource? The most precious resource in America being our children.

In closing, I want to relate back when I was 18 years old. I remember as I watched on television in horror as 54 American citizens were taken hostage in Iran for 444 days. During that time, America sat horrified. We watched another country strip fellow Americans of their rights to life, liberty, and the pursuit of happiness, as guaranteed in our Declaration of Independence. We as Americans were outraged. We placed yellow ribbons everywhere. We held mass rallies, and our government boldly intervened with freezing \$8 billion worth of Iranian assets, halting oil imports, and mounting a near-impossible rescue operation because we were so desperate to let the world know that we were serious about ensuring these rights for American citizens who were taken hostage.

Now my son has been held hostage in Sweden for 1,144 days. Where is the outrage? Where are the yellow ribbons? Where are the mass rallies? And where is our government intervention? I have stood as the only voice for my son, and I promise to Gabriel that my voice will never, ever, remain silent.

I stand before you pleading that, as members of our government, you find a way to send a clear message to Sweden, and to other countries, that we are not going to stand for this any more. I'm asking this Congress to intervene with some reprise, some action, and something "more than words." My son's life depends on it.

Thank you.

[The prepared statement of Mr. Marinkovich appears in the appendix.]

Mr. CHABOT. Thank you very much, Mr. Marinkovich. I have to say that your testimony was very moving and we do appreciate that.

Our final witness for this panel, and for the day, will be Mr. Sylvester.

#### **STATEMENT OF TOM SYLVESTER, PARENT OF AN ABDUCTED CHILD**

Mr. SYLVESTER. Thank you, Mr. Chairman, for holding this hearing and thank you also, Congressman Chabot, for your active participation. I would like to also express my appreciation to Congressman Portman for his introduction, as well as to Senator DeWine for his continued interest and support.

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child, who was abducted by her Austrian mother from Michigan to Austria on October 30, 1995. That was her last day on American soil. Carina was then just 13 months old. She recently celebrated her 5th birthday in Austria.

In the intervening 4 years, I have worked unceasingly to obtain the enforcement of the various U.S. and Austrian court orders granted in favor of Carina's return to the United States in 1995 and 1996. Unfortunately, not one of the hundreds of people I have contacted, and nothing they or I have done, has made a difference.

For me, The Hague Convention has failed in both of its objects set out in article 1: to obtain the prompt return of abducted children to their countries of habitual residence, and to obtain access to abducted children when access is otherwise being denied.

I placed my trust in The Hague Convention and the judicial system that implements it. I relied on The Hague Convention and the workings of the courts, both here and in Austria, to achieve these objects to both Carina's and my detriment. That was a mistake.

I sit here before you 4 years after my daughter's abduction, a person who did everything right under The Hague Convention, including getting all the right orders both here and in Austria. A person who, nonetheless, has lost his daughter.

As to the prompt return of abducted children, the facts are that, despite Austria's valid and final order in 1995 for the return of Carina to Michigan for a custody determination there, affirmed all the way through the Austrian Supreme Court, Carina was never returned. The Austrian legal system provides no mechanism for a civil enforcement of their orders, rendering this and all of their or-

ders useless pieces of paper. Carina's mother was never compelled to return her and she has not voluntarily done so.

With the passage of time, the Austrian court reopened The Hague case, an action not sanctioned by The Hague Convention, ruling that it was in Carina's best interests that the return order not be enforced and that Carina was now to stay in Austria. The Supreme Court of Austria affirmed, and the case was then closed. Oddly, unlike the return order, the order that the return order would not be enforced and the child not returned is well-respected and honored in Austria. The Austrian court, therefore, proceeded to award Carina's mother custody of Carina, in violation of article 16, and further ordered me to pay child support, retroactive to the very day of her abduction.

As related to access to abducted children, my subsequent requests for access to Carina under article 21, submitted early in 1998, have not yet resulted in a viable order for access. Incredibly, the petition presented to the Austrian trial court under article 21 was initially denied on the grounds that The Hague Convention no longer applied in this case. Thereafter, each time the Austrian court entered an order for access for a specific date, the appellate process would extend beyond the date for the visit, rendering the exercise useless.

Most recently, I submitted to the examination of a purported expert child psychologist in Austria on the issue of how I have accepted the present situation and whether Carina's having access to me would be appropriate. He concluded that I could not possibly have the child's best interests in mind because I asked that she be returned to the United States under the return order or, in the alternative, that she come and spend time with me and her extended family in the States. It is questionable whether I will ever have access ordered, since each schedule submitted to the court is unacceptable in some respect. The court will exercise no independent judgment, but, instead, expects me to submit a proposal precisely in line with its unarticulated opinion.

The court further expressly links access to Carina under article 21 with the payment of child support under an Austrian order, despite a Michigan order from 1996 that I have custody of Carina and pay no support; the lifting of the U.S. warrant for the abductor's arrest; and my participation in an Austrian divorce case initiated by my ex-wife, from whom I was divorced here in the States in 1996.

Should an order for access under article 21 survive the appellate process, just as with the order for return, compliance by Carina's mother will never be compelled since Austria has no means for such compulsion. Whether Carina is made available for access or for return to the United States is entirely at the discretion of the abductor. In Austria, therefore, The Hague Convention provides no remedy whatsoever under either the return objective or the access objective of article 1.

After 4 years of continual activity to rectify this situation through legal channels, working exclusively through the system devised under The Hague Convention, I can say today that there has been absolutely nothing that has been done that has made any difference whatsoever to correct this situation. Unbelievably, it is not

the law of the Austrian government and their courts or the U.S. Government and our courts who are in control of this situation. It is the abductor who is in complete control. This is a case of The Hague Convention at its absolute worst.

I relied on The Hague Convention to my detriment. I have discovered one fundamental difference between Austria and the United States. Austria forsakes international relations for the benefit of its nationals whereas the United States forsakes its nationals for the benefit of international relations. Or, as my ex-wife put it, "Tom, the difference between us is that my government protects me."

There has been no remedy to the wrongful removal of Carina. The abductor has gotten away with complete impunity. Now I am being confronted with demands from the abductor. I am told that I must meet these demands or I risk never seeing my daughter again. I am being extorted for my child.

The real choice for me now is to write off the child; carry out a rescue operation; or participate in hostage-like negotiations with the person who committed the hostile, deviant, and illegal behavior. The system has failed miserably. For me, the implementation of The Hague Convention is completely dependent on the cooperation of the abductor. Carina is being denied her most basic human right, that of having both parents in her life. If you have rights that are not able to be exercised, it's as if you have no rights at all.

I hope and pray that productive actions will result for our children from these hearings today. If you are a parent yourself, perhaps you can imagine the heartbreak of being without your child. I ask for your continued interest and support. I've prepared a formal set of materials that I ask be submitted into the record. Thank you.

[The prepared statement of Mr. Sylvester appears in the appendix.]

Mr. CHABOT. Thank you very much, Mr. Sylvester. Again, very moving testimony which I'm sure the Members of the Committee will take under serious consideration. I want to thank all the witnesses here this morning and, as I mentioned before, I've tried to familiarize myself with each of the cases, as have other Members of the Committee, and I know that you have our sympathy and our support. I can just tell you, personally, as a parent of two children myself, I cannot fathom what you all must have gone through and be going through, even today. We all applaud your courage and your persistence, and fervently hope that each and every one of you will succeed in your quest for justice.

Since I'm most familiar with your case, Mr. Sylvester, let me start with you. You indicated that in this particular case, it's your belief—and I have to say I think I agree with you—that, in essence, it's the abductor that's in complete control of this situation right now and that you're, in essence, being blackmailed. Would you expound upon that a little bit, and how that has affected your situation?

Mr. SYLVESTER. Sure. As I mentioned more specifically, on one of my most recent visits to Austria on June 26, 1999, my former wife indicated to me that I should take her out to dinner. At that

event, she reached across the table with her elbows on the table and indicated to me, "Tom, you know, there's one difference between you and I." And I said, "What's that?" she said "My government protects me."

In reflecting upon that, she actually has the sequencing of events over the past 4 years to give that attitude some validation. This perception by this foreign national is, I think, clear incentive for other foreign nationals to consider such actions. Clearly there exists extreme gender and national bias in favor of mothers and Austrian nationals in the Austrian courts.

What's most alarming to me is I've just received a report just 1 week ago from the Department of State on their visit with the Austrians on March 2 of 1999. In the report, it indicates that this potential scenario, that being that custody of the child would be given to the father, was considered most culturally abhorrent to the Austrians.

The national bias is also exemplified by the undignified, but not uncommon practice, of Austrian judges granting non-Austrian fathers visitation to their child only in small bits in Austria, and only under supervision by a third party.

I'll close by turning now to the U.S. front. At a very critical time in my case, back in the summer of 1996, after the Austrian Supreme Court had affirmed the trial court's decision to return Carina to the place of habitual residence, and as enforcement mechanisms were clearly not evident, I called the Office of Children's Issues, our central authority for assistance, and I talked to the Director of the Office of Children's Issues. I beseeched their assistance under article 7 to cooperate with the central authority of the foreign government of the contracting state to ensure the objects of The Hague Convention were met. The response I got was our strategy is to wait 6 months for the next Hague Conference in March 1997. I said, Good God, why would you wait another 6 minutes?

Mr. CHABOT. Thank you.

Mr. SYLVESTER. In closure, to crystallize our U.S. Government response, is another perhaps only Administrative issue, but I think it does crystallize the level of support from our U.S. Government. It's my understanding that under the Freedom of Information Act it should take 10 days to respond to my request for information relative to my daughter. As I sit here before this Committee today, now more than 3 years from the time of my original request, submitted through my attorney, Jan McMillan, I still don't have that file.

One final note, in that DOS report—If I may, I have one final note. Although I happen to be somewhat delighted that Austria's been one of the five countries named as demonstrating a pattern of noncompliance to its objects of The Hague Convention, I can't help but be concerned when you search out and find appendix A where the DOS identifies 56 countries—or, pardon me, 56 cases identified as unresolved after 18 months. My case doesn't appear. So the Department of State now declares my case as resolved. I would like for the U.S. citizen or central authority to establish the standard of resolving cases when our U.S. children are returned, and not until then.



Mr. CHABOT. On behalf of the Chairman, let me ask a question to each of the panel Members here. What is the one most important thing that you believe that the Congress can do to be of assistance to you and to other parents of internationally abducted children? And, Lady Meyer, we'd like to start with you.

Lady MEYER. Yes. If I can just add one quick point to what Tom Sylvester said.

Mr. CHABOT. Yes.

Lady MEYER. In fact, two points. One of the points is to just reinforce the idea that it's not so much the behavior of our ex-spouses which is the problem but the behavior of the foreign courts. Because at the end of the day, they are the ones who enforce or do not enforce our access rights.

The other point is that, most people are not aware, in Austria and in Germany they still have what they call "the blood law." So, under German and Austrian law, our children are just considered either German or Austrian. That, of course, plays an enormous role against us foreigners when we try to get access or, when we need the courts to behave toward us in a nonbiased way.

But to answer your question, for me, the most important issue about child abduction is that I would like this issue to be recognized as a human rights issue.

The second point is that I'm very firm on the idea that this is not a private, legal matter. In fact, referring to the Reader's Digest article, I was interested to hear the comments of the different U.S. departments. Because it's a new issue, people think that child abduction is just a custody battle. But it isn't. We all had custody, and our children were illegally removed. Therefore, the foreign governments or authorities that did not return our children were in breach of the treaty and of international laws.

Then, the third point, which relates to the first point, is that it's not a private matter when we're denied our most basic human right. I said, I have no access rights whatsoever. I have no access rights and I have been denied the rights that even women in prison are allowed. So it's not a private matter.

Mr. CHABOT. Thank you. Mr. Marinkovich, did you want to add anything?

Mr. MARINKOVICH. The one thing that these rogue countries seem to understand is the principal of economics. I'm using Sweden as an example, because that's where my case started. If everyone would look in their pockets and I bet we would find that we have a whole room full of Ericson phones. I bet that if we would go out in the street and look in these parking lots, we would see a whole parking lot full of Volvos, and of course, we all buy Ikea furniture.

If there's one thing that is a threat to some of these countries—and I know economic sanctions is a large step to take—its economics. If there was some sort of tiered system in which we stood up for our children first, above anything else, by implying that we were moving toward economic sanctions when countries don't assist in returning our abducted children, I'm sure we'd get a great response from these countries.

A case in point. At 1 o'clock today my time, 10:00 Pm Swedish time, my child is going to be on television. Why? Because I'm up here. In front of all of Sweden, he's going to be on television. It is

illegal in Swedish newspapers to print a wanted criminal in their publications. It's a privacy issue. So the only reason my son will get broadcast in Sweden, after 3 years of going there personally and talking to these people, is because I'm here today and because the Congress is doing something about this problem. The fact that we're bringing it up, the fact that we're exposing it, the fact that we've got media here today, the fact that this is going to be in the newspapers, the fact that this will be on the front page of the *Svenson Dogblat* tomorrow morning in Sweden. The fact that the film that I'm taking here is going to be playing in Sweden in front of all of Sweden is showing that the United States does, in fact, have the resolve to do something about this problem.

So, I guess the one thing I can say is, for the sake of American children, don't stop these hearings. Don't ever stop having these hearings. Have as many as you can and bring as many witnesses in as you can and hold as many people accountable, as need be held accountable until we change the way in which we find our children.

Mr. CHABOT. Thank you. Mr. Sylvester, do you want to add anything?

Mr. SYLVESTER. Nothing further.

Mr. CHABOT. OK. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman. If you'll indulge me, as you know, I have a long list of suggestions at the end of my testimony. But I guess the three things that I would ask would be publicity, advocacy, and linkage.

There's no substitute for the bright light of publicity. That's what the Human Rights Reports are all about. That's the very useful purpose they have served. As Lady Meyer has indicated, this subject should be dealt with in the Human Rights Reports, on the merits, for the reasons that I set forth in my statement. Those reports are read by everybody. Governments pay attention to them. The governments that we're talking about today are particularly sensitive to any allegations of human rights violations.

It's particularly tough for us to stomach what they're doing because all of them tout themselves as premiere defenders of children's rights. Sweden lectures the world on being the first country in the world to ratify The Hague Convention on the Rights of the Child. What they do, systematically—I agree, we're not supposed to be talking about individual cases in terms of Congressional actions and so on—but what their institutions and legal and social welfare systems do violate their international treaty obligations under these human rights instruments. So the human rights reports are crucial.

Also, a useful report to Congress on Hague Convention compliance. The report that you received this year, Mr. Chairman, did not comply with your reporting requirement. The last part of it, these so-called details of each case are 20 to 25 pages of gobbledygook because really, in my view, poor legal advice was given to the drafters of the report. They took out even the country names, let alone the people's names, that even if your case is there—and, like Mr. Sylvester's, my case is not there as it should be—even if your case is there, it's hard to find.

So publicity through these reports, if they are disseminated the way they should be, would be very effective. The report to you on Hague Convention compliance I don't think has been put on the Internet. It should go to all American courts, so that a judge in Idaho who is dealing with a case involving Austria or Sweden can look and see what's going to happen to children he allows to go back to Austria or Sweden.

Second, Mr. Chairman, advocacy. American parents have no advocate now except the Congress. The National Center should be allowed to play that role by shifting from incoming cases to outgoing cases. That's what our tax dollars should be used for. With regard to the central authority, I guess the hope, the scenario would be maybe the Civil Division of the Justice Department, which would take an assertive advocacy role and if the State Department wanted to play diplomatic games instead of doing its job, the Justice Department would not hesitate to come to Congress or the media, for that matter—the same with the National Center—to get the job done.

Finally, Mr. Chairman, linkage. No child support agreements with these countries. No new law enforcement treaties with countries that are directly engaged in criminal conduct against our citizens. This interpretation of article 13b of The Hague Convention that I mentioned: No sending children back to countries where there's no enforceable access or visitation.

That, essentially, is what happened between France and Germany. The French judges finally had enough and started to refuse to send children back to Germany. Some changes happened very quickly. The same thing would happen here, but the executive branch has failed to educate American courts. So, time and again, foreign governments litigate in our courts and do very well against American citizens, especially in California in the O'Donohue case and in the Benson case. Against Mark Larson in the Tenth Circuit, the Swedish government did very well in terms of concealing what's going on in their country and in obtaining favorable rulings. So the Federal Government needs to educate our courts and I think then there will be some changes in U.S. courts that will change the conduct of the other governments. Thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much. Now we'll recognize Mr. Payne for questions.

Mr. PAYNE. Thank you very much. I certainly also appreciate your coming and, although I didn't hear all of you, what I did hear certainly is disturbing, and we do appreciate the Chairman taking this matter up.

Just on this question of article 13, when it is invoked when a child expresses a desire to stay with an abducting parent. My question is about the age of the children, and how can a young child be put in a position to make such a decision, and I wonder how that whole age thing has worked and if there is any consideration of—are there any exceptions to the age business?

Lady MEYER. I think I should—I'm a specialist on article 13b, obviously. That is actually one of the problems: Article 13b is the only exception to the immediate return of the child to the country of habitual residence, but The Hague Convention is not very clear. The Hague Convention states that a child should be automatically re-

turned unless, under article 13b, the child objects and has obtained an age and a maturity to which the child can express its objection.

Obviously this was meant to apply for older children of the age of 14 and above—although even at that age it could be a problem. But, unfortunately, some countries, and specifically Germany—as the other cases I have presented show—have used this exception, article 13b, not to return children. Children as young as three and five have indeed not been returned to America, Britain, and France because the judges estimated that the children “objected” to their return.

This is one of the big, big issues of The Hague Convention. In itself, it's a good piece of legislation. It's the only piece of legislation one has. But it has no teeth to it. Every country can interpret it in its own way and there are, for the moment, as we were discussing before, no bodies to oversee the implementation of The Hague Convention. So until very recently, the countries that did not abide by The Hague Convention were not exposed.

Foreign countries, Germany in particular—I'm saying Germany because that's where my problem is—consistently answers that their judicial system is independent and they cannot intervene. But that is not right because if a country signs an international convention, there should be a method for every country to abide by and implement it in more or less the same way. I think the ratio is that in some countries 95 percent of the children are returned and in other countries only 5 percent of the children are returned. Article 13b and nonenforcement of court orders are the two major problems.

Mr. PAYNE. Yes.

Mr. SYLVESTER. If I may add for one brief moment, on the element of age, I think it's noteworthy that the courts in Austria used one major aspect to not enforce their own valid and final order. It was a comment submitted from an expert opinion, they claimed to be expert, a child psychologist in Austria who claimed the very ubiquitous comment that said any child between the ages of 6 months and 6 years would be psychologically harmed to be separated from the mother. Now it's my understanding The Hague Convention applies to all children 16 and under. So I think that, in fact, there's bias that relates to the issue of age that also yields against fathers and goes together with the culturally abhorrent issue of having fathers having custody.

One final issue to add to Lady Meyer's comment relative to the independent judiciary and the central authority's involvement, that's been the party line from the Austrian central authority from day one; they can't involve themselves as an independent judiciary. Yet, I read article 7 of The Hague Convention that they have an obligation to cooperate and to educate the judges, and yet the Austrian central authorities and continued to maintain the party line.

In closing, through this report that I just received last week, following the meeting of March 2, I think it's quite noteworthy that the Austrian central authority had commented that the Sylvester case was unique, but he said specifically, that Austrian judges were not unfamiliar with The Hague process. He said, more specifically, they called our attention—meaning the DOS—to the fact that the central authority directly provides information, including prior de-

cisions that might apply to the courts in the first instance. This central authority underscored in this information the roles of Austria under The Hague Convention.

If, in fact, there was some continuity of information from those representatives from the DOS that went to Austria in March 1999—those people weren't on the issue of my case back in 1996 and early on—I think they could have called the central authorities on their issue of the party line that says that the Austrian central authority has no responsibility to intercede with the independent judiciary. Yet they claim that they, in fact, do in many cases.

Mr. PAYNE. Thank you. My time has expired, but I was just wondering if—I hear the case of Denmark, Austria, and your cases in Sweden. I was just wondering, maybe, Lady Meyer, since you're from Europe, is there—and I've heard you talk about Germany—are there any countries in Europe that have a more liberal policy? Is this a big problem—I would imagine if we have heard these cases here, within Europe, it must be even a greater case and with the new EU and Euro currency and borders down and all of that, how does all that interplay?

Lady MEYER. Unfortunately, it doesn't interplay well because it's the same problem. In fact, the country that has the biggest problem with Germany is France, because they're border countries so there are a lot of intermarriages. The country that we represent, I keep on talking about Austria and Germany because I know that for a fact, and because Austria and Germany have similar systems of law. I mean, it's two names, but it's the same country judicially. But I believe that Sweden also has a similar system of law to Germany and Austria.

In Europe, unfortunately, under the Maastricht Treaty, we are still mainly dealing with commercial matters, i.e. the Euro, but we have not achieved a sufficient degree of cooperation in justice and home affairs matters, which is where cases like ours refer to. But there is at least a new Convention because I've been talking a lot in Europe, that's being signed—not ratified yet, but signed—in Brussels to try and make sure that a custody order made in one European country is recognized in another.

But this is still far away down the line. There is still a huge problem. I know that the French government is very outraged by what's going on with Germany. But, so far, they've felt a little bit alone as though they were the only country complaining. They need support because of one nationality happens more and more.

In Europe, in fact, the figures are growing fast, because it can happen even between parents of one nationality. In the cases I've presented, between two American parents; i.e. one American parent taking the plane and fleeing to another jurisdiction. So child abduction is going to happen more, and something really has to be done to stop it. I find it's not good enough for countries to say, they can't intervene; our judges are independent. Because that's not an answer.

Mr. PAYNE. Thank you, very much, Mr. Chairman.

Mr. CHABOT. I thank the gentleman from New Jersey and recognize the gentleman from California, Mr. Sherman.

Mr. SHERMAN. Thank you, Mr. Chairman. Obviously, our State Department has to do more in this area. I'm chagrined, Mr. Syl-

vester, that you didn't get your Freedom of Information Act documents within a week. I don't know if there's somebody from the State Department here that can comment, but perhaps we could get an assurance from the State Department that you'll get—is there any reason he can't get those documents in a week? Please identify yourself for the record.

Mr. CHABOT. Would you come forward to one of the microphones?

Ms. MARSHALL. My name is Mary Marshall. I'm the Director of Children's Issues in the Department of State. What happened to Mr. Sylvester and his FOIA request is outrageous. We had files on him that went through the system when he requested, they went down into the bowels of the earth, and a report came back to Mr. Sylvester directly saying—Tom, am I right?—"No record." Isn't that what it said?

Mr. SHERMAN. I have a number of other questions, so I'm going to cut you short. Does he get his documents in a week, or he doesn't get his documents in a week?

Ms. MARSHALL. We have arranged something now so that he can get his documents, but not under a FOIA. But it will be everything he needs. Everything that he's asked for.

Mr. SHERMAN. How long will that take?

Ms. MARSHALL. We'll do everything we can to get it in a week.

Mr. SYLVESTER. Is there a reason why the information is not provided under a FOIA?

Mr. SHERMAN. Again, I have only 5 minutes. If you're going to get your documents in a week, that's fine. I think we should remember what France did—and this is apocryphal perhaps—back in the 1980's when Japan was importing VCR's into France. France wanted a piece of that market. They said that every VCR from Japan had to be cleared by Customs in a particular small inland French town. It happened to be the place where they stopped the Moorish invasion. Perhaps we could have a rule that, until this matter is resolved, that all Volvos would have to be cleared through Customs, et cetera, in either Juno, Alaska, perhaps in—

Mr. MARINKOVICH. Simi Valley, California. I'll take the job on a volunteer basis.

Mr. SHERMAN. That might also be good. Because I think it's absurd that a country with such a huge trade deficit, which means we're accepting more goods from the rest of the world than they are accepting from us, and I believe we have a trade deficit with at least two or perhaps all three of the countries mentioned, could not use the economic stick. Other than that, I don't see how we can blame our State Department for not getting anything. They don't have anything to offer. They have no sticks; they have no carrots. This report is wonderful. Maybe the video over there may show in Sweden. But unless there are consequences and those consequences have to mean fewer Volvos until this matter's resolved.

Austria spends millions of dollars trying to enhance its reputation here in Washington. All this cultural stuff. Well if—paintings are wonderful—but if those paintings symbolize the theft of children, then perhaps that word needs to get out, and then the Austrian taxpayers will have wasted their money trying to popularize culture, while, at the same time, following legal principals that seem to harken to a very racist tradition and a tradition that has

not brought any joy to the world. If I understand the Austrian case well, they believe it's culturally abhorrent to send a child of both Austrian and American parentage back to America. Is that—do they allege that that's because it's the mother involved or is that because they just think Austria's a cooler cultural place?

Mr. SYLVESTER. For clarification, the issue and comment by the Austrian authorities was that the potential scenario was most culturally it seemed likely that the mother, rather than her father, would be separated from her child.

Mr. SHERMAN. So it's a preference for mothers over fathers, except, of course, when they're American mothers.

Lady MEYER. I would interrupt there, because it's the national, rather than the mother or the father. For instance, in the cases I am presenting, I'm quoting the judge—"The mother works and, therefore, can support the child" when it was the German mother who was the abductor. And then, "The mother works and, therefore, has no time for the child" when it was me and another American woman who were victim parents.

Mr. SHERMAN. So what we see here is racism, masquerading as sexism.

Lady MEYER. Yes. It's just that more mothers are abducting, in general, than fathers, because the women live abroad with their husbands, rather than the other way around.

Mr. SHERMAN. But it doesn't really matter. The cultural abhorrence here is an abhorrence for anything that isn't Austrian or German. I'd like, though, to bring into the mix here a different case. I realize your not here to comment on this case, but the case of Israel Wurmberg, abducted from my district or just outside my district. Here the abduction was to Costa Rica, which has not signed The Hague Convention.

Yet, our State Department, you would think, would give enough clout to those concerned with children to say let's take Costa Rica out of the CBI until such time as Costa Rica signs and abides by The Hague Convention. But we have a separate department that deals with children and they're allowed to ask. They're allowed to testify. But they're not allowed to do the one thing that could possibly work, and that is deal with the trade issue and make it clear that a country cannot ask for the special trade concessions of CBI and treat American children this way.

I, for the record, would want to submit a position to the State Department as to what proposals they have come up with, Administrative or legislative, to hit trade relations and imports to the United States whenever a country violates The Hague. Also, to make any foreign aid or membership in CBI contingent upon signing and abiding by The Hague agreement. Until then, we hit the high water mark when we get Mr. Marinkovich into the Swedish newspapers. But I don't want the headline to be: Americans talk but won't do anything. There are docks in Juneau and they can accommodate Volvos. I look forward to a State Department attitude that is substantive in the ramifications of ignoring the rights of Americans and, more importantly, the children involved.

Just one parting comment. I mean, what has happened to Israel Wurmberg is just outrageous. What has happened there is, not only have the American courts given the American father custody,

but the Costa Rican courts have also decreed the American father should have custody. Yet, in spite of this, Costa Rican law enforcement authorities simply ignore the paperwork and just side with an illegal conclusion. So I will be talking to the Costa Rican Ambassador here. I would hope that we would invite the Ambassadors of Denmark, Sweden, and Germany to respond to a transcript of these hearings, both so that we get a well-rounded picture, but also so that they're aware of how seriously at least some, and I think all of us in Congress, take these matters.

Thank you, Mr. Chairman.

Mr. CHABOT. We thank all of the witnesses here this afternoon and this morning for their testimony. My final comment would be that I think you all have the right as American citizens to have your government look at this as a highest priority, really. I mean, this has obviously terribly impacted your lives. Nobody should have to go through what you've gone through.

We have The Hague Commission; we've got treaties; we've got laws, but they all amount to nothing if they're not going to be enforced. As American citizens, you have the right to have those laws enforced to the greatest extent possible and, in many instances, it looks like one side's playing by the rules—yourselves, for example—but the other side isn't playing by the rules and, according to your testimony, Mr. Sylvester, according to your wife's own statement, she's being backed up by her government. They're on her side, by implication, yours isn't. That's disgraceful, as far as I'm concerned.

Just listening to this testimony, as a Member of Congress, this just makes my blood boil that you've had to go through this, it has to be terribly frustrating to you. If I were in your shoes, I think my attitude would be, it's time to send the Marines in. We obviously don't have the power to do that here today, but I certainly believe that your testimony has been successful to the extent that it's brought attention to this. It's brought the Administration's attention to this, and we'll do all we can to make sure that you ultimately prevail in something that is so important to you, and also so important to your children, because they've got the right to be with you too.

So, thank you for your testimony. Without objection, each Member will have 5 days to submit any questions or comments. Thank you very much and we're adjourned.

[Whereupon, at 1:19 p.m., the Committee was adjourned.]



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## **A P P E N D I X**

OCTOBER 14, 1999

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**HOUSE INTERNATIONAL RELATIONS COMMITTEE  
PRESS RELEASE**

*DATE: October 14, 1999*

*FOR RELEASE: Immediate*

*CONTACT: Lester Munson 202-225-8097 (les.munson@mail.house.gov)*

**GILMAN PANEL EXAMINES INTERNATIONAL CHILD ABDUCTION**

**WASHINGTON (October 14) - U.S. Rep. Benjamin A. Gilman (20<sup>th</sup>-NY), Chairman of the House International Relations Committee, released the following statement this morning at a committee hearing on international child abduction:**

"This morning's hearing is on an important topic that has received too little attention within our government, in view of the devastating impact it has on the lives of countless thousands of children and their left-behind parents. The magnitude of the problem of international parental abduction of children, in this age of increasing numbers of international marriages, of cheap and easy international travel, and an increase in the stress that is placed upon marriage bonds, is only going to increase over time.

"We have convened this hearing with the hope that we will be able to focus a spotlight on one aspect of a highly complex topic - namely the limitations and failures of the process set forth under the Hague Convention on the Civil Aspects of International Child Abduction that were intended to provide civil remedies that will lead to the prompt return of an abducted or wrongfully retained child to his or her country of habitual residence.

"In many cases the Hague process works, but in too many cases where it does not, the result is a heartbreaking, financially devastating, and infuriating experience for the parent attempting to regain his or her child. This observation will be borne out by the testimony that we will hear later this morning from four parents who have had to endure this tragic experience.

"I believe that it is incumbent upon the Congress to spotlight this situation and to alert our public to this growing problem, to keep the issue under review, and to consider whatever additional remedies may be available that will better protect the rights of American citizens and our children, as well as those of children all over the world who have a right to know and have contact with both of their parents.

"I would like to review some of the things the Congress has already accomplished. In 1993, we enacted the International Parental Kidnaping Act, making the removal from our nation of a child by a non-custodial parent a felony, and the United States is one of the few countries that places international parental kidnaping among this category of crime.

"Last year, our State Department Authorization legislation contained a provision for the Secretary of State to provide a report to Congress on the number of cases under the Hague Convention that were unresolved after 18 months, and to include the list of countries to which children in unresolved cases were believed to be abducted.

"And this year our State Department authorization asks for this report to be expanded to include a list of Hague signatory countries whose legal systems may lack a prompt and effective method for enforcement of civil court orders, or a doctrine of comity, or where, due to other

factors, there is a substantial possibility that an order of return or access under a Hague Convention proceeding, or a United States custody, access, or visitation order, is not being promptly enforced.

"I would like to emphasize, for the record, and for the benefit of our witness from the State Department, that the intent of the Congress in requiring this report is to provide to our parents and judicial officials some body of information that will allow a judge in deciding a custody dispute or setting the terms of a custodial order for a child to make an informed judgment where there is a significant possibility that one parent may take the child to another country.

"Congress also believes that there should be a publicly available listing of countries that are derelict in fulfilling their international obligations.

"As I have already noted, today's hearing is to focus on the Hague Convention, and we certainly recognize that many cases of international child abduction occur in nations that are not signatory to the Hague Convention. We believe, however, that it is important to recognize the weaknesses and defects of the Hague process in order to correct them so that it may indeed serve the purpose that our government intended when it ratified this Convention. That is our immediate purpose today.

"In our consideration of this matter, I would like to point out that the issue with which we should be most concerned is the fact that, by and large, our nation does a good job in assisting foreign parents in the return of their children to their habitual place of residence.

"We expend our taxpayer's dollars to make certain that the National Center for Missing and Exploited Children, and our State Department's Office of Children's Issues have adequate resources to carry out our obligations under the Hague Convention. It is apparent that other governments who have undertaken the same type of commitment under the Convention are failing to live up to the letter and spirit of the law, and it is often our citizens who are victimized by this failure."

*Testifying at the hearing were: The Hon. **Mary Ryan**, Assistant Secretary, Bureau of Consular Affairs, U.S. Department of State; Mr. **Richard Rossman**, Chief of Staff, Criminal Division, U.S. Department of Justice; Mr. **Jess Ford**, Associate Director, National Security and International Affairs Division, U.S. General Accounting Office; Lady **Catherine Meyer**, Parent of Abducted Child; Mr. **Tom Johnson**, Parent of Abducted Child; Mr. **Paul Marinkovich**, Parent of Abducted Child; Mr. **Tom Sylvester**, Parent of Abducted Child; and the Hon. **Mike Forbes**, Member of Congress. Also participating was the Hon. **Rob Portman**, Member of Congress.*

**STATEMENT OF**  
**MARY A. RYAN**  
**ASSISTANT SECRETARY FOR CONSULAR AFFAIRS**  
**UNITED STATES DEPARTMENT OF STATE**  
**BEFORE THE COMMITTEE ON INTERNATIONAL RELATIONS**  
**UNITED STATES HOUSE OF REPRESENTATIVES**  
**CONCERNING**  
**IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL**  
**ASPECTS OF INTERNATIONAL CHILD ABDUCTION**

**Thursday, October 14, 1999**

Mr. Chairman and Members of the Committee –

I am pleased to appear before the Committee today to address the important topic of international parental child abduction. Mr. Chairman, I want you to know how much I appreciate your focus on this issue because there is no greater responsibility than the welfare of our children.

The protection of Americans abroad, including those children victimized by international parental child abduction, is of the highest priority to the Department of State. Matters involving the welfare and custody of children are some of the most difficult and emotional cases with which we must deal. When a parent abducts, or wrongfully retains, a child from his or her home, and prevents the child from having a relationship with the other parent, the trauma to the child is immediate and compounded each day the child is not returned home.

International child abductions are often complicated by the fact that many abducted children are from multi-cultural relationships. They are often citizens of both the United States and the country to which they were abducted. Ultimately the fate of

these children is decided by the courts of the countries to which they have been abducted or in which they have been wrongfully retained. Often custody orders entered into by U.S. state courts are not enforceable outside our country. Even when everyone involved is a U.S. citizen, these cases are often difficult to resolve once the child has been removed from the United States.

### **Hague Convention**

The United States has long taken a lead in creating a mechanism for the return of children abducted internationally. The United States was instrumental in the negotiation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, to which the U.S. became party in 1988. The Convention provides a civil legal mechanism in the country where the child is located for parents to seek the return of, and access to, their child. It applies only to cases where children resident in a Hague Convention country have been abducted to, or wrongfully retained in, another country party to the Convention.

The Bureau of Consular Affairs' Office of Children's Issues acts as the Central Authority for the Convention in the United States. Pursuant to the Convention, a Hague proceeding does not decide custody; instead, it decides in which country custody determination should be made. It should, with very few and limited exceptions, result in an order from the court where the abducted child is located for return to the country of habitual residence so that the parents may pursue the resolution of custody.

Overall, the Convention is a success story. In the first ten years that the United States has been party to the Convention, proceedings have resulted in the return of over 2,000 children to the United States. Further, we believe the existence of the treaty's return mechanism has deterred an untold number of abductions. Approximately 60% of the cases in which we provide assistance are now covered by the Convention. When the U.S. joined the Convention in 1988, only nine other countries were party. Today the Convention is in effect between the U.S. and 53 other countries. We have an active program to encourage countries to join the Convention as the best possible means of protecting children from the harmful effects of abduction. For example, in my August trip to Japan, which is not currently party to the Convention, I discussed with a Justice Ministry official the benefits of the Convention for both our countries. As we look to improve the Convention's effectiveness, we must remember the many parents who wish that they had even this less than ideal mechanism to seek return of their children.

While the Hague Convention has facilitated the return of many children to the United States, and while it is a vast improvement over the lack of any international mechanism whatsoever, it is an imperfect instrument. It does not always facilitate the return of children in cases where it should. The world has changed since the Convention was conceived 19 years ago when the majority of taking parents were fathers. Now, 70 percent of taking parents are mothers, and courts in some countries are reluctant to compel children's return to their fathers in the United States. Nevertheless, before we

became party to the Convention, return to the U.S. of abducted children was approximately 20 percent. Under the Convention about 72 percent of cases result in return or access. The rate of returns from the U.S. to other countries is even higher, approximately 90 percent, including voluntary returns.

The Hague Convention does not guarantee a satisfactory result for every left-behind parent. Implementation of the Convention varies among foreign jurisdictions. Even when the left-behind parent has filed an application in a timely fashion, hired legal counsel, and literally done everything “right”, that parent, and the United States, may be bitterly disappointed with the result. There have been some decisions by foreign courts in Hague cases with which we do not agree. However, these decisions are made by independent judiciaries in independent sovereign states. The Hague Convention cannot make a biased judicial system fair, or a nationalistic judge more objective, nor can it remove gender bias from a judicial system.

This reality offers little comfort to the left-behind parents who have suffered the frustration and anguish of losing contact with a beloved child. Nor does it comfort the traumatized child who has been abruptly wrenched from the arms of one parent and asked in effect to choose sides. That is why we continue to work to improve the implementation of the Convention.

#### **Education and Prevention**

The best means of protecting children from the harmful effects of international parental child abduction is prevention through education about and understanding of the Convention. One way to accomplish this is through increased education both domestically and internationally of family court judges and law enforcement officials. As one means of addressing this issue internationally, we are inviting judges and Hague Central Authorities from a number of common law countries to a conference in Washington next fall to discuss how to improve consistency of decisions and better implementation of the Convention.

#### **Noncompliance Report**

As mandated by the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, this past spring the Secretary of State provided Congress with a report on compliance of party countries. In that report, we found Austria, Honduras, Mauritius, Mexico and Sweden to have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for return of children to the United States.

### **Honduras and Mauritius**

The Government of Honduras has chosen to take no action on applications filed by left-behind parents for the return of children in Honduras, claiming that Honduras is not bound by the Convention, due to an error in its domestic ratification process.

Mauritius was found noncompliant because of a Mauritian Supreme Court decision claiming that the Convention is not binding on Mauritian courts. This situation has been particularly difficult because of two pending cases where small children were taken to Mauritius by their mothers. Although the fathers filed for a Hague return in a timely fashion, the Government of Mauritius stated there was nothing it could do to require the courts to give effect to the Convention. Our Ambassador to Mauritius subsequently obtained the commitment of the Mauritian Minister of Justice that he would ensure this issue was resolved. We will continue to work with the Government of Mauritius with respect to individual cases and on the broader issue of their obligations under the Hague Convention.

### **Austria**

Austria was found noncompliant due to an apparent lack of understanding in the Austrian judiciary about the aims of the Convention. This fact was most clearly illustrated in the case of Carina Sylvester, whose father, Thomas Sylvester, will be testifying today.

Immediately following Carina's abduction to Austria by her mother, her father filed for her return under the Hague Convention. After Mr. Sylvester received a final Austrian court order for return, the mother fled into hiding with the child. When the mother and Carina resurfaced over 18 months after the original abduction, the Austrian courts refused to enforce the still valid final Austrian return order citing that the child had been "resettled into her new environment" in Austria.

The mother's refusal to comply with the return order has become the basis for the court's subsequent decision not to enforce the original return order. This outcome is a perversion of the Convention. The abducting parent must not be allowed to generate the justification for non-return of an abducted child. It rewards abducting parents for ignoring lawful court orders, and encourages them to go underground with children, thereby causing even further harm to the child. In this case, Mr. Sylvester followed the law. He believed in the system. Regrettably, the result is that Carina is still not home. We will not stop trying and we will continue to work through every channel available to us to resolve our differences with the Government of Austria over this and any other case that might arise.

## Mexico

Mexico has been noncompliant because of the large number of cases that have remained unresolved for over 18 months from the date of filing. Almost 60% of our 18-month old cases are with Mexico. The Mexican Central Authority has been unable to locate many children abducted from the U.S., causing even greater anguish for the left-behind parent. Delays in processing these cases by the Mexican Central Authority compound the harm already done to these children when they were abducted.

Recently, staff from our Office of Children's Issues met with the Mexican Central Authority at a conference in California and then traveled on to Mexico City for additional meetings. When I traveled to Mexico in September for a meeting of the Migration and Consular Affairs Working Group of the U.S.-Mexican Binational Commission, I raised with my Mexican counterpart, Undersecretary for Foreign Affairs Juan Rebolledo, the difficulties we have had with these cases. Mr. Rebolledo agreed with me on the importance of this issue and suggested that U.S. and Mexican experts meet as soon as possible to explore solutions.

These efforts have been small steps in improving communication and coordination between the U.S. and Mexican Central Authorities. One bit of good news is that it has led to the recent return of six children pursuant to the Hague Convention and two other court ordered returns from Mexico to the U.S. We plan to continue close contact to improve service to families caught in this dreadful and tragic situation.

## Sweden

We found Sweden to be noncompliant with its obligation under the Convention to locate children abducted to or retained in Sweden. The most egregious example is the case of Gabriel Marinkovich whose father Paul Marinkovich will address you later this morning.

Gabriel's mother, a U.S. citizen, abducted him from the United States to Sweden in 1996, and Mr. Marinkovich immediately filed for his return under the Convention. Despite a Swedish court order for Gabriel's return to the U.S. pursuant to the Convention, Sweden has failed for over three years to find Gabriel. It is inconceivable that, in a country with such a highly socialized welfare system as Sweden has, authorities are unable to find this child and the abducting parent.

In the case of Amanda Johnson, Sweden refused to return her, stating that Amanda's habitual residence had shifted to Sweden during her two-year stay there with her mother, despite the parents' mutually agreed U.S. custody order which included the agreement that a state in the U.S. would remain the place of her habitual residence. The agreement further stipulated that the U.S. state court would maintain continuing and exclusive jurisdiction to resolve all future custody issues.



The Swedish judicial system has allowed Amanda's mother unilaterally to violate a mutually agreed-to custody order, after Mr. Johnson allowed Amanda to travel to Sweden honoring the agreement. He put his faith in the Hague Convention to protect his child, and his faith has been violated. The Swedish system is not allowing Amanda's father to have appropriate access and visitation with his daughter, citing concern that the child may be taken to the U.S. It is outrageous that the Swedish system now seeks to deny her a loving relationship with her father. Recently, a Swedish court reinstituted interim joint custody with unsupervised visitation. Practically speaking, because there is no consistent, effective enforcement mechanism for civil orders, this may be a hollow victory.

The Director of the Office of Children's Issues met with officials from the Swedish Central Authority in Stockholm this past March to discuss these cases. Rest assured that we will not stop our advocacy on behalf of Amanda and Tom Johnson and Gabriel and Paul Marinkovich. We will continue our efforts to win greater cooperation from the Government of Sweden on these difficult cases.

We have identified a number of the biggest obstacles to the effective implementation of the Hague Convention. These include:

- Locating children: Many countries, including Mexico and other Latin American countries, Sweden, Norway and Denmark, have difficulties locating children believed to have been taken to their country. The problem in Mexico appears to be primarily a lack of resources and infrastructure, while the problem in the Scandinavian countries may be more of a lack of interagency cooperation and coordination within the country. Often social welfare agencies do not share information with the Hague Central Authority. Other countries have laws that prohibit information sharing among government agencies.
- Duration of cases: Although Article 11 of the Hague Convention calls for expeditious processing of return cases, and specifies that courts may be asked the reason for delay if they have not decided a Hague case within six weeks, the courts in some countries do not proceed in a timely fashion.
- Non-enforcement of orders: Many civil law countries do not have effective mechanisms for enforcement of their own civil orders for the return of abducted children. The country may not have any penalty for noncompliance with a court order, may levy only a small fine, or have no authority responsible for enforcing a civil order. In some instances, a left-behind parent may have to hire a designated authority (such as a bailiff) to enforce a civil order.
- Consent of the child: The Convention allows judges to refuse to order the return of a child if the child objects to being returned "... and has attained an age and degree of maturity at which it is appropriate to take account of its views." While in the United States we would expect that judges would

consider a child of perhaps ten or twelve years old to be mature enough to think independently of the taking parent's influence, we have seen the views of significantly younger children taken into account in some countries. In Germany, for instance, we have seen judges take into consideration the wishes of children as young as five.

- Undertakings: The courts in a number of Commonwealth countries, including the United Kingdom and Australia, often require the left-behind parent to agree to extensive "undertakings" (conditions for return) before an order for the return of an abducted child will be issued. These undertakings expand rather than limit the exceptions for return of abducted children under the Convention. Examples have included requiring the left-behind parent to pay the abducting parent's transportation costs back to the United States, providing housing costs once the taking parent returns to the U.S., and/or furnishing the abductor with an automobile for the duration of custody hearings. In at least one instance, the left-behind parent was required to demonstrate that he had pre-paid a substantial sum to the taking parent's attorney. These undertakings are not provided for in the Convention, have the effect of rewarding abduction and impose additional hardships on the left-behind parent.

While Germany was not included in the report, there have been problems in a number of cases apparently stemming from the inconsistent application of the Hague Convention by German courts. Germany recognized the problem and through legislation reduced the number of courts that would hear Hague cases from approximately 600 to 24. This change took effect July 1, 1999. Our hope is that this development will create more consistent Hague decisions and provide more focus to German efforts to educate their judiciary about effective implementation of the Convention.

#### **U.S. Federal Response to International Parental Child Abduction**

Since the U.S. became party to the Hague Convention in 1988, the Department of State has worked to improve its implementation. The first year we created a new child custody division to coordinate our work in this area. In 1994, we formed the Office of Children's Issues, redoubling our efforts on this important subject and increasing the level of attention it received in the State Department. The benefits of this new office were quickly realized. In 1994, the Office was recognized by the Administration when it won State's first Vice Presidential "Hammer Award" for reinventing government due to its work to return children home. Our efforts have increased steadily since that time.

The new Office of Children's Issues saw the need for a comprehensive interagency coordinated response to address the scourge of international parental child abduction -- from prevention, to recovery, to reunification. In 1994, it co-hosted, with the American Bar Association, the North American Symposium on International Child Abduction, funded by the Department of Justice, and aimed at improving the operation of

the Hague Abduction Convention.

In an effort to coordinate assistance to abducted children and their families, the Office of Children's Issues entered into a cooperative agreement with the Department of Justice and the National Center for Missing and Exploited Children on September 1, 1995, to work together on these cases. While the National Center had always helped us locate missing children, the agreement formalized this arrangement and expanded the National Center's work to include Hague cases in which children were abducted to, or retained in, the United States.

There were other issues needing attention. One was the matter of legal costs. Although the Hague Convention provides that countries will pay the legal fees of parents in Hague return cases, the Convention allows party countries to take a reservation in this regard and the U.S. made that reservation. As a result, some Americans pursuing return of their children under the Convention were receiving free or reduced fee legal assistance in other countries, while foreign parents pursuing return of their children abducted to, or wrongfully retained in, the U.S. did not receive equal benefits.

At the 1994 intergovernmental meeting of Convention Central Authorities, the U.S. was roundly criticized by other party countries because the high cost of U.S. litigation was effectively denying parents from pursuing Hague remedies in the U.S. As a result of that criticism, the Department of Justice, in coordination with the Office of Children's Issues, agreed in 1995 to fund the American Bar Association's creation of the International Child Abduction Attorney Network (ICAAAN) to expand the pool of attorneys who provide pro bono or reduced fee legal assistance in Hague cases involving children in the United States.

In 1998, the Office of Children's Issues received another award from the Administration as a member of the team, which included the Department of Justice and the National Center for Missing and Exploited Children, that created the family reunification program to help needy parents pay for the costs of returning their children home. We have a robust interagency cooperative effort and are dedicated to using every tool at our disposal.

Despite all the efforts of the Departments of State and Justice to coordinate and cooperate, both the agencies involved and, more importantly, the left-behind parents believed that the U.S. federal response to their cases was not sufficient and that more needed to be done. There were failures in coordination on cases, in part because of the inherent tension between the civil aspects of a case in which the goal is to affect the abducted child's return and the criminal efforts to prosecute abducting parents.

The Senate Foreign Relations Committee invited the Attorney General to testify on international parental child abduction in October 1998. Prior to her testimony, the Attorney General spoke with the Secretary of State and together they committed their two agencies to taking a hard look at how the federal response to international parental child abduction could improve.

The Attorney General and the Secretary of State subsequently formed a Senior Interagency Policy Group to undertake a comprehensive review of the federal government response to international parental child abduction. The Policy Group in turn created a working group. Since they were created, the Policy Group and its Working Group have met at least once a month. The Policy Group, with the input of the Missing and Exploited Children Task Force's Subcommittee on International Parental Child Abduction, prepared "The Report to the Attorney General on International Parental Kidnapping" which the Attorney General submitted to Congress in June. The report outlined the gaps in the federal response and recommendations to improve the situation. The Policy Group developed an action plan to implement the report's recommendations, wherever possible, and to the extent resources permitted.

The action plan addresses:

- The creation of a comprehensive tracking system for international parental child abduction cases;
- An enhanced role for the National Center for Missing and Exploited Children;
- The strengthening of inter-agency coordination;
- Enhanced diplomatic initiatives;
- Increased education and training;
- Strengthened mechanisms to prevent departure of abducted children and abducting parents;
- Expansion of services for parents and children;
- Coordinated budget and resource estimates.

Implementing the international parental child abduction recommendations will be expensive, having a price tag in the millions, and taking several years. As a core function of the Department of State, the Office of Children's Issues should be funded with appropriated resources. I am concerned, Mr. Chairman, that the Department's ability to implement these recommendations will be influenced by the outcome of Congress's consideration of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriation Bill, 2000. I am very concerned that the level of funding in that bill for Department of State activities will significantly delay the implementation of the international parental child abduction recommendations. Please note, Mr. Chairman, that I am not suggesting that funds be earmarked for Children's Issues; the problem for the Department of State is the overall funding found in that bill.

We are well on our way to completing the requirement study for the interagency case tracking system. The contractor has had over a dozen meetings with Children's Issues staff and the interagency community that will be using this system. With needed funding, implementation of the first phase of this system is scheduled for this spring. We have increased the staff of the Office of Children's Issues so that country officers have fewer cases. We will soon be advertising for a management analyst to oversee further development of the comprehensive tracking system, to create accurate statistics on all abduction cases, both to and from the U.S.

We have also expanded our cooperative agreement with the National Center for Missing and Exploited Children to include additional assistance for parents and children in all international child abduction cases. We recently established a National Center coordinator position within the Office of Children's Issues. The passport custody lookout function currently in Passport Services will be transferred to the Office of Children's Issues in early 2000.

As we seek to improve services to parents, we recognize the need for continuing feedback from our customers. Recently, Children's Issues has had a number of meetings with left-behind parents to receive their input on how we might do things better. One of the new positions in Children's Issues will be specifically devoted to enhancing our service to American citizen customers. We have also established Children's Issues coordinators at our embassies and consulates around the world.

Recently, we have seen an example of how our increased interagency communication has aided the return process. Five children abducted from the U.S. to Syria were returned home following extensive interagency cooperation involving the FBI, Department of Justice, local law enforcement and the National Center for Missing and Exploited Children, efforts coordinated by Children's Issues. Children's Issues initiated numerous conference calls among the relevant organizations, ensuring that the return of these children remained the focus of all U.S. Government efforts. Following excellent work by our Embassy in Damascus, one of the abducting parents was arrested in Syria and all five children were returned using Justice Department "family reunification funds" and State Department repatriation loans.

I want to acknowledge the important role that our states can and do play in the recovery of internationally abducted children. Each state in the U.S. has criminalized parental child abduction and has victim compensation and victim assistance programs funded in part by the Department of Justice to help needy left-behind parents. California, in particular, has a very comprehensive program whereby the District Attorney's office in each county has a child abduction unit to assist in the recovery of abducted children. In numerous cases, these units have sent investigators to other countries to retain local attorneys, attend judicial proceedings and accompany the abducted children home at the expense of the county. The California program is a model for other states.

In considering the complexity of both Hague and non-Hague abductions, we must remember that these cases are all centered on children and their need to feel secure in their homes and not live in fear of abduction. Thank you, Mr. Chairman, for the opportunity to address the Committee on this important topic for our children and their parents.



## Department of Justice

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RICHARD A. ROSSMAN

CHIEF OF STAFF

CRIMINAL DIVISION

BEFORE THE

COMMITTEE ON INTERNATIONAL RELATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

INTERNATIONAL PARENTAL CHILD ABDUCTION

PRESENTED ON

OCTOBER 14, 1999

I. INTRODUCTION

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM VERY PLEASED TO APPEAR BEFORE THE COMMITTEE TODAY TO ADDRESS THE TOPIC OF INTERNATIONAL PARENTAL CHILD ABDUCTION. THIS IS A SUBJECT OF PARTICULAR IMPORTANCE AND INTEREST TO THE ATTORNEY GENERAL. IT IS ALSO A DIFFICULT SUBJECT. DIFFICULT BOTH BECAUSE OF ITS HEARTBREAKING IMPACT UPON CHERISHED PERSONAL RELATIONSHIPS, AND BECAUSE OF THE LEGAL AND POLICY CHALLENGES CREATED BY THE NEED TO WORK WITH SEPARATE SOVEREIGN COUNTRIES AND THEIR LAWS. I COMMEND THE COMMITTEE FOR BRINGING ADDITIONAL PUBLIC ATTENTION TO THIS ISSUE, AND THANK YOU FOR PROVIDING ME WITH AN OPPORTUNITY TO DISCUSS THE ROLE THE DEPARTMENT OF JUSTICE (DOJ) PLAYS IN ADDRESSING IT.

II. INTERAGENCY AND POLICY INITIATIVES

ONE YEAR AGO, THE ATTORNEY GENERAL DEMONSTRATED THE DEPARTMENT'S COMMITMENT TO ADDRESSING THE INTERNATIONAL PARENTAL ABDUCTION PROBLEM BY APPEARING PERSONALLY AT THE SENATE FOREIGN RELATIONS COMMITTEE'S HEARING ON THIS SUBJECT. ONE OF THE LESSONS DRAWN FROM THAT HEARING WAS THE NEED FOR INCREASED COORDINATION BETWEEN THE VARIOUS AGENCIES WHICH PLAY A ROLE IN THIS AREA, AND THE

DEVELOPMENT OF POLICIES TO FILL "GAPS" IN EXISTING PROCEDURES. I AM PLEASED TO REPORT THAT SIGNIFICANT STRIDES HAVE BEEN MADE DURING THE PAST YEAR TO ACCOMPLISH THESE GOALS.

SPECIFICALLY, THE ATTORNEY GENERAL AND THE SECRETARY OF STATE APPOINTED A SENIOR POLICY GROUP--ON WHICH I SERVE--TO WORK WITH THE SUBCOMMITTEE ON INTERNATIONAL CHILD ABDUCTION OF THE FEDERAL AGENCY TASK FORCE ON MISSING AND EXPLOITED CHILDREN. AS THE RESULT OF THE WORK OF THE SUBCOMMITTEE AND POLICY GROUP, EARLIER THIS YEAR A DETAILED REPORT ON INTERNATIONAL PARENTAL KIDNAPPING WAS PRESENTED TO THE ATTORNEY GENERAL. A COPY OF THAT REPORT WAS ALSO PROVIDED TO THE SENATE FOREIGN RELATIONS COMMITTEE, AND IS AVAILABLE TO THIS COMMITTEE. AS COVERED MORE THOROUGHLY IN THE STATEMENT OF ASSISTANT SECRETARY RYAN OF THE STATE DEPARTMENT, THAT REPORT IDENTIFIES A SERIES OF PROBLEMS OR "GAPS" WHICH OFTEN EXIST IN INTERNATIONAL PARENTAL KIDNAPPING CASES, AND CONTAINS A SERIES OF RECOMMENDATIONS ON HOW FEDERAL RESPONSES TO THOSE GAPS CAN BE IMPROVED.

WE ARE NOW WORKING ON AN INTERAGENCY BASIS TO IMPLEMENT AS MANY OF THE REPORT'S RECOMMENDATIONS AS POSSIBLE. THE POLICY GROUP HAS DEVELOPED AN "ACTION PLAN" SETTING OUT THE TASKS TO BE



ADDRESSED, AND THE FEDERAL OFFICES TO ADDRESS THEM, AND HAS CREATED AN INTERAGENCY WORKING GROUP CHAIRED BY THE DEPARTMENT OF STATE, OFFICE OF CHILDREN'S ISSUES, TO COORDINATE IMPLEMENTATION OF THIS PLAN. BY WAY OF EXAMPLE, EFFORTS ARE UNDERWAY TO CREATE A COMPREHENSIVE CASE TRACKING SYSTEM FOR INTERNATIONAL PARENTAL CHILD ABDUCTION CASES; DEVELOP AN ENHANCED ROLE FOR THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN; IMPROVE THE OVERSEAS IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION; FURTHER STRENGTHEN INTERAGENCY COORDINATION HERE IN THE U.S.; INCREASE EDUCATION AND TRAINING ON LEGAL OPTIONS AVAILABLE IN ABDUCTION CASES AND HOW TO PURSUE THEM; FOSTER MORE WIDESPREAD AND EFFECTIVE USE OF THE NATIONAL CRIME INFORMATION CENTER (NCIC) AND INTERPOL TO STOP ABDUCTIONS IN PROGRESS AND TO LOCATE ABDUCTED CHILDREN AND ABDUCTORS; AND EXPAND THE SERVICES AVAILABLE TO LEFT BEHIND PARENTS. WHILE THIS REMAINS A "WORK IN PROGRESS", WE ARE PLEASED THAT THIS CRITICAL ISSUE IS NOW RECEIVING THE HIGH LEVEL INTERAGENCY ATTENTION AND PLANNING IT DESERVES.

### III. DOJ'S PROGRAMMATIC EFFORTS

WITHIN THE DEPARTMENT OF JUSTICE, THE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION (OJJDP) SERVES AN IMPORTANT PROGRAMMATIC ROLE IN ADDRESSING INTERNATIONAL PARENTAL KIDNAPPING--AND AS A MEMBER OF THE INTERAGENCY WORKING GROUP IS ACTIVELY INVOLVED IN IMPLEMENTATION OF THE INTERAGENCY ACTION PLAN. OJJDP HAS LONG PROVIDED TRAINING PROGRAMS FOR STATE AND LOCAL LAW ENFORCEMENT ON CHILD PROTECTION ISSUES, AND REMAINS THE PRIMARY DEPARTMENTAL OFFICE INVOLVED IN MISSING AND EXPLOITED CHILDREN'S INITIATIVES.

UNDER THE AUSPICES OF THAT OFFICE'S MISSING AND EXPLOITED CHILDREN'S PROGRAM (MECP), NEW TRAINING ON THE ROLES OF LAW ENFORCEMENT, STATE AND LOCAL PROSECUTORS, PRIVATE ATTORNEYS, AND THE JUDICIARY WILL BE DEVELOPED IN COORDINATION WITH THE WORKING GROUP, AS WILL A PROGRAM TO PROMOTE THE USE OF A COORDINATED, MULTI-DISCIPLINARY AND COMMUNITY BASED APPROACH FOR PREVENTING, INVESTIGATING, AND PROSECUTING THESE CASES. INPUT FOR THESE TRAINING COURSES WILL BE OBTAINED FROM THE INTERAGENCY WORKING GROUP; STATE, LOCAL, AND FEDERAL LAW ENFORCEMENT AND JUDICIAL AGENCIES; THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN (NCMEC OR

“THE NATIONAL CENTER”); AND PARENTS.

OJJDP’S MISSING AND EXPLOITED CHILDREN’S PROGRAM IS ALSO SUPPORTING EFFORTS WITHIN THE WORKING GROUP TO INCREASE THE SERVICES AVAILABLE FOR VICTIM FAMILIES IN INTERNATIONAL ABDUCTION CASES (E.G., COUNSELING, IDENTIFYING LEGAL SERVICES RESOURCES, MENTORING, FAMILY MEDIATION, TRANSLATION SERVICES), AND TO HELP THEM IDENTIFY AND ACCESS MORE QUICKLY AND EFFECTIVELY THE SERVICES THAT ARE ALREADY AVAILABLE. THAT OFFICE, IN COLLABORATION WITH OTHERS, IS WORKING TO ADDRESS THE FRUSTRATION CAUSED BY THE LACK OF KNOWLEDGE WHICH STILL PERSISTS AMONG LEFT-BEHIND PARENTS, THEIR ADVOCATES, LAW ENFORCEMENT, AND STATE AND LOCAL AUTHORITIES ABOUT REMEDIES AND RESOURCES IN INTERNATIONAL ABDUCTION CASES. TO DO SO, MECF IS DEVELOPING RESOURCE GUIDES WHICH WILL ASSIST PARENTS AND LAW ENFORCEMENT AGENCIES IN THE INVESTIGATION PROCESS, AND HOPEFULLY IN THE RECOVERY OF, AND REUNIFICATION WITH, ABDUCTED CHILDREN.

OJJDP ALSO PROVIDES FUNDING FOR THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN. FOR THE PAST FEW YEARS, THROUGH A COOPERATIVE AGREEMENT WITH THE DEPARTMENT OF STATE, THE NATIONAL CENTER HAS PLAYED AN IMPORTANT ROLE IN HANDLING INCOMING HAGUE

CONVENTION APPLICATIONS FROM PARENTS OUTSIDE THE UNITED STATES SEEKING CHILDREN WHO HAVE BEEN TAKEN TO THIS COUNTRY. WE ARE VERY PLEASED THAT THE NATIONAL CENTER'S ROLE IS BEING EXPANDED TO INCLUDE ACTIVITIES RELATED TO CASES IN WHICH CHILDREN HAVE BEEN TAKEN FROM THE UNITED STATES TO OTHER COUNTRIES. AMONG THE TECHNICAL ASSISTANCE AND SERVICES WHICH MAY BE AVAILABLE TO PARENTS AND LAW ENFORCEMENT IN SUCH CASES ARE POSTER CREATION AND DISSEMINATION, AGE PROGRESSION AND RECONSTRUCTION TECHNOLOGY, TRANSLATION OF LEGAL DOCUMENTS, LAW ENFORCEMENT LIAISON, INTERNATIONAL CONTACTS, AND PARENTAL SUPPORT. IN ADDITION, THROUGH AN INTERAGENCY AGREEMENT, OJJDP MAY UPON REQUEST TRANSFER MONIES AVAILABLE FROM THE DEPARTMENT'S FEDERAL CRIME VICTIM ASSISTANCE FUND TO THE NATIONAL CENTER TO PROVIDE NEEDED SERVICES THROUGH ITS VICTIM REUNIFICATION TRAVEL PROGRAM (VRT) TO VICTIMS OF PARENTAL KIDNAPPING. THUS, IN SOME INSTANCES THE NATIONAL CENTER MAY BE IN A POSITION TO PROVIDE EMERGENCY TRANSPORTATION FOR AMERICAN PARENTS, CRISIS INTERVENTION SERVICES, ASSISTANCE IN PARTICIPATING IN CRIMINAL JUSTICE PROCEEDINGS, AND PAYMENT FOR FORENSIC MEDICAL EXAMINATIONS OF THE VICTIM.

## IV. DOJ'S ENFORCEMENT EFFORTS

INTERNATIONAL PARENTAL CHILD ABDUCTION CASES MAY BE ADDRESSED THROUGH THE HAGUE CONVENTION OR OTHER CIVIL MEANS TO RECOVER THE CHILD, AND WHEN APPROPRIATE THROUGH CRIMINAL STATUTES COMBINED WITH EXTRADITION PROCEDURES TO PROSECUTE AND PUNISH THE ABDUCTING PARENT. THE DEPARTMENT OF JUSTICE DOES NOT PLAY A DIRECT ROLE IN THE CIVIL MECHANISMS FOR THE RECOVERY OF CHILDREN INTERNATIONALLY, BUT WE DO AND WILL CONTINUE TO SUPPORT AND WORK WITH THE DEPARTMENT OF STATE IN ITS EFFORTS TO SEE THAT WRONGFULLY ABDUCTED OR RETAINED CHILDREN ARE RETURNED TO THEIR LEFT-BEHIND PARENTS.

THE DEPARTMENT OF JUSTICE'S ROLE IS MORE SIGNIFICANT IN THE INVESTIGATION AND PROSECUTION OF PARENTS WHO VIOLATE APPLICABLE CRIMINAL LAWS. THE LAWS OF THE FIFTY STATES AND THE DISTRICT OF COLOMBIA ALL PROVIDE CRIMINAL PENALTIES FOR PARENTS WHO WRONGFULLY ABDUCT THEIR CHILDREN. THE FBI FOR MANY YEARS HAS, WHEN APPROPRIATE, OBTAINED FEDERAL WARRANTS FOR UNLAWFUL FLIGHT (UFAPs) FOR THOSE ABDUCTING PARENTS CHARGED WITH STATE OR LOCAL OFFENSES WHO CROSS STATE OR INTERNATIONAL BORDERS. SUCH UFAP WARRANTS, WHILE THEMSELVES NOT PROVIDING AN INDEPENDENT BASIS FOR

EXTRADITION, MAY ASSIST IN THE DEVOTION OF FEDERAL RESOURCES TO LOCATING ABDUCTING PARENTS WHO HAVE FLED OVERSEAS. MOREOVER, FOR THE PAST SIX YEARS, INTERNATIONAL PARENTAL KIDNAPPING HAS BEEN A FEDERAL CRIME (INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT, 18 USC § 1204). SPECIALLY TRAINED FBI AGENTS AROUND THE COUNTRY DESIGNATED AS "CRIMES AGAINST CHILDREN COORDINATORS" SERVE AS POINTS OF CONTACT ON EXPLOITATION, ABDUCTION, AND OTHER CRIMES AGAINST CHILDREN. THEY OR OTHER AGENTS IN THEIR FIELD OFFICES WORK WITH ASSISTANT UNITED STATES ATTORNEYS TO INVESTIGATE AND PROSECUTE VIOLATORS OF THE IPKA STATUTE.

THE DEPARTMENT'S CHILD EXPLOITATION AND OBSCENITY SECTION (CEOS) IN THE CRIMINAL DIVISION MAINTAINS OVERSIGHT RESPONSIBILITY FOR IPKA, AND PROVIDES ADVICE AND ASSISTANCE TO AGENTS AND PROSECUTORS THROUGHOUT THE COUNTRY WHO CALL WITH QUESTIONS CONCERNING INVESTIGATIONS OR PROSECUTIONS UNDER THAT STATUTE. ALONG WITH THE DIVISION'S OFFICE OF INTERNATIONAL AFFAIRS, CEOS WORKS CLOSELY WITH UNITED STATES ATTORNEYS OFFICES AND THE STATE DEPARTMENT'S OFFICE OF CHILDREN'S ISSUES TO ENSURE THAT PROSECUTORIAL DECISIONS ARE CLOSELY COORDINATED WITH CHILD RECOVERY EFFORTS.

RECORDS OBTAINED FROM THE DEPARTMENT'S EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS (EOUSA) INDICATE THAT SINCE THE PASSAGE OF THE IPKCA STATUTE THROUGH THE END OF THE SECOND QUARTER OF FISCAL YEAR 1999, UNITED STATES ATTORNEYS OPENED FILES ON 229 INTERNATIONAL PARENTAL KIDNAPPING MATTERS. AS OF APRIL 30, 1999, 77 INVESTIGATIONS WERE PENDING. OF THE 62 DEFENDANTS ACTUALLY INDICTED, 23 CASES HAVE BEEN CONCLUDED RESULTING IN 13 CONVICTIONS.

WHILE THE NUMBERS OF IPKCA PROSECUTIONS AND CONVICTIONS ARE RELATIVELY SMALL, IT IS IMPORTANT TO KEEP IN MIND THAT A LARGE BUT UNDETERMINED NUMBER OF INTERNATIONAL PARENTAL KIDNAPPING CASES ARE CHARGED BY STATE AND LOCAL AUTHORITIES UNDER THEIR OWN LAWS. WE HAVE ALSO BEEN INFORMED THAT THE NUMBER OF IPKCA PROSECUTIONS WHICH HAVE RESULTED IN THE RETURN OF THE ABDUCTED CHILD IS VERY SMALL. HERE IT IS IMPORTANT TO REMEMBER THAT WHILE WE OF COURSE HOPE THAT SUCH PROSECUTIONS HAVE THE RESIDUAL EFFECT OF FACILITATING THE RETURN OF THE VICTIM CHILD, THE IPKCA STATUTE WAS NOT DESIGNED, NOR CAN IT BE EXPECTED TO FULFILL, THAT GOAL.

BOTH THE NATIONAL CRIME INFORMATION CENTER (NCIC), AND INTERPOL, PROVIDE CONSIDERABLE ASSISTANCE IN LOCATING AND IDENTIFYING CRIMINALLY CHARGED ABDUCTING PARENTS AND THEIR VICTIM

CHILDREN.

IN RESPONSE TO THE PREVIOUSLY MENTIONED REPORT TO THE ATTORNEY GENERAL, THE FBI IS EXAMINING THE POSSIBILITY OF SEEKING A CHANGE IN ONE OF THE WAYS THE NCIC MAINTAINS RECORDS. SPECIFICALLY, THE CHANGE WOULD PERMIT THE NAME OF AN ABDUCTED CHILD LOCATED ABROAD TO REMAIN IN NCIC UNTIL ISSUES RELATED TO WHERE THE CHILD WILL ULTIMATELY RESIDE ARE RESOLVED.

INTERPOL'S NATIONAL CENTRAL BUREAU (USNCB) HERE IN WASHINGTON, D.C., WHICH IS STAFFED BY SENIOR AGENTS FROM U.S. LAW ENFORCEMENT AGENCIES, FACILITATES THE ISSUANCE OF INTERNATIONAL LOOKOUTS (E.G., "RED NOTICES" SEEKING FUGITIVES INCLUDING ABDUCTING PARENTS, AND "YELLOW NOTICES" SEEKING MISSING OR LOST PERSONS INCLUDING VICTIMS OF PARENTAL ABDUCTIONS). INTERPOL WAS RECENTLY INSTRUMENTAL IN A CASE IN WHICH AN ABDUCTING PARENT, WHO HAD A HISTORY OF VIOLENT CRIMINAL OFFENSES AND DRUG ABUSE, BROUGHT HIS FOUR YEAR OLD CHILD TO THE UNITED STATES. AT THE REQUEST OF INTERPOL CANADA, THE USNCB COORDINATED INVESTIGATIVE ACTIONS IN EIGHT STATES AND THE DISTRICT OF COLUMBIA. THANKS TO THOSE EFFORTS, THE FATHER WAS ARRESTED BY THE D.C. METROPOLITAN POLICE AND THE UNITED STATES MARSHALS SERVICE, AND THE CHILD WAS TAKEN INTO PROTECTIVE CUSTODY.



ONCE AN ABDUCTING PARENT IS CHARGED BY STATE OR FEDERAL AUTHORITIES AND LOCATED ABROAD, EXTRADITION MAY BE CONSIDERED. HOWEVER, IT IS CRUCIAL TO UNDERSTAND THAT EVEN WHEN SUCCESSFUL, AN EXTRADITION BY NO MEANS ENSURES THE RETURN OF AN ABDUCTED CHILD. THERE HAVE BEEN SAD CASES IN WHICH A FUGITIVE PARENT IS RETURNED FOR PROSECUTION, BUT THE VICTIM CHILD IS HIDDEN IN THE FOREIGN COUNTRY WITH FRIENDS OR RELATIVES, OR THE FOREIGN COURTS FAIL TO GRANT CUSTODY TO THE LEFT-BEHIND U.S. PARENT. IT IS EVEN POSSIBLE THAT AN EXTRADITION REQUEST MAY COMPLICATE THE RETURN OF THE CHILD UNDER THE HAGUE CONVENTION (E.G., SHOULD THE FOREIGN AUTHORITIES BE RELUCTANT TO RETURN A CHILD TO THE U.S. WHEN ONE PARENT FACES THE PROSPECT OF PROSECUTION AND INCARCERATION). IN SHORT, THE DECISION TO SEEK CRIMINAL CHARGES AGAINST AND PURSUE THE EXTRADITION OF AN ABDUCTING PARENT MUST BE MADE ON ITS OWN MERITS FOR LAW ENFORCEMENT REASONS, AND NOT VIEWED AS A QUICK, OR EVEN AN EFFECTIVE, MEANS OF SECURING THE RETURN OF THE CHILD.

EXTRADITION MAY BE AVAILABLE TO A STATE OR FEDERAL PROSECUTOR FOR INTERNATIONAL PARENTAL ABDUCTION IF (1) AN EXTRADITION TREATY IS IN FORCE BETWEEN THE UNITED STATES AND THE COUNTRY WHERE THE FUGITIVE IS LOCATED; (2) THE TREATY RECOGNIZES PARENTAL KIDNAPPING AS

AN EXTRADITABLE OFFENSE; AND (3) NO OTHER TREATY PROVISION WOULD BAR THE FUGITIVE'S RETURN TO THE UNITED STATES FOR PROSECUTION FOR THE OFFENSE. WHEN A PROSECUTOR IS INTERESTED IN REQUESTING EXTRADITION, HE OR SHE CONTACTS THE CRIMINAL DIVISION'S OFFICE OF INTERNATIONAL AFFAIRS (OIA) FOR ADVICE AND ASSISTANCE. OIA WORKS THROUGH THE DEPARTMENT OF STATE TO MAKE SUCH REQUESTS.

THERE ARE PRESENTLY OVER 100 BILATERAL U.S. EXTRADITION TREATIES IN FORCE. UNDER THE MOST MODERN OF THOSE, EXTRADITION IS USUALLY BASED UPON "DUAL CRIMINALITY". THAT MEANS IF AN OFFENSE IS PUNISHABLE IN BOTH COUNTRIES BY AND AGREED UPON TERM OF IMPRISONMENT (OFTEN AT LEAST ONE YEAR), THE OFFENSE IS EXTRADITABLE UNDER THE TREATY.

UNDER OUR OLDER TREATIES, EXTRADITION IS PROVIDED ONLY FOR CRIMES LISTED IN THE TREATIES THEMSELVES. AND WHILE MOST OF THESE TREATIES LIST "KIDNAPPING" OR "CHILD STEALING" AS EXTRADITABLE OFFENSES, FOR MANY YEARS THE STATE DEPARTMENT WAS CONCERNED THAT THOSE TERMS WERE NOT INTENDED BY THE TREATY NEGOTIATORS OR THE SENATE WHEN IT AUTHORIZED RATIFICATION TO COVER **PARENTAL** KIDNAPPING OR ABDUCTION. THANKS TO ACTION BY CONGRESS IN PASSING THE EXTRADITION TREATIES INTERPRETATION ACT OF 1998, WE MAY NOW INTERPRET "KIDNAPPING" TO INCLUDE PARENTAL KIDNAPPING. THE STATE

DEPARTMENT INFORMS US THAT ELEVEN OF OUR TREATY PARTNERS HAVE INDICATED THAT THEY AGREED WITH THE UNITED STATES THAT PARENTAL KIDNAPPING IS COVERED BY OUR EXISTING "LIST" EXTRADITION TREATIES. THIS HAS OPENED THE DOOR TO POSSIBLE EXTRADITION REQUESTS ON SUCH CHARGES TO THOSE COUNTRIES, (E.G., CYPRUS, LUXEMBOURG, NEW ZEALAND), AND POSSIBLY SOON TO OTHER COUNTRIES WHICH HAVE NOT YET RESPONDED TO THE STATE DEPARTMENT SURVEY.

UNFORTUNATELY, EVEN WHEN A TREATY EXISTS AND THE PARENTAL ABDUCTION CRIME IS EXTRADITABLE PURSUANT TO IT, THERE MAY EXIST OTHER OBSTACLES TO OBTAINING EXTRADITION. FOR EXAMPLE, MANY COUNTRIES REFUSE, OFTEN BECAUSE OF A CONSTITUTIONAL OR OTHER IMPORTANT PUBLIC POLICY PROHIBITION, TO EXTRADITE THEIR OWN NATIONALS. OUR TREATIES WITH SUCH COUNTRIES OFTEN DO NOT REQUIRE THE SURRENDER OF NATIONALS. BECAUSE ABDUCTING PARENTS ARE OFTEN NATIONALS OF THE COUNTRIES TO WHICH THEY FLEE WITH AN ABDUCTED CHILD, THEY ARE ABLE TO AVOID EXTRADITION TO THE UNITED STATES. AND ALTHOUGH MOST OF THE COUNTRIES WHICH REFUSE TO EXTRADITE THEIR CITIZENS CAN IN THEORY ASSERT CRIMINAL JURISDICTION OVER THEM FOR CRIMES COMMITTED ANYWHERE IN THE WORLD, AS A PRACTICAL MATTER THIS IS RARELY DONE.

THIS IS NOT TO SUGGEST THAT WE WOULD NOT OR SHOULD NOT EVER REQUEST EXTRADITION KNOWING THAT THE REQUEST WILL BE DENIED ON THE BASIS OF NATIONALITY--SUCH DECISIONS ARE CAREFULLY MADE TAKING INTO CONSIDERATION ALL OF THE PARTICULAR CIRCUMSTANCES--BUT ONLY THAT THE EXISTENCE OF A TREATY WHICH SEEMS TO COVER THE CRIME IS NOT ALWAYS SUFFICIENT TO ENSURE THAT THE OFFENDER IS BROUGHT TO JUSTICE. I CAN ASSURE THIS COMMITTEE THAT EXPANDING THE NUMBER OF U.S. EXTRADITION TREATIES WHICH MANDATE THE EXTRADITION OF NATIONALS IS AMONG THE DEPARTMENT'S HIGHEST INTERNATIONAL LAW ENFORCEMENT PRIORITIES.

#### V. CONCLUSION

IN A SHRINKING WORLD WITH INCREASING NUMBERS OF MULTI-CULTURAL MARRIAGES, THE PROBLEM OF INTERNATIONAL PARENTAL CHILD ABDUCTION WILL NOT DISAPPEAR ANYTIME SOON. HOWEVER, WE AT THE DEPARTMENT OF JUSTICE WILL CONTINUE TO DO WHATEVER WE CAN TO ADDRESS THIS PROBLEM, THROUGH ENHANCED INTERAGENCY COORDINATION, CONTINUED PROGRAMMATIC INITIATIVES, AND VIGOROUS ENFORCEMENT EFFORTS.

MR. CHAIRMAN, THAT CONCLUDES MY STATEMENT. AGAIN, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE ON THIS MOST IMPORTANT TOPIC. AT THIS TIME I WOULD BE PLEASED TO ATTEMPT TO ANSWER ANY QUESTIONS THAT YOU MAY WISH TO ASK ME.



United States General Accounting Office

## Testimony

Before the Committee on International Relations,  
House of Representatives

For Release on Delivery  
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## FOREIGN AFFAIRS

# Federal Response to International Parental Child Abductions

Statement of Jess T. Ford, Associate Director, International Relations and  
Trade Issues, National Security and International Affairs Division



Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss our preliminary observations on the federal government's response to international parental child abduction.<sup>1</sup> The State Department estimates that about 1,000 children annually are abducted from the United States by one of their parents.<sup>2</sup> When these cases are reported to authorities, the State and Justice Departments assume roles in locating the abducted children, reporting on their welfare, intervening diplomatically to secure their return, and bringing abductors to justice. However, left-behind parents and others have raised a number of concerns about the federal response to these child abductions.

Because of these concerns, you asked us to (1) examine problems with the federal government's response to parental child abduction and (2) examine how the federal government is attempting to improve its response. Today, I will discuss several of the problem areas that have been identified and what actions federal agencies plan to take to address them. We plan to complete our work and provide a report to this Committee later this year.

#### SUMMARY

There are a number of problems and issues related to the federal response to international parental child abduction. These problems have been identified by the key agencies involved—the State and Justice Departments and the National Center for Missing and Exploited Children—as well as left-behind parents and others. Together, they present obstacles to left-behind parents in their attempts to locate, gain access to, and return their children. Four problems and issues have received substantial attention. These are

- gaps in federal services to left-behind parents, which make it difficult for parents to recover their abducted children;
- weaknesses within the existing State Department case-tracking process, which impair case and program coordination;
- lack of systematic and aggressive diplomatic efforts to improve international responses to parental child abductions; and
- limited use of the International Parental Kidnapping Crime Act of 1993 to pursue abducting parents and bring them to justice.

<sup>1</sup> International parental child abduction is defined as the removal of a child from the United States or retention of a child outside the United States with intent to obstruct the lawful exercise of parental rights. 18 U.S.C. 1204.

<sup>2</sup> The actual number of cases may be greater because some parents never report the abductions to the State Department but instead pursue a remedy directly with foreign authorities.

<sup>3</sup> Public Law 103-173 codified at 18 U.S.C. 1204.

The State and Justice Departments have developed recommendations, which they believe will address most of the problems if implemented. While we found that action has been taken to implement a number of the recommendations, many await further action and most require resource commitments. In addition, some of the recommended actions are not expected to be implemented for several years. These shortcomings raise questions about the likelihood the recommendations will be put in place.

### BACKGROUND

International parental child abduction is a U.S. federal and state criminal offense. The International Parental Kidnapping Crime Act of 1993 and similar state laws seek to prosecute abductors and bring them to justice. All 50 states, the District of Columbia, and territories have such laws. The Justice Department, including the Federal Bureau of Investigation, is the lead federal agency for pursuing criminal charges against abducting parents. The State Department assumes the U.S. lead role in civil cases.

The State and Justice Departments seek to coordinate their efforts with their state and local counterparts. Other organizations, such as the National Center for Missing and Exploited Children, play instrumental roles in seeking the return of wrongfully abducted or retained children.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction is an international agreement among 54 nations, including the United States, that established civil procedures to follow when locating, accessing, or returning abducted children to resolve custody issues.<sup>4</sup> About half of all abductions from the United States are to other Hague Convention countries. The balance of abductions is to countries that are not parties to the Hague Convention. For abductions to non-Hague countries, locating, accessing, or returning abducted children is a case- and country-specific matter. Under the Hague Convention, each country identifies a lead government agency (called a “central authority”) to serve as a central point of contact. The State Department is the central authority for the United States.

Over the past several years, left-behind parents and others have criticized the federal government’s performance in responding to parental child abductions. In 1994, the Justice Department established a Missing and Exploited Children’s Task Force to assist state and local authorities with difficult missing and exploited children cases.

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<sup>4</sup> 29 ILM 1501 (1980).

<sup>5</sup> The Hague Convention seeks to ensure that child custody disputes will be resolved in the country of the child’s habitual residence.



In December 1997, this task force established the Subcommittee on International Child Abduction and in November 1998 the Attorney General created the Policy Group on International Parental Kidnapping<sup>6</sup> which produced the April 1999 publication entitled A Report to the Attorney General on International Parental Kidnapping.

This report highlighted the problems with the current federal response and made recommendations to correct those problems. In this regard, the report underscored weaknesses with the current case-tracking process and coordination problems between the State and Justice Departments as well as the need to improve services to left-behind parents and aggressively pursue diplomatic efforts to resolve Hague Convention implementation problems. The report suggested ways in which the State and Justice Departments should address these problems. It also offered additional recommendations to develop an enhanced role for the National Center for Missing and Exploited Children to work more closely with U.S. left-behind parents, increase education and training resources for federal and local law enforcement, and tighten mechanisms, such as passport revocation practices, to prevent departure. The report also distinguished between the civil remedies to recover children and the criminal mechanisms to bring abductors to justice.

#### PROBLEMS WITH THE FEDERAL RESPONSE

Key problems cited by the State and Justice Departments, left-behind parents, and others that create obstacles to locating and returning internationally abducted children include gaps in federal services to left-behind parents and weaknesses within the existing case-tracking process. In addition, State Department officials and left-behind parents have cited certain countries that are signatories to the Hague Convention but that are not complying with its provisions. Left-behind parents have also cited the Justice Department's limited use of the 1993 International Parental Kidnapping Crime Act as a problem.

#### Gaps in Services to Left-Behind Parents

Certain gaps exist in federal services to left-behind parents that make it difficult for these parents to recover their abducted children. Left-behind parents and others have criticized the U.S. central authority—the State Department—for not providing a central point of contact for information and guidance on how to address abduction cases. They also cited as problems limited U.S. government-provided financial assistance and counseling services, and infrequent and inconsistent communication with officials managing their cases.

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<sup>6</sup> The subcommittee includes representatives of the State and Justice Departments as well as representatives from the Treasury Department (U.S. Customs Service), the National Center for Missing and Exploited Children, the Kern County, California, District Attorney's Office and the American Prosecutors Research Institute. The policy group is comprised of high-level representatives of the Justice and State Departments and seeks to expedite reforms in the federal response.

One problem is that there is no central point of contact within the federal government that can provide complete information on international parental child abduction cases, making it difficult for left-behind parents to monitor the status of their cases. For example, the State Department's Office of Children's Issues can apprise left-behind parents on the status of their civil cases, but the office usually does not have information on the status of the criminal aspects of these cases. Parents would have to obtain this information from the Justice Department.

Inadequate financial and other assistance to parents has been identified as a problem. Currently, neither the State nor the Justice Departments provide financial assistance to left-behind parents that would be sufficient to offset their costs, unlike some other Hague countries. Securing the return of abducted children can entail significant cost. For example, left-behind parents usually will have to travel abroad, retain a lawyer, and pay other fees. One U.S. left-behind parent told us he spent over \$200,000 pursuing his abducted child, while the abducting parent's costs were paid-in-full by her government. Some countries—Germany and Austria, for example—require that Hague applications and supporting documents be filed in their native language. In these cases, left-behind parents may be required to pay for translation services. Often these costs are beyond parents' means. Moreover, left-behind parents and siblings may need counseling services, but the federal government has not traditionally provided financial assistance for counseling. Using Justice Department funds, a program managed by the National Center for Missing and Exploited Children has provided limited financial assistance to some left-behind parents so they can travel overseas to pick up children returned to their custody.

Another gap in services involves the lack of staff at State's Office of Children's Issues to keep parents informed about the status of their case. For most of fiscal year 1999, the average caseload was about 150 cases per caseworker. An ideal caseload, according to social work experts, is 35 cases per caseworker. Office of Children's Issues staff told us that contact with left-behind parents has suffered as a result of the heavy caseload. Although the Office of Children's Issues does not have a specific requirement regarding the frequency of contact with left-behind parents, the general guidance has been that parents should be contacted once a month on Hague Convention cases and every 4 to 6 months on non-Hague cases.

#### Coordination Problems in Managing Cases

As I mentioned earlier, although several agencies may be involved in international kidnapping cases, the federal government does not have a comprehensive system to track agency activities or assure that all appropriate measures are being taken by all appropriate agencies. The State Department and the National Center for Missing and Exploited Children have separate databases that track international parental kidnapping cases. A Justice Department database tracks criminal cases brought against child abducting parents. These databases are not integrated and may use different criteria to categorize cases, actions, and results. This situation has led to coordination problems and duplication of effort. For example, a

caseworker in the State Department Office of Children's Issues made inquiries on an open Hague case only to find that the Federal Bureau of Investigation had located the child and closed its case a month earlier. This caseworker also told us that his office and the Federal Bureau of Investigation often make duplicate inquiries on the same case.

The State Department's case-tracking system also does not generate meaningful statistics that can be used for program management. For example, the system cannot accurately describe the incidence of reported abduction cases because it does not include information on all international parental abductions and because double counting occurs in some cases. Also, although the system can provide data on the number of closed cases, it cannot report on all the reasons why cases are closed and whether the child was returned. Because of these shortcomings, the Office of Children's Issues lacks data to determine where best to allocate resources or identify the elements of successfully resolved cases.

#### Noncompliance With the Hague Convention

The State Department's 1998 report<sup>7</sup> to Congress on the issue of compliance with Hague rules identified Austria, Honduras, Mauritius, Mexico, and Sweden as the most serious violators of the convention. In some cases, these countries have disregarded their obligations to take appropriate measures to discover the whereabouts of abducted children. In others, their judicial systems have interpreted the convention in a manner that the State Department believes undermines the Convention's basic goal of ensuring the prompt return of children to their habitual residence. Left-behind parents have criticized State for not pursuing diplomatic initiatives more vigorously with these and other countries to enforce implementation of the Hague rules and to resolve other problems. The State Department acknowledges that more systematic and aggressive diplomatic efforts are needed to address problems with the Hague Convention.

#### Limited Prosecutions Under the International Parental Kidnapping Crime Act

You asked us to comment on the Justice Department's implementation of the International Parental Kidnapping Crime Act, which makes parental abduction a federal felony. Since 1993, the Justice Department has indicted 62 parents under the International Parental Kidnapping Crime Act. As a result of these indictments, 13 parents have been convicted of felony parental kidnapping.

Decisions to bring cases under the act rest with each of the independent Offices of the U. S. Attorneys. We spoke with some Assistant U. S. Attorneys who have prosecuted abducting parents and they cited a number of reasons to explain their limited use of the act. For example, some prosecutors indicated that as a general policy they will not indict abducting parents until civil remedies are exhausted under the Hague Convention. They cited congressional intent that the procedures

<sup>7</sup> Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction (Washington, D.C.: Department of State, 1999).

under the Hague Convention should be the option of first choice for a parent who seeks the return of a child.<sup>8</sup> Other prosecutors noted that prosecuting abducting parents can compromise efforts under the Hague civil process to return a child since some Hague countries have asserted their unwillingness to continue pursuing civil remedies if criminal charges are pending against its citizens.<sup>9</sup>

In addition, the Assistant U.S. Attorneys believe they can provide significant federal assistance to left-behind parents by supporting state-level prosecutors in their pursuit of international parental abductors rather than by bringing cases under the act. State-level prosecutors, who have already investigated and indicted a parental abductor, can request from an Assistant U.S. Attorney a federal arrest warrant when the abductor unlawfully crosses state or international borders to avoid prosecution under state law.<sup>10</sup> By doing so, state-level prosecutors can bring a battery of federal resources to bear against the abducting parent. For example, the Federal Bureau of Investigation can assist state-level law enforcement officers with locating the abductor, and federal law enforcement officials can request the State Department to deny or revoke an abductor's passport to prevent departure. Also, federal warrants can be used to invoke international police (INTERPOL) notices to seek abductors wanted for extradition.<sup>11</sup>

Even with these mechanisms, however, Justice Department officials noted that many countries, including several Hague signatories, do not consider a parental abduction to be a criminal offense as the United States does, and thus do not consider international parental abduction to be an extraditable offense. Moreover, even if a foreign country deems parental abduction a criminal offense, it often will not be willing to extradite its own nationals. This is particularly true with respect to the civil law nations of Latin America and Europe.

Lastly, Justice Department officials noted that the act seeks to prosecute abducting parents, an action that does not guarantee the return of the child.<sup>12</sup> In this regard, however, they were unable to provide us with information on how many abducted children have been returned because the Justice Department does not maintain such statistics.

<sup>8</sup> Public Law 103-173, §2(b).

<sup>9</sup> According to the American Bar Association in its 1998 report Issues in Resolving Cases of International Child Abduction, four central government authorities reported that some judges in their country will not order a child's return if criminal charges are outstanding.

<sup>10</sup> The 1980 Parental Kidnapping Prevention Act, Public Law 96-611, expressly declares that the Fugitive Felon Act, 18 U.S.C. 1073, applies to state felony cases involving parental kidnapping.

<sup>11</sup> State arrest warrants can also invoke INTERPOL notices.

<sup>12</sup> In at least one case, a federal judge conditioned an abductor's sentence on the return of the child. The judge's sentence was upheld on appeal. See U.S. v. Amer, 110 F.3d 873 (2d Cir. 1997).

### STATE AND JUSTICE DEPARTMENTS PLAN TO IMPROVE FEDERAL RESPONSE

The State and Justice Departments have developed several recommendations they believe will correct the problems we have discussed. Their April 1999<sup>13</sup> report about deficiencies in the federal response to parental child abductions contains recommendations that seek to expand services and resources to left-behind parents, establish a comprehensive case-tracking system, and implement diplomatic initiatives to address Hague implementation issues. Also, both departments have taken an additional step and developed an implementation plan in August, which, according to the Justice Department, serves as a guide to identify the resources needed to implement proposed changes. We reviewed both the recommendations and the implementation plan and found that State and Justice have made some progress toward implementing their recommendations. However, many of the recommendations are not clearly defined and lack specific resource requirements.

#### Some Progress Made in Specific Areas

The State and Justice Departments have made some progress toward improving services to left-behind parents, designing an integrated case-tracking system and pursuing diplomatic initiatives. Specifically, the State Department has made progress toward improving caseworker services to left-behind parents. In this regard, since October 1998, the Office of Children's Issue has hired 10 additional staff to reduce caseload. In addition, State has recently hired a coordinator who will work out of the offices of the National Center for Missing and Exploited Children, which State expects will facilitate an enhanced relationship between the State Department and the National Center for Missing and Exploited Children.<sup>14</sup> Also, the Justice Department has made limited funding available to nonprofit organizations to provide mentoring services to left-behind parents.

Both the State and Justice Departments have acknowledged the need for a comprehensive, integrated case-tracking system, which they are attempting to develop. The Office of Children's Issues is taking the lead to develop this system, and a preliminary needs assessment is underway. The actual system design should begin early next calendar year.

Finally, State has pursued some diplomatic initiatives with a few countries that have had Hague implementation problems. However, most planned diplomatic initiatives have not yet begun.

<sup>13</sup> A Report to the Attorney General on International Parental Kidnapping prepared by the Subcommittee on International Child Abduction of the Federal Agency Task Force on Missing and Exploited Children and the Policy Group on International Parental Kidnapping (April 1999).

<sup>14</sup> State and Justice have signed a cooperative agreement with the National Center for Missing and Exploited Children that is designed to enhance the center's role in abduction cases.

Implementation of Recommendations will be Difficult Without Clear Resource Commitments

Although State and Justice have made some progress, without clear resource commitments it will be difficult to implement the remaining recommendations in a timely manner. As we mentioned earlier, according to State and Justice, they use their implementation plan to identify the resources needed to carry out proposed changes. However, neither department has been able to provide us with information about such resources. For example, according to State Department officials, all of its planned diplomatic initiatives are contingent on additional funding, but they have not provided us with information about the source and level of funding necessary for these activities. Moreover, State and Justice have not provided us funding information for nearly all the remaining planned changes in the federal response, including the resources needed to fully implement the case-tracking system.

In addition to lacking resource commitments, many of the remaining recommendations we reviewed fail to identify the specific actions the State and Justice Departments will take to achieve their objectives. As we mentioned earlier, the State Department acknowledges that more systematic and aggressive diplomatic efforts are needed to address Hague Convention noncompliance. Most of the recommendations in this regard seek to review, study, and explore Hague implementation issues but fail to identify how these activities will actually help solve Hague implementation problems.

In sum, both the State and Justice Departments have taken positive steps to clarify and describe how they will respond to identified international parental abduction problems. However, without resource commitments, it is uncertain whether they will be able to take additional steps to correct most problems. Both State and Justice Departments agree that they need to establish resource commitments. We expect that as recommendations are implemented and accomplished, a clearer perspective on their efficacy will emerge.

Mr. Chairman, while we have not yet completed our work our preliminary observations are that the State and Justice Departments should continue to define the specific actions and resources necessary to implement their recommendations. Doing so will enable both departments to more effectively manage their corrective actions.

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Mr. Chairman and Members of the Committee, that concludes my prepared statement. I will be happy to answer any questions you may have.

CONTACT AND ACKNOWLEDGMENT

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**Testimony of U.S. Representative Michael P. Forbes**  
**before the**  
**House Committee on International Relations**  
**Hearing on International Child Abduction**  
 October 14, 1999

Thank you, Mr. Chairman and Ranking Member Gejdensen, for the opportunity to come before you today to offer my perspective on the inadequacy of multilateral efforts to stem the tide of international child abduction. Since 1980, the Hague Convention on the Civil Aspects of International Child Abduction has been the most effective tool America has at its disposal to effectuate the return of children stolen from their homes. Unfortunately, our government has declined to use it in cases involving nations that have not ratified the treaty.

Because of my own experience, I have reached the conclusion that the United States has an obligation to set an example in the international community and live by the terms and procedures of the Hague Convention, no matter whether the country to which an American child has been taken is a party. Furthermore, I urge this Administration, and the next, to include ratification of the Convention by those countries that have not yet done so a priority of the foreign policy of the United States. Lastly, I call on the Administration to treat others as we would be treated and pledge to abide by the Hague Convention when dealing with nations that have not ratified the treaty but are seeking the return of children illegally brought to our own shores.

For the past several months, I have been involved in an odyssey best suited to a movie theater than the halls of Congress. Last August, seven-year-old Cebrail Tunga was picked up by his father from his home on Long Island and taken for what was supposed to be a brief visit, pursuant to a New York court order. As a precaution, because Cebrail's father is a Turkish citizen, the New York court required him to give up his passport whenever he spent time with Cebrail. Even so, four days later, Cebrail's mother's worst fears came true when she received a phone call from Cebrail's father in Turkey conveying to her the message that if Vedia Tunga ever wanted to see her little boy again, she would have to go to Turkey to do it.

I learned through discussions I have had with Turkish officials that Cebrail's father lied to the Turkish Consulate in New York, assuring them that he had permission from Vedia to take



Cebrail back with him to Turkey. He had gotten a new passport for himself, a Turkish birth certificate for Cebrail, and, based on his false statement, clear passage to Istanbul. There Cebrail remains, almost two months later. Just the other day, Mr. Tunga called Vedia and told her "I am his Mommy now." She can now see what he looks like only in the few pictures her ex-husband has managed to send. She can hear her boy's voice only in her dreams.

Faced with the frightening prospect of never seeing Cebrail again, Vedia turned to her lawyer who then contacted me. Since I knew that the Hague Convention provided at least a workable framework for pursuing the return of abducted children, I contacted the Department of State's Office of Children's Issues. I was surprised when the Department of State told me that there was no way that the United States could get involved because the Republic of Turkey has not ratified the Hague Convention, although it is a signatory. Consequently, a technicality of international law kept the Department of State from providing any meaningful assistance to Cebrail, apart from a suggestion that Vedia hire a Turkish lawyer to pursue her claim in Turkey's courts.

My next step was to contact the Turkish Ambassador to the United States, Baki Ilkin, to enlist his assistance. The chilly response I received came with the same message, "... the best and most practical, if not the only, course of action which Mrs. Tunga can take is to file a lawsuit against her husband in Turkey."

Undaunted, I turned then to our embassy in Ankara and U.S. Ambassador to Turkey Mark Parris. He arranged for the American Consulate in Istanbul to attempt a welfare check on the child, only to be turned away by Cebrail's father who responded to the consular officer's inquiry by stating, "No American is going to touch my child." Unfortunately, our people in Turkey told me that Vedia had to go through the Turkish legal system, and they sent to me a list of available Turkish lawyers.

I could not accept that Vedia's only recourse was an expensive, private, domestic cause of action, in a court system hostile to her interests, to accomplish a public, international purpose -- the return of a citizen who had been stolen from his home under false pretenses. I refused to believe that achieving his sinister goal could be so simple for Cebrail's father. I rejected the premise that the United States was powerless in the face of a man who betrayed the order of a court to snatch a child from his mother due to a mere technicality in international law.

Undaunted, I appealed directly to the President and Vice President and expressed to them that I was extremely disappointed and disheartened to learn that my own government would provide no assistance to an American citizen whose only child, also an American, has been abducted and taken to a foreign land. They heard my pleas on behalf of Cebrail and worked through the National Security Council's Office of Multilateral and Humanitarian Affairs to place the case back where it started -- the Department of State's Office of Children's Issues. The President committed to working under the auspices of the Hague Convention and, if there is no progress toward Cebrail's return by the end of October, then either the President or the Vice President will raise the matter with the Turkish Prime Minister when they attend the Organization for Security and Cooperation in Europe meeting in Istanbul next month. Clearly, it should not have taken six weeks and an entreaty to the White House to begin the process of bringing Cebrail home.

We cannot abandon parents, like Vedia, and expect them to solve problems like these on their own. The United States government must be the voice for those who have none, such as a mother on Long Island who cannot afford a Turkish lawyer or a seven-year-old American boy who is 6,000 miles away from his home. Our own ratification of the Hague Convention declares to the world that we consider ourselves bound by its provisions -- if not in law, then in principle.

While other countries may not be required to stand by their own doctrines of global conduct, I firmly believe that we, as the main authors and proponents of the Hague Convention, have an obligation to operate under its auspices, for the benefit of our children as well as others. It should also be an uncompromising component of America's foreign policy to urge the Convention's adoption by every member of the global community. In doing so, we will set a standard for every country to follow and, in the end, will ensure that every stolen child finally gets back home.

Thank you, Mr. Chairman.

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**"Implementation of the Hague Convention on the Civil Aspects of  
International Child Abduction"**

**October 14 1999**

**INTERNATIONAL CHILD ABDUCTION**  
**A HUMAN RIGHT'S ISSUE**

**I. Introduction**

- In the US alone, more than 350,000 children are abducted by one of their parents every year. Some cases are resolved. But many are not. And when children are taken abroad, experience has shown that the chances of recovering them through a judicial process can be very slim. The issue of child abduction is a prime example of the limitations of international co-operation in the judicial area.
- The 1980 International Hague Convention on the Civil Aspects of Child Abduction was designed to ensure "*the protection of children against the harmful effects of their wrongful removal and retention*". In this it has largely failed.
- My case, of which some of you may be aware, is typical of how the Convention has failed to work as originally intended, leading to a situation in which parents are for years denied access to their children.

**II. My case**

In 1984, I married a German medical doctor, Hans-Peter Volkmann, in London and our first son, Alexander, was born a year later. We then moved to Germany for the sake of my then-husband's career and I gave up my own in the City of London. Our second son, Constantin, was born in 1987. Our marriage subsequently broke up and in 1992 we agreed a legal separation. I was awarded custody of the children (who were to live with me in London) and Volkmann was granted generous access rights.

At first, all worked well. The children continued their schooling at the French Lycee in London (Constantin coming first in his class) and they spent vacations with their father in Germany. I rebuilt my career in the City of London so that I could support my children. By 1994 I had managed to obtain a senior position in a bank and to buy a comfortable apartment for the three of us.

In July 1994, the children left as usual for their summer vacations with their father in Germany. Without warning, four days before they were due to return to London, their father informed me that he was not sending them back. He

then disappeared with the boys. For the next four weeks, I had no idea of their whereabouts, despite police searches.

In August 1994, the High Court of England & Wales ordered the children's "immediate return" to Britain under the terms of the Hague Convention. The children were made "Wards of Court". In September 1994 the appellate court of Verden (Lower Saxony) upheld the English decision and also ordered the "immediate return" of the children. But in defiance of the court order, Volkmann bundled the boys into a car and vanished. The local police and the Court bailiffs were unwilling to help.

The following day, Volkmann lodged an appeal in the higher court of Celle, a nearby town. To my dismay and astonishment, the judges made a provisional ruling that the children should remain in Germany until the appeal was heard because *"otherwise the mother could hide them in England"*. Still worse, the ruling was made **"ex-parte"**; that is, without informing me or my lawyers so that I was left unrepresented at the hearing.

In October 1994, the Celle court reversed the earlier English and German decisions on the grounds that it was the *"children's wishes"* to remain in Germany, so exploiting the so-called loophole clause of the Hague Convention (Article 13b). The judges expressed the view that the children were German and that they had been suffering in a *"foreign environment... especially since German is not spoken at home or at school; that they were taunted as Nazis."* The judges also ruled that the children had attained an age at which it was appropriate to take their views into account *"since a 7 year old child faced with the decision to play judo or football, generally knows which decision to make"*.

The Jugendamt (Youth Authority) testified at both hearings that a return to the UK would cause the children *"severe psychological harm"*, again taking advantage of the Convention loophole clause. The children had, they said, adapted to their new environment, Alexander felt himself German and the mother had no time for them because she worked. The Jugendamt took evidence only from the German side. Neither I nor anyone from the children's habitual environment in London was interviewed.

At the time of the hearing, I had not seen or spoken to my children in over four months, during which they had been under the sole influence and control of their father and his family.

The Celle court decision meant that in German law all further legal proceedings on custody and access had to take place on the abductor's home territory. The

consequence of this has been that since 1994, I have never been able to gain normal access to my children.

Between November and mid-December 1994, five applications to see my children were rejected on the grounds that I could "*re-abduct*" the boys and that in any case they no longer "*wished*" to see me. This went as far as to deny me access to the boys over the Christmas holidays. In January 1995, following my desperate attempt to see my boys in Verden, my ex-husband asked the court to transfer their place of residence to Germany on the false allegation that I had sought to re-abduct them. Despite a police report confirming that this was untrue, in my absence and without allowing me to file my defence, the court accepted my ex-husband's request. This was followed in March 1995 by a decision of the Verden court, giving temporary custody of the children to my ex-husband, despite their being "Wards of Court" in England. The decision gave me only three hours access to my children, once a month, to be followed after 6 months by one day a month. The access visits had to take place either in my ex-husband's house or in the office of the Jugendamt.

My ex-husband reneged on even these highly limited access arrangements. The court, far from enforcing them, cut back my visitation hours in yet another "ex-parte" decision in October 1995. Thus, a pattern was set which exists to this day: of the Court promulgating access arrangements, my ex-husband refusing to abide by them, and the Court refusing to enforce them.

Despite every guarantee on my part, including the support of the British Consul General in Hamburg, the fear of abduction was consistently used, over the next few years, to deny me and my parents normal access rights. Between the summer of 1994 and December 1998 I managed to see my sons for only 12 hours under the most harrowing conditions: either locked in my ex-husband's secluded house, under the supervision of a third party; or in the offices of the Jugendamt. All visits were broken off after less than two hours.

In September 1997, Volkmann divorced me. My German lawyer strongly advised me not to fight for custody, saying that to facilitate access, it was in my best interest to move quickly to grant Volkmann a divorce and acquiesce in his getting custody. So, in exchange for giving him custody, it was agreed in court that I should have access to my children on "neutral territory", that is in Hamburg.

But when, six long months later, the moment finally came for me to see my sons, Volkmann backed out at the last moment, stating that it was the "*wishes*" of the children not to see me and that they feared I would "*abduct*" them. The Verden judge refused to enforce the access agreement. It was only then that I

discovered that while the custody arrangement was legally enforceable, the access agreement was not. It is extraordinary that a court can rule on divorce and custody while neglecting to protect a parent's rights of access to his/her children.

Further applications for access were rejected and the Verden judge ruled that she would not decide on future access rights without first holding yet another hearing. This would entail, she said, her seeing the children and once more requesting a report from the Jugendamt.

The Jugendamt took two months to file the report. I was not interviewed. Their recommendation was that I should see my children once every two months for five hours in a priest's house in Bremen. This was as inhumane as it was impractical, since by now I was living in the USA. By strange coincidence the recommendation was almost identical to a proposal Volkmann had made me the previous year.

It took until December 1998 to secure the promised hearing; i.e. 15 months after the divorce hearing which should have given me enforceable access rights. The Verden court ruled that the children should get accustomed to me "*little by little*" and that it would be too "*stressful*" for them to see their mother who after a four year separation was practically a stranger to them. The judge once again rejected my argument that the children had been deliberately programmed against me and that for us to re-establish a relationship, what was needed from the start was continuous contact over several days.

The judge established a programme of visits, each of which would be longer than the last and which would culminate in the children visiting me in Washington in August of this year. My husband and I, travelling from the US, saw the boys in December (3 hours), January (one day) and February (2 days). Each visit was marked by increased tension on the part of the boys. My husband, Christopher, who had never before met his step-sons, was shocked to see how in only two months they changed from being children increasingly excited to see their mother to becoming sullen zombies monotonously repeating the same "talking points" against me.

Predictably, a week before the April visit (the first which would involve the children being in continuous contact with me, including overnight), Volkmann sent a fax to say that he would not bring Alexander and Constantin to Hamburg because this was against the boys' "*wishes*" and that it could not be in their "*best interest*" to be forced.

The judge, once again, refused to enforce her decision, stating that a new hearing would have to be held. And before then, she needed to see the children and get another report from the Jugendamt!

We were then informed that the judge had left on indefinite maternity leave and that months would pass before a new judge would be competent to hear my case. Meanwhile, a temporary judge rejected a further application requesting the enforcement of the May and subsequent visits. He claimed to be satisfied that Volkmann was acting in good faith.

As of today, I have no access rights whatsoever since the schedule of visits established in the December 1998 decision is at an end. The German Minister of Justice recently wrote to our Ambassador in Bonn saying that the courts were independent and that she could not intervene. Since it is the courts, not my ex-husband, which are the final arbiter over whether I can see my children, I find myself in an impossible catch-22 situation.

The German courts and the German authorities have rejected all my requests to have my children examined by an independent psychologist specialising in Parental Alienation. In five years, I have received one letter and one school report. I have no information on my children's life, well being, schooling, or any other aspects of their existence. Under German law, I have no rights as a non custodial parent so confirming a letter I received from the Bundeskanzlerlei's office (German Chancellor's office) in 1995 stating that: *"Under German law, it is impossible to go against the wish of the parent who has custody"*. I have no rights as a mother. In 5 1/2 years I have seen my sons 24 hours.

\* \* \*

So the months pass, the years pass, and my children are growing up without a mother. Before my ex-husband abducted our children, they were allowed to see and love both their parents. Now, they are not.

Has anyone proved that I am an unfit mother? No. Has anyone proved that I do not love my children? No. But, I am nonetheless denied the rights that even women in prison are allowed. My parents have been denied all access as well. My **87-year old father** may never live to see to see Alexander and Constantin again.

My children will be scarred for life and they may never recover from this experience. They have become confused and angry with me, because they have been told from the start that I have abandoned them. On two occasions, in 1994



and 1998, when I saw my sons and told them how happy I was to see them, Alexander replied: "you lie. Daddy told us that you could come and see us whenever you wanted - but you never did."

### **III. The Hague Convention: what it does and what it does not do**

The 1980 International Hague Convention on the Civil Aspects of Child Abduction was designed to provide a simple and straightforward procedure:

- Should one parent break a custody agreement either by illegally retaining (on an access visit) or abducting a child, the Hague Convention requires the child's immediate return to the country where the original custody agreement was made. The Convention is not concerned with the "best interest of the child"; that is to say, with the merits of a custody case. Criticisms or complaints about the custodial parent or the terms of a custody award, are matters to be dealt with by the jurisdiction of the child's habitual residence. The paramount objective of the Hague Convention is to return the child "promptly" and to confirm the jurisdiction of the country of origin in custody matters.
- There is however one exception to the requirement for the immediate return of the child to country of habitual residence: *"The judicial or administrative authority of the requested State is not bound to order the return of the child if: (Article 13b) there is a grave risk that the child's return would expose him/her to physical or psychological harm or otherwise place the child in an intolerable situation. The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has obtained an age and degree of maturity at which it is appropriate to take account of its views".* But the intent of the Convention is not to allow these objections except in the most narrowly defined circumstances.
- The precedent setting case of Friedrich v. Friedrich (U.S. Court of Appeal, 6<sup>th</sup> Circle, No. 2, 1996) ruled that *"physical or psychological harm or intolerable situation"* can only be upheld if the child would be sent back to a country where there is a situation of war or famine. Similarly, the child's *"objections"* are to be viewed with great caution - for example against the risk of indoctrination by an abducting parent - and, even if a child were found to object to a return, a return should only be refused in an **exceptional case**. The Consultation paper on Child Abduction published in the February 1997 issue of the British Family Law Journal stressed the need to draw a clear distinction between children's objections under article 13b and children's wishes in ordinary domestic custody cases. This is logical, given that the Convention is not intended as an instrument to resolve custody disputes per se. Additionally, abducted children are by definition put under enormous psychological stress (see below).

### **IV. The Hague Convention: What has gone wrong**

- As with many International Conventions, countries sign them but they do not necessarily abide by them. Different national approaches to implement the Hague Convention, the slowness of procedures, the lack of legal aid in some countries and the excessive recourse to the loop-hole clause (article 13b) has meant that most cases of child abduction remain unresolved. Some children are never located. Others are simply not returned to their country of origin.
- According to the American Bar Association Report of 1997 on the Hague Convention, the rate of return of abducted/illegally retained children varies from 5% to 95% depending on the country. In the absence of a body to oversee the implementation of the Convention, the poor performance of some countries has, until recently, not been exposed and will only improve with difficulty.
- The Forum on International Child Abduction held in Washington on 15<sup>th</sup> and 16<sup>th</sup> September 1998, under the auspices of the National Center for Missing & Exploited Children (NCMEC), which Chairman Ben Gilman kindly opened, identified the major weaknesses in the Hague Convention; weaknesses, which some signatories exploit to avoid returning abducted children to their country of habitual residence. The NCMEC's report on the Conference (full copy attached) pointed in particular to:
  1. Article 13b - the loophole clause: Since it is an exception to the requirement for the immediate return of the child, it stands to reason that an abductor will use it as a defence. But whereas, the intent of the Convention is not to allow this objection except in the most narrowly defined circumstances, in some countries - notably in Germany - it has become virtually the rule. The Lowe Report of 1996 found that **every time the child's "objections" was raised as a defence, a return order was refused by the German courts** (even when children as young as 3 and 5 apparently stated an "*objection*" to their return).
  2. The abducting parent usually raises Article 13b as a defence: judges, who are inexperienced treat these Article 13b objections as "a merit of custody" argument. This is exactly what the Convention is supposed to avoid: such considerations are meant to be reserved to the court of the child's habitual residence, which is best placed to decide on questions of custody and access. But local family courts are too often unable or unwilling to uphold the difference between proceedings under the Hague Convention and arguments over custody arrangements. Underlying this is a distrust of foreign courts.
  3. Number of courts and slowness of procedures: In countries where Convention cases are heard centrally by a small number of specialist judges, the system works well. Cases are dealt with expeditiously, based on paper evidence and without the child's view being usually heard (i.e. approaching article 13b - "*the child's objections*" - with great caution, in particular against the risk of indoctrination by the abducting parent). Judges usually make a decision to return the child, relying on the court of habitual residence to make a fair decision at any subsequent custody hearing. In countries where Convention cases are first heard at the lower level, proceedings are slow and dealt by

judges who are inexperienced in Hague cases. As a result, children are usually not returned.

4. The delay factor (compounded when cases are first heard in lower courts and appeals then lodged in higher courts) gives abductors a further advantage by allowing them to indoctrinate the child against the left-behind parent (for the purpose of article 13b) and in generating a new argument, namely that the child is now settled in its new environment and should not be moved yet again.
5. Local bias: Some countries' courts tend to favour their nationals. This is particularly true when cases are heard in small towns where nationalistic biases and local politics put the foreign parent at a disadvantage.
6. Different approaches of law enforcement agencies: in some countries parental child abduction is a criminal act. In others it is not. As a result, law enforcement agencies' involvement in locating abducted children varies widely. Similarly, return orders are not necessarily enforced.

#### **V. International Child Abduction: An increasing Problem**

- There are no exact figures for trans-national child abduction. Many parents are reluctant to go to the central authorities. Others are not even aware of the existence of the Hague Convention. Their cases are therefore never filed officially. The figures, such as they are, almost certainly understate the problem. Even so they are alarmingly high. The National Centre for Missing and Exploited Children reports that over 1,000 American children are illegally transported abroad every year (3 children every day). The number is probably growing sharply.
- In the US, no specific data is available. Only NCMEC has started recording the cases they receive and establishing a data base. In England, Reunite, the National Council for Abducted Children, has recorded a 58% increase since 1995 in the number of children abducted abroad by an estranged parent. In France, a higher upsurge has been recorded...
- The explosion of international travel and tourism, the social consequences of a global economy, and the increasing irrelevance of national frontiers mean that trans-national marriages are more and more common and that non-custodial parents can easily seize the child and flee to another country. Children will increasingly be the victims of cross-border abductions, until there is an international agreement to sanction parents who take the law into their own hands.

- Unfortunately, despite the rapid increase in abduction cases, there is too little awareness of the phenomenon in the governments and legislatures of Convention signatories. Nor is there much awareness among the general population. As a result, very little is being done to tackle the issue and to make The Hague Convention work as originally intended.
- My own fight was in the beginning focussed exclusively on my own case: first, to secure the return of my abducted children, then to enjoy the basic human right as a mother to have access to them. That fight goes on, as, after five years, the obstacles erected in Germany to my seeing my children become increasingly Kafka-esque. But my battle has also opened a window on the nightmare that is child abduction across the world.
- I have been approached by hundreds of other parents, many of them Americans, who are in the same situation. It was both comforting and horrifying to realise that I was not alone.
- My mission is therefore to raise awareness where I can of the predicament of all US victim parents; to sound the alarm over the damage being done to thousands of children; and to press for action that will make the Hague Convention effective.

#### **VI. Effects on victim parents**

- I have come to realise that most victim parents do not know where to get help, that they feel alone, misunderstood. They are emotionally traumatised. Yet, they still have to cope with daunting practical obstacles, knowing where to find help, dealing with unfamiliar legal systems and bearing the enormous financial cost of pursuing justice.
- But it does not stop there. Parents are often not believed. I know about this because when people first heard my story they simply could not accept it. The reaction is all too familiar: how could this possibly happen in an advanced West European State? The whisper goes round that there must be something wrong with you, the victim parent, to explain the severity of being separated from your children.
- As Hillary Rodham Clinton said in her speech at the launch of the International Centre for Missing and Exploited Children (at the British Embassy on 23 April): *"It took about twenty plus years to take an issue like*

*domestic violence and make it an issue that we talked about in public... Well -children abducted across national borders - is an issue that has a similar moment in time".*

- From the correspondence I receive I can tell you that most victim parents are too distraught and too intimidated to speak out. I know of one US father and one French grandfather who have committed suicide because they could no longer bear the pressure and the injustice.

## **VII. Effect on Children**

- If the pressures and distress for victim parents can be almost too much to bear, imagine what it is like for children. Suddenly snatched from the security of a familiar environment, friends, school, grandparents - often at an age when the breakdown of a family relationship is hard to understand. They do not know what is happening or why.
- We know only too well how traumatic it is for children if they are suddenly denied one of their parents. We know that traumatised children can grow into traumatised adults; that disturbed children can become disturbed adults; that abused children can grow into abusive adults. We are now finding out that abducted children can become abducting parents.
- When parents abduct children, they are obviously not going to tell them that their other parent is wonderful, still loves them and wants to see them. On the contrary, as in my case, the children are told that their other parent is a bad mother or father, who has abandoned them and could see them at any time if only he or she wanted to.
- Situations are worse if the abducting parent is hiding from the police or taking precautions against re-abduction - when the child realises there is a state of war between its parents.
- The child becomes confused and angry. It is traumatised by the loss of one parent. Its greatest fear becomes not to lose the remaining parent.
- This is similar to the "Stockholm Syndrome" when hostages identify with their captors. But in child abduction cases, the syndrome is even more severe because of the age of the child-hostage, its relationship with the captor, and the latter's ruthless psychological exploitation of the relationship.

- Many studies have been done in the USA about what is known as "Parental Alienation Syndrome" - when one parent systematically denigrates the other - and its devastating effect on children.
- The child soon replaces the positive memories of the absent parent with hurt and anger at what it sees, and is encouraged to see, as abandonment and betrayal. In its craving to keep the love of the only remaining parent, the child ends up asserting vehemently that it does not want contact with the victim parent.
- This is not just psychologists' theorising. It is my actual experience and that of the many parents who have contacted me.
- Some parents may believe that their actions have an objective justification (e.g. to rescue their children from domestic violence). But a common thread in all too many cases is the sustained, vengeful effort of the abductor to deprive the other parent of contact with the child to the maximum degree possible. The aim is to flee one judicial system, in favour of another - in order to reverse permanently previous custody decisions and destroy the other parent's relationship with the child.
- The Children's Rights Council Inc. estimates that in the US alone 5.6 million children have difficulty in obtaining access to one of their parents. But when abducted children are not returned to their country of habitual residence, they usually end up being **totally** denied access to their left-behind parents.
- So, given the enormity of the problem, why is it that the Hague Convention is ineffective; why is it that a parent can take the law into his/her own hands and get away with it?

#### **VII. International Child Abduction: Not a private legal matter**

- First, too many governments still regard child abduction as simply an extreme type of child custody dispute and that, as such, it is a "private legal matter" over which governments have no jurisdiction. This is surely hopelessly outdated. Violations of international laws and treaties can assuredly no longer be considered private matters. Nor is the illegal removal or retention of US minors abroad. As Senator deWine said in an interview with Reader's Digest (September 1999 edition): *"We go after countries that steal our products or violate patent and copyright laws, but not when they are supporting the theft of American children."*

- But what could be more of human rights' violation than the denial of a parent's access to his or her children? As Hillary Rodham Clinton said at the launch of ICMC: *"Ultimately these matters are not just about individual children and the pain of victim parents, but they really are a question of human rights."*
- Secondly, there are countries that continue to allow other considerations to override their obligations under the Hague Convention.

#### **VIII. Germany: a case study**

- My own difficulties are with Germany. In the past months, I have heard from some 40 American parents in a similar predicament with Germany. In all our cases, there is a striking uniformity in the arguments and procedures used by various German courts and authorities to **stop the return of our abducted children and then to deny us access to them**. For example:
  - The German authorities tend to be inefficient in locating abducted children. As a result, some victim parents cannot initiate Hague proceedings (cases of John Dukesherer, Joseph Howard). Furthermore, under German law it is possible to change a child's surname without the approval of the father.
  - Under German law it is possible to make emergency custody orders without the knowledge or presence of the opposing party. (Cases of Rebecca Collins, Joseph Cook, James Filmer, Joseph Howard, George Uhl, Donald Youmans). The notion of German domicile can also be established in matter of months (Mark Wayson, George Uhl). As a result, German courts are able to claim jurisdiction over that of the country of habitual residence. It should be noted that the precedent setting case of *Friederich v. Friederich* established that habitual residence is not the same as legal residence; that is to say the court must examine past experience and not future expectation.
  - Many victim parents complain that the Berlin Central Authority offer them little, or no help. Victim parents are also required to pay DM 2,000 by the Berlin Central Authority just to allow them to initiate court proceedings. Some parents cannot afford this to begin with (Robert James, Taylor Tali). German courts also tend to charge for the hearings themselves. This, combined with the costs of lawyers, the translating and travel expenses, makes it impossible for most parents to continue with lengthy proceedings which may last years.

- Since German courts consider a child German if one of its parents is German, decisions tend to favour the German nationality over others. Germany still operates the "blood law", based on the 1913 Imperial Naturalisation Act which grants citizenship from parent to child on the basis of bloodline rather than birthplace or residence (all cases presented). This also allows German authorities to argue that the Vienna Convention governing consular access to US citizens does not apply.
- We are told that the child is better off with the German parent (and by implication, the better parent); that it does not want to leave Germany; and that the victim parent is in no position to take care of the child. It is interesting to note that the arguments used by courts to justify not returning a child are often contradictory: for example "*the mother works and can therefore support the child*" when a German mother is the abductor (James Rinaman) but "*the mother works and therefore has no time for the child*" when the mother is the foreign victim parent requesting a return (Ildiko Gerbhash, Catherine Meyer). Similarly, when a German mother is the abductor the German courts argue that it would cause the child "*severe psychological damage*" to the child be separated from its mother, but when the mother is the foreign victim parent this no longer applies. Instead, it is argued that it would cause the child "*severe psychological damage*" to be separated from its new environment. It should be noted that the precedent setting case, Friedrich v. Friedrich, Federal Dist. of Ohio (Remand Division), 1994 ruled that this objection put forward by the abducting German mother could not apply: she could return with the child to the USA and settle that problem.
- Victim parents can be faced by long legal and procedural delays (Hague proceedings take on average 26 weeks in Germany versus 5 1/2 weeks in England) during which contact with the children is difficult if not impossible. This creates a self-fulfilling prophecy for abductors dependent on a "*will of the child*" defence, since the longer the period without seeing the victim parent, the more the children become alienated and indoctrinated against the victim parent.
- This also reinforces an argument much used by the German courts, namely that the child has "*adjusted to its new environment*" and it would be "*unsettling*" to return it to its country of habitual residence. In the case of Joseph Cooke, this argument has been taken to such extremes that a German court has committed his two children to the care of German foster parents rather than return them to their natural father in the USA.



- But even when return orders are made, they are not necessarily enforced. In Germany, it is customary for judges to make decisions without ensuring that their orders are actually enforced. This in turn allows the abductor time to abscond with the child (e.g. cases of Catherine Meyer, Kenneth Roche, James Rinnaman, Sanjay Das).
- Access is made as difficult as possible and often denied altogether drawing on arguments based either on the "*fear of re-abduction*" or/and "*the child's will*". Victim parents are then told that it would be "*emotionally unbearable*" and "*against the child's interest*" to have contact with them. In my own case, the German court has refused to implement access agreements made in the court itself which my ex-husband has with impunity refused to honour. Similarly, grandparents are denied all access. My 87-year-old father may never live to see Alexander and Constantin again.
- German court procedures nearly always involve the Jugendamt (Youth Authority) who are asked to interview the children and report to the court. This causes further delay in the proceedings and gives an additional advantage to the abductor. In most cases, the Jugendamt does not make inquiries pertaining to the child's habitual residence and it is the abductor, not the victim parent, who is interviewed. But, more importantly, the involvement of the Jugendamt fundamentally violates the spirit of the Hague Convention. The Convention is clear: "*In considering the circumstances referred to article 13b, the judicial and administrative authorities shall take into account the information relating to the background of the child provided by the Central Authority or other competent authority of the **child's habitual residence***" - not of the child's country of retention.
- Underpinning the predicament in which we parents find ourselves is the systematic recourse to Article 13b to legitimise abductions/illegal retentions and to refuse a return. Under German Family law children are often required to participate in court proceedings. In these situations, it becomes of paramount importance to abductor-parents that their children say "the right thing" to the judges. This puts an even higher premium on placing psychological pressure on abducted children. (Stanley Clawar, PhD., C.C.S. and Brynne Rivlin, M.S.S. book "Children held Hostage: Dealing with Programmed and Brainwashed Children" Published by the American Bar Association is probably the best research made to date on how easy it is to programme children). But, the German courts refuse to take into account the abductor's opportunity to programme the children's emotions. In some cases, the children to be interviewed by the court are

as young as three and five (Joseph Cooke, Edwin Troxel). Apart from perverting the original intent of The Hague Convention, asking a child of this age in effect to choose between parents is a form of child abuse.

Professor Elisa Perez-Vera provided the primary source of interpretation of the Convention in her Report of 1980: *"The Convention as a whole rests upon the unanimous rejection of the phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition... the systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to a collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration"*. Furthermore, used in this manner, Article 13b delivers children into precisely the danger from which it is supposed to protect them. What greater psychological harm, what more intolerable situation could there be for a child, than to be exposed to systematic indoctrination by one parent against the other; and, worse, to carry the main burden of responsibility in adult court proceedings for deciding between mother and father?

\* \* \*

In short, this can no longer be regarded as a private legal matter or one where the authorities have no role to play. The problem in all our cases case is not so much the behaviour of our ex-spouses, but the failure of the courts to deliver justice. The courts are the problem. They are responsible for gross miscarriages of justice over which their authorities can no longer wash their hands.

In the cases I am presenting today, German courts and authorities have consistently shown themselves heavily biased towards the German parent; either ignorant or careless of their obligations under the Hague Convention; repeatedly using arguments based on "fear of re-abduction" or the "children's will" severely to constrain access to the children; slow to call hearings and to give judgements; ready to make "ex-parte" decisions, without informing or hearing the witnesses from the non-German side; unwilling to admit independent expert opinion to examine children and the degree to which they have been indoctrinated (Parental Alienation Syndrome); and unwilling to enforce access agreements made in court.

As a result, Rebecca Collins has not seen her children since 1994; Glen Gebhard since 1994; Joe Howard since 1994; James Rinaman since 1996; Kenneth Roche since 1991; Edwin Troxel since 1997; Mark Wayson since 1998; Anne Winslow since 1996; Donald Youmans since 1994; Joseph Cooke's

two children have been placed in foster care and he has not seen them since 1994 and John Dukheshere and George Uhl do not even know the whereabouts of their children... to name but a few. None of us have received any information on our children's welfare. And to top it all, the German courts are usually demanding child maintenance payments from the victim parents!

\* \* \*

I stand before you today, as a mother who seeks only to obtain what is her most elementary human right: that of seeing her sons. I stand before you today, as a voice for all the American parents and children who have been separated in this most cruel way. I stand before you today to urge you to help restore our most fundamental human right - a right which God gave all of us but which a foreign judicial system has inhumanely taken from us.

STATEMENT OF THOMAS A. JOHNSON  
907 Dalebrook Drive  
Alexandria, Virginia  
(703) 799-5899  
(TESTIFYING AS THE PARENT OF AN AMERICAN CHILD  
WRONGFULLY RETAINED IN SWEDEN)

BEFORE THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS  
UNITED STATES HOUSE OF REPRESENTATIVES  
OCTOBER 14, 1999

Implementation of The Hague Convention  
on the Civil Aspects of International Child Abduction

This statement is submitted solely in my personal capacity as an American citizen and as the father of Amanda Kristina Johnson, an American child wrongfully retained in Sweden. Although I have been an employee of the U.S. Department of State for more than twenty years, I make this statement as a private citizen and do not in any way purport to represent or speak for the Department of State, as will be obvious to any reader. I have taken annual leave to be here today and have not used government resources to prepare this statement.

Before proceeding, I would like to express my appreciation to Congressman Gilman for his commitment to finding ways to prevent and remedy international child abduction and retention abroad, for his willingness as Chairman of the Committee to schedule this hearing to learn how and why the system has failed so many abducted American children and their left-behind parents, and for his personal efforts to help children subjected to this crime and human rights abuse. I am also grateful to Congressman Smith and his staff for their legislative drafting efforts, as well as to other members of the Committee and the House Caucus on Missing Children for their interest. Finally, the dedication and hard work of the Committee's staff in preparing for this hearing and assisting individual citizens on a daily basis merits the admiration and thanks of all left-behind American parents. In the midst of an otherwise shattering experience for all such parents, this Committee's legislative work and other recent Congressional initiatives, despite Executive Branch opposition and obstruction, have been among the few encouraging developments.

Mr. Chairman, the norm for American parents in the vast majority of these cases is no return of the child under the Hague Convention or otherwise, no possibility of gaining extradition of the abductor because the Executive Branch has negotiated one-way extradition treaties, no possibility of enforceable access to or visitation with the child because most foreign legal systems have nothing comparable to contempt of court, and no effective assistance from the U.S. Government, which in fact stands ready to assist the abductor and his/her supporting government through enforcement of foreign child support orders and extradition of American parents who rescue their children.

Mr. Chairman, my daughter's individual case is summarized toward the end of this

statement for the record, but most of the statement concentrates on what necessarily must be the Committee's primary focus: remedial actions that will help all Americans. That said, it is important at the outset to note the human impact of these cases and the truly barbaric conduct of governments such as Austria, Germany, and Sweden that enables their citizens to abduct and wrongfully retain American children with impunity. Amanda has not seen her American family, friends, school, church, and home environment for more than five years. She has several grandparents here, but none in Sweden. She has two baby sisters here whom she has never met, with another due next month, but no brothers or sisters in Sweden. Amanda's abductor could not have succeeded without the Swedish Government's comprehensive financial support and other forms of assistance. And governments such as Sweden that virtually encourage child abduction and retention by their citizens could not succeed without the U.S. Government's silence, refusal to make them pay any price for their treaty violations and human rights abuses, and failure to protect American citizens. That is what this statement is about, together with proposed remedies. In particular, the statement addresses:

---The need to publicize and punish direct foreign government support for the abduction and wrongful retention abroad of American children, in violation of the Hague Convention and international human rights instruments

---The need to publicize and counter foreign legal systems that ensure the complete loss of American children not returned under the Hague Convention and then subjected to foreign custody jurisdiction because these legal systems lack contempt of court and cannot enforce access or visitation (i.e., cannot control the conduct of their citizens or protect the parental rights of American parents in child custody and visitation matters)

---The need for enactment of effective preventive and remedial measures, such as those in the State Authorization Bill of each house (Section 203 of H.R. 2415 and Sections 201-203 of S. 886), and for accountability within the Executive Branch concerning the handling of these cases and the obstruction or disregard of all Congressional efforts to help

---The indefensible withholding of documents and information from American parents

---The need for Congress to mandate that the National Center for Missing and Exploited Children (NCMEC) shift from helping foreign parents in "incoming" cases to helping Americans in "outgoing" cases (as NCMEC prefers), hold the case files instead of the Department of State, and play an assertive advocacy role on behalf of American children and their parents; today, left-behind American parents must deal with hostile bureaucrats while foreign parents benefit from NCMEC's superb capabilities at U.S. taxpayer expense

---The need for Congress to reject the "private custody dispute" disinformation campaign, the two-front war presented to left-behind American parents by the Executive Branch (the threats of extradition and child support enforcement), and the effective abandonment or "writing off" of American children through State Department closure of their cases

---The harmful conduct of the State and Justice Departments during the past year, as reflected in the Hague Convention Compliance Report to Congress, the Task Force Report to the Attorney General, and opposition to all pending legislation

---The problems of dereliction of duty, dedication to maintenance of the status quo and keeping other governments happy, incompetence, inexperience, and mismanagement within the Executive Branch

---Human rights violations inherent in government facilitation and support of child abduction/retention, and the disconnect between the First Lady and the State Department on this subject

---Essential elements of any credible General Accounting Office investigation and report

---Specific recommended Congressional actions (most of which require only political will rather than tangible resources)

---Specific proposals for improved implementation of the Hague Convention

---a Summary of the Swedish Government System of Abduction and Wrongful Retention of Children (as an example of what the U.S. Government should be drafting and disseminating to all U.S. courts, law enforcement authorities, family law specialists, and the public on each Hague and non-Hague country that facilitates or supports international child abduction and wrongful retention)

---The latest unsuccessful effort to persuade the Human Rights Bureau (DRL) at the State Department to include this problem in the annual country reports on human rights

---a Submission to the United Nations Committee on the Rights of the Child concerning Sweden's systematic and institutionalized violations of the Convention on the Rights of the Child (as an example of what the U.S. Government should be filing with the Committee as a signatory to the Convention and with the European Commission/Court of Human Rights as a nation whose citizens are being subjected to violations of the European Convention on Human Rights)

#### THE CURRENT SITUATION

Mr. Chairman, the past year has been a very good one for the abductors of American children. With all too few exceptions, they have enjoyed great success, thanks to the foreign governments that support them in a variety of ways and the U.S. Government that fails to provide effective assistance to its citizens who are the victims of these crimes and human rights abuses. At the same time, the U.S. Government and courts keep foreign governments happy by generally returning children to foreign parents, thus helping to

maintain the status quo. Abductors of American children will continue to succeed, unless Congress takes specific actions detailed later in this statement to:

- establish accountability (e.g., annual abduction and human rights reporting to Congress as proposed in the State Department Authorization Bill)
- require effective preventive measures (e.g., dissemination of reports and advisories on foreign legal systems via the Internet and all other possible means to U.S. courts, family law specialists, law enforcement authorities, and the public)
- promote full compliance by foreign governments with the Hague Convention and other relevant international instruments, and
- ensure remedial measures in response to treaty violations.

Mr. Chairman, it is common knowledge that the loss of a child in any manner is one of the worst events that can occur in a person's life. It is likely that every member of this Committee and its staff has in some way been exposed to such tragedies. The loss of any child for any reason is a terrible thing for all concerned. But government-supported abduction and retention of children is a particularly intolerable way to lose a child, especially when the government concerned does so in violation of treaty obligations relied upon by other governments and their citizens. The fact that the Executive Branch seemingly cannot or will not comprehend is that American and other victims of parental child abduction by foreign citizens are often up against the full weight of the foreign government concerned from the start of a case, even if that government is a Party to the Hague Convention.

Too many Americans, Mr. Chairman, have relied on the Hague Convention to their detriment, with their attention thus diverted from possibly more effective options. The issue is not elimination of the Hague Convention process, since it should be preserved if it gains the return of even one child each year that would otherwise not come home. But the State Department has allowed the Hague Convention to become a one-way street enabling our treaty "partners" to benefit from the consistent return of children from the United States, many of whom arguably should not be returned because there will be no enforceable visitation for the American parents. These foreign governments generally fail to reciprocate by returning children to the United States, where contempt of court is available to enforce access and visitation for foreign parents.

Mr. Chairman, the U.S. Government has failed to adjust to the reality that the majority of abductions were by fathers when the Hague Convention was negotiated, but, today, an even higher percentage of abductions are by mothers. The overwhelming majority of States Parties to the Hague Convention never changed their domestic law or their cultural beliefs, so that children can or will be taken away from mothers who abduct or wrongfully retain them. The norm facing the United States is abductions by Middle Eastern fathers to non-Hague countries and by European mothers to Hague countries. The latter have conclusively demonstrated that they will rarely treat an American father better than they will treat their own fathers. In short, these European countries may choose to maintain

extreme gender and national bias (as seen in Germany's treatment of Lady Catherine Meyer). But they do not also have the right to hold themselves out as respectable States Parties to the Hague Convention and Convention on the Rights of the Child.

The State Department has obligations both to inform Congress, all U.S. courts, family law specialists, law enforcement authorities, and the public about this state of affairs so as to reduce the instances of these persistent Hague violators (i.e., European and other civil law countries) enjoying the benefits of the Convention while denying them to American parents, AND to pressure these countries either to engage in radical reform of their legal and social welfare systems OR to withdraw as Parties to the Hague Convention and the Convention on the Rights of the Child (which has numerous provisions that are violated by government support of abduction and retention). In all too many cases, American citizens fatally rely on the mere fact that a country is a Party to the Convention and presumed to comply with it. The State Department has an obligation to set the record straight publicly and loudly at home and abroad, just as it does country-by-country worldwide with travel advisories covering crime, disease, and terrorist threats. The probable permanent loss of children guaranteed by the legal systems of most Hague (and non-Hague) countries (due to unenforceable visitation) is clearly just as serious as the matters covered in the current advisory system.

Mr. Chairman, it is important, of course, not to lose sight of the fact that foreign governments are the source of the problem. But no one seriously questions that any longer. As discussed below, governments like Austria, Germany, and Sweden are taking good care of their citizens while violating the human rights of Americans with impunity. Why should they unilaterally change? They have been given no incentive to do so by the U.S. Government.

#### IMMEDIATE REMEDIES

Mr. Chairman, this intolerable and indefensible situation would begin to improve literally overnight, if the Executive Branch took several actions that cost nothing. The first such action is simply to begin publicly telling the truth about these cases. If nothing else, however, the conduct of the State and Justice Departments during the past year has conclusively demonstrated that they will not take such actions voluntarily. Among other things, the Hague Convention Compliance Report submitted to Congress by the State Department violates both the letter and spirit of the statutory reporting requirement in P.L. 105-277, the Task Force Report to the Attorney General is an attempted fraud on Congress that has nothing to do with reality, all pending legislation (Section 203 of H.R. 2415 and Sections 201-203 of S. 886) has been subjected to unprincipled opposition without any constructive alternatives suggested, NCMEC has been successfully pressured by the State and Justice Departments into continuing to assist primarily foreign parents at U.S. taxpayer expense with only limited help and information provided to American parents, and the senior State Department official responsible for this area (Assistant



Secretary Mary Ryan) has declared in an appalling letter to Insight Magazine that these cases are essentially mere private child custody disputes and that we should be encouraged by a return rate for American children of well under 50 percent. The Ryan letter is particularly insulting to the memory of all abducted and wrongfully retained American children. Consequently, the only real hope for American children and their parents is that Congress will enact legislative directives that:

---require the State Department to submit and widely disseminate to U.S. courts, family law practitioners, and the general public by all possible means (including the Internet) an annual Hague Convention Compliance Report in accordance with the original version of Section 203 of H.R. 2415 (i.e., detailed information including country names on all cases where children have not been returned to the U.S. within 6 months and listings of all Hague Parties that do not have anything comparable to contempt of court in their legal systems to enforce Hague return or visitation orders, that pay legal fees for their abductors at home and abroad, that do not recognize the principle of comity, that have criminal laws directed against left-behind parents who attempt to exercise their custody rights, and so on)

---require the State Department to address family rights and parental child abduction in each country report of the annual human rights reports, in accordance with Section 203 of S. 886 as supplemented by subjects covered in the original version of Section 203 of H.R. 2415 (e.g., whether a country can and will enforce a child's right to have access to both parents even if they reside in different countries, whether a country provides financial support to its abductors, whether a country recognizes the principle of comity and respects the laws and court orders of other countries on custody and visitation, whether a country has criminal legislation that effectively shields its abductors and targets foreign parents attempting to exercise their custody rights, whether statistics show that a country's legal system demonstrates gender or national bias in child custody cases)

---require the State Department to disseminate an interpretation of Article 13b of the Hague Convention to all U.S. courts (with notice to all Hague Convention Parties and announcement at the next Hague Convention Review Conference) that "grave risk" to the child as a basis for non-return includes situations where the child(ren) would be returned to a country with a legal system that has no effective means of enforcing visitation in the United States (or anywhere else) for the American parent or enforcing any other aspect of its civil court orders (i.e., a legal system that has nothing comparable to contempt of court)

---require the State Department to conclude bilateral agreements with the worst offending countries concerning access and visitation

---prohibit the State and Justice Departments from assisting foreign parents in domestic litigation until they uniformly assist American parents in Federal or state court litigation financed by foreign governments and brought to challenge or subvert U.S. court orders

---require the State and Justice Departments to inform all extradition treaty partners that the United States will not extradite its citizens for the offense of parental child abduction to any country that does not extradite or effectively prosecute its nationals for that offense and does not consistently return requested children under the Hague Convention

---require the Executive Branch to transform its contract with NCMEC to process "incoming" cases into a contract for NCMEC to assist only with "outgoing" cases, to transfer all "outgoing" case files from the State Department to NCMEC, and to inform all Hague Parties that NCMEC will no longer assist with "incoming" cases

--mandate that NCMEC take an assertive advocacy role on behalf of American children and parents with BOTH foreign governments and the U.S. Government

--terminate the State Department's authority under P.L. 104-193 (Section 459A) to conclude reciprocal child support enforcement agreements and require the State Department to inform the states that foreign child support orders should not be enforced in cases where the American parent has no enforceable visitation in the United States or there has been a violation of U.S. law or court orders, Federal or state felonies, failure to return a child under the Hague Convention, and so on

#### RECENT EXECUTIVE BRANCH PERFORMANCE

"We cannot push too hard in the Johnson case because that might jeopardize the return of children in other cases."

(Assistant Secretary Mary Ryan)

"I don't work for the American people, I work for the Secretary of State."

(Assistant Legal Adviser Catherine Brown)

"Why are you calling about the Johnson case? That case is closed."

(Response to NCMEC by Ellen Conway of the Office of Children's Issues)

Mr. Chairman, these are actual statements concerning my daughter's case or child abduction generally made to me or others by State Department officials who are supposed to be responsible for obtaining the return of abducted American children. They will give you some idea of what American parents experience when they deal with the State Department, and why this function needs to be shifted elsewhere, with the Department placed in receivership in this area by Congress in the interim. The first statement is a classic expression of appeasement, as discussed below. The second may confirm many suspicions, but was also both honest and sincere, which is precisely the problem. And the third raises the issue of the State Department writing off American children by closing their cases as soon as the foreign government makes a final denial of the U.S. request for return. You know about this matter because the State Department

told you that there were only 56 "unresolved" Hague cases in its Hague Convention Compliance Report to you last spring. As a Marine who was trained from Day 1 never to leave anyone behind and as a citizen who admires and supports the MIA effort, I find the bureaucratic closing of our children's cases particularly offensive. My understanding is that no one, from the President on down, has the authority to write off American citizens, especially our youngest ones

Today, Mr. Chairman, there is no accountability within the Executive Branch, few preventive measures to educate American courts and law enforcement authorities (let alone the public), no strategy to achieve full compliance with the Hague Convention and other applicable treaties, and no political will in the Executive Branch to take effective remedial measures. The reality is that foreign governments provide far more financial, law enforcement, and other assistance to their citizens and others who abduct or retain American children abroad than does the U.S. Government to the left-behind American parents. Worse still, the U.S. Government provides far more assistance to foreign citizens whose children are in the United States, often with good reason as discussed below, than it does to Americans whose children have been abducted or wrongfully retained abroad. U.S. tax dollars permit NCMEC to assist foreign parents in a variety of ways, while the American parents in those cases generally face extreme gender and/or national bias in the foreign courts concerned, and will not be able to obtain enforceable access or visitation with their children except perhaps in a few common law countries. It appears that the Executive Branch cares only about U.S. compliance with its treaty obligations and is unwilling to take any effective measures to ensure that there are negative consequences for foreign governments that consistently fail to comply with their treaty obligations to the United States and that support, in a variety of ways discussed in this statement, the commission by their citizens of Federal and state felonies against American children and their parents..

Mr. Chairman, in Amanda's and so many other cases of children abducted and wrongfully retained abroad, the loss has occurred through a combination of Hague Convention violations and other human rights abuses by foreign governments, direct and substantial institutionalized support by these foreign governments for the abduction and wrongful retention abroad of American and other children, and overall conduct by the State and Justice Departments that, as a practical matter, creates a two-front war for Americans and facilitates the successful commission of these Federal and state felonies against American children and their parents. Asa parents, all of us are also here because we do not want thousands of additional American or other parents to lose their children, which is a certainty unless Congress takes charge and enacts legislation or takes other actions along the lines suggested below to force the State and Justice Departments to carry out the most fundamental responsibility of any government: to protect its citizens at home and abroad. Diplomatic and legalistic approaches alone will not work. They must be backed up by demands for reciprocity and a willingness to impose consequences on foreign governments that continue to provide any form of support to those who abduct and retain American children abroad.

In view of those realities, genuine and long-term improvement is unrealistic as long as the State Department remains the U.S. Central Authority under the Hague Convention and otherwise has the lead responsibility for child abduction matters within the U.S. Government. Most left-behind American parents would agree that the State Department has consistently shown that it lacks the competence, commitment, and political will to perform effectively in these cases, that its approach is to compartmentalize these cases at a low level to prevent any impact on bilateral relations, that its principal concern is ensuring that foreign governments have no complaints about U.S. treaty compliance, and that it has no strategy for dealing with foreign treaty violations and no intention whatsoever to do so. In my own case, relatively strong diplomatic notes to Sweden early on were undercut by the American Embassy in Stockholm failing to hand-deliver them, and thus delivering a clear message to the host government. More recently, despite continuing outrages in the case, the State Department has failed to respond to a Swedish diplomatic note of May 1997 or to send other communications with any teeth. Staff shortage is not the problem, since I supplied more than ten single-spaced pages of points from which to draw. While the Swedish Government routinely distributes all Swedish and U.S. Government documents to its citizen who abducted Amanda, Americans are told to file Freedom of Information Act requests. Earlier this year, an inexperienced State Department team spent a great deal of money in visiting the capitals of the worst European violators of the Hague Convention for consultations (including Austria, Germany, and Sweden), but there has been no report to the American parents concerned and no indication of any positive developments from this trip.

The situation for foreign left-behind parents is very different. According to statistics supplied to the General Accounting Office (GAO) by the National Center for Missing and Exploited Children (NCMEC), the combined efforts of the State Department, the Justice Department, U.S. courts, and U.S. law enforcement have ensured that more than 90 percent of children abducted to or retained in the United States in recent years have been sent back to foreign countries. Ironically, that includes virtually 100 percent to some of the worst offending countries, such as Sweden and Austria. Moreover, as explained below, many of these children were brought to or retained in the United States for valid reasons, such as the impossibility of their American parents receiving fair treatment or even enforceable visitation of any kind from the foreign courts concerned. These children should not be sent away from the United States. But they are, because the Executive Branch has failed to educate American courts and family law practitioners about the grave risks (within the meaning of Article 13b of the Hague Convention) of sending them to countries where they will be denied any contact with their American parents unless the foreign parent decides otherwise.

As described below, foreign government support for abduction and wrongful retention of American and other children continues unabated. Because American lawyers and U.S. Government officials continue to have great difficulty in comprehending or even believing the point, it cannot be repeated too often that parents in our position cannot gain legally enforceable access to or visitation with our children in the countries where they are held

hostage, let alone the United States, unless the abductor permits it.

In other words, the reality that would be helpful for this Committee and Congress in general to address is that the problem goes well beyond the fact that foreign governments are violating their treaty obligations to the United States with impunity, refusing to return American children under the Hague Convention, stealing custody jurisdiction from American courts, and awarding sole custody to their citizens who have committed Federal and state felonies. Even at that point, one might reasonably assume, as I did, that the worst case scenario is being a noncustodial parent with only 4 to 6 weeks of visitation in the United States each year. Regrettably, the fact is that most American children are completely and permanently lost to their American parents, families, friends, and home environments.

After years of ignoring or not wishing to believe this reality, the State Department is reportedly contracting for a study to confirm what American parents have been saying all along: judges in European and other civil law countries have no effective means of enforcing their own orders. In nearly all Parties to the Hague Convention, therefore, refusal to grant a United States return request, followed by the exercise of regular custody jurisdiction, means the complete loss of the child(ren) concerned. Accordingly, Mr. Chairman, American parents of abducted children are, in most cases, faced with a clear choice: abandon their children or conduct a rescue operation. For those who make the latter choice, it is hoped that Congress will ensure that they are fully supported by the U.S. Government and that the current practice of subjecting them to a two-front war (e.g., by means of extradition) is terminated.

#### THE PAST YEAR IN PARTICULAR

Rather than alleging dereliction or incompetence at the State and Justice Departments, it is really only necessary to look at Executive Branch actions and inaction during the past year. Such an examination greatly enhances our credibility and demonstrates more clearly than anything we can say the extent of bureaucratic bad faith, obstructionism, covering up, and devotion to the status quo in this area. The only good news is that now Congress has received the same treatment from the Executive Branch that we have and that the Executive Branch has confirmed everything we have been saying about it. You have been on the receiving end of the same attitude that we experience, particularly with regard to three matters: the State Department's Report to Congress on Hague Convention Compliance, the so-called Task Force Report to the Attorney General, and State Department opposition to proposed legislation.

#### Hague Compliance Report

In this Report to Congress in Spring 1999, the State Department violated both the

letter and spirit of P.L.105-277, the legislation that established the Hague Convention reporting requirement, by submitting an inadequate and unacceptable Report that itself makes the case for a renewed and more comprehensive reporting requirement. Congress asked for a listing of all unresolved cases but was given only 56 cases in which the foreign government has not yet definitively refused to return the child, not the hundreds or thousands of cases in which the American children have never come home. Congress asked for a list of countries with a pattern of noncompliance but was given only a short list that inexplicably omits Germany, one of the worst offenders. Congress asked for detailed information on the unresolved cases but was given utterly useless narratives that not only omit individual names but country names on the preposterous grounds of privacy. Whose privacy? The abductor, the supporting government, and the State Department? Left-behind parents rarely if ever want privacy. They want the world to know what has been done to their child(ren) and who has done it.

#### Task Force Report to the Attorney General

The Attorney General promised this report to the Senate Foreign Relations Committee last fall in order to gain the release of 38 law enforcement treaties being held up because of the poor performance of the Executive Branch in the child abduction area. The Report submitted to Congress has virtually nothing to do with the realities facing American parents and is a blatant attempt to perpetrate a fraud on Congress by giving the impression that the Executive Branch intends to do something other than maintain the status quo. The Report is an example of the oldest game in Washington: production of a "blue ribbon" report by bureaucrats under fire to get Congress, the media, and the public off their backs WHILE CHANGING NOTHING. This Report is noteworthy only for what it omits and conceals. NCMEC recognized this early in the drafting process and withdrew from the project in a hard-hitting written dissent available to the Committee, but the fails to make clear that NCMEC is NOT one of the drafters. Any credible GAO Report would have to evaluate this Report in detail and should discuss the facts that the Report does not explain the discrepancies between the Report's rhetoric and actual Executive Branch conduct (opposition to legislation, thorough reporting, release of documents to parents) and the innumerable gaps, ambiguities, and cover-ups in the Report, including:

- no game plan for diplomatic and other responses to foreign government Hague violations or other forms of support for abduction/retention of American children
- no mention of the central importance of the absence of anything comparable to contempt of court in most Hague countries, thus ensuring total loss of children not returned under the Convention
- no indication that anything other than the status quo will be maintained with business as usual even with the worst violators of the Hague Convention and worst non-Hague countries
- no revelation of the largely successful effort to freeze NCMEC out of "outgoing" cases
- no clear recognition that these are not "private custody disputes"

- no disclosure of how bad the numbers are (see NCMEC memorandum to GAO)
- no recognition that a "grave risk" within the meaning of Article 13 of the Hague Convention exists from countries that cannot effectively enforce access or visitation
- no recognition of the consequences of failing to educate U.S. courts about the nature of foreign government support of child abduction and retention
- no hint of DOJ refusal to enforce the 1993 International Parental Kidnapping Crime Act
- no hint of general DOJ refusal to request extradition
- no acknowledgment of the human rights standards that are being violated and the differing approaches of the First Lady (who is legally and morally right) and the State Department
- no mention of foreign government threats and demands against American parents concerning reimbursement of child support and legal fees paid to abductors
- no mention that the Executive Branch fails to monitor domestic litigation against American parents financed by foreign governments
- no strategy for dealing with extortionate demands by even the best Hague countries (e.g., the UK) for costly "undertakings" by the American parent, as in the Lebeau case
- no acknowledgment that foreign governments claim "private custody disputes" while hiding behind their sovereign immunity in hiring and paying American lawyers to represent abductors in abusive litigation in U.S. courts intended to exhaust American parents financially
- no hint of State's negotiation of child support enforcement agreements with foreign governments without safeguards or exclusions to protect left-behind American parents
- no revelation of State's policy of closing cases and compartmentalizing them at the lowest level to avoid any impact on bilateral relations

#### Legislative Proposals

The State Department failed to submit any legislative proposals, but used disingenuous and misleading arguments to oppose in an excessively destructive manner every Congressional initiative in the State Department Authorization Bill in both Houses (H.R. 2415--previously H.R. 1211--and S.886). At the same time, it is not clear that the State Department informed House proponents that some proposals concerning issuance of passports would impact adversely and unjustly on many left-behind American parents of abducted children.

Mr. Chairman, so many problems presented to Congress require large allocations of human and material resources to fix. This one does not. So many issues involve legitimate foreign interests or competing U.S. Government interests such as national security or major economic interests as possible bases for not assertively pursuing or defending the interests of American citizens. This one does not. So many international human rights and law enforcement problems cannot be addressed and largely remedied by means of the State and Justice Departments simply telling the truth and exhibiting

sufficient political will. This one can.

As demonstrated beyond any doubt by their conduct during the past year, the State and Justice Departments are dedicated to maintaining the status quo and will not change unless forced to do so by Congress. Although the status quo guarantees that increasing numbers of American children will be successfully abducted and wrongfully retained abroad, the State and Justice Departments appear sensitive only to foreign complaints and interests. As American parents and those who try to help them know all too well, neither the State Department nor the Justice Department has shown any significant improvement in performance during the last year, despite the Senate Foreign Relations Committee hearings on October 1, 1999, excellent legislation proposed by members of this Committee and your colleagues in the Senate, widespread media coverage (in the New York Times, Reader's Digest, Insight Magazine, and many other publications), the personal involvement of the First Lady, and the efforts of those who have established the International Center for Missing and Exploited Children. Those who abduct and wrongfully retain American children abroad have little to fear from the United States Government. This has been spelled out by reporters Dan Levine and Tim Maier in recent Reader's Digest and Insight Magazine coverage, respectively, with which The Committee may be familiar.

This past year also included the promotion of Assistant Secretary Mary Ryan to the highest possible rank in the U.S. Foreign Service, perhaps in part as a reward for compartmentalizing international child abduction in her largely ineffective Office of Children's Issues, so that the rest of the Department and our embassies abroad do not have to deal with American parents and so that "good relations" with other countries are not disrupted no matter how outrageous the conduct of the foreign governments involved. How much confidence should American parents have in the State Department when its highest rank and the responsibility for protecting American citizens overseas is given to someone who has actually said in my daughter's case "We cannot push too hard in the Johnson case because that might jeopardize the return of other children from Sweden." What was the basis for this statement by Mary Ryan? Direct or implied Swedish threats? Possible Swedish government orders to its "independent" Swedish judiciary? Fear of Swedish noncompliance with treaty obligations in other cases via linkage? Belief in the effectiveness of appeasement?

Perhaps this Committee has heard a more classic expression of appeasement from a senior Executive Branch official. One hopes not. In other words, if we keep quiet and write off one American child, maybe countries such as Sweden will behave better in future cases. Of course, the opposite is true. Appeasement is no more effective in 1999 than it was sixty years ago. It remains an utterly contemptible and morally bankrupt policy, especially when the world's only superpower practices it in abandoning its children for nothing more than a mindless desire to be liked and to have good bilateral relations for their own sake.



Why should countries like Sweden, Germany, and Austria treat the United States with anything other than utter contempt in child abduction matters, as they do? They are doing a superb job of taking care of their citizens and shielding them from the consequences of their criminal conduct. If the United States does not care about its children, why should they? Why should they change their behavior in any way, when it is so beneficial to their citizens and when the United States has provided no incentive to do so, has generally proven inept by using inexperienced personnel to try to match wits with far more senior foreign officials, and fails to follow through in any practical way when it does do something, such as transmitting a diplomatic note of protest. On the one hand, the United States returns close to 100 percent of the children these countries request, even those who should remain here because their American parents cannot obtain from Swedish/German/Austrian courts due process of law and fair treatment in general or enforceable access and visitation in particular, while on the other hand such countries return only a small fraction of the children requested by the United States.

#### GAO Report

As indicated above, a credible GAO report must thoroughly evaluate the Task Force to the Attorney General along the lines suggested and address those issue wholly apart from the context of the Report to the Attorney General. GAO has been supplied with the names and addresses of dozens of American parents, attorneys, and others familiar with the performance of the Executive Branch concerning international child abduction and retention. GAO needs to interview these people and form its own conclusions. Among other things, a GAO report should include:

- Scope of the problem with complete statistics
- Adequacy of existing legislation
- Adequacy of cooperation with NCMEC and American parents
- Refusal of State to include the subject in the Human Rights reports
- Adequacy of the Hague Convention Report to Congress
- Adequacy of Executive Branch cooperation
- Disparity between return rates from the U.S. versus to the U.S.
- Review of case files to ascertain adequacy of State services to parents
- State's criteria for closing cases
- Executive Branch strategy for dealing with violator countries
- Treatment of American parents (access to documents, protection from foreign child support demands, frequency of contact)
- Cooperation and support from embassies and the State Department overall

#### HUMAN RIGHTS (See also pages 43-53)

As mentioned frequently in this statement, foreign government support of child

abduction and retention is a human rights matter. The First Lady has made this point repeatedly, including at the inauguration of the International Center for Missing and Exploited Children on April 23, 1999 at the British Embassy. She is right legally and morally. Articles 9, 10, 11, and 18 of the Convention on the Rights of the Child, which the United States has signed, are directly on point. The UN Committee on the Rights of the Child considers abduction/retention a human rights matter accordingly and has recommended to Austria and Sweden that they improve their legislation concerning respect for foreign custody orders. In like manner, the European Commission/Court of Human Rights has considered cases involving the subject. The leading expert on the Hague Convention, Adair Dyer of Texas (the now-retired Hague Academy official in charge of the Convention), has declared "Of course the Hague Convention is a human rights treaty!" While the initial act of abduction or retention may not be a human rights violation per se, just as street crime in a foreign capital against Americans is not, it IS a human rights violation when foreign governments fail to provide American parents with any effective remedies and, worse, directly facilitate, finance, otherwise support, and reward this conduct by their citizens through a governmental system of the type described below in the case of Sweden. Taking into account the more than 2000 pages in the annual Human Rights reports devoted almost exclusively to what foreign governments do to their citizens in many areas less serious than child abduction, it is not asking too much for the State Department to address what foreign governments systematically do to American citizens in violating their human rights set forth in numerous human rights instruments.

Mr. Chairman, Congress estimated the number of internationally abducted or wrongfully retained American children at 10,000 when it passed the International Parental Crime Act of 1993. With the increasing failures of the Hague Convention on the Civil Aspects of International Child Abduction (less than a thirty percent return rate for American children), the virtual refusal of the U.S. Justice Department to utilize the 1993 Act when Hague remedies are inapplicable or have been exhausted, the worst offending countries rightly emboldened by the present certainty that they generally risk no real-world consequences or even adverse publicity, and the absence of adequate preventive measures, the situation is only getting worse for left-behind parents who play by the rules in both countries concerned. They need to know that foreign government compliance with the international legal obligations they have undertaken in ratifying the Hague Convention and applicable human rights treaties cannot be relied upon.

#### FOREIGN GOVERNMENT SUPPORT FOR INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN

The principal purpose of this statement, as indicated above, is not only to discuss individual cases or countries, but rather to provide a general description of foreign government support for the abduction and retention of American children, the response

of the United States Government, and proposed Congressional actions to assist American children and parents affected by the crime of international parental child abduction and retention. Accordingly, the following information on my daughter Amanda's case and my experience with the Swedish legal and social welfare systems is provided primarily as a case study or as an example of what often confronts left-behind American parents.

#### 1. Five Pillars of Governmental Child Abduction or Wrongful Retention

While the present overall Swedish legal and social welfare system may well be one of the worst adversaries that a left-behind American parent can face, at least some elements of that system exist in many other countries, especially in European civil law countries. The Swedish system includes all of what could be called the Five Pillars of governmental child abduction and retention: no principle of comity in the legal system, extreme gender or national bias in the courts, payment of unlimited legal fees for the child abductor at home and abroad, no enforceability of civil court orders (including child return orders and visitation orders), and criminal legislation that protects parents who abduct or wrongfully retain children. In a given case, only one of these five "pillars" may be enough to ensure a successful abduction or retention:

Regrettably, Amanda is only one of thousands of American children abducted or wrongfully retained abroad. As Congress recognized in passing the International Parental Kidnapping Crime Act of 1993 ("the 1993 Act"), Amanda's case and Sweden's indefensible conduct are not unique, although the facts and circumstances of Mandy's case are particularly aggravated. Despite the best efforts and intentions of Congress and some individuals in the Executive Branch in recent years to combat the continuing tragedy of international parental child abduction, the fact remains that American parents whose children are abducted or wrongfully retained abroad are all too often up against the full weight of foreign governments (including Parties to the Hague Convention such as Sweden) prepared to supply virtually unlimited financial and other resources (e.g., government child psychiatrists and psychologists) to assist their citizens who abduct or wrongfully retain children. What has happened to Amanda and me can happen to any American citizen, already has happened to many, and will unquestionably happen to more in the future, unless Congress acts to prevent "business as usual" with the governments involved and to provide other remedies. Without the help of Congress along the lines suggested below, more American citizens will continue to be victimized by foreign parents and their governments determined to abduct or retain American children, withhold them abroad, and ignore U.S. and international law. This statement is submitted in the hope that Congress will act quickly and decisively to help other Americans avoid the nightmare to which my family has been subjected.

## 2. No Enforceable Visitation or Other Parental Rights

As a preliminary consideration concerning any child abduction or retention involving Sweden (and most other European civil law countries), it must be noted that children not returned under the Hague Convention are likely to be completely lost to their American parents and families. The parental rights of an American parent may be effectively terminated by the inevitable grant of sole custody to the local national (or of joint custody in name only with the local national enjoying all the aspects of sole custody) when a court in a European civil law country exercises regular child custody jurisdiction. In Sweden, for example, a non-Swedish, non-custodial parent has no enforceable parental rights, and unenforceability continues to be the key element of the Swedish system now that joint custody on paper has become the norm for cosmetic purposes. The Swedish legal system and individual judges cannot control the conduct of Swedish parents (or otherwise protect the rights of foreign parents) because there is nothing comparable to contempt of court or any other effective means of enforcing visitation or access under a Swedish custody order. For Amanda, who lived with me half the time for several years and travelled freely with me both in the U.S. and Europe, even supervised visitation in Sweden is totally unenforceable and at the whim and mercy of the child abductor.

A new Swedish law that entered into effect one year ago permits Swedish judges for the first time to impose joint custody over the objections of one parent. That occurred in my case during a Swedish court hearing in February 1999 and inspired some in the State Department and the American Embassy in Stockholm to proclaim that the problem was now solved. This again reflects the limited knowledge and expertise of the State Department personnel who work on these cases. The February 1999 ruling was reversed by the same judge in June 1999 (with sole custody for the Swedish mother restored) and then reversed again by an appeals court in September 1999 to give me joint custody. None of this has any practical effect in terms of unsupervised visitation with Amanda in the United States (or Sweden for that matter). Just as other seemingly progressive elements of Swedish child custody law and policy only apply when both parents are Swedish (e.g., shifting sole custody away from a parent that withholds a child, unless, of course, the consequence is that the child leaves Sweden), this new law has not been applied with any practical effect in cases involving non-Swedish parents. The terms of any Swedish joint custody order is just as unenforceable as any visitation awarded under Swedish sole custody orders. Nothing has changed in that regard, although intense and sustained international pressure on Sweden might bring about reforms that include mechanisms comparable to contempt of court.

For the reasons just given, I have spent more than \$200,000 of my savings to avoid Swedish custody jurisdiction because of the guaranteed consequences: a court order that even some U.S. authorities may view as giving the "color of law" to termination of the child's American life and my parental rights. Amanda is not the first American child to be subjected to these violations of her human rights by Sweden, she is not the only one at the moment (e.g., the child of Mark Larson of Orem, Utah; the child of Ian McAnich of

Dallas, Texas; the children of Greg O'Donohue of Burbank, California; and the children of Greg Benson of San Diego, California), and she will definitely not be the last without sweeping reforms of Swedish legislation, policy, and attitudes. As discussed below, Congress can do a great deal to reduce the risks for American children and their parents, while increasing the risks of wrongful conduct for governments like Sweden and their citizens.

### 3. These Are Not "Private Child Custody Disputes"

One of the worst aspects of these cases for American parents, as indicated above, is to endure the disinformation campaign conducted by foreign governments and echoed by State Department officers and lawyers up to the Assistant Secretary level that these are "private custody disputes." Until the Washington Post article mentioned above concerning Lady Meyer appeared in June 1998, it is likely that few Washington decision makers and opinion leaders would have thought possible what Germany has done to the relationship between Catherine Meyer and her children. And that is the key point. It IS Germany (its governmental, legal, and social welfare systems) that has committed these human rights violations, just as it is Sweden that has done everything possible to destroy Amanda's relationship with her American family, friends, home, and familiar environment in Virginia.

In short, these are NOT "private child custody disputes," as Germany and Sweden try to claim in these cases, and as Executive Branch officials who may wish to write off the children concerned and do business as usual with such countries would like to believe. The following are not "private": treaty violations, Federal and state felonies, human rights abuses, government payment of legal fees and other financial support, foreign government failure to provide civil or criminal remedies to left-behind American parents, foreign government refusal to respect U.S. laws and court orders.

American parents in such cases are often essentially alone against the power and wealth of the governments concerned. Of course, individual parents capable of internationally abducting or wrongfully retaining children are to be found in every country. The question, therefore, is whether their governments will control their conduct and protect the parental rights of foreign parents, especially in light of the international legal obligations of all countries under either (or both) the Hague Convention and human rights treaties that guarantee the role of both parents and the right of children with parents of different nationalities to spend time in both countries.

The disinformation inherent in the false claim of "private child custody dispute" is particularly infuriating to American parents who have spent much of their savings fighting against the deep pocket of a foreign government in both U.S. and foreign courts simply to maintain contact with their children while obeying all applicable laws in both countries. As indicated above but worth repeating, this "private child custody dispute" red herring

(an appropriate description taking into account the conduct of some Scandinavian and Northern European countries) also attempts to cover up what can only be described as sophisticated and very well-financed governmental child abduction systems, for example, in many European and other countries that may include some or all of the following:

- 1) undeniable bias against foreign parents by the courts (compared to the very high rate of returns of abducted children from the U.S. ordered and enforced by U.S. courts);
- 2) no enforceable visitation or other parental rights for foreign parents (owing to the absence of anything comparable to our contempt of court mechanism)
- 3) no concept of comity (reciprocal enforcement of foreign court orders, including custody orders agreed to by their nationals)
- 4) payment of unlimited legal fees for their nationals who abduct or retain children in all litigation at home and in the U.S. (in both Hague Convention and regular custody proceedings)
- 5) aggressive action by police and prosecutors against foreign parents in enforcing criminal legislation specifically drafted and intended to protect their child abductors/retainers;
- 6) "address protection" programs that enable abductors/retainers and the children involved to disappear even from U.S. consular officers, with the aid of the police and social welfare agencies

Because it has proven nearly impossible for Executive Branch officials and other Americans (especially judges and lawyers) to believe, it must be repeated that, as a practical matter, the exercise of jurisdiction over an abducted or wrongfully retained American child in a regular child custody proceeding by a German or Swedish or Austrian or Danish court (with the inevitable grant of effective sole custody to the non-American abducting parent whether or not it is called "joint" custody) is equivalent to termination of the parental relationship between the child and the American parent. Even if some form of access or visitation is awarded on paper, American parents have no legally enforceable rights of any kind in such countries.

#### COUNTRY SUMMARIES

The following is an example of the kind of country-by-country information in narrative form that should have been prepared long ago by the State Department and that should be readily available to Congress, U.S. courts, attorneys, and parents in the annual human rights reports, on the Internet and elsewhere as advisories, in an annual Hague Convention Compliance Report, and otherwise:

SUMMARY OF THE SWEDISH GOVERNMENT SYSTEM OF  
INTERNATIONAL ABDUCTION AND WRONGFUL RETENTION OF CHILDREN

In both domestic and international situations, cases of abduction and wrongful retention of children by a Swedish parent are not merely "private custody disputes," in view of the lack of effective remedies provided by the Swedish legal and social welfare systems to the left-behind parent and the extensive Swedish government financial, law enforcement, social welfare, and other support supplied to Swedish parents who engage in abduction/retention of children.

In international cases where only one parent is Swedish (particularly where the mother is Swedish), children not returned under the Hague Convention on the Civil Aspects of International Child Abduction are, as a practical matter, completely lost to their non-Swedish parents unless the Swedish mother decides otherwise. This is the result of the Swedish legal system's inability to effectively control the conduct of Swedish parents and protect the rights of non-Swedish parents in the absence of any judicial power comparable to contempt of court. In regular child custody proceedings, Swedish courts invariably grant sole custody to Swedish mothers and, as noted, have no power to enforce visitation for non-custodial parents. Although a new Swedish law entered into force on October 1, 1998 permitting Swedish judges for the first time to impose joint custody over the objections of one parent, this law will not be applied with any practical effect when a foreign father is involved. Moreover, the terms of any such joint custody order will be just as unenforceable in Sweden as the visitation provisions of a sole custody order. Similarly, although Swedish legal principles permit sole custody to be shifted from a parent who denies access to a child on the grounds that such a parent is unfit per se, it is highly unlikely in such a case that custody would ever be shifted from a Swedish mother to a non-Swedish father when the consequence would be that the child leaves Sweden to reside elsewhere.

Even in cases where a foreign parent has sole or joint custody under a non-Swedish custody order and no Swedish custody order exists, there is no concept of comity in the Swedish legal system (despite Sweden's obligation under Article 1 of the Hague Convention to ensure respect for the rights of custody and access under the law of other States Parties). Swedish law enforcement authorities, having been informed by the Ministry of Foreign Affairs that foreign custody orders "have no validity in Sweden," aggressively interfere with any effort by a foreign parent to exercise his custody rights in Sweden and may arrest and prosecute him under a unique Swedish penal law that effectively protects and rewards Swedish child abductors/retainers.

In both Hague Convention and regular child custody litigation in Sweden and abroad (including all possible appeals in Sweden, the other country concerned, and the European system), the Swedish social welfare system provides unlimited payment of legal fees for Swedish citizens, thus significantly reducing the incentive for the Swedish child abductor/retainer to compromise or otherwise settle the case. This enables the Swedish

citizen to pursue appeals to the highest courts of Sweden and the other country concerned at no expense, while exhausting the financial resources of most non-Swedish parents. In any event, Swedish authorities will not enforce or otherwise respect foreign appellate judgments against Swedish parents.

In non-Hague cases, as demonstrated by the now leading decision of Sweden's supreme court in the Ascough case during 1997 (children of Australian/British father and Swedish mother residing in Singapore), the Swedish courts will take jurisdiction and award sole custody to a Swedish mother even in cases where the children were born outside of Sweden, clearly reside outside Sweden, have never resided in or even visited Sweden, and were unquestionably abducted to Sweden.

In summary, Sweden's overall legal and social welfare system concerning child custody and parental child abduction/retention does not comply with numerous provisions of human rights treaties to which Sweden is a Party, notably the Convention on the Rights of the Child, the European Convention on Human Rights, and the International Covenant on Civil and Political Rights as a result of six factors:

- 1) the undeniable gender and national bias of Swedish courts, especially in favor of Swedish mothers
- 2) the absence of anything comparable to contempt of court to enforce visitation or other parental rights for fathers (i.e., non-custodial parents)
- 3) the unlimited financial support received in Sweden and abroad by Swedish child abductors
- 4) enforcement by Swedish law enforcement authorities of a criminal law intended to protect and reward Swedish child abductors
- 5) the lack of comity with respect to non-Swedish court orders, and
- 6) the refusal of Sweden to extradite or effectively prosecute Swedish child abductors.

Most notably, Sweden's legal and social welfare systems are inconsistent with both the letter and spirit of Sweden's obligations under the Convention on the Rights of the Child to ensure contact with both parents and, in international cases, with both countries. Thus, Sweden cannot ensure compliance with the provisions of the Convention most relevant to child custody and child abduction/retention: Articles 9, 10, 11, and 18. The United States has signed but not ratified the Convention, but complies with these articles in practice to a far greater extent than Sweden.



## AMANDA'S CASE

Voluminous documentation concerning Amanda's wrongful retention in Sweden by a Swedish diplomat and the Government of Sweden, as well as information on other American children abducted to Sweden, has already been supplied to Committee staff. An updated chronology of the case is attached to this statement, along with:

- the unanimous decision of the Virginia Court of Appeals upholding the Virginia Custody Order
- the Virginia Supreme Court Order dismissing further appeals
- Swedish Government demands for reimbursement of legal fees and child support paid to the abductor
- a Swedish criminal law intended and used to protect Swedish child abductors and punish non-Swedish parents who attempt to exercise their custody rights
- photographs showing Swedish police participation in the continuing Federal and state felonies against Amanda and me, and
- an outline of the Swedish Government's System of supporting and financing parental child abduction.

With full support in every conceivable way from the Government of Sweden, Amanda has literally been held hostage in Sweden since early 1995, in violation of:

- U.S. civil law and court orders to which the mother agreed in open court
- U.S. Federal and state criminal law
- Sweden's international legal obligations under several treaties (The Hague Convention on the Civil Aspects of International Child Abduction, the Convention on the Rights of the Child, the European Convention on Human Rights, and other human rights instruments)
- Sweden's own civil and criminal laws on joint custody and child abduction (which are never enforced against Swedish mothers), and
- the eligibility requirements for payment of all legal fees in Sweden and abroad by the Swedish Government (which are apparently conveniently waived for Swedish abductors).

The facts of the case are clear. Amanda, a U.S. citizen and resident from birth (November 11, 1987), is also a Swedish citizen. She was a U.S. Government dependent during her first two years while I was posted at the U.S. Mission in Geneva. Mandy then lived with me in Virginia roughly fifty percent of the time until age 6, attending three years of preschool and kindergarten at Browne Academy in Alexandria, Virginia. She spent the rest of her time in New York with her mother, Anne Franzen, who was the lawyer at the Swedish Consulate with lead responsibility for child abduction and custody matters, and who was actually offered the position of Head of the Swedish Central Authority for the Hague Convention upon leaving New York. Despite being wrongfully withheld outside the U.S. for nearly five years now, Amanda has still lived longer in an American diplomatic community or the U.S. itself than in Sweden. She should have been living again in the U.S. since the spring of 1995 under the agreed terms of a December 1993 Virginia custody order and subsequent enforcement orders, which make clear that

Amanda's habitual residence continues to be Virginia, that the Virginia courts have continuing exclusive jurisdiction over her case, and that the parents are prohibited from seeking custody modification in any court anywhere in the world without the consent of the Virginia court.

The case against Anne Franzen (Deputy Assistant Under Secretary for Human Rights in the Swedish Foreign Ministry at the time) was so strong that four Swedish courts either ordered Amanda's return under the Hague Convention or held that Sweden did not have jurisdiction over Amanda because she was only in Sweden temporarily in accordance with the Virginia Custody Order to which the mother had agreed. After endless delays, stays of execution, appeals, and litigation financed for the mother by the Swedish Government in 8 separate proceedings in 6 courts (a Hague process that lasted 17 months instead of the 6 weeks set forth in the Convention), the final court from which there was no appeal (the Swedish Supreme Administrative Court or Regeringsrätten) reversed all the lower court rulings in a May 1996 decision that has been declared by the U.S. Government in diplomatic notes to be a violation of the Convention and that has been rejected by the highest courts of Virginia.

On August 9, 1996, with the abducting mother represented by counsel paid by the Swedish Government, the Virginia Court granted me sole and exclusive custody, made contempt findings, and issued several other forms of relief. There was never a Swedish custody order of any kind concerning Amanda until an interim joint custody order was issued by a Swedish court in February 1999. The Virginia Custody Order has withstood costly challenges in the highest courts of Virginia financed by the Swedish Government, and remains the only final order in the world. But Amanda continues to be wrongfully withheld from me, the rest of her American family, her home and familiar environment, and her country by her mother and by the Government of Sweden through a legal and social welfare system that fails to meet even minimal standards of due process of law (e.g., no rules of evidence and no prohibitions on ex parte communications with judges).

Between December 1995 and June 1999, Amanda was able to see me on only five occasions, for a total of 15 hours. On the second occasion (September 16, 1996), after picking Amanda up at her school as a custodial parent unwilling to subject the two of us to the continued degradation of supervised visitation that had unlawfully been imposed for nearly two years at the time, I was wrongfully detained in her presence four hours later at our hotel (where I had informed the mother we would be) by four Swedish policemen at the abducting mother's request. I was held in solitary confinement for nearly 48 hours, despite (or actually because of) the fact that I have sole custody under the only final Custody Order in the case and have joint custody even under Swedish law. Although I was released, never charged with any offense, and compensated by the Swedish Government for wrongful detention, the incident has done incalculable harm to Amanda and to my relationship with her.

On the third and fourth occasions, in December 1996, I was only allowed to see

Mandy under police guard at her school, with the police challenging the presence of the Vice Consul from the American Embassy on one occasion and making a further mockery of my joint custody "rights" in Sweden (see attached photographs of Swedish police car at Amanda's school). Amanda and I did not see each other after that demeaning experience in December 1996 until February 1999 when the abducting mother supervised some brief visitation.

Every element of joint custody has been violated: no school or medical records, no photographs, no information on activities or general welfare have been provided to me. There has been no response to any of the countless letters and packages sent to Amanda. For the summers of 1997 and 1998, creative efforts by my Swedish and American attorneys to arrange visitation in the United States with guaranteed returns to Sweden (U.S. court orders ARE enforceable) or any type of supervised or unsupervised access in Sweden were summarily rejected by the mother and her attorney. No assistance was provided by the judge now assigned to the case. The judge who previously dismissed the mother's petition for sole custody and upheld the Virginia Order has, not surprisingly, been removed from the case.

In February, an interim joint custody order was issued over the mother's objection because joint custody is now the norm in Sweden, although it has no practical enforceable meaning in Sweden. The terms of the order gave the mother de facto sole custody, with only supervised visitation in Sweden. Even this meaningless "joint custody" was reversed by the same judge in June 1999 at the mother's request. Several hours per day of supervised visitation took place for a few days in June 1999. The good relationship between Amanda and me has survived despite all efforts by the abductor and the Swedish Government to destroy it, but serious damage has been done to the child (a nervous tick in both eyes). Amanda lived alone with me in Virginia and attended three years of school roughly half the time for nearly 4 years, but everything possible has been done to de-Americanize her and eliminate her relationship with me.

In September 1999, an appeals court reversed part of the June 1999 interim order, restoring joint custody and saying that visitation (still limited to Sweden) does not need to be supervised. Like everything else in the Swedish system, this is not enforceable, and an effort for contact between Amanda and me during the October 8-10 weekend therefore collapsed over the issue of supervision.

#### UNITED STATES GOVERNMENT RESPONSE (OR LACK THEREOF) TO FOREIGN GOVERNMENT SUPPORT OF INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN ABROAD

Today, when an American parent faces the nightmare of international child abduction or wrongful retention abroad, he or she does so alone in most respects. Legal fees and other expenses can quickly mount to tens of thousands of dollars. A decade after U.S.

ratification of the Hague Convention on the Civil Aspects of International Child Abduction, there is still no central repository of reliable information and expertise in the Executive Branch that can quickly and effectively supply accurate basic data on the legal system, child custody institutions, law enforcement system, social welfare system, legal aid program, and Hague Convention performance of the abductor's country. The left-behind American parent thus has little basis for evaluating the options available.

Some of the information supplied by the Executive Branch last year to the Senate Foreign Relations Committee in order to obtain the release of 38 law enforcement treaties was inaccurate, incomplete, and misleading, particularly the implication that "everybody does it" and that the United States is no better than most other countries. That implication is false, and the Executive Branch knows it. Moreover, the frequent claim by the Executive Branch that elementary but essential information on a variety of matters concerning foreign legal systems in connection with child abduction or child custody is "not available" to the Executive Branch is untrue. This information is readily available and could be obtained without difficulty or expense from American embassies, experts in the field, local attorneys, and American parents who have learned the hard way. The Executive Branch simply does not want Congress to have this information because of the likely Congressional reaction.

Although all concerned would presumably agree that prevention and deterrence of child abduction or wrongful retention are the ultimate goals, little is being done in this area. Dissemination of information on the key institutions, laws, and child custody practices of other countries is the key to eliminating much of the secrecy and ignorance that leads to successful child abductions and retentions. Countries whose legal systems and child custody institutions guarantee frequent non-compliance with the Hague Convention or no visitation or other rights for American parents need to be publicly identified and analyzed in depth.

As suggested below, effective vehicles such as the annual human rights reports already exist, and Congress passed legislation last year requiring an annual country-by-country Hague Convention compliance report. As already noted, the State Department submitted a poor report that was inconsistent with both the letter and spirit of P.L. 105-277, but that makes the case for renewed legislation and a permanent reporting requirement. That requirement should be broadened to include cases not resolved within six months, cases involving non-Hague countries, and lists of countries that have any of the 5 Pillars of a governmental child abduction system mentioned above. Maximum use should be made of the Internet and other established channels in the family law and consular affairs fields to ensure that U.S. courts, attorneys, and parents with children at risk are aware of the likely consequences of an abduction to or wrongful retention in a given country.

Left-behind parents often find themselves more knowledgeable in many ways than those in the Executive Branch who are supposed to help them, especially in view of the

fact that case officers now are responsible for around 150 cases, according to a recent statement by the Assistant Secretary of State for Consular Affairs. If those who are supposed to help (or their superiors) are primarily interested in maintaining "good relations" with the other countries concerned or declare that they do not work for the American people but rather for the Secretary of State or are fearful that pressing too hard in a current case will jeopardize assistance from a particular country in future cases, the plight of the children involved and their left-behind parents worsens. In the latter case, such a classic policy of appeasement is no more successful in dealing with child abduction than it has historically been in any other field.

At present, there is no real advocate for left-behind American parents, who must deal with a hostile foreign government and an often unresponsive U.S. Government, whereas foreign parents whose children are abducted or retained in the United States have access to the superb capabilities and staff of the National Center for Missing and Exploited Children (NCMEC) because of its role in dealing with "incoming" cases (i.e., abductions to or retentions in the United States). Left-behind American parents would greatly benefit if NCMEC were allowed to play this role for "outgoing" cases instead of "incoming" cases, as suggested above.

There is no monitoring by the Executive Branch of U.S. litigation financed by foreign governments against left-behind American parents (or responsiveness to reports of such litigation), so that U.S. Government statements of interest or amicus curiae briefs can be filed in landmark cases. Instead, the Executive Branch participates in Hague Convention and perhaps other litigation on behalf of foreign parents while failing to help Americans up against the deep pocket of foreign governments trying to reverse or undermine U.S. court orders. Assisting Americans would not require a significant increase in resources. In two recent cases, statements of interest from the U.S. Government of only a page or two would have been invaluable. In my own case, I prevailed in upholding the U.S. custody order in the highest courts of Virginia, but only at a personal cost of more than \$20,000 while the Swedish Government financed this bad faith litigation to exhaust my financial resources while having no intention of respecting any result adverse to the Swedish abductor. In the other case, Mark Larson of Utah lost in the 10th Circuit for acting precisely in accordance with U.S. Government policy and advice in Hague Convention cases. In view of the strong dissenting opinion, literally a few sentences in a U.S. Government statement of interest might have made a difference.

In contrast, foreign Central Authorities often work just as hard to assist their nationals who abduct or wrongfully retain children as they do for their nationals who are victims of these offenses. In the case of the Swedish Central Authority, its support of child abduction and wrongful retention include such means as coordination of litigation strategy in both Sweden and the U.S. against American parents. This has included creative attempts to:

a) use the Uniform Child Custody Jurisdiction Act in U.S. courts to obtain for Sweden the status of an American state for purposes of jurisdiction and enforcement of Swedish

custody orders, and,

b) use the mere existence of the 1993 International Parental Kidnapping Crime Act in both Swedish and U.S. courts as a justification for not returning children to the U.S. on the pretext that the Swedish abductor might be prosecuted (which adds insult to injury in view of the fact that the Justice Department will only rarely enforce the Act)

. Other activities of the Swedish Central Authority have included automatic distribution of Swedish and U.S. Government documents and information to Swedish abductors and their attorneys (while the State Department tells Americans to file Freedom of Information Act requests), informing the Swedish police and prosecutors that American child custody orders have no validity in Sweden in contravention of the whole object and purpose of the Hague Convention set out in Article 1, translation only of court decisions and other documents favorable to the Swedish abductor, and so on. Such conduct by a foreign government, especially its Central Authority for an international convention against child abduction and wrongful retention, should receive the widest possible exposure and censure.

Litigation in the United States financed by foreign governments against Americans who are already the victims of crimes committed by nationals of those governments should at least raise some serious questions about possible abuse of sovereign immunity. For example, the Swedish Government attempts to put a legal gloss on the abductions and wrongful retentions committed by its citizens by pursuing frivolous appeals of U.S. custody orders all the way to the supreme court of the states concerned even when the children have been held hostage in Sweden for years. Roughly five years ago, Julia Larson was abducted to Sweden from Utah for the third time and my daughter Amanda was wrongfully retained in Sweden. Neither child has been in the United States nor been allowed normal contact with their American families, but the Swedish Government has considered it necessary to try to make everything look "legal" by attacking the Utah and Virginia custody orders in extremely expensive and time-consuming litigation. An effort in Virginia to satisfy a money judgment against the abducting mother by garnishing the retainer paid to her attorney was blocked by an affidavit (attached) declaring that all funds held by the law firm are directly from "the Kingdom of Sweden's legal aid agency."

In many respects, an improved United States response requires a change in attitude, so that senior officials acknowledge that foreign legal and social welfare institutions which permit the successful commission of crimes against American children and their parents are not "private child custody disputes" or merely the errors of an "independent judiciary." Regarding the latter point, it is not clear that the State Department is aware that the judges are not particularly independent in many European countries. They become judges relatively early in their careers, do not have life tenure, and depend on the Ministry of Justice for future assignments. In any event, evidence of foreign government involvement in and support for parental child abduction or retention by their nationals must no longer be ignored by the Executive Branch.

International Parental Kidnapping Crime Act of 1993

This Act should either be revised (if that will result in greater willingness of U.S. Attorney's offices to utilize it) or be enforced as it stands when Hague Convention remedies are exhausted or inapplicable, or the left-behind parent so requests. At present, despite the best intentions of Congress, the 1993 Act is not only a failure in helping Americans (there have been few indictments, and fewer still convictions and provisional arrest requests under the Act), but it has become an effective tool for foreign child abductors and retainers. Under some extradition treaties, it actually creates dual criminality where none existed before, so that American parents who rescue their abducted children can be extradited to countries that refuse to extradite their nationals for parental child abduction or any other offense and also refuse to return children consistently (or at all) under the Hague Convention.

Moreover, to add insult to injury for the victims of child abduction or wrongful retention who know that the Department of Justice will generally not implement the 1993 Act, its mere existence (and the purely theoretical possibility of prosecution of foreign abductors or retainers) is being used against American parents in Hague Convention and regular custody litigation in the U.S. and abroad. Attorneys for child abductors/retainers, including those hired and instructed by foreign governments that are U.S. treaty "partners," have argued that the fear of prosecution under the 1993 Act justifies the denial of applications for return of children under the Hague Convention, as well as refusal of abductors/retainers to appear in U.S. custody proceedings. This latter argument concludes with a demand that U.S. courts defer to the jurisdiction of the foreign court.

That was precisely the argument made in Virginia to the trial court and the Court of Appeals in my daughter's case by the attorney hired by the Swedish Government. Fortunately, the Virginia judge cut through the argument by asking whether the abductor would immediately return to Virginia with the child if given immunity from prosecution. This bad faith argument fared no better in the Court of Appeals. But the argument that the children should not be sent back to the U.S. under the Hague Convention if the local parent faces criminal charges will almost certainly succeed in many foreign courts.

With regard to implementation of the 1993 Act, the approach being taken by some U.S. Attorney's offices concerning the Act cannot possibly be consistent with the intent of Congress. Although the Act places both wrongful removal (or abduction) of a child from the United States and wrongful retention abroad on the same level, as does the Hague Convention, wrongful retention abroad is effectively being read out of the Act by some prosecutors as not serious enough to merit indictment.

Moreover, some prosecutors have unilaterally added as an affirmative defense that a child abductor or retainer is attempting to obtain a local custody order abroad and would already have succeeded so but for Hague Convention proceedings freezing the local custody process. In like manner, some prosecutors are incorrectly asserting that a

foreign court order denying return of the child(ren) under the Hague Convention constitutes a defense under the Act. Disregarding the entire object and purpose of the Hague Convention in Article 1 (respect for the custody laws of other Parties to the Convention), such prosecutors apparently have no difficulty with individuals who clearly violate U.S. court orders and custody rights, as long as they are also attempting to persuade a foreign court to ignore the orders and unilaterally take jurisdiction over the case. In essence, this approach gives immunity from prosecution, so long as abductors are using the legal process in their home country, no matter how corrupt, incompetent, or biased against foreign parents it may be.

Even when Hague Convention remedies are inapplicable or have been exhausted, and thus utilization of law enforcement mechanisms will not jeopardize return of the child(ren), left-behind parents hear a litany of excuses for failure to implement the Act or to use it in any way to pressure abductors into returning the child(ren). The latter approach does not constitute misuse of the criminal process to achieve a civil law objective, as some might argue. Rather, it would constitute use of a criminal law to bring a halt to criminal conduct, which is presumably what Congress intended. At the moment, the point is moot because the 1993 Act is being used far more by foreign governments against Americans than by the U.S. Department of Justice.

In litigation financed by foreign governments, as noted above, its mere existence is cited as a reason not to return children to the United States in European courts and as a reason to defer to European jurisdiction in U.S. courts. Adding to the irony of the general refusal by U.S. law enforcement authorities to implement the 1993 Act is the very aggressive enforcement by some European law enforcement authorities of laws or policies that protect local child abductors and target foreign parents who attempt to exercise their sole or joint custody rights. An example of such a criminal law from the Swedish penal code is attached to this statement. It has been used as a justification for aggressive Swedish police action against several American fathers, including me, as described above.

Ironically, the record of U.S. courts under the Hague Convention in recent years is nearly perfect concerning returns of children to some of the worst violators of the Convention, including Sweden. There have in fact been essentially voluntary returns of children to the United States from such countries. But a determined Swedish or Danish or Austrian or German child abductor/retainer (among others) will almost never have to comply with return orders from their own courts. There is nothing comparable to contempt of court with jail time attached, so there are no truly effective means of enforcing civil court orders in European civil law countries, including Hague Convention return orders. Police assistance to enable an American or other non-local parent to take a child out of the country is virtually impossible. Moreover, European abductors/retainers have the possibility of further delaying and frustrating the Hague Convention process by utilizing the European Human Rights Commission and Court in Strasbourg.



Especially in Scandinavia, mothers also increasingly have the option of going "underground" or otherwise stalling long enough to have the case reopened, with the best interests of the child(ren) then being found to require remaining in place because they are fully resettled. Of course, in social welfare States where the governments continue to pay legal fees, child maintenance, and other allowances to child abductors, the authorities can easily find those who go "underground" if they want to.

While a few countries that provide legal aid to both parties in Hague cases without regard to need (e.g., the United Kingdom) may have a valid complaint about the failure of the United States to provide legal aid to anyone, the situation is far worse where a government pays unlimited legal fees at home and abroad for its child abductors, so that left-behind American parents are confronted by the deep pocket of a foreign government not only in foreign courts but also in U.S. courts. The point is that foreign parents are not in any way up against the U.S. Government in abduction cases here.

Several additional preventive and remedial actions by Congress are needed to "level the playing field" for American parents facing off against foreign governments. Congress is confronted daily with many competing demands that have serious resource implications. This request does not. It seeks only the requisite political will to accomplish the objectives of better protecting American children from international parental kidnapping, especially when such conduct is directly supported by foreign governments.

Taking into account that the high rate of return from a very few countries (e.g., the United Kingdom) makes even the overall return average of thirty percent misleading, the Hague Convention success rate with certain countries is so low that the reality facing many American parents is a stark choice between abandoning their children or conducting a rescue operation. That reality and the country-by-country details behind it need to be comprehensively disseminated to all U.S. courts, family law practitioners, law enforcement authorities, and the general public.

#### PROPOSED CONGRESSIONAL ACTIONS AGAINST INTERNATIONAL CHILD ABDUCTION

Congress may wish to give serious consideration to specific proposed actions listed below in order to accomplish three general objectives:

- 1) Dissemination of sufficient information to alert U.S. courts, law enforcement authorities, family law practitioners, and parents in bi-national situations concerning the difficulties of gaining the return of American children from particular countries;
- 2) The sending of a clear worldwide message that the U.S. Government will no longer tolerate the abduction or wrongful retention of American children under any circumstances

and will make foreign governments pay a price if they essentially encourage and reward such conduct through financial and other direct support to abductors; and,

3) Reform of current U.S. law and practice (both civil and criminal) that can work against American citizens, thus aiding and abetting the abduction of American children by foreign citizens and their governments.

In view of the overall poor performance of the State and Justice Departments for many years, receivership is necessary. Accordingly, the following proposals do not constitute micro-management.

#### 1) U.S. CENTRAL AUTHORITY

PROPOSALS: A) Amend ICARA if necessary or otherwise direct that the U.S. Central Authority for the Hague Convention be shifted immediately from the State Department to the Civil Division of the Justice Department (with the State Department directed to provide all support and assistance requested), taking into account the need to improve such areas as:

- training and expertise of personnel
- continuity and institutional memory of personnel
- number of personnel available
- caseload of personnel
- quality, quantity, and nature of legal support available
- the balance between child abduction/retention cases and "good relations" in bilateral relations
- the role of regional bureaus and American embassies
- general openness and a willingness to provide left-behind American parents with all available information and documentation

B) Direct that NCMEC cease handling incoming cases and play the same role for "outgoing" cases (i.e., abductions from the U.S. and retentions of American children abroad) that it has been playing for "incoming" cases, with a mandate for assertive advocacy on behalf of American parents on all fronts

#### 2) HUMAN RIGHTS AND PREVENTION, PUBLICITY, AND ACCOUNTABILITY

(See also pages 43-53)

PROPOSALS: A) Human Rights: In the "children's rights" section of the annual human rights report on each country, direct that the child custody system be summarized, including gender bias or bias against foreigners based on statistical evidence, enforceability of visitation/access for noncustodial parents (i.e., is there anything comparable to contempt of court?), payment of legal fees for host country nationals in custody or abduction cases, criminal legislation that protects abductors/withholders,

compliance (or not) with the relevant provisions in the Convention on the Rights of Child on the role of both parents, the right of children in international cases to spend time in both countries, etc. The U.S. is not a Party but has signed and complies with the relevant provisions to a far greater extent than most States Parties.

---Each year, the annual human rights report is eagerly awaited, widely disseminated, and, unlike most government reports, widely read throughout the world. One important function that the annual human rights reports should perform is prevention, as "human rights advisories" comparable to travel advisories; i.e., to alert potential victims of current and/or ongoing, systemic human rights abuses. If just one child from ANY country is saved from being lost because a judge, attorney, parent, or family friend reads or hears about government-supported child abduction/retention in a given country, then an accurate and complete report will have accomplished something both worthwhile and right. An accurate and complete report on countries such as Sweden would constitute a great service to American and other parents who might be warned in time to avoid losing their children.

---This subject belongs in the Human Rights Reports on its merits based on the numerous provisions in international human rights instruments that are violated by foreign governments in these cases. The First Lady has been right morally and legally in repeatedly declaring that international child abduction and retention are a human rights matter. State Department opposition is ludicrous, especially in view of what IS covered in the reports already and the fact that this is a systematic human rights abuse against Americans, whereas the current reports are devoted almost exclusively to what foreign governments do to their citizens.

B) Enact a permanent annual reporting requirement on Hague Convention Compliance to cover retention cases and any case where the child is not returned to the United States not resolved within 6 months, and to include lists of countries that do not have anything comparable to contempt of court and cannot enforce their own civil court orders, that pay the legal fees of their abductors/retainers, that have criminal legislation which effectively protects their abductors/retainers, etc.

### 3) BILATERAL RELATIONSHIPS

PROPOSAL: Review what type of relationship the United States should have with governments that engage in the following conduct and attach consequences such as no new law enforcement treaties or child support enforcement agreements if they:

- are directly engaged in facilitating, financing, otherwise supporting, and rewarding criminal conduct against American citizens
- have in place any elements of a governmental child abduction system
- have refused return of American children abducted/retained in violation of U.S. law or court orders
- have unresolved cases of abduction/retention of American children with no meaningful

or enforceable access for the American parent  
 --use their law enforcement authorities aggressively against American parents whose children have been abducted/retained and rarely if ever use them to assist American parents  
 --have failed to compensate American parents of abducted/retained children for their legal and other expenses  
 --abuse their sovereign immunity by financing litigation in U.S. courts against American parents while claiming that the cases are private custody disputes and refusing to respect/enforce results adverse to their citizens

#### 4) EXTRADITION

PROPOSAL: Direct that the United States inform all extradition treaty partners that the U.S. will not extradite its nationals for the offense of parental child abduction or related offenses to any country that will not extradite or effectively prosecute its nationals and will not fully comply with its obligations under the Hague Convention.

#### 5) MUTUAL LEGAL ASSISTANCE TREATIES (MLATs)

PROPOSALS: A) Consider whether the United States should provide assistance against a left-behind American parent in any case where there has been a child abduction/retention in violation of U.S. law or court orders AND whether the United States should provide assistance under any foreign law that criminalizes the attempts of custodial parents (sole or joint) to exercise their parental rights in response to abduction/retention of their child(ren). (e.g., See attached Swedish penal law that has been used against several American parents of abducted/retained children)

B) Refuse to sign or ratify an MLAT with any country that consistently supports international child abduction such as Sweden, in view of participation by Swedish police and prosecutors in the commission of Federal and state felonies against American citizens, Sweden's blatant and continuing violations of its obligations under related treaties, the unacceptable elements of Sweden's legal and social welfare system (summarized above), and the current and past cases of criminal conduct and human rights violations against American children and their parents directly facilitated, financed, rewarded, and supported in every conceivable way by the Government of Sweden.

C) Deliver a message comparable to the following one that should be delivered to Sweden to any country that engages in similar conduct; i.e., that no further consideration will be given to moving forward on a mutual legal assistance treaty (MLAT) until the Government of Sweden:

--terminates its comprehensive participation in ongoing Federal and state crimes against

American citizens, in particular the International Parental Kidnapping Act of 1993 (18 USC 1204) and the comparable laws of each state

--acknowledges that American children over whom Swedish courts exercise custody jurisdiction are completely lost to their American parents unless the Swedish parent decides otherwise, and takes effective remedial actions

--eliminates the Swedish Government Child Abduction System (see above), starting with acknowledgment and elimination of the 5 pillars of the System (no principle of international comity in the Swedish legal system, undeniable bias by Swedish courts against non-Swedish fathers in regular custody proceedings and guaranteed sole custody awards for Swedish child abductors, nothing comparable to contempt of court to enforce access/visitation, unlimited government financing of legal fees and other expenses of Swedish abductors, and aggressive Swedish law enforcement use of a criminal statute that targets non-Swedish fathers)

--resolves satisfactorily all pending cases of child abduction/retention by Swedish citizens through return of the children to the United States and putting in place immediately enforceable criminal remedies against the Swedish citizens involved to prevent any recurrences

--implements and demonstrates the effectiveness of reforms of its legal and social welfare system to deter or quickly resolve in an acceptable manner all future cases, including in particular unsupervised and immediately enforceable access to the children concerned guaranteed by something comparable to criminal contempt, termination of legal aid for child abductors in civil proceedings, and streamlining its legal system to prevent endless appeals and delays

--repeals its criminal law directed against non-Swedish fathers attempting to exercise sole or joint custody rights over children abducted or withheld by Swedish mothers

--directs its police and prosecutors to cease harrasing and attempting to intimidate American and other parents of abducted/retained children who attempt to exercise their custody rights

--compensates American parents of abducted/retained children for all expenses of litigation financed by the Swedish Government in both Sweden and the U.S., as well as all other costs and damages resulting from Sweden's failure to comply with its treaty obligations under the Hague Convention on the Civil Aspects of International Child Abduction and the family/parent provisions of the Convention on the Rights of the Child

--halts its abuse of sovereign immunity in aggressively litigating against American parents in U.S. courts with no intention of respecting or enforcing results adverse to the Swedish citizen

--demonstrates that it will extradite or effectively prosecute Swedish parents who engage in child abduction/retention

## 6) CHILD SUPPORT ENFORCEMENT

PROPOSAL: Terminate the State Department authority in P.L. 104-193 (Section 459A) or at least amend it to:

a) prohibit any child support enforcement arrangement with a country that does not have a legal system providing prompt, adequate and effective enforceable, unsupervised access/visitation IN THE UNITED STATES by means of something comparable to contempt of court

b) prohibit any child support enforcement arrangement unless it contains ironclad guarantees that no American parent of an abducted/retained child will be affected, harassed, or penalized in any way AND it expressly excludes any case where there is or has been at any time:

--a violation of a U.S. custody order or U.S. custody law

--a violation of a Federal or state criminal law

--a denial of a request for return of the child(ren) under the Hague Convention or a failure of the foreign Central Authority to comply with other Convention obligations

--termination or reduction of any support obligation by a U.S. court

--an unpaid judgment or fine imposed by a U.S. court on the foreign parent

--a failure by the foreign government or its courts to provide rapidly enforceable, unsupervised, and generous visitation in the United States with police assistance and with no legal aid provided to the foreign parent violating a foreign or U.S. custody order

--an inability or refusal by the foreign government/courts to control the conduct of the foreign parent through contempt of court or other effective means

--an inability or refusal by the foreign government/courts to protect and promote the exercise of parental rights by the American parent

#### 7) IMPLEMENTATION OF THE INTERNATIONAL PARENTAL KIDNAPPING ACT OF 1993, 18 US 1204

PROPOSAL: Either mandate Justice Department enforcement of the Act or repeal it, in view of the foreign government efforts to use the Act against Americans noted above. At present, the law is primarily used against Americans and rarely enforced by the Justice Department.

--If not repealed, require an annual DOJ report on the number of requests from parents or their counsel for indictments, number of indictments, number of extradition requests, number of actual prosecutions, etc.

#### 8) PRIVACY ACT

PROPOSAL: Require that left-behind parents be provided with the option (in writing) to waive all Privacy Act rights so that their names can be given to parents involved with the same country and to organizations (such as NCMEC) that can help.

--Prohibit use of the Act to withhold any information or documents from left-behind American parents

--Prohibit use of the Act on behalf of abducted American children or abductors (even if U.S. citizens) as a basis for withholding information or documents from left-behind American parents

9) FREEDOM OF INFORMATION ACT (FOIA)

PROPOSAL: Prohibit use of FOIA as a basis for refusing release of ANYTHING and EVERYTHING to American parents in child abduction/retention cases (information, documents, diplomatic and other government-to-government correspondence, etc.)  
--these are not matters of national security; a left-behind American parent has an absolute right to know everything that his government has done or failed to do to obtain the return of the American children concerned

10) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITIES ACT

PROPOSAL: Create an exception to the FSIA giving American citizens a cause of action in U.S. district courts against foreign governments (and all their assets in the United States) that directly engage in, facilitate, or otherwise support criminal conduct against them and their children

11) BILATERAL CLAIMS

PROPOSAL: Consider the use of bilateral U.S. Government claims on behalf of American children and their parents against foreign governments that have permitted their nationals to abduct/retain American children (and perhaps provided assistance and support)

12) OFFICE OF FOREIGN MISSIONS

PROPOSAL: Require OFM to: A) regulate and monitor the hiring and payment by foreign governments of American attorneys in cases of abduction/retention of American children where U.S. civil/criminal law or U.S. court orders have been violated, and B) monitor and discourage any harassment of American citizens by foreign government agencies demanding either "child support" for abducted/retained American children or reimbursement to the foreign government of the legal fees it has paid for someone who has abducted or retained American children

13) INTERPRETATION OF THE HAGUE CONVENTION

PROPOSAL: Direct that the Executive Branch inform all U.S. courts and Hague Convention countries that the term "grave risk" in Article 13 of the Convention (as a

grounds for not returning a child) should be interpreted to include situations where the country concerned cannot provide enforceable access or visitation owing to the absence of anything comparable to contempt of court in its legal system.

SPECIFIC PROPOSALS (FOR BOTH THE UNITED STATES GOVERNMENTS AND OTHERS) TO IMPROVE IMPLEMENTATION OF THE HAGUE CONVENTION AND TO COMBAT INTERNATIONAL CHILD ABDUCTION AND WRONGFUL RETENTION: ACCOUNTABILITY, PREVENTION, IMPLEMENTATION OF INTERNATIONAL TREATIES, REMEDIAL ACTIONS

1) ACCOUNTABILITY

At present, there is no meaningful accountability for any of the entities or officials with the responsibility of dealing with abduction/retention (i.e., governments, Hague Convention central authorities, foreign ministries, justice ministries, police, prosecutors, etc.). A goal for the United States should be to create such accountability, primarily through publicity and dissemination of information in all possible ways, both on a case-by-case basis and for countries whose overall legal and other institutions provide a system that supports abduction/retention in any way.

2) PREVENTION (through definitive and reliable sources of information to ensure that parents, judges, attorneys, and law enforcement authorities know the odds of children returning from each country in the world)

A) Continuous Dissemination of Information by means of a Web Site and an annual published Report (like Amnesty International's annual country reports) under U.S. Government, NCMEC, or other auspices, with a database containing OBJECTIVE and FACTUAL information on each country's:

- legal system (comity for foreign custody orders or laws? enforceable visitation or other civil court orders? criminal laws that protect abductors/retainers?)
- social welfare system (payment of legal fees for abductors/retainers? payment of child support to abductors/retainers? government-paid psychiatrists/psychologists available to support abductors/retainers?)
- child custody practices (statistics showing results of custody proceedings by gender and nationality)
- Hague Convention performance (average duration of proceedings? actual return rate? access issues?)

Explanation: A major purpose of such a web site is to enable judges from South Africa to Idaho to Singapore to have instant access to definitive information that tells them



whether children in either a Hague or regular custody case will return (if one parent resides locally) and/or have access in any way to both parents if allowed to leave the jurisdiction (e.g., all judges and governments should know that children that end up in most European civil law countries are completely lost to parents from other countries UNLESS the local PARENT decides otherwise). A further purpose is to identify countries with legal and social welfare systems that are so clearly INCOMPATIBLE with Hague Convention and Rights of the Child Convention obligations (Articles 9, 10, 11, 18, and others) as to guarantee successful child abduction/retention by their citizens. NCMEC and the Task Force must have the courage to identify publicly through all available media the countries that are the worst offenders, both in specific cases AND in the availability of their legal and social welfare systems to encourage, facilitate, finance, and otherwise support child abduction/retention by their citizens or residents

B) The U.S. Government Hague Convention Compliance Report (mandated by legislation passed in October 1998)

This Report should be made a permanent annual reporting requirement for the Department of State, should be viewed as an international resource (like the web site described above and the current U.S. annual human rights reports), and should be broadened to include all children not returned within 6 months, objective information on each country's legal and social welfare systems, and non-Hague cases and countries. NCMEC and all other interested parties should closely review these reports and be a "truth squad" (i.e., a sort of "State Department Watch") to ensure accurate and complete reporting by the Department of State whether or not there is outside pressure from Congress, the media, and the public.

C) The Annual Country Reports on Human Rights (See also pages 43-53)

These reports prepared by the Department of State and issued by Congress are now an international resource for all governments, academia, and private individuals and organizations. However, despite a section on "children's rights" in each country report, these reports are now silent on the human rights violations inherent in international child abduction and retention facilitated, financed, otherwise supported, and rewarded by governments. Every country in the world is a Party or signatory to the Convention on the Rights of the Child, and some of the worst offenders in this area are also Parties to the Hague Convention and the European Convention on Human Rights.

Congress should direct the State Department to address governmental conduct relating to child abduction and retention in the human rights reports and acknowledge that the Hague Convention IS a human rights treaty, particularly since the status quo aids and abets the conduct of the governments, especially in Europe, that maintain child

abduction/retention constitute merely "private custody disputes"

D) UN Committee on the Rights of the Child

The State Department and NCMEC should submit country reports (and complaints about legal or social welfare systems that virtually invite child abduction and retention) to this implementation body for the Convention on the Rights of the Child to create demands for changes in laws, policies, and practices

3) IMPROVED IMPLEMENTATION OF THE HAGUE CONVENTION

A) Abuse of Article 13: The U.S. Government and NCMEC should compile and publicize the increasingly creative abuses of Article 13b (grave risk to the child as a grounds for denying return applications)

B) Psychological effect of abduction/retention on victims: The U.S. Government and NCMEC should publicize both the Stockholm Syndrome and the Parental Alienation Syndrome

C) Access/custody during the Hague process: The U.S. Government and NCMEC should publicize the virtually complete failure of the Convention's access provisions and the practices of many countries that allow abductors/retainers to control access to the child(ren) during the Hague process, especially when return orders are stayed pending appeals by abductors/retainers (i.e., courts should shift temporary custody to the left-behind parent or at least enforce substantial access)

D) Training of judges: The U.S. Government and NCMEC should identify and publicize the Hague Parties that fall short in this area and disseminate a model training package (perhaps based on the U.S. and British packages)

E) "Two track" court systems: The U.S. Government and NCMEC should declare the incompatibility with Hague Convention obligations of legal systems that use a separate administrative court system for Hague cases while handling custody cases in regular courts that may proceed with jurisdictional and other disputes while a Hague application is still pending

F) Performance of Central Authorities: The U.S. Government and NCMEC should evaluate central authorities and publicize cases where a central authority does far more for its citizens who abduct/retain children than some central authorities do for their citizens who are victims (e.g., Sweden compared to the U.S.)

G) Length of process: The U.S. Government and NCMEC should gather and

disseminate data on average duration of the Hague process in each country (bearing in mind that returns after a lengthy process are better than quick final denials!)

H) Enforcement: The U.S. Government and NCMEC should shine the spotlight on all countries with legal systems that do not permit effective enforcement of Hague return orders, access, visitation, etc.

I) Limit appeals: The U.S. Government and NCMEC should publicize legal systems that allow essentially allow appeals and/or the reopening of Hague return decisions until their citizens win

J) Meaning of Article 1: The U.S. Government and NCMEC should publicize the extent to which Article 1 of the Convention is meaningless (i.e., that the object and purpose of the Convention is to ensure that Parties respect the laws of other Parties concerning child custody and access)

K) Legal Aid: The U.S. Government and NCMEC should publicize the extent of legal aid provided by each country, ESPECIALLY situations where governments finance their nationals who engage in abduction/retention while their victims are up against that government's deep pocket in litigation in both countries

L) Nullification by European system: The U.S. Government and NCMEC should publicize the fact that abductor/retainers from ALL European countries may be able to nullify even Hague return orders from the highest courts of their countries by utilizing the European human rights commission/court in Strasbourg

M) Entitlement of left-behind parents to information: The U.S. Government and NCMEC and the Task Force should press all governments to provide all information and documents in every case to left-behind parents, including diplomatic notes

#### 4) REMEDIAL ACTIONS

The U.S. Government and NCMEC should utilize all means on all fronts to produce:

A) Access/visitation regimes in both Hague and regular custody cases with effective sanctions and police assistance to deal with parents who do not cooperate

B) Widespread Ratification of the 1996 Hague "Protection" Convention WITH EFFECTIVE IMPLEMENTING LEGISLATION to avoid the current situation with both the Hague Convention and the Rights of the Child Convention (i.e., widespread ratification with no underlying implementing legislation by some of the most self-righteous and worst offending Parties, such as Sweden, Germany, Austria)

- C) Linkage to law enforcement treaties and child support agreements to prevent the worst offending countries from additional one-way benefits comparable to those they now enjoy under the Hague Convention
- D) Bilateral Agreements on custody and visitation with the worst offenders, as contemplated in Article 11(2) of the Convention on the Rights of the Child
- E) No closing of cases and "writing off" of American children that other governments refuse to return
- F) Inclusion of child abduction/retention as a major issue in bilateral relations
- G) Extradition by all countries of their citizens for child abduction/retention
- H) Elimination of government financial support for abductors/retainers in the forms of unlimited legal fees at home and abroad, abusive and frivolous litigation in the left-behind parent's country, assistance to abductors/retainers from criminal legislation (and police and prosecutors), payment of child support to abductors/retainers, availability of government psychiatrists or psychologists to assist with bogus Article 13 defenses, etc.
- I) Ability of left-behind parents to penetrate sovereign immunity and bring lawsuits in the courts of their country for damages against governments that facilitate, finance, or otherwise support criminal conduct against them (i.e., abduction/retention of their children)
- J) Bilateral claims against governments that facilitate, finance, or otherwise support abduction/retention by their citizens or residents

Mr. Chairman, in an era of budget constraints, it is reasonable for Congress and the American people to ask what U.S. Government interest is more important than protecting our youngest citizens from the impact of crime. And international parental child abduction or wrongful retention of children are crimes, as well as human rights violations. The Hague Convention is a noble effort to remedy criminal conduct by civil means, but all too many countries (notably European civil law countries) knew at the time they ratified the Convention that their basic child custody laws and institutions were (and still are) incompatible with full compliance.

All of us are well aware that there are many ways to lose a child, none of them acceptable. But foreign government support for and participation in the loss of a child is intolerable. To a large extent, these crimes and human rights violations against American children and their parents succeed because the foreign governments concerned are confident that there is simply no downside risk; i.e., no real-world consequences for ignoring or dismissing the U.S. Government's interests and views. This guarantees future cases. As a father who came within 18 hours of regaining his daughter only to have a last-minute stay from a Swedish court change our lives forever, I can only express the hope that this Committee and Congress in general will ensure that there will be consequences in the future for governments that facilitate, finance, otherwise support, and reward the international parental child abduction and wrongful retention abroad of American children.

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LATEST EXAMPLE OF FOUR YEARS OF EFFORTS (NO RESPONSE)

907 Dalebrook Drive  
Alexandria, Virginia 22308  
11 January 1999

The Honorable Harold H. Koh  
Assistant Secretary of State  
For Democracy, Human Rights, and Labor  
U.S. Department of State (DRL)  
Room 7802  
Washington, DC 20520

Re: Sweden---Annual Human Rights Report

Dear Mr. Koh:

Although I am one of your attorneys in L/HRR, this letter and its enclosures are, of course, submitted to you solely in my private and personal capacity to avoid any appearance of conflict of interest. The dual purpose of this letter and its enclosures is to supply you with the record of my thus far unsuccessful efforts since 1995 to persuade DRL and Embassy Stockholm to produce an accurate and complete human rights report on Sweden with respect to children's rights and to urge you to remedy the situation in the 1998 report. This can easily be accomplished by adding a more concise version of the first enclosure to the section on children in the Swedish report. There is ample time to accomplish this before publication of the 1998 report.

While we are rightly concerned with human rights violations by foreign governments against their own citizens, we should be far more concerned with human rights violations by foreign governments against American citizens, especially when such violations are made a certainty by the overall systems and institutions of the countries in question. I believe Congress, the media, and the American people will agree. Until the annual report on Sweden contains the substance of the first two enclosures (Summary of the Swedish Government System of International Abduction and Wrongful Retention of Children and my recent Submission to the UN Committee on the Rights of the Child), your office will be doing a terrible disservice to all American and other children at risk from the Swedish system and to the cause of human rights generally. Governments and individuals now rely on the annual reports in a variety of ways. Elimination of the section on children from the Swedish report altogether would be a far more honest and honorable approach than continuing to supply misleading and arguably fraudulent reports to Congress, the American people, and the international community. DRL should either do it right, or not do it at all.

You will note from the enclosed package of correspondence with DRL and Embassy Stockholm that my most recent communication with DRL was at the Principal Deputy

Assistant Secretary level concerning the 1997 report on Sweden. In recent years, the section on children in the Swedish report concentrates on such topics as education and medical care while whitewashing the fundamental human rights violations committed by the Swedish Government and giving the false impression that there are no significant risks to children in Sweden. In fact, the Swedish legal and social welfare systems ensure that American (and other non-Swedish or dual national) children abducted to, wrongfully retained in, or otherwise taken to Sweden will completely lose their American or other non-Swedish parent, family, and home, unless the Swedish parent decides otherwise. As described in the enclosures, that is because the Swedish Government (its policies, practices, and legal and social welfare systems) facilitate, finance, otherwise support, and reward the total elimination of one parent and family from a child's life in both abduction/retention and regular custody cases. There are those in the Department of State who attempt to argue that none of this entails human rights violations. Such people do not have the competence, expertise, or sensitivity to be entrusted with human rights work of any kind.

My recent submission to the Committee on the Rights of the Child (the second enclosure) explains how Sweden's conduct in this area constitutes clear, consistent, and institutionalized violations of ten articles of the Convention on the Rights of the Child (2, 5, 8, 9, 10, 11, 16, 18, 29, and 35). Having signed the Convention, the United States at least has the obligation to do nothing contrary to its object and purpose. The 1997 report on Sweden contains the preposterous statement that an "ombudsman also ensures that Sweden lives up to its obligations under the United Nations Convention on the Rights of the Child." If DRL and Embassy Stockholm would do some independent research instead of recycling old reports and blindly accepting whatever the host government tells them, they would know that Sweden has not adopted adequate implementing legislation and that Sweden therefore cannot comply with most of the provisions listed, even if individual judges or other officials would like to do so.

How many of the people involved with the report on Sweden in DRL or Embassy Stockholm fully comprehend that Swedish judges have nothing remotely comparable to a contempt of court power to enforce their own orders in child abduction or regular child custody cases (e.g., for return or visitation)? In any event, it is inconsistent with the obligations of the United States as a Convention signatory to participate in such a cover-up of Convention violations and to disseminate globally such Swedish Government disinformation. In view of the unlimited Swedish Government financial and other resources arrayed against American citizens (see enclosures) who receive virtually nothing from the U.S. Government, it is not asking too much for DRL to include a few paragraphs in a 1600 page report printed on tissue paper.

In the third enclosure (my testimony before the Senate Foreign Relations Committee on October 1, 1998---again in my private capacity), I mention the more general problem. Among other things, the reports on Sweden and some other European countries constitute a double standard "pass" for our fellow developed Western countries, while we

impose higher standards on developing countries. In fact, a country like Sweden, with all its rhetoric on human rights in general and children's rights in particular, and its self-appointed status as the "conscience of mankind" and leading defender of children, should be held to the highest possible standards. The current human rights reports not only fail to do so, but badly deceive readers in the process and may in fact help produce human rights violations if American judges, law enforcement personnel, or other officials rely on them in actual cases. U.S. legislation virtually encourages American courts to treat foreign countries like American states in terms of deferring to foreign custody jurisdiction, unless the foreign government concerned violates human rights or otherwise does not meet U.S. standards. Since foreign custody jurisdiction generally means elimination of the American parent from the child's life, DRL has a duty to supply American courts with accurate and complete human rights reports that will serve as a basis for rightly refusing to defer to foreign child custody jurisdiction in many cases. In the current reports, the cover-up of foreign human rights violations in this area may result in terribly unjust decisions by American courts that rely on them for completeness and accuracy.

Sweden loudly boasts of being the first country to ratify the Convention on the Rights of the Child and leads the criticism of the United States for its failure to ratify. Although not a Party, the United States complies with the provisions of the Convention in question to a far greater extent than Sweden, and we should not hesitate to state that publicly. As with several other treaties (e.g., the European Convention on Human Rights, the Hague Convention on the Civil Aspects of International Child Abduction, the ICCPR), Sweden confuses the photo opportunity of ratification with the daily requirement of implementation, and the United States allows Sweden to get away with it by issuing inaccurate, incomplete, misleading, and fraudulent human rights reports.

As you must certainly know, your appointment gave hope on a wide variety of matters to countless people inside and outside the Department. I was one of them. I hope you will act immediately on the 1998 report on Sweden. After four years of DRL and Embassy Stockholm stonewalling, however, I hope you understand the necessity for me to pursue this matter simultaneously with the Inspector General and the relevant committees of Congress.

Thank you for your consideration of this matter. I look forward to hearing from you.

Sincerely,

Thomas A. Johnson  
(703) 799-5899 (Phone and Fax)



907 Dalebrook Drive  
Alexandria, Virginia 22308  
USA  
5 January 1999

Ms. Sandra Mason, Chair  
United Nations Committee  
on the Rights of the Child  
UN Center for Human Rights  
Palais des Nations  
1211 Geneva 10, Switzerland

Re: Sweden

Dear Ms. Mason:

As a result of not knowing the Committee's precise schedule until recently, I greatly regret that this communication concerning the Government of Sweden's failure to adopt measures (including implementing legislation) to give effect to several of the most fundamental rights set forth in the Convention on the Rights of the Child, Sweden's lack of progress made on the enjoyment of those rights, and its consistent, systematic, and institutionalized violations of many of these rights, is being submitted at a relatively late stage of the Committee's consideration of Sweden's report.

However, despite its international legal obligations under the Convention, Sweden's harmful conduct toward children with respect to family law matters, international child abduction, and wrongful retention of children is beyond question and based on clear evidence. It cannot be denied by the Government of Sweden, and will be apparent to Members of the Committee based on this communication and other available information. From the article-by-article analysis below, Members will note the provisions of the Convention that Sweden has failed to implement, and/or violates, in this area (notably Articles 2, 5, 8, 9, 10, 11, 16, 18, 29, and 35).

In view of these points, combined with the devastating impact on children of the present Swedish system (i.e., the nearly certain loss of one parent in custody and abduction/retention cases), the Committee's limited opportunity to address Sweden's conduct again for five years, the leadership role that Sweden has unilaterally claimed in the field of children's rights, and the complete lack of effective and legally enforceable remedies under the current Swedish system (starting with the inability of Swedish courts to enforce their own civil orders), it is hoped that the Committee will give full consideration to this communication and will vigorously press the Government of Sweden to adopt the necessary reforms and remedial actions. This is NOT an individual or group complaint against Sweden. I am well aware that the Convention does not provide such a mechanism and that the Committee on the Rights of the Child does not have procedures

for handling such complaints.

Rather, as indicated above, the purpose of this communication is to inform the Committee of the inadequacy of the Swedish Government's implementation of the Convention, and the manner in which the rights of children under the Convention articles listed above are violated on a daily basis by Sweden's overall legal and social welfare system in both domestic and international cases.

Specifically, as discussed also in the attached summary and outline of the Swedish Government System of International Child Abduction and Wrongful Retention of Children (much of which also applies to Sweden's treatment of children in regular custody cases), the Government of Sweden facilitates, finances, and otherwise supports such violations by means of a legal and social welfare system that, as a practical matter, encourages and rewards Swedish citizens for their wrongful conduct.

#### BACKGROUND

Before proceeding, it is necessary for me to inform the Committee that I am an attorney with the United States Department of State who served as one of the principal United States negotiators of the Convention on the Rights of the Child during nine of the sessions of the Commission on Human Rights when the Convention was being drafted (including the final four sessions while posted in Geneva as the Legal Counselor at the United States Mission). However, I do not purport in any way to speak for or otherwise represent the Department of State or the United States Government in this matter. In short, this communication is submitted to the Committee solely in my private and personal capacity, and was prepared and transmitted to the Committee through my own resources.

Further, for the sake of full disclosure and to state my interest in the subject, this communication is based largely on my personal experience and knowledge of the Swedish legal and social welfare systems, both as the parent of a child wrongfully retained in Sweden by a Swedish diplomat (ironically a former Deputy Assistant Under-Secretary for Human Rights in the Ministry of Foreign Affairs) and as an acquaintance of many other parents whose children have had their rights violated by Sweden. Nevertheless, I trust that the Committee will recognize that every effort has been made in this communication to concentrate on the Swedish legal and social welfare systems, Swedish institutions, and patterns of Swedish conduct. This communication clearly does not contain the names and details that would characterize an individual or group complaint, and should not be viewed as such.

Finally, in the event that there are doubts about the "standing" of a citizen from a country that has signed but not ratified the Convention to criticize Sweden's conduct, I would simply reply that Sweden's misconduct impacts on non-Swedish or dual national children

and their non-Swedish parents from many countries. Moreover, the United States, at both the Federal and state levels, has a far better record of compliance than

Sweden with the actual terms of the Convention articles listed above.

#### THE SWEDISH LEGAL AND SOCIAL WELFARE SYSTEM

Like Sweden's ratification of the Convention, other relevant elements of Sweden's legal system look progressive and humane on paper, but it is crucially important for the Committee to distinguish between appearance and reality in Sweden. And reality in Sweden with respect to family law and child abduction/retention matters must begin with the absence of adequate and effective enforcement mechanisms to promote and protect the rights of the child under the articles of the Convention listed above.

Several other pertinent examples of form versus substance exist in the Swedish system. In theory, Swedish parents who abduct or withhold a child from the other parent can be found unfit *per se* by a Swedish court, and lose custody. But this occurs very rarely, and, according to Swedish legal experts, never in international cases where the consequence would be that the child leaves Sweden to reside elsewhere.

In responding to this communication, Swedish Government authorities may also direct the Committee's attention to the new joint custody law that entered into force on 1 October 1998 as an example of progress and reform. That may appear true on paper, where for the first time Swedish judges can impose joint custody over the objections of one or perhaps both parents. (Previously, Swedish courts were required to give sole custody to one parent, and that was automatically the mother in virtually every case.) But nothing has changed to enable Swedish courts to enforce the terms of joint custody. Even if the Committee is not prepared to accept the prediction that joint custody will rarely if ever be imposed over the objections of a Swedish mother, and never if the father is non-Swedish and residing outside Sweden, the inescapable reality (especially for the children involved) is that any Swedish joint custody orders under the new law will be just as unenforceable as the standard sole custody order has always been in terms of securing enjoyment of the rights of a child abducted or wrongfully retained by a Swedish parent.

More precisely, in regular child custody cases and in cases involving either domestic or international child abduction and wrongful retention of children, the current Swedish legal and social welfare systems guarantee that the child will completely lose one parent, UNLESS the custodial or abducting parent decides otherwise. As a practical matter, the exercise of child custody jurisdiction by a Swedish court effectively terminates the child's relationship with the non-custodial parent, both in purely domestic cases, or in international abduction/retention cases where Sweden fails to return a child in accordance with its obligations under the Convention (and, when applicable, the Hague Convention

on the Civil Aspects of International Child Abduction).

As indicated above, Sweden essentially gives the custodial parent (who often has already abducted or wrongfully retained the child) a veto power over every aspect of the child's relationship with the non-custodial parent. Thus, despite all the standards and safeguards enumerated in the articles of the Convention cited above, Sweden leaves each child's relationship with non-custodial and non-Swedish parents at the mercy of the Swedish custodial parent. By perpetuating this cruel and irresponsible system, the Government of Sweden completely disregards its international legal obligation under the Convention to protect and ensure the child's rights to substantial contact with both parents and both extended families and, in international cases, with both countries and cultures as well. In short, the Swedish legal system does not and cannot either control the conduct of Swedish custodial parents or protect the rights of children to contact with non-custodial and non-Swedish parents.

In a recent demonstration of the Swedish legal system at its worst (one that is well known to Swedish Government officials), the Swedish Supreme Court ignored the objections of a non-Swedish father and permitted the Swedish courts to take custody jurisdiction and award sole custody of two children to a Swedish mother in a case where the children had been born and always resided outside Sweden, had apparently never even visited Sweden, and were unquestionably abducted to Sweden. As the leading Supreme Court case in this area, it is of interest to the Committee as Swedish law, not just as an individual case.

#### THE SIX PILLARS

The continued existence of the following six "pillars" of Sweden's sophisticated and well-financed international child abduction system (most of which also apply to regular custody cases in Sweden) demonstrates the extent to which the Government of Sweden has failed to implement, and/or violates, the ten articles of the Convention listed above:

1) The absence of any legal mechanism comparable to "contempt of court" in common law countries that can enforce the rights of children, for example, to have contact with both parents and, in international cases, with both countries. More than any other factor, the impossibility of effective enforcement machinery for Swedish civil court orders means that Sweden cannot give effect to the rights recognized in the Convention at issue here, even if individual judges might wish to do so.

2) Extreme gender and national bias of Swedish courts. This is common knowledge in Europe, North America, and perhaps in other regions, and is not a subjective or unsubstantiated allegation. Accurate and complete statistics from Swedish child custody proceedings, which the Swedish Government may be unwilling to supply to the Committee, would unquestionably reveal that Swedish courts grant sole custody to

Swedish mothers virtually without exception in both domestic and international cases. Swedish courts have almost certainly never granted custody to a non-Swedish father residing outside Sweden. This national bias is also exemplified by the grotesque but not uncommon practice of Swedish judges granting non-Swedish fathers visitation of their children only in Sweden, and often only under social welfare, police, or other supervision.

3) Unlimited Swedish Government payment of legal fees in Sweden and abroad for Swedish citizens who are involved in regular custody proceedings or who abduct or wrongfully retain children. Except for a relatively few low income individuals who can qualify for legal aid in Swedish proceedings, non-Swedish parents are confronted by the "deep pocket" of the Swedish Government in both custody and abduction/wrongful retention litigation wherever conducted. In exhausting their savings and other resources while fighting against the Swedish Government to uphold the rights of their children set forth in the Convention articles listed above, most non-Swedish parents suffer irreparable financial harm. Ultimately, as with every other aspect of this problem, it is the children involved who suffer most from the permanent and unnecessary waste of resources in each case caused by the Swedish Government.

4) Misuse of Swedish law enforcement authorities to enforce a criminal law intended to protect and reward Swedish parents who abduct or wrongfully retain children. The third attachment to this letter is the English translation of a provision from the Swedish Criminal Code that was drafted, in the exact words of two senior Swedish prosecutors, primarily for use against "fathers from the South." This refers to African and Arab fathers who, when denied access to their children despite their joint custody rights in Sweden, respond by taking the children to their home countries. Along with gender and national bias in favor of Swedish mothers, it is common knowledge that the Swedish courts are characterized by racial bias in such cases. Even if the Committee is not prepared to accept that assertion, a brief examination of the plain language in the second paragraph of the attached Swedish criminal law (marked "For use against non-Swedish fathers") reveals a "law" that anticipates wrongdoing by Swedish citizens (child abduction or retention) and punishes parents with joint or sole custody who respond by attempting to exercise their custody rights. Whatever its original intent, this law is used against all non-Swedish fathers. It was wrongly used, for example, to detain me for two days (for which I have since been compensated by the Swedish Government) after I exercised my sole custody rights under the only custody order in existence and my joint custody rights even under Swedish law.

5) Absence of the principle of comity from the Swedish legal system. The rights of children are severely harmed by Sweden's lack of respect for non-Swedish laws and court orders, even when the orders concerned result from trials or appellate litigation financed and often initiated by the Swedish Government.

6) In international child abduction and wrongful retention cases, the refusal of Sweden

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to extradite or effectively prosecute Swedish nationals. As with every other facet of the Swedish system, it is primarily the children involved whose human rights are violated by Sweden's status as a sanctuary for child abductors/retainers.

#### ARTICLE-BY-ARTICLE ANALYSIS:

Article 2: Sweden does not respect and ensure all the rights in the Convention for children with a non-Swedish parent, as discussed above, and thus discriminates against such children.

Article 5: Sweden only respects one parent and one extended family by failing to protect the child's relationship with the other parent and extended family, thus assuring the elimination of that parent/family from the child's life.

Article 8: By failing to ensure that the child has substantial contact with both parents and both extended families (and both countries and cultures in international cases), Sweden clearly does not respect the right of the child to preserve his or her full identity, nationality, and family relations.

Article 9: Sweden does nothing to facilitate personal relations and direct contact for a child separated from one parent (and has no effective means of doing so without something like contempt of court) and, as discussed above, supports and rewards the parent responsible for the separation.

Article 10: In international cases, as discussed at length above and in the attachments, Sweden does not respect the right of the child to maintain regular personal and direct contacts with both parents, and to leave Sweden. As a practical matter, the Swedish legal and social welfare systems are wealthy and indispensable accomplices of Swedish parents who abduct or wrongfully retain children.

Article 11: As discussed above, Sweden combats any transfer of children abroad from Sweden, while at the same time essentially encouraging and rewarding abduction of children to, or wrongful retention of children in, Sweden.

Article 16: By stepping aside and leaving children under the total control of the Swedish custodial parent, the Swedish legal and social welfare systems guarantee arbitrary and unlawful interference with the child's overall family (i.e., the non-custodial or non-Swedish parent).

Article 18: Notwithstanding Sweden's lip service to the principle of gender equality and its new but unenforceable joint custody law mentioned above, the reality is that the Swedish legal and social welfare systems virtually guarantee the elimination of one parent from the child's life, since non-custodial parents have no significant enforceable

parental rights in Sweden.

Article 29: Since the norm in Sweden is that one parent is eliminated from the child's life in divorce and abduction/retention cases, it is highly unlikely that the Swedish educational system is developing respect for both parents. Moreover, since the Swedish educational system is so ethnocentric, for example, that it teaches little or nothing about Western Hemisphere history and culture, the education of the child in Sweden is clearly not directed in international cases to development of respect for overall cultural identity/language/values and the national values of the country from which he or she may originate.

Article 35: As with Article 11 above, Sweden may take measures to prevent the abduction of children from Sweden, but, as detailed above and in the attachments, the overall Swedish legal and social welfare systems actually constitute a Swedish Government Child Abduction/Retention System that facilitates, finances, otherwise supports, and rewards abduction and wrongful retention of children by Swedish citizens.

#### CONCLUSION

For too many years, the Swedish Government has succeeded in portraying itself to the international human rights community as a staunch defender of children's rights in general and a leading proponent of the Convention in particular, while at the same time maintaining a legal and social welfare system that systematically violates numerous fundamental rights of children recognized in the Convention and identified above. For too many years, the international human rights community has remained silent about the difference between the reality of Sweden's actual conduct toward children in the areas under discussion here and Swedish Government rhetoric in support of countless human rights initiatives. It is respectfully requested that the Committee on the Rights of the Child remedy this situation in two ways:

FIRST, by alerting the General Assembly and the international community generally to the ongoing violations by Sweden of the rights of children already within Sweden and the risks to children that may be taken to Sweden in one way or another, and,

SECOND, by utilizing its authority under Article 45(d) of the Convention to make suggestions and general recommendations to Sweden (reported also to the General Assembly) concerning the measures that Sweden must adopt to give effect to the rights in question, to eliminate current Swedish violations of the Convention, and to prevent future ones.

Under its current legislation, policy, and practices, as described in this communication, the Government of Sweden does not fully implement or comply with the articles of the Convention discussed above (2, 5, 8, 9, 10, 11, 16, 18, 29, and 35). In addition to

addressing the cruel impact of Sweden's current violations of the Convention on the children affected today, it is hoped that the Committee will also be particularly concerned with the absolute certainty of continuing and future Swedish violations of the Convention affecting thousands of children in Sweden or at risk of being taken to Sweden, unless immediate and sweeping reforms of Swedish laws, policies, practices, and judicial conduct take place.

Sincerely,

Thomas A. Johnson

(703) 799-5899 (Phone and Fax)





Bergshamra School  
Solna, Sweden  
December 18-19, 1996

Direct Participation  
by Swedish law  
enforcement authorities  
in Federal and state  
felonies against  
American citizens



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

THOMAS ARTHUR JOHNSON

Complainant

v.

Chancery No. 920010

ANNE FRANZÉN JOHNSON

Defendant

**AFFIDAVIT**


My name is John Crouch. I am member of the Virginia State Bar. I am also a member of Crouch & Crouch, 2111 Wilson Boulevard, Suite 550, Arlington, Virginia 22201. Ms. Anne Franzén Johnson is our client. I am executing this affidavit at the request of Christopher Schinstock, Esquire. Counsel for the Complainant, and sending an original of it to him on the day before the hearing date on his garnishment summons in this case.

1. On the date of the service of the garnishment summons and from then to present, our law firm did not hold and has not held any funds on deposit or on retainer on behalf of Ms. Anne Franzén Johnson.

2. Ms. Anne Franzén Johnson is not entitled to any funds or personal property held by our firm on or since the date of the service of the garnishment summons.

3. All such funds or personal property received by our firm pursuant to our representation of Ms. Anne Franzén Johnson in the currently pending Johnson custody dispute have been paid by the Kingdom of Sweden's legal aid agency, and not by Ms. Anne Franzén Johnson.

Respectfully submitted.

  
John Crouch



FÖRSÄKRINGSKASSAN  
STOCKHOLMS LÄN

Handling officer, Tel.No. (direct in-dialing)  
Anna Wallgren, 08-676 1485

Date  
1997-01-07

Reference No.  
470785-2457

Mr Thomas Arthur Johnson  
5711 Heritage Hill Court  
Alexandria, VA 22310  
USA

Payment of maintenance

Since you are resident outside Sweden, the matter of your maintenance liability is being handled by our INTERNATIONAL DIVISION.

The debt you have incurred for the child(ren) indicated below is currently 10 840 US dollars.

Child	Pers. id. no.	Maintenance/month
Amanda Kristina Johnson	871111-0547	542 US dollars

The Insurance Office is empowered by virtue of agreements (conventions) with a number of other countries to apply for assistance in enforcing payment of maintenance even though the maintenance debtor may be resident in a country outside Sweden.

Payments may be enforced by deducting a certain sum from your wages or salary or by selling some of your property. Any money which may thus be raised can then be used towards paying off your debt for unpaid maintenance.

To avoid the unpleasantness associated with enforcement, we recommend you both to settle your debt and to start paying your regular contributions without delay. Please get in touch with us if you wish to discuss some form of payments plan. We are enclosing information on how to pay maintenance. ./.

FÖRSÄKRINGSKASSAN STOCKHOLMS LÄN

*Anna Wallgren*

Anna Wallgren

CONVENTIONS EMPOWERING SWEDEN TO APPLY FOR ASSISTANCE IN ENFORCING PAYMENT OF MAINTENANCE CONTRIBUTIONS

Convention on the recovery abroad of maintenance, signed in New York on 20th June, 1956.

Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, signed in the Hague on 15th April, 1958.

Convention on the recognition and enforcement of decisions relating to maintenance obligations, signed in the Hague on 2nd October, 1973.

RECIPROCITY

USA, 1st May 1991.  
Australia, 1st April, 1989.

## Chapter 7

SWEDISH CRIMINAL CODE

## On Offences against Family

## Section 1

## Section 4

If a person, without authorization, separates a child under fifteen years of age from the person who has the custody of the child, he shall, unless the offence is one against personal liberty, be sentenced for dealing arbitrarily with a child to pay a fine or to imprisonment for at most one year.

This also applies if a person having joint custody of a child under fifteen years of age without good reason arbitrarily removes the child or if the person who is to have the custody of the child without authorization seizes the child and thus takes the law into his own hands.

For use  
against  
non-Swedish  
fathers

A person is also liable under the first paragraph who without authorization separates a child under fifteen years of age from the person who has the custody of the child by virtue of the Care of Young Persons (Special Provisions) Act (1980:621), unless the offence is one against personal liberty or of furtherance of flight.

If the offence stated in the first or second paragraph is to be regarded as grave, the offender shall be sentenced to imprisonment for at least six months and at most two years. (SFS 1993:207)

## Section 5

VIRGINIA:

*... In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 3rd day of March, 1998.*

Anne Franzen Johnson,	Appellant,
against	Record No. 980060
	Court of Appeals No. 2200-96-4
Thomas Arthur Johnson,	Appellee.

From the Court of Appeals of Virginia

Finding that the appeal was not perfected in the manner provided by law, the Court dismisses the petition for appeal filed in the above-styled case. Rule 5:17(a)(2).

A Copy,

Teste:

David B. Beach, Clerk

By:

*Janet H. Earl*  
Deputy Clerk

THE SWEDISH GOVERNMENT'S SYSTEM OF SUPPORTING AND FINANCING  
PARENTAL CHILD ABDUCTION BY SWEDISH CITIZENS

- Overall refusal to extradite Swedish citizens
- No possibility of effective Swedish prosecution of Swedish citizens who commit parental child abduction or custodial interference
- Payment by the Swedish Government of ALL but a token amount of the Swedish abductor's legal fees and related expenses in Sweden OR abroad in Hague Convention cases, except that the victim parent (instead of the Swedish Government) is ordered (in violation of Article-2§ of the Convention) to pay the abductor's legal fees and related expenses when a Swedish court refuses to grant a Hague Convention Application
- Either no return from Sweden of abducted children under the Hague Convention or returns only after extraordinarily costly, lengthy, and burdensome proceedings for the victim parent (e.g., full trials at both the trial and appellate levels), with the danger of last-minute stays and interference by Sweden's Social Welfare Authorities
- Payment by the Swedish Government of ALL legal fees and related expenses of Swedish parents in the regular child custody battles in Sweden or abroad against non-Swedish parents which usually follow resolution of a parental child abduction, further disadvantaging and intimidating non-Swedish parents
- Payment by the Swedish Government of child support not paid by foreign fathers (i.e., Swedish Government elimination of any practical impact of Swedish citizens ignoring foreign custody orders, as well as its elimination of any legal risks)
- No requirement of testimony under oath by the abducting parent (i.e., no perjury risk) in Hague Convention proceedings
- No rules of evidence in Hague Convention proceedings in Sweden (especially no hearsay rule), along with no requirement that the authors of documents appear as witnesses to be cross-examined, thus ensuring that the content of testimony, legal briefs, and documents submitted to the Swedish courts is regulated only by the integrity and ethical standards of the Swedish child abductor and the abductor's lawyer
- Free psychiatrists and psychologists from the Social Welfare Authorities for psychiatric/psychological evaluations of children in Sweden (with pro-Swedish results a certainty)
- Swedish law which gives Swedish child abductors a "right of protection" over abducted children and permits the abducting parent to deny the child access to the victim parent, while at the same time, contrary to U.S. law in this area, purporting to criminalize any efforts by a non-Swedish parent with primary or sole custody to attempt to exercise that right without a Swedish court order

-2-

--Total support for Swedish child abductors by the Swedish Central Authority under the Hague Convention, combined with the Swedish CA's refusal to assist non-Swedish victims despite its obligations under the Convention

--Virtually unlimited paid leave from work for Swedish child abductors claiming a need to care for the child(ren) but actually working on their cases against non-Swedish parents

--"Address protection" (i.e., legalized disappearance and cut-off of even consular access to children) granted by Swedish authorities with no questions asked, based only on unilateral accusations by the Swedish parent against the non-Swedish parent

--Swedish social welfare laws with no right of appeal which permit the abducting Swedish parent to initiate custody investigations, psychiatric evaluations, and commitment of abducted children to child psychiatric hospitals without consulting the non-Swedish parent, without regard to joint custody and habitual residence outside Sweden, and in violation of the Hague Convention's stay on custody proceedings in the abducting parent's country

--Issuance of replacement Swedish passports on demand (no questions asked) to any Swedish citizen at any Swedish embassy or consulate worldwide (i.e., surrender of a Swedish passport to non-Swedish judicial or other authorities provides no protections or safeguards whatsoever)

--No concept of "contempt of court" or anything comparable, and thus no effective means of enforcing court orders in Hague Convention or child custody cases on behalf of non-Swedish parents

--No effective enforcement of visitation or access under Swedish custody orders and no implementing legislation for Article 21 of the Hague Convention concerning rights of access

--Children with a Swedish mother fraudulently (but automatically) registered in all Swedish records as born at the place in Sweden where the mother is registered, even if the birth occurred in Australia or Brazil or Canada, with Swedish passports perpetuating the same fraud

--Use of laymen (who outnumber the judge 3 to 1) in the trial court (Lansrätten) that deals with Hague Convention cases (a practice that raises concerns about bias and competence, especially in connection with interpreting an international treaty)

INTERNATIONAL CHILD ABDUCTION AND WRONGFUL RETENTION IN SWEDEN

Name of Child: Amanda Kristina Johnson

Date <sup>and</sup> ~~of~~ Place of Birth: 11 November 1987 Geneva, Switzerland

Current Location: Radjursstigen 14, 17072 Solna, Sweden

Telephone in Sweden: (8) 851436

ID Number in Sweden: 871111-0547

Wrongfully Retained in Sweden since January 1995

4 Swedish courts either ordered Amanda's return under the Hague Convention or denied Swedish jurisdiction

Final denial of return by Supreme Administrative Court (Regeringsrätten) in May 1996

Father: Thomas A. Johnson, 907 Dalebrook Drive, Alexandria, Virginia

--primary custodian since June 1995

--sole and exclusive custody of Amanda since August 1996

Mother: Anne Franzen or Anne Franzen Johnson (address and telephone

--no custody order but given de facto sole custody rights above)  
by Swedish law enforcement and social welfare authorities

Mother's employer: Swedish Ministry of Foreign Affairs

--she is former Deputy Assistant Under Secretary for Human Rights

Proceedings: -14 separate proceedings in 10 different courts in New York, Virginia, and Sweden with the Swedish Government paying the mother's legal fees in ALL

Pillars of the Swedish Government Child Abduction System:

--no comity for foreign law or court orders despite Sweden's obligations under Articles 1 and 2 of the Hague Convention

--extreme gender bias and nationalistic bias in Swedish courts

--payment of all legal fees for Swedish abductors/retainers in all proceedings in Sweden and abroad by the Swedish Government

--nothing comparable to contempt of court in the Swedish legal system, so that Swedish courts cannot control the conduct of Swedish parents or protect the parental rights of non-Swedes

--criminal law that targets non-Swedish parents with sole or joint custody rights who attempt to exercise those rights



CHRONOLOGY: ABDUCTION OF AMANDA KRISTINA JOHNSON BY ANNE  
FRANZEN AKA ANNE FRANZEN JOHNSON AND THE  
GOVERNMENT OF SWEDEN

- 8/94 Amanda last in Virginia and the United States
- 11/94 Last exercise of Thomas Johnson's custody rights permitted by Anne Franzen Johnson (Amanda in Paris for Thanksgiving)
- 6/94-2/95 Repeated attempts by Thomas Johnson to schedule 4 weeks of 1995 Easter vacation in the U.S. in accordance with the Virginia Order are ignored or rejected by Anne Franzen Johnson
- 1/95 Repeated attempts by Thomas Johnson to schedule visitation in Sweden in accordance with the Virginia Order during early February are ignored or rejected by Anne Franzen Johnson
- 1/25/95 Anne Franzen Johnson secretly files for sole custody of Amanda and complete elimination of all Virginia Orders Virginia jurisdiction in the Solna District Court, Solna, Sweden
- 2/1/95 In a telephone call initiated by Thomas Johnson only to speak with Amanda, Anne Franzen Johnson refuses contact with Amanda and suddenly demands without previously raising the subject that Thomas Johnson agree to immediate psychiatric treatment for Amanda; Thomas Johnson responds negatively with an immediate fax requesting an explanation in writing (none is ever received, but Anne Franzen Johnson had raised the subject in her secret filing for sole custody on 1/25)
- 2/8-2/10/95 Thomas Johnson travels to Sweden for visitation but is allowed by Anne Franzen Johnson to see Amanda only under supervision
- 2/13/95 Thomas Johnson receives Anne Franzen Johnson's petition for sole custody by registered mail
- 3/7/95 Anne Franzen Johnson refuses in writing via her Swedish attorney to comply with the Custody Order by allowing Amanda to return to the U.S. for 4 weeks of Easter vacation
- 3/14/95 Thomas Johnson files an Application for Amanda's return on June 10, 1995 under the Hague Convention on the Civil Aspects of International Child Abduction
- 3/27/95 Initial hearing in Circuit Court of Alexandria on Thomas Johnson's motion for an order finding Anne

-2-

Franzen Johnson in violation of the Custody Order for Amanda and wrongfully retaining Amanda in violation of his custody rights

- 4/5/95 Solna District Court dismisses Anne Franzen Johnson's petition on the grounds that Amanda has spent most of her life in the U.S., that the agreed terms of the Virginia Orders are that Amanda's stay in Sweden is not permanent, and that she is thus not domiciled in Sweden
- 4/12/95 Hearing before the Circuit Court of Alexandria and issuance of an Order that Amanda's habitual residence remains in Alexandria, Virginia, that Anne Franzen Johnson has wrongfully retained Amanda in violation of the Hague Convention and has violated Thomas Johnson's custody rights, and that Anne Franzen Johnson is ordered to relinquish custody of Amanda to Thomas Johnson on June 10, 1995
- 4/24-4/27/95 Thomas Johnson present in Sweden
- 4/25/95 Thomas Johnson allowed the only overnight visit with Amanda since 11/94, but only after surrendering her passport and only because of Anne Franzen Johnson's desire to disrupt his trial preparations and exploit his jet lag
- 4/26/95 Hearing in Stockholm, Sweden before the County Administrative Court (Lansratten) on Thomas Johnson's Hague Application with both parties and witnesses present
- 5/19/95 Lansratten finds that Amanda has her domicile in the U.S. and that Anne Franzen Johnson has violated Thomas Johnson's custody rights, and orders Amanda's return as requested on June 10 in accordance with the Hague Convention
- 6/7/95 Administrative Appeals Court (Kammarratten) issues a stay on execution of the return order
- 6/10-6/20/95 Thomas Johnson present in Sweden (no contact with Amanda)
- 6/13/95 Hearing in Stockholm before the Kammarratten on Anne Franzen Johnson's appeal with both parties present
- 6/19/95 Kammarratten fails to respect the Virginia Orders and reverses the return order on erroneous grounds that only Thomas Johnson's rights of access, not his custody rights have been violated until 8/20/95

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- 7/14/95 U.S. Central Authority transmits two Hague Applications by Thomas Johnson, one for Amanda's return on 8/20/95 and the other for access to her under Article 21, along with concerns about Swedish compliance with the treaty.
- 7/19/95 Thomas Johnson's Hague Application for return on 8/20/95 filed with the Lansratten
- Swedish Central Authority dismisses U.S. concerns, sends translations of the psychiatric reports unlawfully obtained by Anne Franzen Johnson and ignored by 3 Swedish courts, and essentially urges Thomas Johnson to submit to Swedish jurisdiction
- 8/15/95 U.S. Central Authority transmits a six-page memorandum to the Swedish Central Authority raising concerns about Swedish compliance with the treaty (never answered)
- 8/21-9/8/95 Thomas Johnson present in Sweden (no contact with Amanda)
- 9/7/95 Regular Appeals Court (Svea Hovratt) ignores Article 16 of the Hague Convention (regular custody proceedings must be frozen during pendency of a Hague application), applies Swedish domestic law, decides that Amanda's residence in Sweden is permanent, and reverses the Solna District Court's dismissal of Anne Franzen Johnson's sole custody petition
- 9/26-10/1 Thomas Johnson present in Sweden (access to Amanda only at her school for 1 hour on 9/28)
- 9/28/95 Hearing (lawyers only) in Stockholm before the Lansratten on the Hague Application for return of Amanda on 8/20/95
- 10/6/95 Lansratten upholds the Virginia Orders and orders Amanda's return on 11/11/95, finding that her stay in Sweden is limited under the Virginia Orders and (expressly rejecting the Svea Hovratt decision) that she is thus not a resident of Sweden
- 10/95 Thomas Johnson petitions the regular Supreme Court (Hogsta Domstolen) for leave to appeal the Svea Hovratt decision on jurisdiction (petition not acted upon as of 8/8/96)
- 10/27/95 Kamarratten issues a stay on the return order for 11/11
- 11/10/95 Kamarratten refuses to lift the stay

-4-

- 12/13/95 Hearing (lawyers only) in Stockholm before the Kammarratten on Anne Franzen Johnson's appeal of the return order
- 12/18-12/24/95 Thomas Johnson present in Sweden (access to Amanda only at her school)
- 12/19/95 Kammarratten orders Amanda's return at 10 A.M. on 12/22/95, finding that Amanda's stay in Sweden was limited under the Virginia Orders, that Amanda's domicile on 8/20/95 was still in Virginia, and (agreeing with previous courts) that there is no support for Anne Franzen Johnson's claims of psychological risks in returning Amanda and thus no need for a child psychiatric evaluation
- 12/20/95 Administrative Supreme Court (Regeringsratten) reverses the 8/95 return order for Julia Larson, daughter of American father Mark Larson abducted 3 times from Utah by her Swedish mother
- 12/21/95 Without explanation, the Regeringsratten issues a stay on the return order for Amanda less than 18 hours before the time ordered for the return
- 1/30/96 United States Government Statement of Interest filed with Regeringsratten via the Swedish Central Authority
- 12/95-5/96 Repeated denials by Regeringsratten of requests by Thomas Johnson's attorneys for a hearing, lifting of the stay, an immediate decision, etc.
- 5/9/-5/11/96 Thomas Johnson present in Sweden (access to Amanda only for 2 hours at her school on 5/10)
- 5/9/96 Regeringsratten reverses the return order for Amanda, finding that Amanda's residence is Sweden by applying Swedish domestic law and ignoring the Virginia Orders, the Hague Convention, the U.S. Government Statement, the reasoning of the lower courts, and pertinent decisions by third country courts
- 6/20/96 Diplomatic Note from the United States Government is delivered to the Swedish Government by the American Embassy in Stockholm declaring that:
  - the Regeringsratten decision of 5/9 "represents a serious departure from Sweden's obligations under Articles 1, 3, and 16 of the Hague Convention" and "threatens the greater objectives of the Convention"
  - "the United States considers Sweden to be in violation of its obligations under the Hague Convention"

--the "Regeringsrätten decision can be expected to have an immediate, negative effect on transnational custody disputes among nationals of Hague Convention States--a result manifestly and significantly contrary to the Hague Convention and to the best interests of the affected children"

--the United States "strongly urges" the Government of Sweden to "remedy the inconsistency between Sweden's hemvist law and its obligations under the Hague Convention, and to take all other necessary steps to correct the Regeringsrätten decision of 9 May 1996."

- 6/26/96 Request for Status Conference by the Alexandria Court continued until 7/2/96
- 7/2/96 Status Conference
- 8/9/96 Hearing by the Circuit Court for the City of Alexandria on Rule to Show Cause and Motion for Order of Sole Custody filed by Thomas Johnson  
  
Order of Contempt and Change of Custody issued by the Circuit Court for the City of Alexandria finding Anne Franzen in willful/multiple/continuing contempt of court, ordering her to produce the child so that custody may be given to Thomas Johnson, terminating any child support obligation to Anne Franzen, imposing a fine of \$500 per day against Anne Franzen until she returns the child to Thomas Johnson, granting Thomas Johnson sole and exclusive custody, ordering Anne Franzen to pay \$75,000 in attorneys fees and other costs to Thomas Johnson, enjoining Anne Franzen from proceeding further in Sweden with any aspect of a custody or child support petition, and reserving jurisdiction
- 9/16/96 Thomas Johnson exercises joint custody rights in Sweden by picking up Amanda at her school and spending 4 hours with her, and is arrested in her presence at their hotel by 4 Swedish policemen upon the request of Anne Franzen
- 9/16/96-9/18/96 Thomas Johnson detained in solitary confinement without charges and released from custody
- 9/20/96 Thomas Johnson returns to the United States
- 11/96 Swedish prosecutor refuses to file charges
- 12/16/96 Swedish supreme court (Högsta Domstolen) refuses without issuing an opinion to hear Thomas Johnson's

-6-

appeal against Swedish jurisdiction (i.e., an appeal against the 9/95 reversal by the court of appeals of the 4/5/95 dismissal by the Solna district court of Anne Franzen's petition for sole custody)

- 12/19/96- Direct participation by Swedish police in criminal
  - 12/20/96 conduct by "supervising" Thomas Johnson's visitation with Amanda, interfering with his custody rights under both Swedish and United States law, and aiding and abetting child abduction by Anne Franzen
  - 1/97 Appellate brief financed and supervised by the Swedish Government is filed in Virginia against the 12/28/93 and 8/9/96 Orders, and argues that Sweden is a "more convenient" forum to litigate custody because Anne Franzen would be prosecuted for committing the felony under United States federal law of international parental kidnapping
  - 2/97 Order by the Circuit Court for the City of Alexandria authorizing Thomas Johnson to participate in any Swedish proceedings without prejudice to U.S. jurisdiction and court Orders
  - 5/97 Order by the Circuit Court for the City of Alexandria imposing additional damages and fines on Anne Franzen
  - 6/97 Swedish judge (Hans Frostell, Solna Tingsratt) defers to vacation schedules of Anne Franzen and her attorney (Susanne Johansson), and refuses to schedule a hearing to arrange some kind of summer visitation using "mirror" court orders and other safeguards
  - 9/97 Oral argument before the Court of Appeals of Virginia on the appeal financed by the Swedish Government
  - 12/97 Unanimous decision by the Court of Appeals in an opinion written by Chief Judge Johanna Fitzpatrick that upholds the Virginia Custody Order, finds that Virginia continues to be Amanda's residence and continues to have jurisdiction, refuses to defer to Swedish jurisdiction, upholds the finding of contempt against Anne Franzen based on her wrongful conduct, and rejects Anne Franzen's fear of a kidnapping prosecution as an excuse for her misconduct
  - 3/98 Supreme Court of Virginia dismisses Swedish appeal
  - 6/98 Swedish judge reportedly willing to speak by telephone with the Virginia judge to discuss solutions but allows Anne Franzen and her attorney to veto the proposed contacts
- Anne Franzen refuses any form of supervised or other access or visitation when Thomas Johnson is in Stockholm on 19 June, and also rejects any contact of any kind for the entire summer

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## THE WEEK'S OPINIONS

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### ■ U.S. BANKRUPTCY COURT

Cont'd. from page A-11

scouted by counsel. The court is constrained to conclude that since the agreements comply with the formal requirements of § 524(c), and since the requirements of the statute for court approval do not apply and there are no extraordinary circumstances justifying the exercise of the court's equitable powers to protect the integrity of the bankruptcy system, this court may not disapprove the reaffirmation agreements simply because the court might think them unwise.

*Objections of debtor's ex-wife and son are overruled.*  
In re *Bauer* (Mitchell) No. 97-13034, SSJM - Nov. 12, 1997. USBC at Alexandria, Va.; Harry R. Leuk for debtor; Sandra A. Stranell for plaintiffs. ★ VLW 097-4 070, 16 pp.

### BANKRUPTCY Dalkon Shield Claimants Trust - ADR - Referee Bias

A claimant who alleges the referee who heard her Dalkon Shield claim was "biased" and used "simplistic" reasoning may not set aside the \$4,000 award the referee made to her, and the trust is directed to again forward the check for \$4,000 to claimant.

*In re Dalkon Shield Claimants Trust* (Mortgage) No. 85-01307-R, Dec. 2, 1997. ★ VLW 097-4 071, 8 pp.

### BANKRUPTCY Dalkon Shield Claimants Trust Disqualification Of Judge

1995, the father moved for modification of the custody decree because of his concern that the mother intended to relocate to Sweden with the child.

The Virginia trial court's December 1993 consent decree set out a schedule for shared custody and visitation provisions, including an agreement that neither party would initiate related proceedings elsewhere without the permission of the trial court. Both parties agreed to be bound by these terms. When mother filed for custody in Sweden in January 1995, the Virginia trial court clearly had jurisdiction to consider this violation and to enforce its ongoing decree.

Mother argued that the child's consent time she was in Sweden throughout 1994 and thus rendered these provisions unenforceable. This argument ignores the fact that the child was located in Sweden pursuant to the Virginia trial court's custody schedule, which allocated equal time to each of the parents. At no time did the child's "residence," as agreed to by the parties, change.

The mere fact that mother received her scheduled time with the child did not constitute a violation of the court-ordered provisions, which the remainder of the court's decision addressed.

Here, mother, who had consented to the custody order and schedule, denied father his court-ordered visitation and refused to return the child to Virginia, as the consent decree directed. These actions do not support her contention that she has acted "in good faith and in

orderly fashion." Rather, they provide ample justification for the trial court's enforcement of its decree. To hold otherwise would allow any dissatisfied custody litigant to divest a court of its inherent power to enforce a valid order by simply changing the child's residence. Such an outcome is not contemplated by either historical analysis or statutory authority.

Also, applying the Uniform Child Custody Jurisdiction Act, Va. Code § 20-130, we find the trial court did not err in refusing to decline jurisdiction under the facts of this case. Virginia was and is the child's home state by agreement. The court's decision to decline jurisdiction was a designation in anticipation of the child's stay in Sweden. The child was to have equal time in both homes.

Based on the factors enumerated in the UCCJIA and the trial court's clear continuing jurisdiction to modify its initial consent decree, we cannot say that the trial court abused its discretion in refusing to defer jurisdiction to the Swedish court as a more convenient forum.

The trial court also did not err in finding the mother's testimony regarding the child's residence to be credible. Mother's contention that fear of a federal kidnapping prosecution excuses her failure to appear and shields her from a finding of contempt has no merit.

We affirm the trial court's change of custody, finding of contempt, imposition of fines, and award of father's costs and fees. Additionally, we remand for an

## THE WEEK'S OPINIONS

### ■ VA. COURT OF APPEALS

Cont'd. from page A-12  
award of further costs and counsel fees incurred by father in this appeal.  
*Johnson v. Johnson*, (Pitzpatrick) No. 2200-96-4, Dec. 9, 1997; *Alexandria Cir. Ct.* (Haddock) *Richard E. Crouch for appellant; James R. Cottrill for appellee* ★ VLUW 097-7-762, 21 pp.

### CRIMINAL Severance Of Charges - Firearm & Larceny

A trial court's refusal to sever defendant's charge of possession of a firearm by a felon from the grand larceny charge was affirmed where defendant faced a harmless error where defendant testified at trial in his own defense.

In *Johnson v. Commonwealth*, 20 Va. App. 49 (1995), we held that the trial court abused its discretion by refusing to sever the charge of possession of a firearm after having been convicted of a felony from the grand larceny charge. We held that the error was harmless. 3A.10, justice required severance of the charges. However, in *Kirk v. Commonwealth*, 21 Va. App. 291 (1995), we held that a refusal to sever was harmless error where defendant placed his credibility and character at issue by taking the stand, and his prior felony convictions were relevant and admissible for impeachment purposes.

Defendant here attempts to disdis-

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- \$15 for overnight delivery, plus 60¢ per page, with a \$6 minimum order.
- 24-hour-a-day service.
- For customer service, call 1-800-933-6117, M-F, 9 a.m.-5 p.m.

As in *Kirk*, defendant chose to testify in his own defense. Evidence of his prior convictions became relevant and admissible to impeach his credibility and to rebut his testimony. Defendant's proposed jury instruction regarding recent exclusive possession, firearm and theft convictions affirmed.

#### Concurrence & dissent

Benton, J.: I dissent to that part of the majority opinion holding harmless the trial judge's error in refusing to sever the charge of possession of a firearm by a convicted felon from the charges of grand larceny and burglary. I would reverse the convictions and remand for separate new trials.

*Huckney v. Commonwealth* (Coleman) No. 2165-96-3, Dec. 9, 1997; *Buchanan County Cir. Ct.* (Williams) *David L. Eiting for appellant; Christopher J. Adg for appellee* ★ VLUW 097-7-764, 19 pp.

### ■ WORKERS' COMP

suffered an episode of vision to his heart disease in 1994, frequently missed work for several blockages in his circulation. The commission found that the records sufficiently reflected the commission's findings. The commission found that the records sufficiently reflected the commission's findings. The commission found that the records sufficiently reflected the commission's findings.

However, in *Augusta Co. Dept. v. Overbey*, 11 VLUW 100 (Supreme Court), the court held that the commission's decision to deny the employee's claim for compensation was reversible error. The court held that the employee's claim for compensation was reversible error.

Here, a physician indicated that the claimant's "probable cause" of claim is "genetic and environmental factors." Another physician attributed the claimant's heart disease to atherosclerosis, a condition that is "not hereditary." Under the standards set forth in *Overbey*, this evidence sufficiently rebutted the presumption that claimant's work-related.

The evidence was inadmissible. The evidence was inadmissible. The evidence was inadmissible. The evidence was inadmissible. The evidence was inadmissible.

Award of benefits reversed. Award of benefits reversed.



## Correspondence

### State Department Responds to Int'l Child-Abduction Story

I was disappointed to read your article "Kids Held Hostage" [March 8], which failed to provide the background that would have made for a balanced exposition of the situation. It does not accurately portray the efforts of the Bureau of Consular Affairs Office of Children's Issues to remedy these painful and often intractable problems. It also misleads readers into thinking that State Department officers somehow control the outcome of international parental-child custody disputes. The role of consular officers is to work to ensure the welfare of a U.S. citizen child — not to provide legal assistance to the parents. If a child-custody dispute cannot be settled amicably between the parties, it often must be resolved by judicial proceedings in the country where the child is located. We cannot dictate the results of a legal proceeding in another country. I can assure you that conscientious consular officers around the world are committed to working as hard as possible, within the context of the laws of the country involved, to reach a resolution of these very emotional cases.

Fortunately, a major development is the return of internationally abducted children through the Hague Convention of the Civil Aspects of International Child Abduction — negotiated for the United States by the Department of State. This treaty is in effect between the U.S. and 54 other nations. We are continuing to expand Hague protections to more countries. Worldwide, thousands of children have been returned home because of the Hague Convention.

As far as U.S. citizen children are concerned, of the total of 1,124 Hague cases processed by our office from May 1997 to early March 1999, 52 percent, or 580, have been closed. This means some type of arrangement, ranging from a visitation agreement, to access by a consular officer, to return of the child to the country of habitual residence, was achieved.

What some of the parents mentioned in your article said about our limited resources is true. We have taken positive steps to deal with this situation, including assignment of

additional personnel to the Office of Children's Issues. This information, which would be very relevant for your readers, was not discussed in your article.

I wish also to point out an aspect of your article that reflects on the overall perception of our officers. You state that certain State Department files you have seen contain personal, negative statements about left-behind parents. I wish to assure you that any such comments have no place in State Department documents. Although we appreciate the attention you have brought to bear on the problems that confront us in this area of consular work, we believe it would have been more useful and informative if your article on this matter had included more-balanced information.

Mary A. Ryan  
Asst. Sec'y for Consular Affairs  
Dept. of State

### It's Too Soon to Endorse Bush; He Hasn't Articulated a Plan

Buried in Michael Rust's informative piece on the developing George W. Bush presidential campaign ["Off and Running," April 5] was a disconcerting quote that the formulation and expression of political ideas often is trumped by the fund-raising necessary to run a big-time campaign. If this is the case, then all that is necessary to win a modern campaign is to raise vast quantities of money and stay quiet.

Will Bush simply wait until all the endorsements are in and the coffers are full before he begins to articulate a plan? I fear that this rush to nominate Bush comes not from an assurance that he is the best, but because the GOP fears a rough-and-tumble campaign that will dredge up all the old issues that tripped Bush Sr. and Bob Dole. Slow down, people. You've got a wimp across the fence from you in Al Gore. Deciding next April instead of this April would be a much better idea.

Tim Fogle  
Via the Internet

Write: *Insight*, Correspondence Editor, 3600 New York Ave. N.E., Washington, D.C. 20002. Fax: (202) 529-2484. Please include an address and a daytime phone number. Letters may be edited for space.

CBAD ↓

### A Letter from the Editor

Dear Readers,

Developments lately in Washington have been, even by the district's standards, hairy and scary. What with the explosive news of potential Chinese espionage, the "war" in Kosovo and other ongoings, this town — as well as our nation — is on edge.

This week's espionage cover story by Timothy W. Maier and the war-news analysis by Jamie Dettmer certainly are eye-opening and insightful. Congress has its hands full in the weeks ahead on these important issues as well as more mundane legislative priorities such as repairing Social Security and Medicare, not to mention reforming our tax laws.

This week we also bring you an update — long in the waiting — on stories first reported by this magazine over a year ago involving preliminary test results on sick Persian Gulf War soldiers — those who served overseas during the conflict and those who never left the United States during that time.

The Defense Department and, to some extent, members of Congress ignored our stories and claimed there was nothing to the early results showing antibodies to a substance called squalene. Partly because of negative responses from the DOD and also because the tests still were preliminary, the major laboratory involved in the research asked not to be named.

Now, however, we can reveal that it is Tulane University's school of medicine. It has confirmed the early tests: Indeed, antibodies to squalene are present in those sick vets.

Rep. Jack Metcalf, a Washington Republican, has been a lone voice demanding further study of the issue by the DOD. The General Accounting Office also recommends such action. No matter how those antibodies got there, we need to help these vets get well. It's up to Congress now to force the DOD to do its job and start testing sick vets. Something is amiss. Answers must come soon.

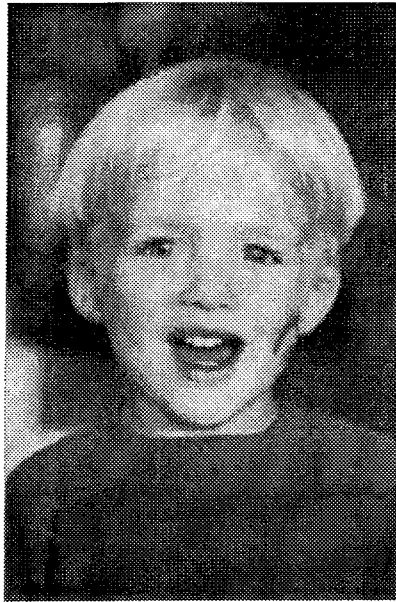
Until next week then, God bless.

*Paul M. Rodriguez*

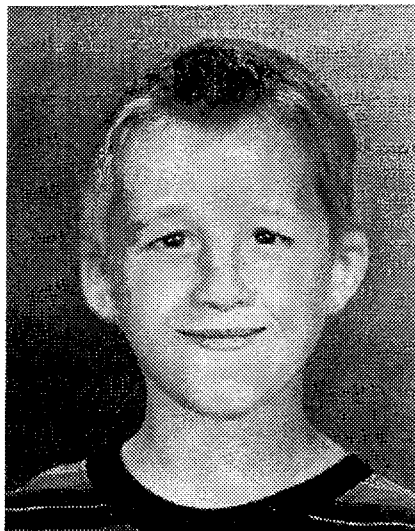
Paul M. Rodriguez  
Managing Editor

## **The Abduction of Gabriel Marinkovich**

**Testimony of Paul Marinkovich**



**Gabriel at Age of Abduction, 5 ½ Years**



**Age Progressed Photo of Gabriel as of Today**

**Paul Marinkovich  
Father of Abducted American Child Gabriel Marinkovich  
October 14, 1999 Hearings  
House Committee on International Relations**

I first wish to thank Chairman Gilman and Members of the Congressional Committee on International Relations for standing as a rock in the stream of governmental indifference for the sake of our children.

My 8 year-old son Gabriel was lost to an act of International Parental Abduction on August 19, 1996. Frustrated that the police were refusing to act, I hired an expensive investigator who found them in Sweden. I immediately called the State Department and was presented a booklet that described a six week Hague process. My completed application was received by the State Department on October 26, 1996 and was held for almost the entire six weeks as described in the booklet before they sent it to the Swedish Government. Little did I know that for the next three years I would spend over \$200,000, travel to Sweden eight times, Denmark two times, and Washington DC four times, wait for over two years before getting a court decision, have to single-handedly expose the corrupt Swedish system, send an investigator to Sweden twice just to keep my case open, and spend much precious time working to change an ineffective American system. Today after all of this, I stand before you with only the memory of my son Gabriel.

My son was illegally taken out of the United States and registered into Sweden with a fraudulent United States passport and birth certificate. These fraudulent documents provided a different name for my son and even a fictional father. The Swedish Central Authority was well aware that this information was falsely submitted because a Hague Application had already been filed with the correct documented information from the United States government. They chose to participate in this fraudulent act by registering my son under one name and opening a Hague file under another. To add insult to injury, they then granted the abductor of an American child, secrecy protection, which is the equivalent of our witness protection program.

According to Swedish law, secrecy protection can only be issued in extreme situations when one's life is in danger. Swedish officials chose to ignore their own law which requires this type of protection to be stringently verified by Swedish police. Ultimately, the law was ignored and the Swedish Government chose to actively assist in this illegal abduction of American citizen, Gabriel Marinkovich. The cover-up began when the Swedish government flat out lied to the United States that this action had ever taken place for 334 consecutive days. On October 2, 1997 they were confronted with documents from my investigator that were stamped "secrecy protected by the Swedish Tax Authority" and were forced to admit to this scandal.

Just prior, on July 1<sup>st</sup> of 1997, the Swedish Central Authority said they would close the case if I could not demonstrate my son had any physical ties to Sweden leaving the burden of proof to me. This request by the Swedish Government directly violates Article 7(a) of the Hague Convention and becomes even more ironic when considering that they were secrecy protecting the same people they claimed not to have any ties to Sweden. At this point, I was forced to hire an expensive investigator to fly to Sweden. In spite of running into a wall of protected identities,

he immediately found the abductor's husband and daughter living in an apartment in central Helsingborg. Ironically it was just blocks away from the station of the police who claimed they could not find them. In a recorded phone conversation with my investigator under cover, the abductor's husband boldly reveals the abductor being "amazed" that anyone knew where she was because she claimed that the Swedish Government had placed all of them under strict secrecy protection. They went on to indicate that they were registered with the Swedish Tax Authority and police authorities.

Digging deeper, he found that my son was registered in a local school three blocks from the police station under his correct name and Swedish ID number during the time the police were looking for him. My investigator then called the local Tax Authority and inquired about the abductor and my son. He was told that they would return his call but was instead called by a Swedish police officer, the same officer who was in charge of finding the abductor and my son. The officer demanded my investigator come down to the police station immediately or be arrested. He was promptly interrogated about why he was calling on persons whose secrecy was protected by the Swedish Government. Just steps away from finding my son, he had all his investigation records confiscated and was told to leave the country by the police.

This is but a mere token of the grave injustices my son has received at the hands of Sweden and an inefficient State Department. Please read my written record for a more detailed account.

Over the last 3½ years the only reaction by the State Department was continuing engagement in talks with Sweden on many different levels. No action or threats of action have ever been presented. With three years of inaction and lack of holding Sweden accountable, we have actually taught Sweden by example, that their assistance in the abduction of American children will never bring any reprise. It firmly taught our context that we, as Americans, are willing to sacrifice our children to maintain good diplomatic relations. The OCI has repeatedly told me that there is nothing they can do except talk to the Swedes which has been proven time and time again not to work.

When I was 18 years old I remember my terror as I watched on television when 54 Americans were taken hostage in Iran for 444 days. During that time American sat horrified as we watched another country strip fellow Americans of their rights to life, liberty and the pursuit of happiness as guaranteed in our Declaration of Independence. We as Americans were outraged, we placed yellow ribbons everywhere, we held mass rallies, and our government intervened by freezing eight billion dollars worth of Iranian assets, halting oil imports and mounting a near impossible rescue operation. The world knew we were serious.

My son has been held hostage by Sweden for 1,144 days. Where is the outrage, where are the yellow ribbons, where are the mass rallies and where is our government intervention. I have stood as the only voice for my son, but my promise to Gabriel is that my voice will never remain silent. I stand here before you pleading that our government find a way to send a clear message to Sweden that we are not going to stand for this anymore! I am asking this Congress to intervene with some reprise, some action, something beside words. My son's life depends on it.

I can tell you what has worked are these hearings. As a result of notifying the State Department about them, they have released documents to me that they have under lock and key over two years. As a result of Sweden finding out about my testimony, they finally agreed to sponsor my son on a show in Sweden similar to America's Most Wanted called "Efterlyst" after three years of my asking. The people of Scandinavia will see my son and his abductor for the first time and show that the United States is serious about this problem.

Also help from the Media has been instrumental. In the United States, the Advo program run by the National Center for Missing and Exploited Children has been very successful. In my case it produced hundreds of leads in the United States and if here, they would have been found in short order. The problem is that internationally, we do not have this resource and we are left at the mercy how the governing authorities choose to act. Forming relations with international media and promoting interest in this matter will help to assist in the recovery of my son. In fact, it has shown a strong context of our government's resolve to find their missing children when our State Department has refused to do so.

I feel that we need public relation people outside of the State and Justice Department who have the sole responsibility to get photos and information about our internationally abducted children to newspapers and television stations abroad. They could also form relations within the countries with businesses and companies to assist in the printing and distribution of information about these missing children like Advo does in the United States.

In addition, this department could be granted the right to gain information to these files from the State and Justice Department by the Congress and could provide them with independent oversight as to what is wrong with these cases. Today we have the conflict of the Justice and State Departments covering their rear at the expense of our children and we seldom get the real story. This would provide the much needed accountability that we need to do a better job. Independent oversight is the only measure that would insure an accurate portrayal of what was really is happening.

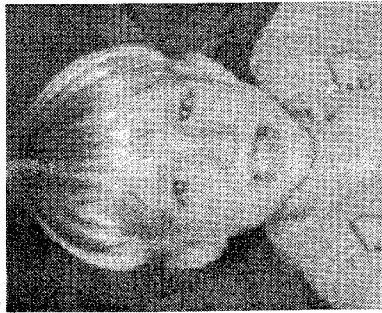
Finally, we have to act in our role as world leaders and be willing to take action to hold those accountable who abduct our children. We take tough action with countries for copyright infringement, for illegally copying music and movies, and for other economic reasons. Why are we at odds with doing anything less for America's most precious resource, our children!

Available for interview in Washington DC  
From October 12, 1999 to October 17, 1999  
via my cell number (805) 990-9700

Available in Simi Valley, California via:  
home number (805) 581-3904  
telefax (805) 526-9719  
e-mail – [marink123@msn.com](mailto:marink123@msn.com)

## Family Abduction

GABRIEL MARINKOVICH



DOB: 13-dec-1990  
Missing: 19-aug-1996  
Age Now: 8 years  
Sex: M  
Hair: Blonde  
Eyes: Hazel  
Height: 4'0" - 122 cm  
Weight: 70 lbs - 32 kg  
Missing From:  
CORPUS CHRISTI  
TX  
USA

SINDI GRABER



Abductor  
DOB: 30-jul-1968  
Sex: F  
Hair: Blonde  
Eyes: Hazel  
Height: 5'9" - 175 cm  
Weight: 140 lbs - 64 kg

Child was abducted by his non-custodial mother, Sindi Graber. An International Parental Kidnapping warrant was issued for the abductor. She may have dyed her hair red. She has a mole on the bottom of her chin. She may be using the aliases Sindi Kay Linden or Kay Alexander.



ANYONE HAVING INFORMATION SHOULD CONTACT  
National Center for Missing and Exploited Children  
1-800-843-5678 (1-800-THE-LOST)

Federal Bureau of Investigation (Corpus Christi, Texas) 1-713-693-5000 Or Your Local FBI

Open Hearing of the  
*United States House of Representatives*  
Committee on International Relations

**Implementation of the Hague Convention  
on the Civil Aspects of  
International Child Abduction**



**Carina Sylvester**  
**Abducted From United States To Austria**  
**October 30, 1995**

Testimony Submitted By  
Thomas R. Sylvester  
October 14, 1999

**OPEN HEARING OF THE UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON INTERNATIONAL RELATIONS  
IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF  
INTERNATIONAL CHILD ABDUCTION  
OCTOBER 14, 1999**

***INDEX OF INTERNATIONAL CHILD ABDUCTION CASE***

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**Biography**

**Thomas R. Sylvester** was born in Covington, Kentucky on September 14, 1953 and is currently 46 years of age. He was raised in Cincinnati, Ohio and graduated from Ohio State University with a BSBA in 1975. He earned his MBA from the University of Cincinnati in 1976.

Mr. Sylvester is a business executive with extensive domestic and international experience in the automotive industry. He has achieved successful results in start-up activities in this area in Asia, South America and Europe. He lived and worked in four countries over a 10-year period while an executive with Chrysler Corporation.

Mr. Sylvester married the former Monika Rossmann in Cincinnati, Ohio on April 4, 1994. His only child Carina Sylvester was born in Royal Oak, Michigan on September 11, 1994. Mr. Sylvester divorced Ms. Sylvester April 16, 1996.

For more than 10 years he has served his community as a Big Brother volunteer.

**Carina M. Sylvester** was born in Royal Oak, Michigan on September 11, 1994. She recently turned five years old. Carina had not yet begun to speak at the time of her abduction to Austria by her mother on October 30, 1995. She now speaks only German and has lived in Austria with her mother and maternal grandparents since the abduction. From 1995 – 1998, she has been permitted to visit with her father for only 10 hours in a supervised setting. She has only recently come to know her father as an infrequent visitor and cannot effectively communicate with her father whose spoken German has declined since his last assignment to a German-speaking country in the early 90's.

**Monika M. Sylvester** was born in Graz, Austria, as Monika Rossmann on April 29, 1962 and is currently 37 years old. Ms. Sylvester met her husband in 1990 when she was employed as his secretary in Graz, Austria. She married Mr. Sylvester on April 4, 1994 in Ohio. Her only child, Carina, was born in Royal Oak, Michigan on September 11, 1994. On October 30, 1995, Ms. Sylvester abducted Carina from her home in Michigan, taking her to Austria without Mr. Sylvester's knowledge and consent.

Since the abduction, Ms. Sylvester has lived with Carina in her parents' home in Austria. She has been completely successful in derailing the workings of the Hague Convention in Austria. She wields absolute power over the Austrian and American courts, and Carina's life.

**UNITED STATES HOUSE OF REPRESENTATIVES**  
**COMMITTEE ON INTERNATIONAL RELATIONS**

**OPEN HEARING ON THE IMPLEMENTATION OF**  
**THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL**  
**CHILD ABDUCTION**

Testimony of Thomas R. Sylvester

*October 14, 1999*

**INTRODUCTION**

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child, who was abducted by her Austrian mother from Michigan to Austria on October 30, 1995. That was her last day on American soil. She was then just 13 months old. She recently celebrated her fifth birthday in Austria. In the intervening four years, I have worked unceasingly to obtain the enforcement of the various U.S. and Austrian court orders granted in favor of Carina's return to the U.S. in 1995 and 1996. Unfortunately not one of the hundreds of people I have contacted and nothing they or I have done has made a difference. I spoke similar words to the Senate Committee on Foreign Relations one year ago and the situation today is the same.

For me, the Hague Convention has failed in both of its objects set out in Article 1: to obtain the prompt return of abducted children to their countries of habitual residence and to obtain access to abducted children when access is otherwise being denied. I placed my trust in the Hague Convention and the judicial system that implements it. I relied on the Hague Convention and the workings of the courts both here and in Austria to achieve these objects to both Carina's and my detriment. That was a mistake.

I sit here before you four years after my daughter's abduction, a person who did everything right under the Hague Convention, including getting all the right orders both here and in Austria, a person who nonetheless has lost his daughter. As to the prompt return of abducted children, the facts are that despite Austria's valid and final order in 1995 for the return of Carina to Michigan for a custody determination there, affirmed through the Austrian Supreme Court, Carina was never returned. The Austrian legal system provides no mechanism for civil

enforcement of their orders rendering this and all of their orders useless pieces of paper. Carina's mother was never compelled to return her and she has not voluntarily done so. With the passage of time, the Austrian Court re-opened the Hague Convention case, an action not sanctioned by the Hague Convention, ruling that it was in Carina's best interests that the return order not be enforced and that Carina was now to stay in Austria. The Supreme Court of Austria affirmed and the case was then closed. Oddly, unlike the return order, the order that the return order would not be enforced and the child not returned is well-respected and honored in Austria. The Austrian court thereafter proceeded to award Carina's mother custody of Carina in violation of Article 16 and further ordered me to pay child support retroactive to the very day of the abduction.

As related to access to abducted children, my subsequent requests for access to Carina under Article 21 submitted early in 1998 have not yet resulted in a viable order for access. Incredibly, the petition presented to the Austrian trial court under Article 21 was initially denied on the grounds that the Hague Convention no longer applied in the case! Thereafter, each time the Austrian court entered an order for access for a specific date, the appellate process would extend beyond the date for the visit, rendering the exercise useless. Most recently, I submitted to the examination of a purported "expert" child psychologist in Austria on the issue of how I have accepted the present situation and whether Carina's having access to me would be appropriate. He concluded that I could not possibly have my child's best interests in mind because I ask that she be returned to the United States under the return order, or in the alternative, that she come and spend time with me and her extended family in the States. It is questionable whether I will ever have an access order since each schedule submitted to the court is unacceptable in some respect. The court will exercise no independent judgment, but instead expects me to submit a proposal precisely in line with its unarticulated opinion. The court further expressly links access to Carina under Article 21 with the payment of child support under an Austrian order (despite a Michigan order from 1996 that I have custody of Carina and pay no support), the lifting of the U.S. warrant for the abductor's arrest and my participation in an Austrian divorce case initiated by my ex-wife from whom I was divorced here in the States in 1996.

Should an order for access under Article 21 survive the appellate process, just as with the order for return, compliance by Carina's mother will never be compelled since Austria has no means for such compulsion. Whether Carina is made available for access or for return to the

United States is entirely at the discretion of the abductor. In Austria therefore, the Hague Convention provides no remedy whatsoever under either the return objective or the access objective of Article 1.

After four years of continual activity to rectify the situation through legal channels, working exclusively through the system devised under the Hague Convention, I can say today that there has been absolutely nothing that has been done that has made any difference whatsoever to correct this situation. Unbelievably, it is not the law, the Austrian government and their courts, or the U.S. government and our courts who is in control of the situation. It is the abductor who is in complete control. This is a case of the Hague Convention at its absolute worst.

#### **My Personal Experience**

There are no words to adequately describe my feelings of loss and pain. I wish that I could convey the daily anguish and the deeper feelings of sorrow, sadness, anger, despair and hurt. These feelings are always present for me. The moment I became aware that my daughter was taken from me I felt like someone had reached inside my chest and ripped my heart out of my body. Since then, I think about her always. Every child I see reminds me of her. There is not a day that goes by that she is not paramount on my mind. Through Carina, I felt the joy and wonder of being a father. Then, after only 13 months, I felt the sorrow of her being taken away from me. If you are a parent yourself, perhaps you can imagine the heartbreak of being without your child. I love Carina with all of my heart and soul. I am committed to a loving relationship with my daughter. I do not want to lose Carina. She is the most important part of my life.

I believe that I am doing all that I can and feel that some days I devote most of my time to obtaining some assistance in having a life with my daughter. I have sought this assistance from only those persons I believe to be holding themselves out in the United States government as those who can help--the Department of State and the Department of Justice. I have long felt ineffectual support from both.

Despite my unceasing efforts to be a part of Carina's life, I am not at all a part of her life. I have seen my daughter in a supervised setting for ten hours from the time of her abduction in 1995 through the end of 1998, and supervised for just 10 additional days since. None of this time was associated with a court order under Article 21. All of this time was in Austria.

The harsh reality of the situation is that I have paid legal fees, travel and related expenses both here and in Austria in excess of \$200,000. There is no end in sight to these expenses. This is money that I pay for Austria's non-compliance with the Hague Convention and their inability to enforce their own orders. These funds could otherwise have gone for Carina's future.

#### **Procedural Background**

##### **-The Hague Convention Case, Article 3:**

On October 31, 1995 I filed an Application for Assistance with the State Department under the Hague Convention, to which both the U.S. and Austria are party. I also filed a Complaint for Divorce in Oakland County Michigan Circuit Court. The Application for Assistance made its way through the Austrian Ministry of Justice to the court of the first instance in Graz, Austria where hearings were conducted by Judge Christine Katter. Both Carina's mother and I appeared at the hearings, and her mother raised defenses to Carina's return under the terms of the Hague Convention. On December 20, 1995, Judge Katter entered an order for the immediate return of Carina to me in Michigan. In that order Judge Katter stated:

"The child's mother Monika Maria Sylvester is ordered by otherwise forced action to return the minor Carina Maria Sylvester, D.O.B. 09/11/94, immediately to the father Thomas Sylvester to the previous residence in 5851 Cheerywood Drive, Apt. 1912, West Bloomfield, 48322 Michigan USA."

\* \* \*

"Here must be considered, that in the process the custody is not to be decided, but that the condition prior to the kidnapping restored, and that the State of the prior residency can resolve the custody decision."

\* \* \*

"It should also be expected from the child's mother, if she puts the well-being of the child higher than her own, that she returns with the child to the United States."

Carina's mother, however, did not comply with the return order.

Judge Katter also ordered specific supervised visitation for me at the Institute of Family Learning in Graz, Austria on Christmas Eve and December 27, 1995. Carina's mother did not

bring Carina to the appointed place for visitation on either date denying Carina the opportunity to share the fun of opening Christmas presents with her father. That was the first of many Christmases we have now spent apart.

Instead, Carina's mother took an appeal to the return to the Austrian Court of Appeals. This initiated an automatic stay of enforcement of the return order which ultimately continued through May 7, 1996. The Austrian Court of Appeals affirmed the return order and again directed Carina's mother to return her to me for a custody determination here in the United States stating:

"It is the mother's freedom and is also expected of her as a responsible custody provider, that she put the welfare of the child before her interest to stay in Austria and returns together with the daughter to the United States. It is then the responsibility of the appropriate American court to decide final custody."

Rather than returning Carina at that point, Carina's mother instead took an Extraordinary Writ to the Austrian Supreme Court. That court, although rendering its decision on February 27, 1996 in favor of the return of the child, did not "deliver" its order until May 7, 1996. The Supreme Court order stated:

"According to the findings of the lower courts, which are binding for the Supreme Court, a return of the child to her father would not pose an immediate physical or psychological danger for the child. Furthermore, the appeal emphasizes problems for the child due to a separation from her mother, the main provider, if she complies with the order, is not given. The goal is to restore the original conditions until a decision about custody is made in the United States."

Once the decision of the Austrian Supreme Court was delivered, all stays were then lifted in the case and the return order of December 20, 1995 became valid and final. On May 10, 1996, my local attorney assembled a group in Graz, Austria at the direction of Judge Katter to assist in effectuating the one and only opportunity for court enforcement of the return order. That group included local police, Judge Katter herself, an enforcer from the Court and others, including my Michigan counsel and me. Unfortunately, the attempt failed when Carina's mother stated that

Carina was not at home and that she was with her grandmother somewhere "in the mountains." I believe that Carina's grandmother escaped from the house with Carina out a back window.

There was much drama in the attempted enforcement in that a gun was drawn by the child's Austrian grandfather on the court officials. However, the local police on the scene made no arrests. To date, despite efforts by my Austrian counsel, there has been no criminal matter against Carina's mother lodged by Austrian officials.

In response to this exclusive chance for court enforcement, Carina's mother admitted herself into a hospital for "injuries" allegedly sustained from her contact with court-appointed officials. She then retaliated with a barrage of actions against the trial court, including a motion for disqualification of the judge alleging an amorous connection between the judge and my Austrian counsel, and a motion to change venue based on a false change in her address, both of which were denied. She then lodged criminal charges and grievances against my attorney.

The most damaging of all, however, was her petition to "reopen" the Hague Convention case due to change of circumstances resulting from the passage of time. This motion was denied by the trial court, but was reversed and remanded on appeal. The Supreme Court of Austria determined that the order to return, entered more than a year earlier, could not itself be changed since it was both valid and final. However, with the services of an "expert" in child psychology, the trial court was to determine if circumstances had changed sufficiently due to the passage of time to warrant that the child not now be separated from her mother under the "grave risk of harm" analysis under Article 13(b). The trial court was further to consider if the child were to be returned, the proper mode for enforcement of the order.

On remand, the trial court held that the order for return would not be enforced and the child would stay in Austria. This decision was allegedly based on the report of the Austrian "expert" child psychologist on a best interests of the child standard "*since the specific welfare of the child takes precedence over the purposes of the Hague Convention.*"

I myself was never interviewed by the child psychologist prior to this determination and it was therefore made without benefit of any information or experience other than that provided by the abductor herself. I did however at that time provide the Austrian court with a copy of a "Safe Harbor" order from the Michigan court, the scheme of which the Austrian court dismissed as not in the Carina's best interest since it would remove her from Austria and could allow for the possibility my retaining custody of her in Michigan. Both situations, the court concluded, would

be detrimental to the child. With this analysis, the court effectively determined custody in clear violation of Article 16 of the Convention. This decision was subsequently affirmed by the Austrian Supreme Court. The Central Authority in Austria notified us shortly thereafter that it had closed their file on the abduction.

I subsequently filed two applications with respect to these matters with the European Commission on Human Rights against Austria on behalf of both Carina and me, and anticipate official word as to their acceptance for presentment to the European Court early next year.

#### -The Michigan Divorce Case

In Michigan, the divorce case proceeded to a Default Judgment of Divorce granting me sole physical and legal custody of Carina. Carina's mother appeared in and participated in the case to the extent of requesting that the default entered be set aside. Following an extensive hearing, the Michigan court determined that it would set aside the default on the condition that Carina's mother return her to Michigan by a date and time certain. Carina was not returned. The Judgment of Divorce was entered on April 16, 1996. One week later, the court entered an order sealing the court records.

My attempts to obtain acknowledgment by Austria of the Michigan Judgment of Divorce have been unsuccessful to date. In fact, after three years in the various stages of appeal, the matter has not been finally determined. Initially, the Austrian Ministry of Justice denied my request for acknowledgment of the Michigan Judgment of Divorce. This decision was affirmed on appeal. While my further appeal was pending before the Supreme Administrative Court, the issue of the proper Austrian body to determine the recognition of foreign judgments was presented to Austria's Constitutional Court. This Constitutional review has stayed consideration of my appeal to the Supreme Administrative Court. It is unknown when the Constitutional Court will decide the question. Irrespective of that decision, it will be years before a final determination of Austria's recognition of the Michigan Judgment of Divorce from April 1996 will be made..

This delay in recognition of the Michigan judgment combined with the Austrian Supreme Court's order not to enforce the valid and final return order justified the Austrian trial court to determine itself vested with jurisdiction to award custody of Carina to her mother and to order me to pay child support retroactive to the day of the abduction. My appeals on both issues were



denied. With the implementation of the Uniform Interstate Family Support Act here in the States, I could expect that the Austrian support order, when presented to the appropriate state agency, would be honored automatically and my income withheld, thereby violating the Michigan Judgment of Divorce and subsidizing the abductor in the process. Fortunately, HUD recently issued a statement giving local agencies discretion on the mandates of automatic enforcement of foreign support orders in international parental child abduction cases. It has become necessary for me to notify my local support enforcement agency, provide it with a copy of the HUD statement and copies of both the 1996 Michigan Judgment of Divorce granting me custody and the 1999 Austrian support order which conflicts with it. With this, I have had some measure of success in confirming that automatic enforcement of the Austrian support order will not take place.

I have recently filed a third petition with the European Commission on Human Rights protesting both the delay in a decision and the Austrian court's proceeding with orders on custody and support prior to a final decision on the recognition of the 1996 Michigan Judgment of Divorce.

#### -The Hague Case, Article 21

In March 1998 when Austria closed its file on my Article 3 case, I petitioned under Article 21 for access to my daughter for visits in July, September and December of that year. The petition was presented to the trial court, by that time presided over by the new judge.

Unbelievably, the petition under Article 21 was denied in April 1998 on the grounds that the Hague Convention did not apply. In May, the Austrian Court of Appeals reversed and remanded the decision, directing the trial judge to enter an order for access as "guaranteed under Article 21." At the end of July, the new trial judge did just that, ordering visitation in Austria at the home of Carina's grandparents where she and her mother lived. Since the July dates had already passed, the order granted the request for only the September and December dates. Carina's mother appealed that decision based on the fact that the court had not secured approval for the visit from the grandparents and therefore, had no authority to order the visit in their home. It was also based on Carina's mother's articulated fear that I would still snatch Carina back, even after four years of not having done so. In addition, she claimed that seeing me would traumatize Carina and believed that I should have no visiting rights because a warrant existed in the States

for her arrest. I appealed supervision of the visits. By the time the first appeal was heard, the September dates had passed and the issue was moot as to that visit. Because of the passage of time, the court also recommended that I give a new schedule of dates. The opinion of the child psychologist would be required to determine how I have accepted the current situation and how I see Carina's future in order to determine whether it would be in Carina's best interest to have access to her father. I took a further appeal to the matter, particularly related to the use of the "expert" evaluation for the propriety of the visit. The Supreme Court affirmed.

I consequently was required to travel to Austria to meet with the "expert" child psychologist. My requests of the court to see my daughter at that time while I was in Austria were denied. I therefore took it upon myself to stand outside of her house with arm loads of presents, begging to see her. Carina's mother responded and I spent the entire day with Carina, her mother and grandparents at their home. This contact resulted in what might be called a discussion but which is more appropriately called an ultimatum. Carina's mother, understanding her absolute power in this matter has outlined her demands for allowing me to have a life with my daughter:

1. Written acceptance of Austrian custody court order;
2. Written acceptance of Austrian child support order;
3. Payment of remainder of the arrearage owed on the Austrian child support order retroactive to November 1995;
4. Withdrawal of American warrant of arrest; and
5. Agreement to the entry of an Austrian judgment of divorce.

Should I do all five of the above, Carina's mother will then consider allowing me some periodic visitation, decided one visit at a time and always to be had in her presence in Austria. Under no circumstances will she allow Carina to return to the U.S.

She is right to know that she is in control because there can be no question that she is. Even if I could obtain an access order from the Austrian court, without enforcement mechanisms, Carina's mother may comply or not as she chooses. The history is that she will not comply. Under Austrian law, there will be no sanctions for her doing so.

As a result, although Article 21 was clearly designed to protect me from these situations – I am left with the reality that I must engage in self-help if I am ever to know my daughter. Self-

help however, was the device that the Convention was designed to remedy so as to afford parents like me the weight of the law and the support of the local courts in seeking the return of abducted children. In the end, the Convention and its implementation by Austria combined with a lackluster showing of support from the U.S., has led me inexorably to self-help on access. Had I known all of this at the start, I would have engaged in self-help in 1995 when the abduction occurred and avoided the legal, emotional and financial disaster this matter has become. Had I done that Carina would now know both her mother and her father.

#### -The Criminal Case

In addition to my efforts under the Hague Convention, I sought a criminal warrant against the abductor under the International Parental Kidnapping Act. Special Agent Scott Wilson of the FBI took the information and obtained the warrant on May 29, 1996. Interpol issued red and yellow notices. The case was assigned to Assistant U.S. Attorney Jennifer Gorland. To my knowledge, no action was taken on the warrant or the complaint for the first two years. My request to Jennifer Gorland that an extradition request be made to Austria for Carina's mother was denied by Ms. Gorland on the grounds that Austria does not extradite its own nationals. Just recently I learned a provisional arrest request was presented to Italy a short time ago. The request was denied by Italy.

#### Diplomatic And Political Pursuits

In an attempt to move the Austrian authorities to assist in either the civil or criminal enforcement of the return order, I sought the assistance of the American Consulate in Vienna. The U.S. Ambassador personally delivered a U.S. government demarche to the Austrian Ministry of Foreign Affairs in June, 1997. I asked the State Department, Bureau of Consular Affairs to correspond with the Ministry of Justice, the Central Authority in Austria. In response, the Austrian Minister of Justice has consistently and stubbornly declined to assist in the enforcement of the Hague Convention.

I have requested the involvement of literally hundreds of people including President Clinton, Mrs. Hillary Clinton, Attorney General Janet Reno, Secretary of State Madeleine Albright, Senators Abraham and Levin, Representatives Knollenberg and Portman, Nancy McLean, Nancy Hammer, Jennifer Penta and others within the International Division, National

Center for Missing and Exploited Children, David Hobbs, Deputy Assistant Secretary of State for Overseas Citizens Services, U.S. Department of State, Randy Toledo, Terri Schubert, Debra Caruth, Mary Jo Gotenrath and Ernestine Gilpin of the Office of International Affairs, U.S. Department of Justice, Assistant U.S. Attorney Jennifer Gorland and Saul Green, the U.S. Attorney for the Eastern District of Michigan, U.S. Department of Justice, Scott Wilson and John Oullette, Special Agents, Federal Bureau of Investigation, in the U.S. Department of Justice, Mary Marshall, Mary Ellen Conway, Jim Schuler, Ray Clore, Steve Sena and Bill Fleming, Bureau of Consular Affairs, Office of Children's Issues, U.S. Department of State, Jim Preach, Interpol, John Baliff and Guyle Cavin, General Counsel, U.S. Embassy in Vienna, and I met with Swanee Hunt, former U.S. Ambassador to Austria in Vienna.

In addition, I have had regular correspondence and contact with Senator Mike DeWine and your office, Mr. Chairman. If I may quote from your own correspondence Mr. Chairman to Helmut Tuerk.

"Now, Mr. Sylvester is attempting to exercise his rights under the Hague Convention to be able to visit his daughter who just celebrated her fourth birthday last week. (Mr. Sylvester has been able to see the child during her entire life for a total of only six hours.) Again he is encountering delays and obstructions in his legitimate right to visit his daughter instituted by the mother, but aided and abetted by a macabre procedure in the Austrian judicial system that allows the mother to institute an unending series of appeals in simply establishing a visitation schedule for Mr. Sylvester to see his daughter."

"You know that I am a good friend of the people and the government of Austria, and I write this appeal to you in that spirit. I urge you to do everything possible to end this miscarriage and travesty of justice so that Mr. Sylvester and his daughter can enjoy the normal relationship that a child is entitled to have her father."

Nothing done has made a difference. The child was not returned because the order was not enforced, now the order will not be enforced because the child was not returned. The delay engendered both by the stubborn refusal of the mother not to comply with the order for return and the unending number of ancillary motions and other legal maneuvers brought by the mother coupled with the unlimited number of appeals to each decision, has been fatal to my relationship with my daughter.

### The Media

I have turned to the media for assistance after failing on the legal, diplomatic and political fronts. I would prefer not to pursue this forum. I do not seek or enjoy the personal attention. I do not typically make my private life public. However, I have come to realize that my case is a tragedy that has resulted in spite of the purported safeguards put into place by the Hague Convention and the International Parental Kidnapping Act. Nothing can give me back these four years without my daughter and no one can give my daughter a childhood filled with memories of her father. However, this situation cannot continue and this situation must not happen again. The problems encountered under the Hague Convention by an individual parent are not just private matters.

I believe my case serves as an excellent example of how the system does not work and has failed miserably. I believe that it is important to tell my story so that the American people can have a better understanding of what can happen in these cases, and to caution those who may follow. I was told early on by a representative of the U.S. Embassy in Vienna that it is clear that the Austrians are protecting Carina's Austrian citizenship. In response, I have asked for years, who in the States is protecting Carina's American citizenship? I am given no response.

I now have adopted a strategy to embarrass the Austrians for their handling of this case and validation of the abductor's illegal, deviant behavior. I am outraged by Austria's behavior and my government's response in this case. My rights as a parent are being denied and the Austrians are denying Carina's rights. Although Austria is our ally and claims to be a civilized society, I am getting the level of cooperation from the Austrians as one might expect to receive from our enemies. I will continue to do all I can to embarrass Austria in the media in the hopes that they will cooperate to ensure the objects of the Hague Convention are upheld.

My efforts to date on this front have including the following:

Voice of America:	Radio and Television Broadcast
	International Crime Alert on Internet
Radio Talk Show:	Douglas Darnall, Ph.D.
<i>The Cincinnati Post:</i>	- October 2, 1998 (Associated Press article)
	- February 5, 1999 (Front Page Headline)
	- May 21, 1999 (Front Section Lifestyle)
<i>Reader's Digest:</i>	September 1999 Special Feature, "America's Stolen Children"

However, I am concerned that Austria will not unilaterally reform their system. They will do so only when forced to do so out of self-interest (if their children are not being returned by foreign judges in retaliation) or embarrassment (from massive publicity and adverse human rights reports).

I contacted the media in an effort to raise awareness of my situation and the problem of international child abduction at large. This is child abuse. This is a human rights issue. I need media support. All parents like me need media support. I request today assistance and support from the media in order to compel the U.S. government employees to assist in a meaningful, effective way. I continue to be disappointed by all of those Americans in positions to do so who have chosen not to support me by speaking up for Carina's rights. I have been told by one U.S. government employee that he is embarrassed to be a federal government employee in view of how many people have not supported me and Carina.

#### **Networking/Advisory Panels**

I have networked extensively with other similarly-situated parents. Networking among left-behind parents and their attorneys is in fact my most valuable resource because of the immediacy and wealth of information exchanged. Our federal government should propose ways to facilitate such networking, including requests for Privacy Act waivers from the outset, so that DOS and DOJ can give a left-behind parent names and phone numbers of other parents in the same situation with the country in question.

I have attended workshops on the issue of international parental child abduction and participated in rallies in support of active government participation in the return of parentally abducted children. During the past four years I have actively participated in Parent Focus Groups and have been in contact with a large number of left-behind parents and hundreds of people involved in addressing child abduction. I am a member of many organizations, including the Committee for Missing Children, P.A.R.E.N.T., Children's Rights Council, Parents and Children for Equality, National Fatherhood Initiative, American Coalition for Fathers and Children. I have testified before the United States Committee on Foreign Relations on matters relative to international parental child abduction, and have been recently selected to serve as a member of Project H.O.P.E.

**The United States Central Authority: The Department of State**

My experience with the Department of State ("DOS") has caused me grave concern as to their ability to serve effectively as Central Authority under Article 7. First, there appears to be a institutional misunderstanding of the Hague Convention by the DOS. In their publication, *International Parental Child Abduction*, eleventh edition, at page 4 under the heading: "What the State Department Can and Cannot Do When a Child Is Abducted Abroad," the DOS states:

"Despite the fact that children are taken across international borders, *child custody disputes* remain fundamentally *private legal matters* between the parents involved, over which the Department of State has no jurisdiction."

Under Article 16 of the Hague Convention, an international parental child abduction is by no means a child custody dispute. Article 16 of the Convention reads as follows:

After receiving notice of a wrongful removal or retention under Article 3, the judicial or administrative authorities of the contracting state to which the child has been removed or in which the child has been retained *shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention* or unless an application under this convention is not lodged within reasonable time following receipt of the notice.

What the Hague Convention does provide is a remedy to a left-behind parent to assert that an abducted child be returned to its environment of habitual residence for a determination of the custody of the child in that jurisdiction. Indeed, even the Austrian courts initially understood this fundamental concept, denying Carina's mother's request for temporary custody in keeping with the provisions of Article 16 following its decision that Carina was to be returned to Michigan under Article 3 for a custody determination there.

The fact that the DOS should articulate this policy in a publication devoted entirely to the problems and remedies associated with international parental child abduction in their capacity as Central Authority under the Convention is puzzling. I myself have often heard tacit encouragement for self-help from my contacts at State: "The best thing you can do is keep working visitation out yourself." There are even explicit directives for self-help in *International Parental Child Abduction* : "You, as the deprived parent, must direct the search *and recovery*

*operation yourself."* I am confounded by the advocacy of self-help from the agency charged under Article 7 with the following responsibilities:

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangement for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

I believe this to be an abrogation of DOS duties under Article 7 by the DOS in favor of the self-help doctrine the Convention was designed to remedy.

Second, there appears to be no established protocol for the handling of outgoing cases by DOS. I can report in all honesty that my attorney and I have had dozens of conversations with personnel at the DOS that resulted in their saying something like "My hands are tied"; "What do you want me to do?"; or "Why are you calling me?" The procedures there seem irregular and



haphazard and with the passage of time, the case workers change and the institutional memory of the case is lost.

Third, although time and effort has been expended by the DOS on my case in that ultimately after repeated requests by me, demarches have been issued, letters written to the Austrian Central Authority, and personal visits and contacts arranged between the Central Authorities, I must ask toward what end this work was done, with what level of preparedness, with what commitment? For example, at a particularly crucial time in my case when our sole attempt at court enforcement failed, my appeals to the DOS were met with the inexplicable "strategy" of waiting six months until the Hague Conference to "embarrass the Austrians." To me this "strategy" seemed outrageous in the context of the Convention's directive for "prompt return" of abducted children. However, this was the best I could get. In fact, the six months did indeed pass with little or nothing done on the matter. Upon return from the Hague Conference six months later, I was told that Dr. Werner Schutz, the Austrian Minister of Justice, was a very arrogant and intimidating man. There was no further information or result provided. This is the end for which Carina and I were to wait half of a year.

More recently, in March of this year, a group from the DOS comprised of two newcomers to DOS, Mary Marshall and Ellen O'Connor, neither fully familiar with my case, traveled to Austria to meet with authorities there, including Dr. Werner Schutz, to discuss my case. Following the meeting, I received only an oral report from Ms. Marshall that I needed to submit yet another schedule request for access under Article 21 if I wanted the court in Austria to proceed with my petition for access. Based on my experience in the case, my expectations of the visit had been low. However, I found this outcome abominable. Moreover, after many months of written requests, just last week I received a written report of the results of the visit, a copy of which is attached to this submission in full.

This report reveals a number of missed opportunities to challenge the Austrians on false representations made by them in those discussions. First, DOS notes that the issue of the Austrian court's knowledge of the Convention was addressed and they were told:

*"Austrian judges were not unfamiliar with the Hague Process. Moreover, [the Austrians] specifically called our attention to the fact that the Central Authority directly provides information, including prior decisions that*

*might apply, to the courts of the first instance. The [Austrian] Central Authority underscores in this information the duties of Austria under the Hague Convention."*

Unfortunately, Ms. Marshall and Ms. O'Connor were apparently unaware of communication between Ray Clore, Director, Office of Children's Issues, U.S. Central Authority, and Dr. Werner Schutz exchanged in December 1996 and attached in full to this submission. Mr. Clore on behalf of the Department had written in part to Dr. Schutz as follows:

*"Is it possible for the Austrian Central Authority to file a legal brief with the courts in Austria in a pending Hague Convention Case? If so, under what circumstances will the Central Authority take this step? What can the Austrian Central Authority do to facilitate access of the father to the abducted child while this matter drags on? Can you confirm the child's location and condition? Please inform me of what specific actions the Austrian Central Authority is taking to fulfill its obligations pursuant to Article 7 section (h) and (e) of the Convention."*

In response, the Austrian Central Authority through Dr. Schutz stated:

*"2. The Ministry of Justice has no possibility at all to interfere with the independent judiciary. It is a basic principle that the administration and the judiciary are separated and no interference whatsoever is possible. All States based on the rule of law have to respect court orders. I cannot imagine that the U.S. Central Authority is entitled to give instructions to the courts, in particular to the Supreme Court relating the handling of the Convention.*

*Having said this I have to reject very strongly – with all due respect – your allegations that the Austrian Central Authority does not comply with its obligations under the Convention. Such allegations are unfounded and in the field of international co-operation unusual, too. Acting in such a way does not promote international co-operation at all.*

*For these reasons I abstain to comment on your remarks relating the proceedings in the Austrian courts.*

*Of course it is up to the USA to make proposals for creating more appropriate legal mechanisms within the framework of the Convention in the proper international forum."*

Similarly, on August 28, 1996, Dr. Schutz wrote: *"And it is quite obvious that the Ministry of Justice cannot give any instructions to a court because courts are truly independent."*

Later, on February 5, 1997 Dr. Schutz wrote to the DOS on the issue of a legal brief as follows:

*"Relating to your fax-letters of 2 January 1997 and 4 February 1997, I do not want to comment on issues that have been dealt with and decided by the independent courts. The only issue that I want to touch is the question of legal briefs from a third person. The submitting of legal briefs by (third) interested parties is not possible under Austrian law. It is the task of the courts, in particular the Supreme Court to interpret international conventions; theoretically a court might ask an expert-opinion on questions of private international law but the initiative must be taken by the court."*

If in fact the delegation from DOS was aware of these communications, there is no evidence in the report to suggest that the comments made by Dr. Schutz were challenged on the basis of Dr. Schutz's own correspondence.

Similarly, the written report from the DOS's March 1999 meeting with the Austrians revealed that the subject of "Safe Harbor" orders was discussed generally and again our representatives were apparently unaware that a "Safe Harbor" order had been presented to the Austrian Court from the Michigan Court providing for the following safeguards for Carina's return to the U.S. The terms of the "Safe Harbor" order were:

- a. That the Father, although recognizing that under Michigan law he has right to sole custody of Carina, shall not exercise that right of sole custody upon the return of the Mother and Carina to Michigan
- b. That instead, the Mother shall live with the minor child separate and apart from the Father. The Father shall provide the Mother and Carina with a suitable furnished apartment for this purpose pending the outcome of an expedited custody hearing in Michigan.
- c. The Father shall provide airline tickets for the return of the Mother and the minor child at his cost.
- d. That upon their return, the Father shall pay all reasonable and necessary living expenses incurred by the Mother including rent, utilities, insurance, groceries, clothing, and medical expenses for Carina and incidentals for Carina, pending the outcome of an expedited custody hearing in Michigan.

- e. That this Court shall conduct an expedited evidentiary hearing on the custody of Carina pursuant to her best interests as defined by the Michigan Child Custody Act.
- f. That until such time as a determination is made by this Court regarding custody, the Father shall exercise visitation with the minor child supervised by a person other than the Mother, appointed by the Court, recognizing that this is neither an admission of a need for such supervised visitation nor an acknowledgement that he is not the legal custodial parent of the minor child.
- g. That upon confirmation that the Mother and the minor child have boarded a direct flight to Michigan, assistant U.S. Attorney Jennifer Gorland shall be instructed to dismiss the federal criminal warrant now outstanding, against the Mother in the case styled *The United States of America vs. Monika M. Sylvester*. This would assure the Mother that she would not be arrested upon landing in Detroit for the crime of parental kidnapping.

The Austrian court rejected the "Safe Harbor" order out of hand. The trial court in Austria stated:

"Nor can the approach proposed by the father in his statement of April 28, 1997 within the meaning of the "Safe Harbor" judicature change anything in the evaluation of the case by this Court pursuant to the instructions of the Supreme Court, since on the one hand, a move to the United States by Carina's mother along with the child would mean a change in the environment the child has been used to for about a year and a half, and on the other hand, there would be no guarantee that Monika Sylvester would remain the child's main caregiver, which, in view of the above-mentioned facts, is indispensable for Carina's well-being."

Again, if the delegation from DOS were aware of the presentation of the "Safe Harbor" order, there is no evidence of it in the report. Obviously, tremendous opportunities by DOS to challenge the Austrians were missed at that meeting. It is questionable as to whether expensive meetings of this sort are of any benefit to American parents without adequate preparation, commitment and purpose.

Fourth, there appears to be no serious commitment in DOS to assure welfare and whereabouts checks under Article 7(a). There also appears to be no protocol established either

relating to the form of the request to the authority in the country to which a child has been abducted or to the process for the welfare check itself. The DOS publication *International Parental Child Abduction*, eleventh edition, describes the possibilities for a welfare and whereabouts check as follows:

"If your child has been found you can request that a U.S. counselor officer visit the child. If the consul succeeds in seeing your child, he or she will send you a report on your child's health, living conditions, schooling, and other information. Sometimes consular officers are also able to send you letters or photos from your child. If the abducting parent will not permit the consular officer to see your child, the U.S. embassy or consulate will request the assistance of local authorities, either to arrange for such a visit or to have the appropriate local official make a visit and provide a report on your child's health and welfare. Contact the Office of Children's Issues to request such a visit."

I consider myself fortunate to have obtained one welfare and whereabouts check in the four years Carina has been gone. This check occurred only after my repeated requests to DOS over the years. Interestingly, DOS did instruct the Embassy to conduct a check at the place where Carina was understood to be living. Representatives from the U.S. Embassy traveled from Vienna to Graz, knocked on the door of the home where Carina was living and was told that no information about the child would be provided to the U.S. officials. Subsequently, the U.S. Embassy received a harassment complaint for their actions. Later requests by me for a welfare and whereabouts check resulted in the U.S. Embassy in Vienna first contacting opposing legal counsel only to be told that no welfare and whereabouts check would be allowed and that the child was fine. This stopped all activity on the matter.

When a welfare and whereabouts check was finally arranged, it was done so in the presence of the trial judge at the Graz courthouse. My request that the American Embassy workers take a photo of Carina for me was denied.

Fifth, DOS is dilatory in responding to FOIA requests for personal files maintained by the Office of Children's Issues. My case is particularly enlightening in this regard as well. My attorney first filed a FOIA request for my file, among other things, from the Office of Children's Issues in 1996. Three years later, the file has not been provided. Instead, the various layers of correspondence written to inquire about the matter appears to have allowed for the classification by DOS of several separate requests each detailed below.

FOIA REQUEST NO. 9604263

1. On October 30, 1996, my attorney filed the original request on my behalf for all records in the State Department's possession or control relating to the return of any children to the Republic of Austria from the United States pursuant to the Hague Convention on the Civil Aspects of International Child Custody since October of 1995.
2. On December 4, 1996, she received a letter of acknowledgement of that letter assigning it Request No. 9604263.
3. On March 5, 1997, she received a letter from Karen A.H. French concerning certain record systems which had initially been searched for the requested documents. These were listed as:
  - The Bureau of European and Canadian Affairs;
  - The Office of Overseas Citizens Services;
  - The Office of the Assistant Legal Advisor for Consular Affairs;
  - The Office of the Assistant Legal Advisor for European and Canadian Affairs; and
  - The Office of the Assistant Legal Advisor for Private International Law.
4. On March 12, 1997, my attorney wrote Ms. French explaining that the files she was requesting were maintained: "by the United States Central Authority under the Hague Convention, that being the **Bureau of Consular Affairs, Office of Children's Services [Issues]**." She further stated that Ms. French did not mention that this as an office in which Ms. French had conducted a search. She concluded with the statement "**All files referenced in my request should be available there.**"
5. On March 21, 1997, my attorney sent a similar letter to Patrick Scholl, Information Response Branch stating as follows:
 

"Enclosed please find a copy of my letter to Karen A.H. French sent pursuant to our FOIA request. Please note that the office you need to search is the **Bureau of Consular Affairs, Office of Children's Issues** since all information requested deals with records kept by the Central Authority of the United States pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abductions Remedy Act. Please provide this information as soon as possible."
6. Finally, on January 19, 1999, my attorney received a letter from Margaret P. Grafeld stating that she searched the same record systems, those being

- The Bureau of European and Canadian Affairs;
- The Office of Overseas Citizens Services;
- The Office of the Assistant Legal Advisor for Consular Affairs;
- The Office of the Assistant Legal Advisor for European and Canadian Affairs; and
- The Office of the Assistant Legal Advisor for Private International Law.

Ms. Grafeld's conclusion was that the Department of State did not have records responsive to my request. Once again, the Bureau of Consular Affairs, Office of Children's Issues was not identified as a department searched.

FOIA REQUEST NOS. 9604264 and 9604265

7. On November 25, 1996, my attorney filed a separate request on my behalf specifically requesting the Department of State file concerning the abduction of Carina Maria Sylvester to Austria on October 30, 1995. She also requested a copy of the full file of the Barlow child abduction to Olten, Switzerland in May 1991. This was intended to supplement the October 30, 1996 request for records about children returned to Austria under the Hague Convention since October 1995.
8. On December 4, 1996, my attorney received acknowledgement that the above request had been converted into two new request numbers: copies of the documents concerning the abduction of Carina M. Sylvester as Request No. 9604264, and copies of documents pertaining to the Barlow child abduction to Olten, Switzerland in May 1991 as Request No. 9604265.
9. On July 14, 1998, Ms. Grafeld sent a letter producing 116 documents from the American Embassy, Vienna.
10. On July 17, 1998, my attorney received a letter from Lois S. Chichester advising of the production of the American Embassy file and reciting the other record systems as yet to be searched as:
  - The Bureau of European and Canadian Affairs;
  - The Office of Overseas Citizens Services;
  - The Office of the Assistant Legal Advisor for Consular Affairs; and
  - The Office of the Assistant Legal Advisor for European and Canadian Affairs.

The Bureau of Consular Affairs, Office of Children's Issues was not a record system listed.

FOIA REQUEST NO. 9802377

11. On June 4, 1998, I wrote directly to Ellen Conway at the United States Department of State Bureau of Consular Affairs, Office of Children's Issues concerning the October 30, 1996 request explaining to Ms. Conway that documents were well overdue at that time and seeking her assistance in preparing a response.
12. On July 1, 1998, a letter was sent directly to me under Request No. 9802377 from John Livornese identifying that correspondence as a new request for copies of State Department documents pertaining to me, Carina and my case in Austria in addition to U.S. government demarche published and distributed in June 1997. Mr. Livornese asked for further information from me.
13. On July 14, 1998, I responded to Mr. Livornese's letter providing the information requested. At the end of that letter, I indicated that I also requested copies of all documents and records relating to a State Department file on Carina's abduction to Austria and any further demarches issued in my case. I also made reference to my original request on October 25, 1996 and further requested an explanation as to the October 30, 1995 request made by my attorney had not been finalized.
14. On July 14, 1998, Representative Rob Portman wrote a letter to John Livornese requesting a prompt response to my FOIA requests.
15. On August 17, 1998, I received a letter from Lois Chichester informing me that records were to be produced from the *Central Foreign Policy Records System*. She further identified The American Embassy in Vienna, the Office of Overseas Citizens Services and the Office of the Legal Advisor as other areas in which searches were underway. She did not mention the Bureau of Consular Affairs, Office of Children's Issues as such an area.
16. On August 28, 1998, I received Ms. Grafeld's letter and a document production of 30 items believed to be from the *Central Foreign Policy Records System*. Although these documents pertain to the abduction of Carina, these documents are not the office file of the Bureau of Consular Affairs, Office of Children's Issues files on Carina and me, nor are they the files of all children abducted to Austria since 1988.
17. On October 4, 1999 Representative Rob Portman sent a letter to Mary Ryan, Assistant Secretary to Foreign Affairs, DOS requesting an expeditious response to my FOIA requests.

FOIA NO. 437835



18. On August 18, 1998, my attorney received a letter from the Department of Justice apparently denying the production of its records under the Request No. 437835. Neither she nor I had ever requested any FBI records and do not know the origin of this request number and further do not understand the contents of the letter.

NEW REQUEST AS YET UNACKNOWLEDGED

19. On March 12, 1999, my attorney submitted a new FOIA request directly to Bill Fleming, my case worker at the Bureau of Consular Affairs, Office of Children's Issues repeating the request for what now appear to be Request Nos. 9604263, 9604264, 9604265, and 9802377 directly addressed to the **Bureau of Consular Affairs, Office of Children's Issues**. To date, I have had no acknowledgement of that request.

Oddly, my attorney sat in Bill Fleming's office at the DOS over one year ago and was told that the file had been pulled for copying. I myself was later told that the fact that it hadn't yet been copied was "mysterious."

Finally, I would address the DOS's Report on Compliance with the Hague Convention submitted in April of this year. Naturally, I approve of Austria's inclusion as a country that has demonstrated a pattern of non-compliance with the obligations of the Convention with respect to applications for the return of children. The short exemplary paragraph on the matter however touches upon only a smallest part of the problem. Ironically, it also demonstrates some level of institutional knowledge of the communications referenced above between the U.S. and Austrian Central Authorities and the subsequent meeting which followed where, unfortunately, the delegates were apparently not aware of such communications.

Further, since my case is not one of the 56 identified as unresolved after 18 months, I can only infer that my case has been closed by the U.S. Central Authority as "resolved."

**The Department of Justice**

My experiences with the Justice Department ("DOJ") began well with the entry of an international warrant in May of 1996 under the International Parental Kidnapping Crime Act. This led to the red and yellow notices by Interpol. However, that is essentially where the participation of DOJ ended. Even my inquiries into the matter were surprisingly met with contention and hostility. The sole exception was Mary Jo Grotenrath at the Office of

International Affairs who was uniformly pleasant and informative. Initially however, I was told that the criminal approach would be put on hold to see how the civil proceedings under the Hague Convention would unfold. I was told that Austria does not extradite its citizens but the U.S. does. So that if I were to go over to Austria to retrieve Carina myself, that I would run the risk of being extradited to Austria to face criminal charges there. The excuse of Austria's refusal to extradite its own nationals was used to explain away any further work on the warrant. After three years we had well seen how the civil proceedings have unfolded and still nothing was forthcoming from DOS on the warrant. In fact, after a very short period of time it became clear that the official position of the Department of Justice was to "remain neutral" on the warrant.

Neither understanding this position nor being satisfied with this situation, I continued to press for information and answers or even some interest in the warrant of any kind. For example, last year I made a request to the Assistant U.S. Attorney on the case that an extradition request be issued to Austria— even if impossible to achieve. I was denied that request. Just recently I have learned that a provisional arrest request was presented a short while ago to Italy. Italy denied the request.

I believe the United States is not responding adequately through law enforcement tools to assist American parents and internationally abducted U.S. children. Such legal action by the DOJ would serve to apply pressure on the Austrians to comply with its international treaty obligations, and perhaps the abductor to take accountability for the wrongful, illegal behavior. With the current situation of lack of support on international parental kidnapping warrants from DOJ, Carina's abductor continues to get away with complete impunity.

Ironically, the existence of the international parental kidnapping warrant, as useless as it is as a law enforcement tool, is however used as a weapon by the abductor and the Austrian courts to justify their not returning Carina to the U.S. In theory, the Austrians believe the abductor must accompany the child here upon her return or on a visit. At that time, theoretically, the abductor would be arrested and jailed and I would have free reign to enforce my valid Judgment of Divorce giving me custody of Carina. The "Safe Harbor" order to the contrary has been completely ignored by the Austrians, despite the recent statements to the U.S. Central Authority at their meeting in March.

As a result, the warrant on which very little has been attempted and nothing accomplished is in fact a detriment to Carina's return. Swift action on the warrant on the part of

DOJ could have restored the balance of power in the case early and would also have been perfectly in keeping with DOJ's role as our federal law enforcement agency.

Senator Mike DeWine has recently stated:

"I am concerned that a small child would be taken from a parent in violation of the law without any law enforcement intervention." . . . "We go after countries that steal our products or violate patent and copyright laws, but not when they are supporting the theft of American children. What does that say about us as a country?"

The recent report to the Attorney General from the joint task force on the DOJ's response to international parental kidnapping cases was a disappointment to me and other similarly situated parents. It lacks backbone, relying essentially on fact that the International Parental Kidnapping Act was meant as a last resort after civil recourse under the Hague Convention failed. I perceive at least two problems with this approach.

First, a prompt criminal response allowing for the arrest of the abductor, even though theoretically leaving the child behind, is essential for re-establishing the balance of power. As time drags on, the American laissez-faire policy on these warrants looks weak and insincere. The warrant is also used as a weapon in the argument against return. Therefore, if it is to be available and of any benefit whatsoever to left behind parents, it must be utilized swiftly to its maximum effect.

Second, the proposals for law enforcement response to international parental kidnapping under the International Parental Kidnapping Act are weak and will result in no further assistance to parents of America's stolen children. For example:

- a. The report does not adequately reflect existing difficulties that reduce the efficacy of these arrest warrants when abductors flee to countries such as Austria from which nationals are not extradited;
- b. The report focuses on the fact that the arrest and extradition of the abductor does not return the abducted child. This reads as justification for not vigorously pursuing the warrant, since it is assumed that the primary purpose of the warrant and the criminal act on which it is based is the return of the child. Naturally, left-behind parents are desperate for the return of their lost children. In many cases however, the civil remedy under the Hague Convention has been so abominable an arrest and incarceration

under the act may provide the only means by which to resolve the balance of power between the parents to allow for a negotiation as to how the child will be cared for.

It appears never to have been the intention of the legislature to seek the return of the child with the implementation of the International Parental Kidnapping Act. The perpetrator under the act is the abductor. The International Parental Kidnapping Act criminalized the abduction itself and seeks redress for the criminal behavior. There should be no concern by DOJ in pursuing criminals under the International Parental Kidnapping Crime Act as to whether or not the child is returned. This simply isn't relevant to the performance of the job of our federal law enforcement agency;

- c. The emphasis by DOJ in the report on the fact that a conviction under the crime act does not return the child reinforces the same institutional misunderstanding held by DOS – that being that the remedy sought by the Hague Convention and the International Parental Kidnapping Act is a private custody matter; and
- d. The report fails in providing a swift and defined protocol for prosecuting cases and pursuing warrants under the International Parental Kidnapping Act.

#### **The Problem of Austria**

Austria plays a significant role in the bizarre result of my case that looked so hopeful from the start. As a treaty partner to the Hague Convention, Austria has committed to complying with the terms of the Convention and its implementation there. Nonetheless, its legal system works in direct opposition to the two objects of the Convention – the prompt return of the parentally abducted child into its environment of habitual residence and the provision of access by left-behind parents to parentally abducted children. The problems that arose in my case are of such a voluminous nature that they are addressed below in turn.

1. ENFORCEMENT. The most pronounced problem and that which was fatal to the return of Carina to the U.S. is the Austrian legal system's failure to provide for any significant and hard-hitting enforcement procedures for its own orders, relying instead on the polite knock on the door and a request for voluntary compliance. This means that it is absolutely impossible for Austria to consistently comply with the Convention since Austria cannot control the conduct

of its citizens or protect the parental rights of foreign parents through their own court orders. This fact is well understood by Carina's mother who recently said to me: "Even if the courts here [ in Austria] tell me what to do . . . I don't have to do it." She learned this from the successful results of her direct disregard of the initial set of orders of the Austrian courts which stated:

- "The child's mother Monika Maria Sylvester is ordered by otherwise forced action to return the minor Carina Maria Sylvester immediately to the father, Thomas Sylvester to the previous residence in Michigan, USA" (December 20, 1995, Trial Court)
- "It should also be expected from the child's mother, if she puts the well-being of the child higher than her own, that she returns with the child to the United States." (December 20, 1995, Trial Court)
- "It is the mother's freedom and is also expected of her as a responsible custody provider, that she put the welfare of the child before her interests to stay in Austria and return together with the daughter to the United States. It is then the responsibility of the appropriate American court to decide final custody." (February 19, 1996, Austrian Court of Appeals).

Despite the strong language of these orders, Carina's mother felt completely comfortable not complying with their directives. Lack of enforcement of the early Austrian orders meant that Carina would be returned only if her mother chose to do so. This fatal shortcoming puts the effectiveness of any Austrian return or access order in the hands of the abductor, who obviously chose to take the child impermissibly in the first place.

For recipients of return orders under the Hague Convention, this defect in the Austrian system means that Austria gives the abductor complete control over the situation including, every aspect of the child's relationship with the left-behind parent. This is the antithesis of what the Hague Convention is all about. This not only limits the value of Austria as a partner to the Convention, but renders Austria a very dangerous treaty partner when American parents rely upon Austria's participation in the Convention to their detriment.

Austria is not alone in this regard. Germany and other civil law countries are treaty partners with no means to enforce court orders rendered under the Convention or otherwise.

2. RE-OPENING OF CONCLUDED HAGUE CASES. The defect of non-enforceability of return orders allows for the "re-opening" of Hague Convention cases in Austria years after a valid and final return order is entered. The "re-opening" of a Hague Convention case is not only unprecedented, but also runs counter to the inherent philosophy of the Hague Convention that a child's best interests are served when it is immediately returned to its country of habitual residence following an international parental child abduction.

The Austrian court's determination in my case to devalue the original valid and final order for return of Carina metamorphosing it into an order that Carina will not be returned is an amazing fete of legal logic. On the one hand, the order for Carina's immediate return to Michigan for a custody determination there is valid and final, but on the other hand, since the order hasn't been complied with voluntarily, the return of the child is no longer necessary. The child was not returned because the order was not enforced. Therefore, the order will not be enforced because the child was not returned. In the end, the custody determination was said to take precedence over the Hague Convention.

3. ENDLESS APPEALS ON ANY ISSUE. The Austrian legal system seemingly provides no end to any issue before it, allowing for unlimited appeals and motions until an original decision is bent so far out of shape that it is no longer the same decision. An end can be achieved as in my case, when the Austrian national finally obtains an order legally sanctioning the abduction. This creates the serious problem of extensive delay, i.e., when the file is in a higher court, no proceedings can be had on even interim matters requiring resolution such as access not related to the issue on appeal.

4. THE AUSTRIAN CENTRAL AUTHORITY DOES NOT MEET ARTICLE 7 OBLIGATIONS. The Austrian Central Authority is intractable. There is no real evidence of any interest or dedication to compliance with its duties under Article 7 despite the Austrian delegation's attempt to have the situation appear otherwise in its meeting with the U.S. Central Authority in March of this year, as referenced above.

5. GENDER AND NATIONAL BIAS IN HAGUE CASES. There exists extreme gender and national bias in favor of mothers and Austrian nationals in the Austrian courts. This

is evident even in Hague Convention cases. According to the U.S. Embassy report on the March 2, 1999 meeting: "This potential scenario [custody to the father] was most culturally abhorrent when it seemed likely that the mother (rather than the father) would be separated from her child." In my access case under Article 21, the court-appointed child "expert" submitted a report to the court stating that any child between the age of six months and six years would be psychologically harmed if separated from the mother even temporarily. This opinion is maintained and advocated irrespective of Austria's participation in the Hague Convention.

The social worker who supervised my first meetings with Carina following the abduction stated the situation quite plainly—I give the mother whatever it is she wants legally, including custody under an Austrian order, and then everyone else in Austria will be in a position to consider my having access to Carina. Based on my experience, it is impossible to conceive of circumstances under which an Austrian court would award custody of a small child to an American father in the United States over an Austrian mother in Austria.

This national bias is also exemplified by the undignified but not uncommon practice of Austrian judges granting non-Austrian fathers visitation of their children only in small bits, only in Austria, and often only under supervision of the mother or a third person authorized by the mother. This bias is most startling in light of the recent European trend toward mandating family courts to preserve joint physical custody of a child.

6. ABSENCE OF COMITY FOR FOREIGN ORDERS. Austria is disrespectful of the principle of comity. In its initial determinations, Austria was quick not to acknowledge my Michigan Judgment of Divorce stating that the judicial process in the United States was lacking in even the most basic Constitutional safeguards, despite the abductor's active participation in the case through counsel. It is now three years later and the matter of Austria's acknowledgement of the Michigan Judgment of Divorce is still not resolved. Instead, the issue of the proper authority to determine Austria's recognition of foreign orders has moved to its Constitutional Court. It is difficult for me as a layman to understand this lack of respect for and consideration of court orders of other nations, particularly when the principle of comity is a well-established element of American law.

Particularly offensive is the Austrian court's assumption of jurisdiction over matters such as custody and child support in advance of an official determination as to Austria's recognition of

the Michigan Judgment entered in 1996 resolving those same issues. This exercise of jurisdiction is without question premature, contradictory to established legal procedure, aggressively arrogant and revealing of the compelling drive to favor their own nationals in court proceedings.

7. FAILURE TO EXTRADITE ITS NATIONALS UNDER AMERICAN ARREST WARRANTS. Austria provides a sanctuary for child abductors wanted under internal parental kidnapping warrants. In international child abduction and wrongful retention cases, Austria refuses to extradite or prosecute Austrian nationals. This combined with the complete inability to enforce their civil orders means that an abductor can flee to Austria with complete impunity both civilly and criminally.

8. LINKING OF ARTICLE 21 HAGUE CONSIDERATION WITH ISSUES IN OTHER PENDING CASES OR LIFTING OF U.S. ARREST WARRANT. Austrian courts link the granting of access under Article 21 with other non-related issues. Carina's rights are completely independent of any other proceedings in which her parents are involved. The trial court judge in my case has told me if I accept an Austrian divorce, I will get more access to Carina. He calls it a "factual relationship." I call it "blackmail." At a recent access hearing under Article 21, the Austrian judge discussed such matters as my lifting the international warrant for the abductor's arrest and my modification of the terms of the Michigan Judgment of Divorce to comport with what is happening in the Austrian courts.

9. DISCOURAGEMENT OF SETTLEMENTS. The Austrian system discourages amicable settlements by not providing for the possibility for joint custody, contrary to the trend of most of its other European neighbors. Therefore, it eliminates the possibility of the use of "mirror orders," those being the same orders entered in the courts of both countries incorporating terms that might reflect a compromise position of both parties.

10. NO SANCTION FOR FAILURE TO COMPLY WITH HAGUE CONVENTION. Austria has been able to benefit from the Hague Convention while systematically failing to comply with its terms and thus failing to reciprocate. According to statistics from the National Center for Missing and Exploited Children, Austria has realized the



return of four children from the United States to Austria under the Hague Convention since September 1995. This covers the time that the Austrian courts had ordered Carina's return to the United States. To date, Carina still has not been returned. Why is her heart considered any different than those of the Austrian children? It is a sad fact that some countries have been able to benefit from the Convention while systematically failing to comply with its terms and thus failing to reciprocate.

11. VIOLATES U.N. CONVENTION ON RIGHTS OF THE CHILD. Austria is systematically violating its obligations of the Convention on the Rights of the Child. Austria ratified this Convention in 1992. The United States has signed, but not ratified the Convention. Specifically, the denial of Carina's right to know her father and her extended family here in the States contravenes Article 9 of the Convention on the Rights of the Child. In addition Austria violates Article 10, Carina's right to contact with parents who live in different countries; Article 18, the right of both parents to have common responsibilities for the upbringing and development of the child; and Articles 2, 5, 8, 11, 16 and 29 which also impose pertinent obligations. These obligations are systematically violated by Austria, a loud proponent of the Convention on the Rights of the Child. Austria is a country with legal systems that do not provide effective enforcement mechanisms for access/visitation and therefore, cannot comply with their obligations under either the Hague or Rights of the Child Conventions.

#### **Recommendations**

Unfortunately for parents who put their faith in the legal system, as in my case, the Hague Convention sometimes does not work even between parties to the Convention and even when orders for immediate return of the child are entered. It is because of this failure that American parents desperately need the assistance of the Department of State and the U.S. Central Authority, and the Department of Justice as our federal law enforcement agency.

There is an immediate need for both the Department of State and the Department of Justice to prioritize these parental child abduction matters and assist with the enforcement of American orders and American arrest warrants to give some support to parents like me who obtain affirmed valid and final orders for return under the Hague Convention which don't themselves bring the children home. A strongly staffed U.S. Central Authority must take an

aggressive, non-diplomatic posture with uncooperative Central Authorities like the Austrian Ministry of Justice. The Department of Justice must vigorously pursue these fugitives from justice as they would "serious" criminals and never again remain neutral on a warrant for arrest of an abductor. Extradition should be requested in every appropriate case whether it is believed it will be granted or not. Possible solutions include:

1. The immediate organization of a conference of judges and administrators from the U.S. and each of the five countries identified in the DOS report to discuss the violations of their obligations under the Hague Convention. The model used by France and Germany could be explored.
2. Correct the institutional mind set for both DOS and DOJ that actions under the Hague Convention and criminal warrants for the arrest of abductors under the International Parental Kidnapping Act are not private child custody matters.
3. The U.S. Central Authority under Article 7 should supply valuable information such as the legal procedure of problematic cases in those five countries identified as non-compliant under the Hague Convention to the courts of the U.S. dealing with return cases to those particular countries.
4. Privacy Act waivers should be obtained from all interested left-behind parents to facilitate networking between parents. An applicant parent should be assigned a mentor from these left-behind parents and immediate contact should be made through DOS/DOJ.
5. Hague non-compliance should be incorporated in the DOS Human Rights report of each recalcitrant country.
6. DOS should prepare an annual Hague Compliance Report, covering both return and access cases, with more meaty information on case examples presented.

7. Modify UIFSA to specifically eliminate automatic enforcement of foreign child support when the case involves an international parental child abduction.

8. Apply political and moral pressure on the non-compliant countries to improve the performance of the Hague Convention. It is important for countries to be persuaded to introduce mechanisms to ensure the principles of the Hague Convention are enforced. Now that non-compliant countries have been identified, specific measures should be taken to correct non-compliance. For example, pass new immigration legislation to limit visas issued to nationals of non-compliant Hague countries. Similar legislation could be passed to that of America's trade agreements with those countries to provide for sanctions for non-compliance. In addition, actions could be taken to limit the United States participation in any other bi-lateral treaties with non-compliant countries until compliance is achieved under the Hague Convention.

#### **Closing Remarks**

I relied on the Hague Convention to my detriment. I believed that Austria was a civilized society as I had been told by Monika. However, I have discovered one fundamental difference between Austria and the United States. Austria forsakes international relations for the sake of its nationals whereas the United States forsakes its nationals for the sake of international relations. Or, as my ex-wife put it: "Tom, the difference between us is that my government protects me."

Under its current legislation, policy and practices, Austria does not fully implement or comply with the Articles of the Hague Convention. In addition to addressing the cruel impact of Austria's current violations of the Convention on the children affected today, it is hoped that the Committee will also be particularly concerned with the absolute certainty of continuing Austrian violations of the Hague Convention.

According to the U.S. Embassy report of the March 2, 1999 meeting, "the Austrians agreed that the very difficult Sylvester case had certainly highlighted many of the contentious areas of the Hague process." There has been no remedy to the wrongful removal of Carina. The abductor has gotten away with complete impunity. Now I am being confronted with demands from the abductor. I am told that I must meet these demands or I risk never seeing my daughter again. As an FBI agent said to me, I am being extorted for my own child. The real choice for

me now is to "write off" the child, carry out a rescue operation, or participate in hostage-like negotiations with the person who committed the hostile, deviant and illegal behavior. The system has failed miserably. For me, the implementation of the Hague Convention is completely dependent upon the cooperation of the abductor.

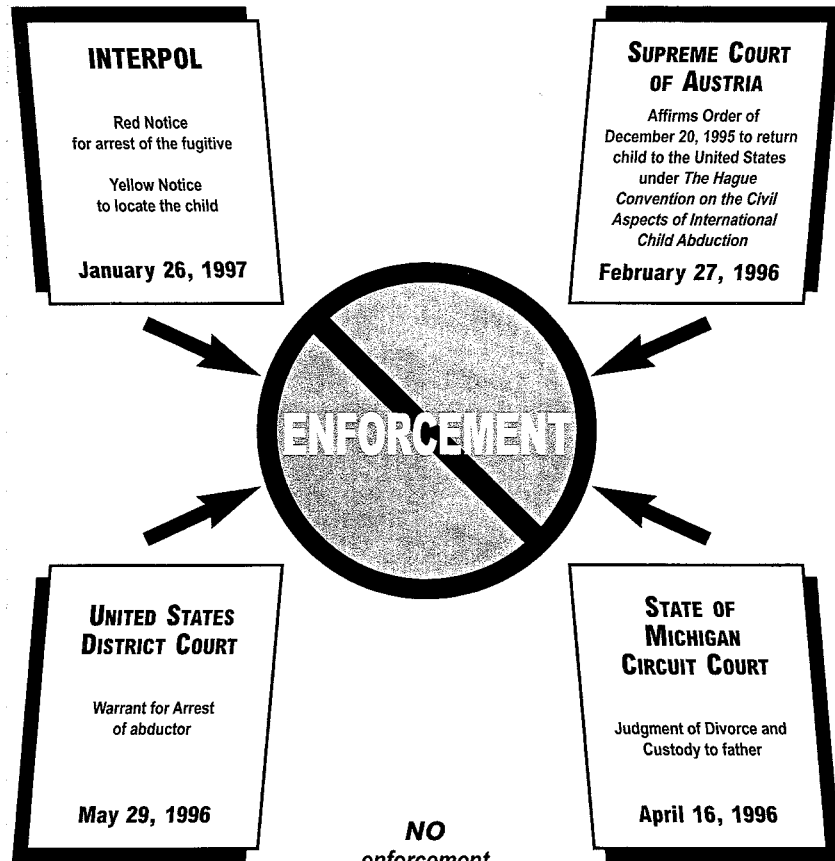
Carina is being denied her most basic human right - that of having both parents in her life. If you have rights that are not able to be exercised, it is as if you have no rights at all. She is not being exposed to this country, her native language or her extended family. She has the right to have a continuing relationship with me, her father.

Although Islamic countries deserve to be criticized for not participating in the Hague Convention and the United Nations Convention on the Rights of the Child, they are no worse than Austria (and a good deal more honest than many European civil law countries, including Austria) and are in fact more honest in their approach. A parent knows what to expect from the Islamic courts when a child is abducted to an Islamic country. Much more dangerous is a country like Austria, which portends to participate in the Convention, only to be fully unable to fulfill their obligations in the end. The end result is often the same whether a left-behind parent is dealing with Iran or Austria. The truth is that Austria has rewarded child abduction.

I hope and pray that productive action will result for our children from these hearings here today. I thank you for listening to my story and my concerns. I ask for your continued interest and support.

# INTERNATIONAL CHILD ABDUCTION

United States House of Representatives COMMITTEE ON INTERNATIONAL RELATIONS



Submitted by Thomas R. Sylvester, October 14, 1999

**Press Release**  
For Immediate Release  
October 7, 1999

Contact: Thomas Sylvester  
Phone: (513) 469-6135  
E-mail: [tsylvest@one.net](mailto:tsylvest@one.net)

**Dad Takes his Fight to be a Part of his Daughter's Life to the  
United States House of Representatives**

Cincinnati—The problem of International Parental Child Abduction has caught the attention of the United States House of Representatives. Thomas Sylvester and three other parents were selected nationally to speak to the U.S. House Committee on International Relations on October 14, 1999.

October 29, 1995 was the last day that Thomas Sylvester saw his daughter on American soil. The next day, thirteen-month old Carina, was abducted by her mother, Monika Sylvester, and taken to Graz, Austria. As a result of an international parental child abduction, Thomas Sylvester has seen his daughter in a supervised setting for only a few hours since 1995. This father's love for his child has taken him to the Supreme Court of Austria and the U.S. Capitol.

On December 20, 1995, a court in Graz ordered Carina's return to her father, Thomas. Monika Sylvester refused to return the child. She has also refused to comply with an Austrian court order to permit the father to see his child. On February 19, 1996, the Court of Appeals in Graz ordered Carina's return to her father. The ruling was affirmed by the Austrian Supreme Court on February 27 of that year. Monika Sylvester again refused to return the child. On May 10, 1996, Austrian judicial authorities attempted to enforce the return orders but failed to locate the child. Nineteen days later, authorities in Detroit, Michigan, issued a warrant for Monika Sylvester's arrest for international parental kidnapping. An arrest notice has also been issued by INTERPOL.

Carina Sylvester is an American-born U.S. citizen with rights that are being violated. "If you have rights that are not able to be exercised, it is as if you have no rights at all," says Mr. Sylvester. "Carina is not being exposed to this country, her native language or her extended family. She has the right to have a continuing relationship with her father."

"Every day since Carina's abduction I have been driven to continue my efforts to seek enforcement of the various U.S. and Austrian Court orders granting me custody of my daughter, the arrest of her mother, and Carina's return to the United States. Unfortunately, even after nearly four years, my efforts have failed. Despite my unceasing attempts to be a part of Carina's life, I have not been able to participate at all in her life. There are no words that can adequately describe my feelings of loss and pain. If you are a parent yourself, perhaps you can imagine the heartbreak of being without your child," says Mr. Sylvester.

Your assistance is crucial in exposing Thomas Sylvester's and the situation of other parents who have had their children abducted. Foreign governments have been ignoring the international treaty requiring abducted children to be returned to the United States and U.S. agencies in a position to help are not providing much help at all. Parents need media support.

**Editor's Note:** Mr. Sylvester is a business executive with extensive domestic and international experience in the automotive industry. He has achieved successful results in start-up activities in Asia, South America and Europe. He lived and worked in four countries over a 10-year period while an executive with Chrysler Corporation. He currently resides in Cincinnati, Ohio.

FROM : CR/OCS

222 647 2835

1996.12-03 1E:23 #828 P.02/03

**FAX**

United States Department of State

Washington, D.C. 20520

Date 12/03/96

Number of pages including cover sheet

**TO:** Central Authority of  
Austria  
Werner Schutz

Phone

Fax Phone

**FROM:** Raymond Clore, Director  
Office of Children's Issues  
United States Central  
Authority

Phone (202) 736-7000

Fax Phone (202) 647-2835

CC:

**REMARKS:** ☒ Urgent ☐ For your review ☐ Reply ASAP ☐ Please Comment

**RE:**  
**SYLVESTER**  
**CASE**

Ms. Jan McMillian, the attorney in the U.S. for Mr. Sylvester, has forwarded a copy of the attached order from the Austrian Supreme court. She believes that this order indicates that the Hague case regarding Carina Sylvester may be re-opened at the trial level for a re-consideration of the facts of the case. Please inform me of the current status of this case and whether this information is correct.

Developments in this case prior to the latest supreme court order already have been cause for extreme concern with the U.S. Central Authority and call into question the ability of Austria to comply with its obligations pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. The apparent endless process is severely affecting the ability of the Hague Abduction Convention to work to return Carina to her habitual residence. The Austrian courts found almost a year ago that Carina had been abducted and ordered her return. The mother has repeatedly shown her contempt for the Austrian court order. No sanction or penalty has been levied on her for this defiance.

FROM : CA/DCS

282 647 2835

1996, 12-03

15:23

#826 P.03/03

The mother not only caused the original harm to Carina by abducting her she continues to add to that harm each day she fails to return her home. It is incredible that she may again have the ability to argue that the facts have changed since the Dec. 1995 Austrian court order for the child's return. It is the mother who has caused the delay, and it is her who is causing the ongoing harm to the child. If she is rewarded for continuing this harm to the child; then all parents will be given the message not to comply with Austrian court orders under the Convention and the treaty will fail.

How can it be possible for the Austrian court order of almost one year ago be open for reconsideration of the facts? How can an abductor be allowed to argue a change of fact; when they caused the change? There was an abduction as found by the court in Dec. 1995. How can that fact have changed? No exceptions to return applied then; they must not be allowed to apply now because the abducting parent refused to return the child. The abductor must not be rewarded for the abduction and failure to comply with the Austrian court orders. The child cannot be considered settled in its new environment since the application for return was filed immediately after the abduction.

While proceedings under the Hague Abduction convention are private civil matters between the parties involved; Governments signatory to the Convention have agreed to take all appropriate measures to secure the return of abducted children once the facts of that abduction have been determined. Central Authorities are responsible to provide administrative arrangements necessary to secure the safe return of abducted children. We must create the legal mechanism by which parents can return these abducted children; or parents will abandon legal avenues. We must fulfill our obligation to eliminate any obstacles to the operation of the Convention; or children will not be protected from the harmful effects of international abduction. If there are not means to compel parents to return abducted children; we must create those means. It is unreasonable to believe that an abducting parent will participate in good faith in a negotiation for return of an abducted child when there is no cost for failing to comply. Continuation of the status quo rewards the abductor and increases the risk that children will be abducted.

Is it possible for the Austrian Central Authority to file a legal brief with the courts in Austria in a pending Hague Convention case? If so, under what circumstances will the Central Authority take this step? What can the Austrian Central Authority do to facilitate access of the father to this abducted child while this matter drags on? Can you confirm the child's location and condition? Please inform me of what specific actions the Austrian Central Authority is taking to fulfill its obligations pursuant to Article 7 sections (h) and (i) of the convention.

As the officials of our Embassy indicated to you in their diplomatic representation at the end of September, the government of the United States continues to be interested in a speeding resolution to this child abduction case. I look forward to your reply.



1996.12.09

1996.12-09 18:39 #576 P.02/04



REPUBLIK ÖSTERREICH  
BUNDESMINISTERIUM FÜR JUSTIZ

gZ 870.075/35-1 10/96

To the  
United States Department of State  
Office of Children's Issues  
Bureau of Consular Affairs  
( for the attention of:  
Mr. Raymond Clore, Director )

Washington, DC, 20520

Museumstraße 7  
A-1070 Wien

Briefanschrift  
A-1015 Wien, Postfach 63

Telefon  
0222/52 1 62-0\*

Fernschreiber  
131254 justm a

Sachbearbeiter

Klappe

Telefax  
0222/52 1 62/2727

Telefax  
3222548 = bmjust

(DW)

Vienna, 5 December 1996

Re: Application under the Hague Convention on Civil Aspects  
of international Child Abduction.  
Carina Maria Sylvester, born 11 September 1994.

Your case no.: 147188

Dear Mr. Clore,

Referring to your letter of 3 December 1996 I want to re-act as follows:

1. By the decisions of the Court of Appeal in Graz of 29 May 1996 - see my letter of 6 September 1996 - and of the Supreme Court of 15 October 1996 the decision of the District Court of Graz of 8 May 1996 has been set aside totally. The court of the first instance has been instructed to reconsider the question of enforcing the decision of 20 December 1995 by which the return of the child has been ordered. To this end - taking into account the best interests of the child - a court expert ( child-psychologist ) shall be requested to give an opinion.

There is no re-opening of the case; the decision of 20 December 1995 mentioned above is still valid and final. There is only the question of enforcing this decision at stake.

DEC 09 '96 19:01

202 647 2835

PAGE.02

1996.12.09 16:40 #976 P.03/04

The way in which a return - order is to be enforced is not regulated by the Convention itself but is left to the ( Internal ) law of the requested State. This is quite common and usual in this area. May I draw your attention to Art. 28 of the new Hague Convention 1996 on the protection of minors ( " Enforcement takes place in accordance with the law of the requested State to the extent provided by such law , taking into consideration the best interestes of the child " )

2. The Ministry of Justice has no possibility at all to interfere with the independent judiciary. It is a basic principle that the administration and the judiciary are separated and no interference whatsoever is possible. All States based on the rule of law have to respect court orders. I cannot imagine that the US Central Authority is entitled to give instructions to the courts, in particular to the Supreme Court relating the handling of the Convention .

Having said this I have to reject very strongly - with all due respect - your allegations that the Austrian Central Authority does not comply with its obligations under the Convention. Such allegations are unfounded and in the field of international co-operation unusual, too. Acting in such a way does not promote international co-operation at all.

For these reasons I abstain to comment on your remarks relating the proceedings in the Austrian courts.

Of course it is up to the USA to make proposals for creating more appropriate legal mechanisms within the framework of the Convention in the proper international forum.

3. If Mr. Sylvester wants to have access to his daughter ( "...while this matter drags on..." ) he has to apply to the competent Austrian court for such an interim measure.

4. The Austrian Central Authority has - upon the request of the US Embassy - informed this Embassy by its letter of 30 September 1996 that the competent court cannot find any necessity to arrange for a social worker to see the child; according to the view of the judge there are no indications that the child is in danger.

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646 647 2835

1996.12-09

18:40

#976 P.04/04

3

5. I shall keep you informed about this case.

Yours faithfully,



( Dr. Werner Schütz )

DEC 09 '96 19:01

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PAGE.04

202 647 2835

1999.10-07 12:28 #018 P.02/02

1. SUMMARY ON MARCH 24, 1993, THE US AND AUSTRIAN CENTRAL AUTHORITIES UNDER THE HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, MET TO DISCUSS PARTICULAR CASES BETWEEN AUSTRIA AND THE US TO EVALUATE THE HAGUE PROCESS. IN A FRANK, OPEN, HONEST, AND CONSTRUCTIVE DISCUSSION, BOTH AUTHORITIES PRESENTED THEIR FULL VIEWS ON ISSUES THAT HAVE ARISEN BOTH BILATERALLY AND WITH OTHER COUNTRIES, WHICH REFLECT UPON CERTAIN WELL-KNOWN DIFFICULTIES THAT ARISE IN HAGUE CASES. AMONG OTHER ISSUES BROUGHT TO THE TABLE BY THE AUSTRIANS WAS THAT CRIMINALIZATION OF THE ABDUCTOR WOULD STRENGTHEN THE ABDUCTOR'S CASE FOR NON-RETURN OF THE ABDUCTED CHILD. END SUMMARY..

2. DEPARTMENT OF STATE REPRESENTATIVES FROM THE BUREAU OF CONSULAR AFFAIRS AND OFFICE OF THE LEGAL ADVISER ACCOMPANIED BY THE US CONSUL GENERAL, MET WITH HIGH OFFICIALS OF THE AUSTRIAN MINISTRIES OF FOREIGN AFFAIRS AND JUSTICE, INCLUDING THE AUSTRIAN CENTRAL AUTHORITY ON MARCH 2, 1939. WHILE THE MEETING PRODUCED NO DRAMATIC DEVELOPMENTS, THE DISCUSSION WAS FRANK, USEFUL, AND CONSTRUCTIVE. LIST OF ATTENDEES IS SET OUT IN PARAGRAPH EIGHT.

2. THE US CENTRAL AUTHORITY HAD REQUESTED THIS MEETING WITH THE AUSTRIANS TO DISCUSS BOTH SPECIFIC RESULTS IN RECENT CASES INVOLVING AMERICAN CITIZEN CHILDREN ABDUCTED TO AUSTRIA AND TO NOTE US CONCERN THAT THE AUSTRIAN PROCESS WAS LITTLE UNDERSTOOD IN AMERICA AND HAD GENERATED CONCERN AMONG THE DEPARTMENTS OF STATE AND JUSTICE AND THE US CONGRESS. THE WELL-WERPED AUSTRIANS HAD CONSIDERED THE ISSUES RAISED IN OUR DIPLOMATIC NOTE SEEKING THIS MEETING. THEY AGREED THAT THE VERY DIFFICULT SYLVESTER CASE HAD CERTAINLY HIGHLIGHTED MANY OF THE CONTENTIOUS AREAS OF THE SAVOIR PROCESS.

4. THEY COMMENTED THAT THE SYLVESTER CASE WAS UNIQUE AND THAT OTHER CASES, INCLUDING ANOTHER RECENT AMERICAN ONE, HAD WORKED WELL. IN RESPONSE TO OUR CONCERN ABOUT THE KNOWLEDGE OF THE CONVENTION WITHIN THE AUSTRIAN JUDICIARY, THEY EXPLAINED THAT AUSTRIAN

JUDGES WERE NOT UNFAMILIAR WITH THE HAGUE PROCESS. MOREOVER, THEY SPECIFICALLY CALLED OUR ATTENTION TO THE FACT THAT THE CENTRAL AUTHORITY DIRECTLY PROVIDES INFORMATION, INCLUDING PRIOR DECISIONS THAT MIGHT APPLY, TO THE COURTS OF THE FIRST INSTANCE. THE CENTRAL AUTHORITY UNDERSCORES IN THIS INFORMATION THE DUTIES OF AUSTRIA UNDER THE HAGUE CONVENTION.

5. THE DISCUSSION CONTINUED WITH AN AIR TOWARD FINDING WAYS TO ENSURE THAT THE SYLVESTER CASE DID NOT SIMPLY BECOME A BLUEPRINT FOR AVOIDING THE CONVENTION. IN THIS GIVE AND TAKE PERIOD, THE ISSUE OF ENFORCEMENT OF VALID ORDERS, THE USE OF COLLATERAL ATTACKS OF A VALID JUDGMENT TO DELAY EXECUTION OF A VALID ORDER, AND THE VIEW THAT THE PASSAGE OF TIME WAS SUFFICIENT TO CREATE A CHANGE IN CIRCUMSTANCES WERE ALL FULLY EXPLORED.

6. IT BECAME CLEAR THAT DECISIONS ABOUT THE APPROPRIATE  
VENUE FOR CUSTODY HEARINGS WERE SEEN BY THE AUSTRIAN  
JUDICIARY AS ESTABLISHING DE FACTO CUSTODY. AS A  
RESULT, THE SAFETY AND SECURITY OF THE CHILD SUBJECTS  
THAT MIGHT MORE NORMALLY FALL WITHIN THE PURVIEW OF  
THE COURT DETERMINING CUSTODY, ARE INTRODUCED INTO  
THEIR DELIBERATIONS OR VENUE. THE AUSTRIANS  
UNDERLINED THE IMPORTANCE OF SAFE HARBOR ORDERS SINCE  
SUCH ORDERS MIGHT GIVE THE AUSTRIAN JUDICIARY MORE  
CONFIDENCE IN RETURNING THE ADDUCTOR MOST OFTEN THE  
MOTHER; AND THE CHILD TO THE PLACE OF HABITUAL  
RESIDENCE FOR A CUSTODY HEARING.

7. ALONG THESE LINES, THE AUSTRIANS NOTED THAT THE CRIMINALIZATION OF THE ADDUCTOR, WITH CONSEQUENT WARRANTS AND INTERPOL NOTICES, MADE AUSTRIAN COURTS UNWILLING TO SEE THE US CUSTODY HEARING AS FAIR, SINCE IT WAS ASSUMED THAT UPON ARRIVAL IN THE US, THE ADDUCTOR WOULD BE INCARCERATED AND CUSTODY AWARDED TO THE LEFT-BEHIND PARENT. THIS POTENTIAL SCENARIO WAS MOST CULTURALLY ABHORRENT WHEN IT SEEMED LIKELY THAT THE MOTHER (RATHER THAN THE FATHER) WOULD BE SEPARATED FROM HER CHILD IN THIS FASHION.

8. OTHER CONSTRUCTIVE EXCHANGES INVOLVED THE NEED FOR MORE ATTENTION TO DETAIL IN THESE CASES, BOTH WITH RESPECT TO THE SPECIFIC REQUIREMENTS OF THE CONVENTION (I.E. REQUIRED TRANSLATIONS AND CERTIFICATIONS) AND TO AUSTRIAN COURT PROCEDURES THAT CONTROL THE LOCAL PROCESS. PARTICIPANTS ALSO SUPPORTED THE NEED FOR MORE FREQUENT MEETINGS OF THE PARTIES TO THE HAGUE CONVENTION, PERHAPS LIMITED TO SPECIFIC TOPICS SUCH AS ACCESS.

5. ATTENDEES AT THE MEETING ON THE AMERICAN SIDE WERE MARY B. MARSHALL, DIRECTOR OF CHILDREN'S ISSUES AND THE US CENTRAL AUTHORITY; EMILY O'CONNOR, ATTORNEY ADVISER FROM THE OFFICE OF THE LEGAL ADVISER; OS CONSUM, GENERAL CUSTY CANNING; AND ALEXANDRA FIALLA, SPECIAL CONSULAR ASSISTANT. THE AUSTRILIANS WERE REPRESENTED BY DR. CHRISTIAN PROSL, HEAD OF THE LEGAL AND CONSULAR OFFICE OF THE MINISTRY OF FOREIGN AFFAIRS; DR. VERNER SCHOTZ, HEAD OF THE MINISTRY OF JUSTICE'S FAMILY LAW SECTION AND THE AUSTRIAN CENTRAL

AUTHORITY: DR. FERDINAND TRAUTMANSDORFF, HEAD OF THE MFA OFFICE OF GENERAL INTERNATIONAL LAW SECTION; DR. PETER PRAMBERGER, HEAD OF THE MFA TREATY SECTION OF THE LEGAL AFFAIRS OFFICE; DR. JAMES WINKLER, AMERICA DESK OFFICER IN THE MFA; AND MR. ERWIN GRIESSLER, ASSISTANT TO THE MFA LEGAL AND CONSULAR AFFAIRS DEPARTMENT.

18. THIS MESSAGE WAS CLEARED BY MARY B. MARSHALL AND  
EMILY O'CONNOR.  
HALL

# United States District Court

Eastern DISTRICT OF Michigan-Sp

UNITED STATES OF AMERICA  
v.

Monika Maria Sylvester

## WARRANT FOR ARREST

CASE NUMBER: ~~96-80432~~  
~~28708-96~~

To: The United States Marshal  
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest Monika Maria Sylvester  
Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

☐ Indictment ☐ Information ☒ Complaint ☐ Order of court ☐ Violation Notice ☐ Probation Violation Petition

charging him or her with (name/ description of offense):

International Parental Kidnapping

**A TRUE COPY**

CLERK U.S. DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

BY [Signature]

DEPUTY CLERK

in violation of Title 18 United States Code, Section(s) 1204

**VIRGINIA M. MORGAN**

Name of Issuing Officer

**VIRGINIA M. MORGAN**

Signature of Issuing Officer

**MAGISTRATE JUDGE VIRGINIA MORGAN**

Title of Issuing Officer

May 29, 1996 Detroit, Michigan

Date and Location

Bail fixed at \$ \_\_\_\_\_ by \_\_\_\_\_  
Name of Judicial Officer

### RETURN

This warrant was received and executed with the arrest of the above-named defendant at \_\_\_\_\_

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

SYLVESTER Monika Maria  
A-26/1-1997



PRESENT FAMILY NAME: SYLVESTER      FAMILY NAME AT BIRTH: ROSSMANN

FORENAMES: Monika Maria      SEX: F  
DATE AND PLACE OF BIRTH: 29th April 1962 - Graz, Austria

FATHER'S FAMILY NAME AND FORENAME: ROSSMANN Werner  
MOTHER'S FORENAME: Gertraud

IDENTITY CONFIRMED - NATIONALITY: AUSTRIAN (CONFIRMED)

DESCRIPTION: Height 173 cm, weight 70 kg, dark brown hair, brown eyes.

DISTINGUISHING MARKS AND CHARACTERISTICS: Mole on left side of chin.

IDENTITY DOCUMENTS: United States Social Security No. 375-17-6462; Austrian passport No. W-0282151.

OCCUPATION: Secretary.

COUNTRIES LIKELY TO BE VISITED: United States, Austria (Neuseiersberg, Graz).

LANGUAGES SPOKEN: German, English.

ADDITIONAL INFORMATION: Her daughter, SYLVESTER Carina Maria, born on 11th September 1994, is the subject of yellow notice File No. 20080/96, Control No. F-3/1-1997 (see photograph).

SUMMARY OF FACTS OF THE CASE: On 30th October 1995, SYLVESTER Monika Maria took her daughter SYLVESTER Carina Maria and left the United States for Graz, Austria. On 20th December 1995, the court in Graz ordered that SYLVESTER Carina Maria be returned to her father, SYLVESTER Thomas R.; SYLVESTER Monika Maria appealed against this order and the child was not returned. Visits by the father on 24th and 27th December were also ordered but the child was not brought to the location agreed upon on either date. On 16th April 1996, the court in the County of Oakland, Michigan, United States, granted default judgement of divorce and ordered sole legal and physical custody of SYLVESTER Carina Maria to SYLVESTER Thomas R. SYLVESTER Monika Maria refuses to return the child.

REASON FOR NOTICE: Wanted on arrest warrant No. 96-80432, issued on 29th May 1996 by the judicial authorities in Detroit, Michigan, United States, for international parental kidnapping. EXTRADITION WILL BE REQUESTED FROM ALL COUNTRIES WITH WHICH THE UNITED STATES HAS AN EXTRADITION TREATY CURRENTLY IN FORCE WHICH PERMITS EXTRADITION FOR THE OFFENCE CHARGED. If found in a country from which extradition will be requested, please detain; if found elsewhere, please keep a watch on her movements and activities. In either case, immediately inform INTERPOL WASHINGTON (Reference 96-05-05496/JRP of 17th January 1997) and the ICPO-Interpol General Secretariat.

File No. 20077/96

Control No. A-26/1-1997

CONFIDENTIAL INTENDED ONLY FOR POLICE AND JUDICIAL AUTHORITIES

SYLVESTER Carina Maria  
F-3/1-1997



PRESENT FAMILY NAME: SYLVESTER      FORENAMES: Carina Maria      SEX: F

DATE AND PLACE OF BIRTH: 11th September 1994 - Royal Oak, Michigan, United States

FATHER'S FAMILY NAME AND FORENAMES: SYLVESTER Thomas R.

MOTHER'S MAIDEN NAME AND FORENAMES: ROSSMANN Monika Maria

IDENTITY CONFIRMED - DUAL NATIONALITY: UNITED STATES CITIZEN AND AUSTRIAN (CONFIRMED)

DESCRIPTION: Height 74 cm, weight 11 kg, brown hair, brown eyes.

TEETH: Good condition.

IDENTITY DOCUMENT: United States Social Security No. 375-17-6986.

AREAS/PLACES FREQUENTED OR COUNTRIES LIKELY TO BE VISITED: Austria (Neuseiersberg, Graz), United States.

LANGUAGE SPOKEN: German.

CIRCUMSTANCES OF DISAPPEARANCE: On 30th October 1995, SYLVESTER Monika Maria took her daughter SYLVESTER Carina Maria and left the United States for Graz, Austria. On 20th December 1995, the court in Graz ordered that SYLVESTER Carina Maria be returned to her father, SYLVESTER Thomas R.; SYLVESTER Monika Maria appealed against this order and the child was not returned. Visits by the father on 24th and 27th December were also ordered but the child was not brought to the location agreed upon on either date. On 16th April 1996, the court in the County of Oakland, Michigan, United States, granted default judgement of divorce and ordered sole legal and physical custody of SYLVESTER Carina Maria to SYLVESTER Thomas R.. SYLVESTER Monika Maria refuses to return the child.

ADDITIONAL INFORMATION: Her mother, SYLVESTER Monika Maria, born on 29th April 1962, is the subject of red notice File No. 20077/96, Control No. A-26/1-1997 (see photograph).

PURPOSE OF NOTICE: Issued at the request of the United States authorities in order to locate this person. If traced, please place her in the care of a child welfare organization and contact her country's nearest diplomatic representative. Please send any information available to INTERPOL WASHINGTON (Reference 96-05-05496/JRP of 17th January 1997) and the ICPO-Interpol General Secretariat.

File No. 20080/96

Control No. F-3/1-1997

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CONFIDENTIAL INTENDED ONLY FOR POLICE AND JUDICIAL AUTHORITIES

## International Crime Alert



Wanted by the U.S. Federal Bureau of Investigation

### MONIKA SYLVESTER

**Description:** Monika Sylvester was born Monika Maria Rossmann in Graz, Austria, on April 29th, 1962. She is a white female, one-meter seventy-three centimeters tall, and weighs seventy kilograms. She has dark brown hair and brown eyes. Sylvester has a mole on the left side of her chin. She speaks German and English. She travels on an Austrian passport. The abducted child, Carina Maria Sylvester, was born in Royal Oak, Michigan, on September 11th, 1994. She is one meter four centimeters tall and weighs twenty-one kilograms. She has brown hair and brown eyes. She speaks German.

**Case Details:** On October 30th, 1995, Carina Sylvester, then thirteen months old, was taken to Graz, Austria, by her mother, Monika Sylvester. On December 20th of that year, a court in Graz ordered Carina's return to her father, Thomas Sylvester. Monika Sylvester refused to return the child. She has also refused to comply with an Austrian court order to permit the father to see the child. On January 19th, 1996, the Court of Appeals in Graz ordered Carina's return to her father. This ruling was confirmed by the Austrian Supreme Court on February 27th of that year. Monika Sylvester again refused to return the child. On May 10th, 1996, Austrian judicial authorities attempted to enforce the return orders but failed to locate the child. Nineteen days later, authorities in Detroit, Michigan, issued a warrant for Monika Sylvester's arrest for international parental kidnapping. An arrest notice has been issued by INTERPOL.







*CARINA SYLVESTER*

**If you have any information concerning Monika Sylvester, or the abducted child, Carina Sylvester, you should contact the nearest U.S. embassy or consulate. Or call the National Center for Missing and Exploited Children at 00-8000-843-5678. The identities of all informants will be kept confidential.**

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## Family Abduction

CARINA SYLVESTER



DOB: 11-sep-1994  
Missing: 30-oct-1995  
Age Now: 4 years  
Sex: F  
Hair: Brown  
Eyes: Brown  
Height: 2'8" - 81 cm  
Weight: 30 lbs - 14 kg  
Missing From:  
WEST BLOOMFIELD  
MI  
USA

MONIKA SYLVESTER



Abductor  
DOB: 29-apr-1962  
Sex: F  
Hair: Brown  
Eyes: Brown  
Height: 5'8" - 173 cm  
Weight: 150 lbs - 68 kg

The child was abducted by her non-custodial mother, Monika Maria Sylvester. An International Parental Kidnapping warrant was issued for the abductor on 05/29/96. The child has both American and Austrian citizenship. The abductor may be using the alias last name Rossmann. She has a prominent mole on her chin.

NATIONAL  
CENTER FOR  
**MISSING &  
EXPLOITED**  
CHILDREN  
www.missingkids.com

ANYONE HAVING INFORMATION SHOULD CONTACT  
National Center for Missing and Exploited Children  
1-800-843-5678 (1-800-THE-LOST)

Federal Bureau of Investigation (Troy, Michigan) - Agent Scott Wilson - 1-248-879-6090 Or Your Local FBI

**SYLVESTER - KEY CONTACTS**

- |   |   |
|---|---|
| <p>1. <b>Jan Rewers McMillan</b><br/>Attorney at Law<br/>400 Galleria Officentre, Suite 117<br/>Southfield, Michigan 48034<br/>(248) 354-9650 - Phone<br/>(248) 354-9656 - Fax</p>  | <p>6. <b>William R. Duncan</b><br/>Hague Conference on International Law<br/>6 Scheveningseweg 2517 KT<br/>The Hague, Netherlands<br/>011-31-70-363-3303 - Phone<br/>011-31-70-360-4867 - Fax</p>                                 |
| <p>2. <b>Dr. Stephan Moser</b><br/>Attorney at Law<br/>Kaan, Cronenberg &amp; Partners<br/>Kalchberggasse 1<br/>A-8011 Graz, Austria<br/>011-43-316-830550 - Phone<br/>011-43-316-813717 - Fax</p>                                  | <p>7. <b>Dr. Werner Schutz</b><br/>Minister of Justice<br/>Republic of Austria<br/>Museumstrasse 7<br/>A-1070 Vienna, Austria<br/>011-43-1-52152-134- Phone<br/>011-43-1-52152-2727 - Fax</p>                                     |
| <p>3. <b>John E. Ouellet</b><br/>Special Agent<br/>Federal Bureau of Investigation<br/>5700 Crooks Road, Suite 302<br/>Troy, Michigan 48098<br/>248-879-6090 - Phone<br/>248-879-2284 - Fax</p>                                     | <p>8. <b>James D. Pettit</b><br/>Consul General<br/>Embassy of the United States<br/>Gartenbaupromenade 2/4<br/>A-1010 Vienna, Austria<br/>011-43-1-31-339 - Phone<br/>011-43-1-512-5835 - Fax</p>                                |
| <p>4. <b>William D. Fleming</b><br/>Office of Children's Issues<br/>United States Department of State<br/>Washington, D.C. 20520<br/>(202) 647-2688 - Phone<br/>(202) 647-2835 - Fax</p>  | <p>9. <b>Jennifer M. Gorland</b><br/>U.S. Attorneys Office<br/>211 W. Fort Street - Suite 2300<br/>Detroit, Michigan 48226<br/>(313) 226-9707 - Phone<br/>(313) 226-2372 - Fax</p>  |
| <p>5. <b>Referee Patrick J. Cronin</b><br/>State of Michigan Circuit Court<br/>Oakland County Friend of the Court<br/>1200 North Telegraph Road<br/>Pontiac, Michigan 48341<br/>(810) 858-0440 - Phone<br/>(810) 858-0461 - Fax</p> | <p>10. <b>Jennifer Penta</b><br/>International Division, National Center<br/>for Missing and Exploited Children<br/>699 Prince Street<br/>Alexandria, Virginia 22314-3175<br/>(703) 837-6218 - Phone<br/>(703) 274-2122 - Fax</p> |



SEPTEMBER 1999

SPECIAL REPORT

AMERICA'S

# Stolen Children

*Why has Washington turned its back on thousands of abducted kids?*

By DANIEL LEVINE

**W**HEN Barbara Mezo of Brooklyn, N.Y., separated from her husband, she was granted temporary custody of their two children, and he was awarded visitation rights. One month before a final divorce hearing, he whisked the kids to JFK Airport and fled to his homeland in

**Forced Apart-** Ananda Johnson is illegally retained in Sweden by her mother. Her American father rarely sees her.

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PHOTO: GURTELL THOMAS A. JOHNSON

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**Egypt. For years Mezo sought help from the U.S. State Department, which is supposed to help citizens with these conflicts. It said it could do little.**

Again and again Mezo tried to get State to act. But when she requested documents in her case, she discovered that one Foreign Service officer had written that she "gives the impression of being mentally unbalanced" and "unusually combative and demanding" in seeking the return of her children. In another memo, a consular officer had remarked that Mezo wanted "to appear on talk shows as the spokesman for all righteous women." She still does not have custody of her kids.

When the daughter of a Texas man was abducted to Honduras by the girl's grandmother, he sought assistance from the State Department. It was no help. In an internal e-mail, an official commented, "Dad's name is Bubba—that should tell you something about him."

#### Cavalier Treatment

**T**HE ONLY DISRESPECT shown to American citizens in these child-custody cases—as well as the government's cavalier treatment of their legal rights—is not

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uncommon. Thousands of American children have been abducted abroad by estranged spouses, but when their parents turn to Washington, they are far too often met with delays, empty promises, even outright hostility. Many spend years trying to get their children back. Most never do.

It isn't supposed to be this way. In 1988 the United States signed a treaty, called the Hague Convention on the Civil Aspects of International Child Abduction, that requires the United States and 48 other signatories to "secure the prompt return of children wrongfully removed to or retained in" another member country, and "to ensure that rights of custody are effectively respected." Congress also passed the International Parental Kidnapping Crime Act in 1993, making it a federal offense to take or retain a child outside the United States in violation of a custody order. This enables the government to seek extradition of the parent in any country.

Nevertheless, the United States rarely puts much pressure on other countries to abide by the treaty. For example, Mexico—orders return or access to parents in less than three percent of the cases that make their way through its courts. By comparison, when asked to do so by other countries, the United States issues such orders more than 80 percent of the time.

David Thelen, CEO of the Committee for Missing Children, Inc., a

nonprofit parent-advocacy group, speaks for many when he charges that "the State Department considers these children expendable in the name of maintaining good diplomatic relations." State denies this charge. "We deal with children's issues first and foremost," Mary Marshall, the director of the department's Office of Children's Issues, said in an interview. "What more can we do within the law?"

A lot more, says Ray Mabius, a former U.S. ambassador to Saudi Arabia. When he was ambassador, Pat Roush of San Francisco came to him for help. Her two daughters had been taken to Saudi Arabia by her ex-husband, a Saudi citizen. Like most countries in the Middle East, Saudi Arabia has refused to sign the Hague Convention and is widely regarded as one of the most difficult countries in the world from which to recover an abducted child.

Mabius tried. He suspended the visas of Roush's ex-husband and his family for travel to the United States, met with numerous Saudi officials, including the Saudi ambassador to Washington, and even got an agreement in 1996 to allow Roush's daughters to spend summers living with her in the United States.

Then, just as the deal was about to go through, Mabius resigned, and it collapsed. "Embassies take pretty good care of Americans who lose their passports overseas," he told Reader's Digest. "But if you lose your kids, it is going to be harder

than it ought to be to get anybody to listen. It doesn't have to be this way." The State Department says it has handled about 13,000 child-abduction cases since 1977. State also says it "closed" about 900 child-abduction cases between May 1997 and May 1999. But it considers a case closed when a foreign government denies a return request. State does not know how many kids have actually been returned.

#### No Justice

**T**HE STATE DEPARTMENT is not the only government agency whose performance falls short. The Department of Justice is the other.

In September 1994 Tom Sylvester and his Austrian-born wife had a daughter they named Carina. But his wife became increasingly homesick and critical of the United States. In October 1995 she fled from their home in West Bloomfield, Mich., to her hometown of Graz, Austria, taking Carina with her.

Sylvester sought help under the Hague Convention. His wife suddenly claimed "abuse." After a hearing, an Austrian court ruled that Carina should be returned to her father. Two more courts, including the country's supreme court, agreed. But she wasn't sent home.

Sylvester then filed federal criminal charges under the international parental kidnapping statute. After more than two years of waiting, he

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learned that the Justice Department had not even forwarded an arrest and extradition request, because Austria typically does not extradite its citizens.

Nevertheless, Sen. Mike DeWine (R., Ohio) wondered why our Justice Department doesn't even try. Writing a letter to Attorney General Janet Reno, DeWine stated, "I am concerned that a small child would be taken from a parent in violation of the law without any law enforcement intervention." It took Justice nearly five months to respond, and even then it would still not say if it was planning to try extradition.

Says a veteran FBI special agent who has worked in several parental kidnapping cases and who requested anonymity, "This is happening more and more often. Our government has to pick up the ball and run with it." But prosecutors and law enforcement officials often don't want to get involved with these cases, because they are time-consuming and costly. Since the kidnapping law was passed in 1993, the Justice Department has issued all of 49 indictments and gotten 15 convictions.

In any event, indictments do not matter unless prosecutors file an extradition document known as a request for provisional arrest (PAR), describing the crime committed and explaining why the person should be detained. These PARs go to the Justice Department, which is supposed to forward them to foreign governments. Claiming that foreign

countries rarely extradite for parental kidnapping, prosecutors often do not even file requests.

#### Shifting the Blame

**E**VEN IN CASES where the government seems to try to help a parent, the results are unimpressive. In June 1994 Jean Henderson's eight-year-old son, Roman, was abducted by her ex-husband, Randall Lamar Henderson. A warrant was issued for Randall's arrest, and Henderson says she was told that "holds" were put on both his and Roman's passports.

Then Henderson learned that on two separate visits in 1996 Randall and Roman had walked into the U.S. embassy in Prague and renewed their passports. The State Department claims it had no knowledge of the kidnapping or arrest warrant and blames the FBI. Says Henderson, "It was ridiculous. Nobody knew what anybody else was doing, and they were all blaming each other."

THE STATE DEPARTMENT publishes a handbook for parents of internationally abducted children explaining the options available to them, such as retaining an attorney overseas, but makes clear that "you, as the deprived parent, must direct the search and recovery operation yourself." Four pages later it reads as though the Hague Convention did not exist: "Child-custody disputes remain fundamentally private

#### America's Stolen Children

legal matters between the parents involved, over which the Department of State has no jurisdiction."

That is misleading, notes Thomas A. Johnson, a State Department attorney who has negotiated dozens of international agreements. "Crimes and international treaty violations are not private matters. These are also human-rights violations, and these are facts the State Department has been trying to avoid."

Ironically, Thomas Johnson's own 11-year-old daughter, Amanda, was illegally retained by his ex-wife in Sweden in 1995. A Virginia court order granted him "sole legal and physical custody." But the Hague Convention provides that a child should be in his or her place of habitual residence, and by the time the case reached Sweden's Supreme Administrative



**Brief Reunion**—Tom Johnson and daughter Amanda during a supervised visit in Sweden in 1995.

Court, Amanda had been in the country two years. The court claimed that this made her a "habitual resident" of Sweden and ruled that she should remain there. Sweden says it has fulfilled its treaty obligations.

Johnson says it has not, and feels that he has received no effective support from his own government. "If this can happen to me, an expert in the field," he says, "it can and will happen to other parents unless sweeping changes are made in U.S. policy."

Senator DeWine notes that the government has no more important responsibility than to stand up for the rights of American citizens, especially when they cannot stand up for themselves. "We go after countries that steal our products or violate patent and copyright laws," he says, "but not when they are supporting the theft of American children. What does that say about us as a country?"

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FOR REPRINTS SEE PAGE 208.

### **FRIEDRICH v. FRIEDRICH: A Precedent Setting Case**

**The *Friederich* case is cited in most Hague court decisions made in the United States:**

Friedrich v Friederich, Federal Dist of Ohio, Western Div., 1992

FRG and Ohio. US military person takes child from FRG to Ohio. Request for return filed in federal court. Court finds that when German father forced the U.S. mother and child out of the apartment in Germany and the mother took up residence on a military base, then the father no longer was exercising a rights of custody and the habitual residence shifted from the FRG to the US. Case has been reversed on appeal (see following).

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Friedrich v Friederich, U.S. Court of Appeal, 6th Cir, No. 1, 1993

First case in the Federal Appellate system. Very good discussion of Habitual Residence: Not legal residence, must examine past experience and not future expectations, future plans irrelevant, alter only by change of geography and passage of time. Rights of Custody discussed: Separation does not terminate, look to law of Habitual Residence. Reverses the district court of appeal.

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Friedrich v Friederich, Federal Dist of Ohio, Western Div. (Remand Decision), 1994

Remand decision. Discusses rights of custody, finds must refer to FRG law on this issue. No abandonment of those rights by acts of father. Finds that father was actually exercising his rights of custody. Art. 13(b) raised by mother, based on fact that child had been with mother during the 2.5 year legal process. Despite MHP reports (portions quoted in decision) court does not find Art. 13(b). Harm only likely if separated from mother and she can accompany the child back to the FRG, ending that problem. Country vs. the person. Cannot evaluate custody.

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Friedrich v Friederich, U.S. Court of Appeal, 6th Cir, No. 2, 1996

Appeal of the Federal District Court after remand. Good discussion of what is meant by "rights of custody" and "exercising rights of custody." Sets out policy that exceptions are to be very narrowly construed. Discussion of acquiescence, holds that there was none. Art. 13(b) raised as a defense and rejected, holding can only exist in two situations: If there is a war, famine, or diseases, etc., and/or second where court of habitual residence may be incapable or unwilling to give the child adequate protection. Rights of Custody

**BUDAKIAN John**

**Number of Child(ren):** 1  
**Age(s) at Abduction:** 2 year-old  
**Current Age(s):** 3 year-old  
**Hague Convention:** Yes - new case

**History**

In 1998, the mother absconded with the child to Germany. The father had custody at the time. The US court ordered the "*immediate return*" of the child to the USA.

Return denied by the German court on the basis of **article 13b**. The court ruled that a return to the USA would cause "*severe psychological harm*" for the child to be separated from its mother. Father was not informed of the hearing.

**Current Status:**

**Father re-abducted the child back to the USA. Mother has now applied for the return of the child to Germany under The Hague Convention.**



CARLSEN KennethFlorida/Bamberg

**Number of Children:** 1 child  
**Ages (s) at Abduction:** 8 years old  
**Current Age (s):** 15 years old  
**Hague Convention case:** Yes

History

Parties married in Bamberg, Germany then returned to the USA where their child was born. The parties separated. Custody awarded to father visitation rights granted to mother. On September 10, 1993 the mother and her boy-friend picked up the child at her Florida school and absconded to Germany.

In December 1993 the Florida court ordered the "*immediate return*" of the child to the USA. Father was asked by the Berlin Central Authorities to pay DM 2,000 to initiate court proceedings in Germany. But it took fourteen months before the case was finally heard.

Return denied by Amtsgericht (lower court) Bamberg on the basis of **article 13b**. The court ruled that the child "*objected*" to a return to the USA and that she was old enough to decide.

The Jugendamt testified that the child was settled in its new environment and that she objected to a return to the USA. Father was not interviewed.

Current Status

Since 1993 the father was only able to see his daughter twice at the Jugendamt offices and under their supervision. However, recently his daughter, who is now fifteen, has started communicating with her father through the internet.

CARR JonColorado/where in Germany

Number of Child(ren): 1

Age(s) at Abduction: 2 years-old

Current Age(s): 13 years-old

Hague Convention case: NO. Convention not signed between US and Germany at the time.

History: In 1988, mother abducted child from the United States to Germany the day before custody hearings were to take place in Colorado.

Father received little help from agencies and police.

Status: NCMEC is attempting to get into contact with the father for an update on the matter. However, the father's former attorney believes that Jon has had no contact with his child since the time of abduction.

COLLINS RebeccaNorth Carolina/Claw (near Karlsruhe)

**Number of children:** 1 Children  
**Age (s) at Abduction:** 7 months old  
**Current Age (s):** 8 years old  
**Hague Convention case:** Yes

History

Parties married in the USA in October 1889. Mother awarded temporary custody until the final divorce decree was decided. In July 1991 the father absconded with the child to Germany during a scheduled visitation. Police filed charges.

In August 1991 the White Country Court awarded mother custody and ordered "*the immediate return*" of the child to the USA.

As soon as father reached Germany, he filed for custody. Amtsgericht (lower court) Claw transferred temporary custody to the father despite the US previous decision. Mother obtained access rights but father refused to abide by them. Amtsgericht Claw did not enforce her access rights

Hague application filed too late (mother unaware of Convention) and the German court rejected her application stating that a year had gone by.

Mother was unable to pursue litigation in Germany as she was no longer entitled to legal aid.

Current Status:

The mother has not seen her son since 1991. Last time she was able to speak to him on the telephone was in 1997. Child was led to believe that the father's new partner is his natural mother.

COOK JeffreyFlorida/

**Number of Child(ren):** 1  
**Age(s) at Abduction:** 4 years-old  
**Current Age(s):** 6 years-old  
**Hague Convention case:** Yes

**History:**

In April 1997, mother abducted child to Germany in the middle of U.S. custody proceedings. Father was granted custody after the abduction and the US court ordered the "*immediate return*" of the child to the USA.

Return denied on the basis of **article 13b** by the Amtsgericht (lower court). Court ruled that the child "*objected*" to a return and that it would cause "*severe psychological harm*" for her to be separated from her half-brother and half-sister.

**Status:**

NCMEC is attempting to get into contact with the father for an update on the matter.

COX FredOklahoma/Pobledorf

Number of Child(ren): 1  
Age(s) at Abduction: 11 months-old  
Current Age(s): 8 years-old  
Hague Convention: No

History:

In October 1993, mother was served with divorce papers and immediately abducted the child to Germany. Father was granted custody after the abduction.

Father attempted to apply under the Hague Convention, but he withdrew his application citing that it was too stressful a process.

Current Status:

NCMEC spoke with Fred Cox who informed them that while he has spoken to his son, he is still being denied access. No papers were ever filed in the German courts, as all the lawyers who were referred to the father in Germany informed him that nothing could be done.

DAS Sanjay

Florida/Munich

**Number of Children:** 1  
**Ages (s) at Abduction:** 1 year-old  
**Current Age (s):** 3 year-old  
**Hague Convention case:** Yes

History:

In 1997, the mother absconded with the child to Germany. Father applied for the "immediate return" of the child under the terms of the Hague Convention.

Return ordered by the Amstgericht (lower court) but it was not enforced. Mother immediately appealed at the Oberlandesgericht (high court). Returned order overturned on the basis of **article 13b** of the Hague Convention.

Current Status:

NCMEC is attempting to contact the left-behind father for an update.

**DUKESHERER John****Hawaii/Schwaebisch Gmuend (Near Stuttgart)**

**Number of children:** 1 Child  
**Age (s) at Abduction:** 2 year old  
**Current Age (s):** 3 1/2 year old  
**Hague Convention case:** Yes - new case

**History:**

Parties never married but a child was born from their union. Custody order made in the USA in March 1997. Custody given to father and access rights granted to mother "*so long as she continued in therapy*". Mother not allowed to take child out of the country without prior approval of the Court, or notification of no less than 48 hours to the opposing party. August 1998, mother picked up the child for her regular visit and absconded to Germany. Arrest Warrant issued. Whereabouts of mother and child not traced.

July 1999 US court confirmed sole legal and physical custody of father and ordered for the "immediate return" of the child to the USA.

**Current situation:**

Hague Convention hearing has not yet taken place in Germany as mother and child have not been located.

**Father has not since his child since August 1998 and he does not know its whereabouts.**

**FILMER James****California/Tostedt**

**Number of Children:** 1  
**Ages (s) at Abduction:** 9 months-old  
**Current Age (s):** 1 year-old  
**Hague Convention case:** Yes - new case

**History:**

Parties married in the USA. Parties separated and mother obtained temporary custody and father was awarded visitation rights. In October 1998, mother absconded to Germany with the baby whilst the divorce proceedings were ongoing.

US court granted father custody and ordered the "*immediate return*" of the child. Return denied by the Amtsgericht (lower court) Tostedt on the grounds that the US temporary custody order was unclear and the mother rightfully believed that she was allowed to leave the US with the child.

**Current Status:**

**Father has had no contact with the baby since the abduction.**



**FLEASCHMANN Bertha****Texas**

**Number of Child(ren):** 1  
**Age(s) at Abduction:** 6 years-old  
**Current Age(s):** 7 years-old  
**Hague Convention:** Yes - new case

**History:**

In January 1999, father abducted child from school and took him to his parents in Germany. The father then returned to work in Texas, leaving the child behind with his relatives.

A warrant for the father has been issued in Texas for sexual battery against the mother, but the father has since returned to Germany. Mother has applied under the Hague Convention for the return of the child.

**Status:**

NCMEC is attempting to get into contact with the mother for an update on the matter.

GERLITZ Sidney

Number of Child(ren): 1  
Age(s) at Abduction: 5 year-old  
Current Age(s): 8 year-old  
Hague Convention: Yes

History

In 1996 mother absconded with the child to Germany. US court ordered the "*immediate return of the child*", but the Berlin Central Authorities rejected the Hague application on the basis that the father was not able to get an Article 15 declaration; i.e. a document proving that he had custody before the time of the abduction.

Current Status:

NCMEC is attempting to get into contact with the father for an update on the matter

**OUTGOING GERMAN CASE****Left Behind****Parent:**

Mark Gilgen  
4407 5<sup>th</sup> St.  
Columbia Heights, MN 55421  
Phone: (H) 612-574-2238

**Child(ren):**

Angela Gilgen DOB 01/14/1990

**Age(s) at Abduction:**

5 years-old

**Current Age(s):**

9 years-old

**History:**

On August 1, 1995, Claudia Bettina Svetlana White (a German citizen) abducted her child from Minnesota to Georgia. While in Georgia, the mother applied for divorce claiming she did not know where the father was living. Georgia court gave her custody, the father was informed, and he appealed the matter in the Georgia courts.

Before the appeal came to trial, the mother re-married a U.S. Army employee and moved to Germany. The father re-established jurisdiction in Minnesota and was granted sole custody from Minnesota courts.

Father applied under the Hague convention and was told by the German Central Authority that there was no hope for return because Angela was a German citizen and needed to be with her mother. The Central Authority did help arrange stringent, brief supervised access in 1998.

**Status:**

Father has telephone access at the mother's will, but is not allowed to visit the child in Germany without supervision, despite the Minnesota court order being the only order in existence.

HILL AstridTexas/Bremen

**Number of Children:** 1 child  
**Age (s) at Abduction:** 3 years old  
**Current Age(s):** 5 years old  
**Hague Convention case:** No - access/visitation

History:

Astrid Hill is the maternal grandmother. She has contacted me several months ago to report:

Parties married in the USA (Mother German citizen, father British citizen). Their child was born in the USA in 1994. Parties divorced a year later. The US court awarded custody to the mother and granted the father generous access rights (three months per annum). But he was unable to exercise his right and in 1997 the mother absconded with the child and her new husband to Germany without informing the child's father or her own mother.

No Hague Convention applications were made as the US decision allowed the mother to go to Germany. Father was unable to obtain any access rights.

Current Status:

**Neither the father nor the grandmother has seen the child since 1997. The grand mother (who is a German citizen) has never heard from her daughter since. She is very eloquent about the failure of the German system to protect children and enforce foreign court decisions. She feels that she has let her grandchild down.**

**JAMES Robert****Maryland**

**Number of Children:** 2  
**Ages (s) at Abduction:** 10 month old and 2 I/2 year-old  
**Current Age (s):** 6 and 8 years-old  
**Hague Convention case:** Yes

**History:**

In April 1994, while the father was at work, the mother absconded with the two children to Germany.

US court granted father sole custody and ordered the "*immediate return*" of the children.

Father was asked to pay DM 2,000 by the Berlin Central Authorities to initiate proceedings in Germany. Father was unable to come up with the money, so the case was closed.

Mother obtained a divorce in Germany. She was awarded sole custody on an "ex-parte" basis and no access rights were granted to the father. The father was never served notice of the hearing but found out several months later when he was ordered by the German courts to pay child support.

**Current Status:**

Father has only seen his children once when the mother allowed him a brief supervised visit several years ago because one of the children was seriously ill.

**MARQUETTE N. Robert****Texas/Schaebisch Gmuend (near Stuttgart)**

**Number of Child(ren):** 2

**Age(s) at Abduction:** 4 and 13 years-old

**Current Age(s):** 6 and 15 years-old

**Hague Convention:** Yes

**History**

Parties married in Dallas, Texas in 1998 and separated in 1993. Parents were awarded temporary custody. The children had primary residency with the mother and the father was granted generous access rights. In 1995, father filed for divorce. Mother applied to reduce father's access rights on the grounds that the eldest child "objected" to seeing him. She also threatened to leave the country. A further decision ordered for the mother "*not to change the domicile of the children from Dallas Country, Texas*" without prior approval of the court. US court appointed psychologist testified in court to the presence of Parental Alienation Syndrome. Divorce proceedings lasted over two years but in June 1997 mother absconded to Germany with the children before the final decree.

In July 1997 Dallas County Court transferred custody to the father, giving mother restricted access rights to the mother and ordered the "immediate return of the children".

Return denied by Amtsgericht (lower court) Schaebisch Gmuend on the basis of **article 13b** in March 1998. The court ruled that the eldest child "*objected*" to its return and that it would cause the second child "*severe psychological harm*" to be separated from its elder brother.

Father's appeal rejected by the Oberlandesgericht (high court) Stuttgart on the basis of **article 13b** in May 1998.

Father immediately retained an attorney in Germany (who was appointed to him by the German Central Authority) to file an appeal with the Constitutional Court. But the attorney failed to file the appeal within the prescribed one year time limit.

**Current Status:**

**Father has not seen or been able to speak to his children since 1997. He presumes that the German courts transferred custody to the mother, but he was never notified of any hearings.**

MASKALICK LindaMichigan/LanggansNumber of Child(ren): 1Age(s) at Abduction: 2 years-oldCurrent Age(s): 7 years-oldHague Convention: Yes

History: On July 19, 1993, the grandmother who had been granted custody of the child in September 1992, was having major surgery when the natural mother abducted the child to Germany.

Police filed charges and grandmother, with help from the natural father, filed under the Hague Convention. However, the child was not returned to the United States.

Status: NCMEC is attempting to get into contact with the grandmother for an update on the matter.

**PENDARVIS, Larry****Florida/Dortmund**

**Number of Children:** 1 child  
**Age (s) at Abduction:** 4 months  
**Current Age(s):** 11 years old  
**Hague Convention case:** No - before Germany signed the Convention in 1990

**History:**

Parties married in Tampa, Florida in August 1986. While still married, mother absconds with the baby in August 1988 to Dortmund, Germany.

On 2 February 1989, father awarded sole custody of the child by the US courts.

He assumes the mother has obtained a custody order in Germany. He has not been granted any visitation rights in Germany as far as he is aware. He has never received any correspondence from the German courts, although he wrote to them on several occasions.

**Current Status:**

**Father has not seen or receive any communication from his child since 1988.**



PETERSON, JamesTennessee/Bad Kreuznach

Number of Children: 1 child  
 Age (s) at Abduction: 6 years old  
 Current Age(s): 6 years old  
 Hague Convention case: Not yet filed (new case)

History:

Parties divorced in the USA in 1996. Primary custody granted to mother with extensive access rights to father. But mother continuously obstructed access. In 1999, custody reversed to father. Decision based on the mother's refusal to allow him to exercise his visitation rights and on other welfare issues. The decision, however, allowed the mother to keep the child in her care until the end of the school year. In May99, mother absconded to Germany with the child. Father did not know its whereabouts.

In July 1999, father received a copy of a custody transfer petition which the mother filed as soon as she returned to Germany. The wording of the petition include statement such as "*the child speaks German fluently*" whereas the child has been living in Germany for only two months and spoke no German beforehand; that "*the child has already settled in her environment*"; "*made friends*" and "*is enrolled in a German school*".

These are all very familiar arguments preparing for an Article 13b defence.

Father has not been able to file a Hague petition as until last month as he did not know where his daughter has been abducted to until he received the custody transfer petition.

Current Status:

**Father has not seen his child since May 1999. Father also feels very depressed and is hesitant about filing a Hague Convention application because of the bad performance of Germany in returning children. He is not a wealthy man.**

**ROCHE Kenneth****Massachusetts/Darmstadt**

Number of Children: 1 child  
 Age (s) at Abduction: 4 year old  
 Current Age: 10 year old  
 Hague Convention case: Yes

**History:**

Parties married in Denmark in 1986 and moved to the USA. Parties separated in 1990. Divorce pronounced in the USA in July 1991 granting both parties joint legal custody. Physical custody given to mother and generous access rights granted to father. In addition, a specific clause stated that the removal of the child from Massachusetts was not authorised unless both parties agreed or a court order was obtained. In 1992 mother remarried in the USA. During that time, father regularly saw his child. Mother divorced second husband and in March 1993, she absconded with the child to Germany. Arrest Warrant issued.

April 1993 US court transferred temporary custody to the father and ordered the "*immediate return*" of the child.

Amtsgericht (lower court) Darmstadt ordered the "*immediate return*" of the child to the USA but mother absconded with the child and immediately lodged an appeal at the Oberlandesgericht (high court) Frankfurt.

Oberlandesgericht Frankfurt confirmed the return order but it was not enforced. Police did not help. Father never managed to locate his child. FBI got involved in 1994 and issued a second Warrant. But, in April 1994 the Central authorities in Berlin confirmed that the investigation had been without any positive results. No further efforts were made to find mother and child.

**Current Status:**

**Child living with mother in Germany. No further action has been taken by the German courts against the mother. Father has not seen his child since 1991 and does not know his whereabouts.**

**TALI Taylor****California/Berlin**

**Number of Children:** 1  
**Ages (s) at Abduction:** 2 year-old  
**Current Age (s):** 3 year-old  
**Hague Convention case:** Yes - new case

**History:**

In September 1998, mother absconded with the child while divorce proceedings were pending in the California court.

US court granted father temporary sole custody and ordered for the child's "*immediate return*". Father was asked to pay DM 2,000 by the Berlin Central Authorities to initiate proceedings in Germany.

**Current Status:**

**Father is currently in Germany for the court hearings. Until then he has had no contact with his child since the abduction. NCMEC will find out upon his return if he was able to see his child and secure his return to the USA.**

UHL George

Maryland/Munich

**Number of Children:** 1 child  
**Age (s) at Abduction:** 1 year old  
**Current Age(s):** 2 1/2 years old  
**Hague Convention case:** Yes

**History:**

Parties married in the USA. Divorced pronounced in the USA in July 1997. Baltimore County Court, Maryland awarded both parties joint custody: the child would reside 60% of the time with the mother and 40% of the time with the father. In April 1998, the mother went with the child to Germany but she never returned to Baltimore for the father's scheduled visit in June 1998.

In June 1998, the Baltimore County Circuit Court transferred sole custody to the father and ordered the child's "*immediate return*" to USA. (Final sole custody given to father in March 1999).

Return denied by the Amtsgericht (lower court) Munich in October 1998. The court ruled that the custody arrangements made in the USA had allowed the mother to go back to Germany with the child and that she therefore had the right to change jurisdiction. The court further ruled that the child's habitual residence had now been established in Germany since the mother lived there and did not intend not to return to the US.

The father lodged an appeal at the Oberlandesgericht (higher court) Munich. Appeal denied (without a hearing) and the Amtsgericht's decision was upheld. No access rights were granted to the father.

**Current Status:**

**The father has not seen his child since April 1998. The father has no contact with his child and does not know its whereabouts. The father believes that the German courts have transferred custody to the mother, but he was never informed.**

**URBAN Kurt****Texas/Butzpat**

**Number of Child(ren):** 1  
**Age(s) at Abduction:** 6 year-old  
**Current Age(s):** 12 year-old  
**Hague Convention:** No

**History**

In April 1993, the mother (a US citizen) absconded with the child to Germany. The parties were never married, but the father had been awarded custody of the child.

Father was told that since they were not married, he could not file under the Hague Convention for a return. Police attempted to locate the child without success.

**Current Status:**

Father has had no contact with the child since 1993.

WINSLOW AnneMarvland/Firth (near Nuereburg)

**Number of Children:** 4 children (Mary Elizabeth, Angelina, Charles, Sarah)

**Ages (s) at Abduction:** 4, 9, 11, 12 years old

**Current Age (s):** 7, 12, 14, 15 years old

**Hague Convention case:** Hague application rejected under the terms of Article 15

History:

Parties married in the US. On June 19, 1996 the father (an American citizen) abducted the four children to Germany. A divorce was pending so no custody determination had been made and the children were temporarily living with their father at the time.

In March 1997, the court of Maryland awarded temporary sole custody to the mother.

Mother was then told that under Article 15 of the Hague Convention, the US Department of State needed a decision or other determination that the removal was wrongful within the meaning of Article 3 (i.e. a proof that the removal was in breach of her custody rights). The Maryland court refused to grant her this order on the basis that there had been no custody agreement prior to the abduction. (N.B. it seems that the mother must have been badly represented or advised of the terms of the Convention since the abduction was in breach of custodial rights - custody is shared when the parties are married).

The Hague application was withdrawn. The police dropped charges against the father as well, claiming that extradition costs would be too high.

Current Status:

**Mother has not seen her children at all since 1996. In November 1998, father called mother to reiterate his intention of keeping the children in Germany. Mother does not know their whereabouts.**

**WELCH, Sasha**

2-11-98 NCMEC intaked case via the hotline. Mother apparently took child to Germany around 1-15-98. Father was working with the DOS on a Hague Application for return of the child.

8-15-98 According to NCMEC report, father received notice by DOS 7 days after German Hague hearing occurred. Father's appointed German attorney attended, but had never spoken with the applicant father. Second hearing occurred 8-4-98, father lost the case partially because psychiatrist stated child would suffer harm if separated from the mother and mother does not wish to return to Germany.

11-5-98 Received fax from Bill Fleming at DOS. Contained the application from German mother because child was taken from Germany to US on 10-29-98. Bill informed NCMEC that this was a reabduction and that the father had lost a Hague application made to Germany during the summer. Meredith Morrison, case manager at NCMEC, was informed that the child was back with the father in Colorado. The Hague application that NCMEC received included a ruling from Germany stating that the removal from Germany was wrongful. They provided no details or documents regarding the father's Hague petition.

12-4-98 I requested a copy of the original German Hague decision from DOS, which was faxed to NCMEC. This fax contained a Hague decision from a German court dated 8-7-98 denying the applicant father's petition for return. Abducting mother apparently had temporary custody of the child in Colorado, but was not allowed to leave the United States until the custody hearings were completed. Mother left with the child Subsequently, father was given custody by the Colorado court. Germany Court seems to have denied the father's application based on the fact that the mother had temporary custody at the time of the abduction and was allowed to live in Germany.

COOKE JosephNew York/Stuttgart

Number of Children: 2 children  
 Age (s) at Abduction: 1 and 2 1/2  
 Current Age(s): 8 and 9 1/2  
 Hague Convention case: Yes

History:

Parties married in the USA in 1989. Father was stationed in Stuttgart (from 1985 to 1989) while serving in the US Army. In July 1992 mother took the two children to Germany to visit her family. Informed father that she was not coming back and that he would never see his children again. Father tried in vain to find the whereabouts of his children.

Two months after her arrival in Germany mother was admitted to a clinic and asked the Jugendamt (Youth Authority) to place the two children in foster care. Neither the mother, nor the Jugendamt informed the children's father. In January 1993 mother returned to the US leaving the children behind. Father was told different stories (including that the children were with the mother in California) and only found out in September 1993 that his children had been given by the Jugendamt to a foster family (who have other children in care and receive money from the state). Father immediately notified the foster parents that he wanted to take his children back to the USA. Foster parents obtained an "**ex-parte**" order prohibiting him to do so. Father had no alternative but to go to court.

Divorce pronounced by the Supreme Court of Queens County, New York in January 1994. Father awarded full custody (with mother's consent). In April 1994, Supreme Court of the State of New York ordered immediate return of the children to the US, under the terms of the Hague Convention. Return denied in March 1995 (a year later!) by the lower court of Singen. Judge ruled that it would cause the children "*severe psychological damage*" to be separated from the foster parents and be returned to the US. Court also told father that he first needed to get reacquainted with his children. The father stayed in Germany but only able to visit his children at the foster parents' house who obstructed the visits.

Appeal rejected in June 1995 by the county court of Konstanz. (The mother had now also requested that the children be returned to their father in the US). Court ruled "**ex-parte**" that the children "*objected to a return*" (they were 4 and 5 at the time) and that it would cause them "*severe psychological damage to be returned to the US*". Children were deemed to be adapted to their new environment and "*to subject the children to a language shock*" (since they don't speak English anymore)... "*contradicts the children's welfare most strikingly*". No specific access rights given to father.

Appeal rejected by the Karlsruhe Constitutional Court (last appeal possible) in October 1995. Judges ruled that the foster parents have equal rights to the natural father and that it would



cause "*severe psychological harm*" for the children to be separated from them, especially "*since they have now been in their care for the last two and half years*".

Father fought further through the German courts but to no avail.

**Current Status:**

**Father has not seen his children since 1994.**

GEBHARD GlennCalifornia/Hoechst (near Frankfurt)

**Number of children:** 2 children  
**Age (s) at Abduction:** 2 years old (twins)  
**Current Age (s):** 7 years old  
**Hague Convention case.** No

History:

Father is American and the mother is a Mexican national. Parties married in the US in 1992. The children were born in Germany, moved to the US, and then back to Germany. In 1994 parties separated. Divorce pronounced in Germany in July 1995. The German court took jurisdiction over the case, and then gave custody to the mother. Access rights were granted to the father. The father was never able to exercise his access rights because the mother refused to present the children. Amtsgericht (local court) Hoechst refused to enforce access rights of father.

In view of his ex-wife's continual refusal to allow him court ordered visitations, and the court's unwillingness to enforce their own visitation orders, Gebhard decided to lodge an appeal at the Oberlandesgericht (High court) Frankfurt seeking a custody transfer in June 1997. His demand was rejected in September 1998 (over a year later). The judge's opinion was that father's presence would upset the children, and that he should regain contact with them "little by little" not "overwhelm them".

Current Status:

The father has not seen his children since August 1994 and has completely lost contact with them. He has travelled to German over 20 times in the hope of seeing his twins but to no avail. Father has applied for and received a Fulbright Senior Scholarship to teach at a university in the Berlin area during the 1999-2000 academic year (he is an Assistant Professor in Loyola Marymount University in Los Angeles, California) in order to be closer to his children. He refuses to give up hope.

**GERBATCH Ildiko****California/Oyten, Lower Saxony**

**Number of children:** 2 children  
**Age (s) at abduction:** 10 and 7  
**Current age (s):** 12 and 9  
**Hague Convention case:** Yes

**History:**

Parties married in the USA, then moved to Germany. Husband had an affair and told wife to leave. She returned to the US with the children. Divorce hearing in the USA in June 1994 (father present). Mother obtained custody; father granted access rights (7 weeks per annum). In the summer of 1997 children went to Germany to visit their father. Father illegally retained them. August 1997, the Superior Court of Vista, San Diego issued a warrant and ordered "immediate return" of the children under the terms of the Hague Convention

Return denied by Amtsgericht (lower court) Achim on basis of **Article 13b** in September 1997. Court ruled that the children "*objected*" to their return to the USA; that Naomi (10) was old enough to decide; and that younger sister should not be separated from her.

Jugendamt (Youth Authority) Verden stated that the children "*objected*" to a return to the US (mother not interviewed); that they felt more free in Germany; that the mother had no time for them since she worked and that the children had adapted to their new environment (after 7 weeks holiday and notwithstanding that they had lived 3 years in USA).

Appeal rejected by Oberlandesgericht Celle on the basis of **Article 13b** in December 1997. The judges considered that the children were old enough to decide because, "*after all a 7 year old can already decide whether its wants to spend its holiday at the sea-side or the country side*". Jugendamt Verden reported the same and that it would cause them "*severe psychological harm*" to be returned to their mother in the USA.

Mother granted some visitation rights but managed to see her children only 8 hours in 1997 and 7 days in 1998. Following an access visit in Germany in August 1998, mother returned to the USA with the younger daughter.

**Current Status:**

**Eldest daughter still in Germany.** Father applied for sole custody in German courts (awaiting decision) and made an application under the Hague Convention for the return of Isabella. Hague application has just been rejected by the US courts (on the basis that father illegally retained both children initially). Mother has not seen Naomi since August 1998.

HOWARD JosephArizona/Worms (near Koblenz)

Number of Children: 1 child

Ages (s) at Abduction: 5 years old

Current Age (s): 10 years old

Hague Convention case: NO - Hague Convention application not possible because whereabouts of child was unknown.

History:

Parties married in Germany in 1989 and moved to the USA a year later. On March 5, 1994 wife absconded from the family home with the child and all the furniture while father at work. Police, FBI and Missing Person's Bureau informed. Whereabouts of mother and child could not be traced.

Mother applied for custody as soon as she reached Germany. April 1994, Amtsgericht (lower court) Worms made an emergency order transferring temporary custody to the mother on an 'ex-parte' basis *"in the interest of the child"*. The court ruled that *"in order to avoid the father's bringing the child to the USA and creating a fait accompli situation before legal proceedings had come to end, it is essential to legalise the stay of the child through the transfer of Parental Custody to the mother"*. Father only advised of this decision one month later. Jugendamt (Youth Authority) wrote to father refusing to disclose the whereabouts of his child.

November 1994 Amtsgericht Worms confirmed temporary custody to mother on an 'ex-parte' basis *"because the father is so far away, his presence must be omitted for this hearing"*. *"This decision is in the best interest of the child. The father lives in the USA and is therefore no longer in a position to exercise his custody rights"*. No access provisions made but a demand for child maintenance served on father a month later.

Jugendamt (Youth Authority) reported that the child *"objected"* (5 year old) to a return to the USA and that it would cause it *"severe psychological harm"* to be returned. (Father not interviewed).

December 1994 divorce pronounced in the USA on an "es-parte" basis. Custody given to father and access rights granted to mother (every two week-ends and holidays).

Amtsgericht Worms recognised US divorce but ruled that it must decide on the final custody provisions: *"Since the marriage has been dissolved in the US, no decision regarding custody was passed"*. July 1997 Amtsgericht Worms ruled that *"in the child's best interest"* sole custody should be given to the mother *"since it is feared that the Plaintiff will take the child against its will to the USA"*. No access rights granted to father but a demand for child maintenance was served on him a month later.

Appeal rejected in December 1997 by Oberlandesgericht (High Court) Koblenz. Full and final custody confirmed to mother while access rights were to be discussed at a further hearing!

April 1998 father finally granted access rights - but only in Worms, at the office of the Jugendamt, if he surrenders his passport "*otherwise the father could take the child back to the US*".

**Current Status:**

**Father has not seen his child since 5 March 1994. Father does not know the whereabouts of his child in Germany.**

MEYER CatherineEngland/Verden, Lower Saxony

Number of Children: 2 children  
 Age (s) at Abduction: 7 and 9  
 Current age (s): 12 and 14  
 Hague Convention: Yes

History:

Parties married in England in 1984 and moved to Germany a year 1/2 later. Parties separated in 1992. Mother obtained custody father granted access rights (minimum 8 weeks per annum). July 1994, children went to Germany to visit their father. Father illegally retained them. August 1994 the High Court of England & Wales ordered the "*immediate return*" of the children under the terms of the Hague Convention and made the children "Wards of Court".

Amtsgericht (lower court) Verden ordered "*immediate return of the children*" in September 1994. But in defiance of the court order, father absconded with the children. No help from local police. Bailiffs unreachable. The following day, father lodged an "*ex-parte*" appeal at the High Court of Celle. Return order stayed (i.e. children ordered to remain in Germany) until the appeal is heard "*otherwise the mother could hide the children in England*".

Return order reversed by the Oberlandesgericht (High Court) Celle on the basis of **Article 13b** in October 1994. Court ruled that the children "*objected*" to their return; the children were old enough because, "*after all a 7 year old can already decide whether it wants to play judo or football*", Alexander was suffering in England "*because German was not spoken at home or at school*" and his younger brother should not be separated from him.

Jugendamt Verden stated (for both hearings) that a return to the UK would cause "*severe psychological harm*" (mother not interviewed). Alexander felt German; the mother had no time for them since she worked and the children had adapted to their new environment (after 7 weeks holiday and notwithstanding that they had live 2 years in the UK).

Five demands for access rejected by Amtsgericht Verden because "*the children objected*" and the "*mother could use the opportunity of a visit to re-abduct the children*". January 1995 '*ex-parte*' decision changed the children's residence to Germany. March 1995 temporary custody transferred to father although the children were still "Wards of the English court". Minimal access granted to mother (3 hours per month under supervision in father's house). Because of the children's long separation from their mother, it would be too "*overwhelming*" for them to see her for "*too lengthy a period or in surroundings to which they are not accustomed*". Visits blocked by father.

Appeal (Hague proceedings) rejected by the Karlsruhe Constitutional Court (last appeal possible) in April 1995.

September 1997 final sole custody given to father, minimal access rights granted to mother. Access blocked by father. Judge refused to enforce access rights and called for a new hearing. December 1998 court grants mother minimal access rights starting "*little by little*" not to "*overwhelm the children*". Father reneged on the third visit (the very first which would have included an overnight contact). Again, court refused to enforce access, stating that a new hearing should be held. In May 1999 judge left on indefinite maternity leave.

**Current Status:**

**Mother only managed to see her children 11 hours between 1994 and 1998 (under supervision) and twice in 1999. Currently, mother has no access rights whatsoever. The German Minister of Justice said that she cannot help because local courts are independent. There is thus no remedy left within the German system.**

RINAMAN JamesWashington DC/Duesseldorf

Number of Children: 1 child  
 Ages (s) at Abduction: 15 months old  
 Current Age (s): 4 years old  
 Hague Convention case: Yes

History:

Parties married in Germany in September 1993 and moved to the USA in August 1995. (father was an officer in the US army until 1996. He is now an attorney-at-law based in Florida). In June 1996 mother took the baby to Germany to visit her family for two weeks. To the father's total surprise mother informed him (by fax) that she was not coming back to the USA and that she wanted a divorce. Father applied for the "immediate return" of the child under the terms of The Hague Convention.

Amtsgericht (lower court) Duesseldorf ordered the "*immediate return of the child*" in August 1996. Mother and child were not present at the hearing and the court decision was not enforced. Mother immediately lodged an "**ex-parte**" appeal at the Oberlandesgericht (High Court). Return order stayed (i.e. the children ordered to remain in Germany until appeal is heard).

Return order reversed by the Oberlandesgericht (High Court) Duesseldorf in October 1996. An isolated statement (based on hearsay) was used to block the return of the child to the USA. The abductor's mother claimed that she had overheard a conversation between her daughter and her son-in-law in which he had supposedly agreed that the child could remain in Germany. (In Germany, it is possible to present new evidence on appeal). Ignoring the mother's original fax of intent (see first paragraph), the judges ruled that the child was not taken to Germany illegally after all.

Jugendamt (Youth Authority) Duesseldorf recommended that sole custody be given to the mother, adding that "*the mother works and can therefore support the child*" and that "*the child is adapted to its new environment and is learning German*". Limited or no access rights should be granted to the father "*because it would be against the child's interest to spend time with him*". Indeed, it would be "*emotionally unbearable*" in view of the child's "*age, the long distances and because its father is now a stranger to her due to their long separation.*"

October 1997, Amtsgericht Duesseldorf granted father limited access rights and only if he surrendered his passport to the Jugendamt. Mother did not comply and appealed against the decision. In the meantime, court did not enforce access order.

August 1998, the Oberlandesgericht Duesseldorf affirmed the Amtsgericht's order of limited access to the father. Again, the mother did not comply. She then switched to another



jurisdiction and the father was told that he needed to start new proceedings in Bonn to secure his access rights. In January 1999 he filed a new application at the Amtsgericht Bonn. As of July 1999, father had not received a reply.

**Current Status:**

**Father has not seen his daughter since 1996. As in other cases, the German courts and the German authorities have repeatedly refused to allow an independent health and welfare check on the child. The first request was made by the US State Department in June 1996. Instead, father was asked to pay child maintenance.**

TROXEL EdwinArkansas/Mannheim

Number of children: 2 Children  
 Age (s) at Abduction: 4 and 2 years old  
 Current Age (s): 6 and 4 years old  
 Hague Convention case: Yes

History:

Parties married in Germany in 1991 and moved to USA a year later. They separated in 1994. Divorced pronounced in the USA in November 1995. Mother obtained custody and father was granted generous access rights. At first father able to exercise his access rights. On 6 March 1997, father went to pick up his children for his regular access visit but found that everything had been removed from the house and that the mother had absconded with the children. Father informed the police and filed a petition in the Chancery Court of Benton County, Arkansas for Contempt of Court which is still pending. Whereabouts of the mother and the children could not be traced for one month.

August 1997, the court of Benton County transferred primary legal and physical custody to the father and ordered the "immediate return" to the children to the USA.

Return denied on the basis of **article 13b** by Amtsgericht (Lower Court) Mannheim in October 1997. Court ruled that the children "objected" to their return to the USA (they were 3 and 6) and that a return would cause them "severe psychological harm" and bring them simultaneously into an uncertain condition. *"The father works and therefore has no time for them; the mother does not wish to return to the USA; the children should not be separated from their mother; torn from their environment; and be transferred to persons who are strangers to them...The personal situation of the children is favourable in Germany and they have adapted to their new environment...The illegally produced situation must therefore be accepted"*.

The Jugendamt stated that the conditions were better in Germany: *the mother has found her own apartment and a work permit; the children have been placed in a German school; they are adjusted to their "new environment"; it would cause them severe psychological harm to be returned to the USA.* (Father not interviewed).

Appeal rejected by the Oberlandesgericht Karlsruhe on the basis of **article 13b** in May 1999. Judges considered that a return would cause "severe psychological harm". The children should not be separated from mother. The mother did not wish to return to America. The father had not seen the children for a long time. He worked and therefore could not take care of the children. The children had adapted to their new environment.

**Current Status:**

**The father has not seen his children since March 1997.** The last time he was able to speak to them on the telephone was in August 1997.

WAYSON, MarkAlaska/Rio de Janeiro/Gummersbach

Number of Children: 1 child  
 Age (s) at Abduction: 2 years old  
 Current Age(s): 4 years old  
 Hague Convention case: No - Brazil/Germany

History:

Parties were never married but a child was born from the union in Brazil (child is US, Brazilian and German citizen). Father is a US citizen (formerly a policeman) who was living in Brazil at the time, mother a German citizen. In December 1996, the parties separated and in April 1997, the Brazil court granted the parents joint custody. Care and control given to mother and extensive visitation rights granted to father. But mother repeatedly blocked access and in December 1997 she absconded with the child.

Father contacted the German Consulate in Rio who advised him against filing a Hague petition. Father now suspects that the Consulate "interfered" to help the mother. He later tried to complain but was told that only a German citizen can lodge a complaint against a German official.

February 1998, mother contacted the father and between March 1998 and August 1998 they sought mediation. During that period, the father saw his daughter regularly and paid an allowance to his ex-partner.

Beginning August 1998 mother blocked access. The father flew to Germany 6 times to try and see his child but to no avail.

October 1998 court of Rio de Janeiro confirmed its jurisdiction on the matter of access. "*The fact that the mother moved to Germany after the court decision does not withdraw the jurisdiction of the Brazilian court*". Brazilian court reconfirmed father's access rights.

February 1999 the father filed an application to enforce the Brazilian access order. Amtsgericht (lower court) Gummersbach rejected the father's demand and refused to establish new access rights. Father then lodged an appeal in the Oberlandesgericht Koeln (Cologne) in April 1999.

Appeal rejected July 13, 1999 on the grounds "*that although the Brazilian court had jurisdiction at the time of the separation, the fact that the mother and the child are now domiciled in Germany, gives the court of Gummersbach international jurisdiction*".

**Current Status:**

**Father has not seen his child since August 13, 1998.**

YOUMANS DonaldNorth Carolina/Berlin

Number of Children: 1 child  
 Age (s) at Abduction: 2 years old  
 Current Age(s): 8 years old  
 Hague Convention case: Yes

History:

Parties married in Munich, Germany in December 1990 then father transferred to Stuttgart, Germany. (Father serving in the US Army). Parties returned to the USA in February 1993 and separated in September 1993. The following day, the mother absconded with their two-year-old child. Father immediately filed a report at the Missing Persons' Bureau. Whereabouts of mother and child remained unknown.

Cumberland County District Court awarded temporary sole custody to the father and ordered the *"immediate return"* of the child to the USA on September 24 1993. Meanwhile, mother had applied for custody in Germany. Amtsgericht (lower court) Charlottenburg granted mother sole custody on an *"ex-parte" basis* on 27 December 1993 on the basis of the *"child's interest"* and that it would cause it *"severe psychological damage"* to be taken away from its new environment.

Jugendamt reported that it would cause the child *"severe psychological and physical harm"* to be returned to the USA. The child *"attends a day nursery nearby and is well adapted to its new environment"*.

Return denied by the Amtsgericht (lower court) Berlin in February 1994 on the basis of **article 13b**. Court ruled that returning the child to the USA would cause it *"severe psychological harm"* adding that although *"the illegal act of the mother stays unsanctioned"* ...returning the child to the father *"would cause a new injustice"*. Since the father was a soldier and travelled all the time for professional reasons, he had no time for his son. Furthermore, the child should not be separated from its mother.

Father did not lodge an appeal as he was too depressed by the previous decisions and he could no longer pay the costs of litigation.

In June 1994 Amtsgericht Charlottenburg awarded sole custody to the mother (despite previous US decision). Parties declared divorced by German court in March 1995.

In March 1996, Amtsgericht Tempelhof-Kreuzberg awarded sole final custody to mother *"in the interest of the child"*. Father granted minimal access rights (from 9.00 a.m. till 6.00 p.m. for a week in 1996 and 4 weeks in 1997). Child should remain in its *"accustomed surroundings.... Father and son have become alienated since they have been separated"*

*during the last two years. The father speaks no German and the child speaks no English...therefore it is not possible for the child to visit its father in the USA. The father should see his child in Berlin and return him to his mother every evening. In the beginning, a third party should be present during the access visits not to overbear the child... Future arrangements will depend on how these first meetings go".* The court ruled that it had "international jurisdiction since one of the parties was German...Although the law of North Carolina is applicable because this was the last common residence of the couple, the fact that the German wife is (now) domiciled in Germany makes German local law applicable".

**Current Status:**

**Father has not seen his son at all since 1994.** Sometimes letters are sent to him and he receives occasional telephone calls. Mother denies the child access to his father in the USA. State Department refused to grant US passport to son without the mother's permission. Mother is now remarried and has another son.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

1. When did the State Department first begin to realize that the vast majority of parties to the Hague Convention cannot effectively enforce their own civil court orders (e.g., in Hague cases and regular child custody/visitation cases) owing to the absence of anything comparable to contempt of court?

Answer:

During the past 18 months, we became aware that certain civil code countries, such as Austria, Germany, Sweden, and Switzerland, have a problem enforcing Hague Abduction Convention court orders. Specifically, we realized that the difficulty occurs with the enforcement of orders that return a child to a left-behind parent, or that order visitation by a non-custodial parent. This appears due, in part, to the absence of authority for a court in these countries to enforce compliance with court orders through the threat of a citation for contempt of court (as in most common law countries), or some similar method of compelling compliance.



Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

2. What has the State Department done to improve its knowledge and expertise in this area?

Answer:

The Department has consulted with the British and Canadian Governments regarding similar difficulties they have had with enforcement of Hague orders in certain civil law countries.

The Department has also hired a legal consultant to report on the ability/inability of certain civil code countries, namely Austria, Germany, Sweden, and Switzerland, to enforce their civil court orders. See question 3.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

3. Has the State Department hired an outside expert to conduct a study of this matter? If so, what are the credentials of this expert, how much did any such study cost, and has a report been submitted? If a report has been submitted, what does it say?

Answer:

The State Department has contracted with German Professor Kurt Siehr to prepare a study on family and procedural law in Austria, Germany, Sweden and Switzerland. Professor Siehr is an expert on family law and comparative law, and is now teaching at the Center for Private International Law at the University of Zurich. He is particularly expert on the situation in Germany and Switzerland, two of the countries with which the United States has experienced difficulties. He has participated in the work of the Hague Conference with regard to the 1980 Hague Abduction Convention (Convention) and on other Conventions concerned with the protection of children.

The study will focus on laws related to the implementation of the Convention in the above mentioned countries. In particular, the focus will be on the apparent disconnect between return and visitation orders issued by those countries' courts in compliance with the Convention, and the non-compliance with such orders by the person(s) to whom such orders are directed. We hope to determine whether there is a systemic inability of these countries and possibly others with similar legal systems to comply with their obligations under the Convention. We also hope to gain insight into ways in which persons seeking the return of children from, or visitation rights in, these

countries can more effectively seek and obtain the enforcement of court orders in their favor.

Professor Siehr's study and the underlying problem will undoubtedly become one of several topics for discussion at the Fourth Special Commission Session of the Hague Conference, which is scheduled for spring 2001. This session will discuss problems and improvements in implementation of the Convention.

We hope to receive the study by early 2000. The purchase order for Professor Siehr's services to consult with legal experts in the relevant countries is \$1000 above his out-of-pocket travel and related expenses (not to exceed \$4000).

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

4. What has the State Department done to educate and inform American courts, family law practitioners, law enforcement authorities, and parents of the reality that (except in a few common law countries) there will not even be any enforceable access to, or visitation with, abducted American children who are not returned under the Hague Convention?

Answer:

We agree that parents should, insofar as possible, be advised of any potential problems concerning return or access under the Convention. In general, we have been expanding efforts to provide as much information as possible to parents and have aggressive plans for education and outreach in the future. We have over 30 country-specific child custody flyers on our home page, which are included in numerous mailings to parents and attorneys. These flyers provide detailed information on issues of child abduction, custody disputes, access (visitation), and the operation/implementation of the Convention in those countries. We plan to include more detailed information on particular problems that may arise.

We are not yet in a position to speak definitively on the nature and extent of the problem of enforcement of access and visitation. We hope that Professor Siehr's study will help define the problem. There are cases where access does occur, but it is most often on a voluntary basis. Moreover, as discussed in relation to the next question, there are additional problems regarding enforcement of civil orders, which may arise in

connection with access. These problems may be more relevant in a particular case; therefore, this type of information is not yet included in our informational flyers.

When our interagency database becomes operational, statistical information from it will be included in our informational flyers in an effort to better educate parents, attorneys, law enforcement and the courts on country-specific practices under the Convention. As part of the Action Plan to implement the Attorney General's Report on the Federal Government Response to International Parental Child Abduction (copy attached), the Office of Children's Issues will have a full-time position dedicated to public outreach and education. Currently, we have a Presidential Management Intern (PMI) who is already working on enhancing our outreach efforts.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

5. Stated differently, does the State Department understand that when a child is not returned under the Hague Convention, the exercise of regular custody jurisdiction by all but a few common law countries that can enforce visitation means that the child(ren) will be completely lost to their American parents and families, unless the abducting parent decides otherwise? If so, what has the State Department done to educate and inform the groups mentioned above?

Answer:

The problem of access is very real and difficult. As a general rule, we are concerned that children have access to both parents. The lack of enforcement of civil orders is not the only, nor necessarily the key, problem with enjoyment of access rights. In some cases, in a deep and tragic irony, foreign courts have refused to give unsupervised visitation to parents who unsuccessfully sought return of a child on the grounds that the parents might re-abduct them. There is no strong, standardized international legal regime governing access comparable to the regime governing abduction. Although the Convention addresses enforcement of access rights in Article 21, this is a brief summary article that does not create any clear mechanisms for access. As discussed in connection with question 39, we need to explore what the possibilities are for creating an improved legal system governing access.

At the same time, however, we have to be aware that the difficulties encountered go beyond the lack of a developed international regime. This problem is not unique to international situations, as is evidenced by the problems with effective enjoyment of

access, visitation and joint custody rights that are encountered even in the United States. In the domestic context, particular attention has been given in recent years to the role that mediation and similar services can play in ensuring effective enjoyment of visitation and access rights, as this addresses the fundamental problem that parents must jointly implement a visitation arrangement on a continuing and recurring basis. Accordingly, the Departments of State and Justice also agreed to the importance of promoting mediation and similar services as part of the interagency Action Plan on parental child abduction.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

6. Do you agree that the complete loss of one parent is a "grave risk" to a child within the meaning of Article 13 of the Hague Convention and that American courts should not send children (in both Hague and regular custody cases) to countries that cannot guarantee enforceable visitation in the United States for the American parent?

Answer:

The Department of State does not agree that Article 13(b) of the Hague Convention provides a legal basis for denying return requests when there is no guarantee that visitation would be made possible in the country to which the child would be returned.

Article 13(b) is part of Chapter III of the Convention on Return of Children. Article 13(b) contains one of very few exceptions to the return obligation that is to be narrowly construed and available only in exceptional circumstances. Chapter IV on Rights of Access is a separate chapter of the Convention dealing with the facilitation of the exercise of rights of access (visitation). Chapter IV is designed to take account of the fact that it is generally acknowledged to be in the best interests of children in most situations that they have access to both of their parents. We would be in violation of the purpose and structure of the Convention if we read into Article 13(b) of Chapter III the separate issue of access. That issue is dealt with in Chapter IV in the form of a requirement for an enforceable guarantee of visitation as a condition to return. We believe, therefore, that it would be inconsistent with the purpose and structure of the Convention to read Article 13(b) of Chapter III as addressing the separate issue of



access dealt with in Chapter IV, and as permitting the requirement of an enforceable guarantee of visitation as a condition of return. Moreover, were we to read Article 13(b) in this way, other countries might well follow suit.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

7. If you agree, is the State Department in the process of disseminating such an official interpretation of the Convention to all U.S. courts, with notification to foreign governments?

Answer:

As mentioned in the answer to question 6, the Department of State does not agree with the analysis that the complete loss of one parent is a "grave risk" to a child within the meaning of Article 13(b).

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

8. With regard to the visitation agreements you include in your 52 percent success rate, is it not true that such agreements are completely unenforceable except perhaps in a few common law countries?

Answer:

We recognize there are problems with the implementation of the Convention, including access. We expect this to be addressed in Professor Siehr's study on civil code country enforcement of court orders. Once it is complete, we should have a body of material on the treatment of access in civil law countries, which will be included in our country flyers. In addition, the issue of access will be on the agenda at the Fourth Special Commission Session in The Hague in spring 2001.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

9. With regard to consular visits, what resources has the State Department devoted in recent years to the issue of consular notification (i.e., notification by U.S. authorities of the appropriate foreign consulate when a foreign national is arrested, in accordance with the Vienna Convention on Consular Relations), particularly in cases where foreigners have murdered American citizens or others in the United States and then tried to defeat the death penalty on the grounds that their consulate was not informed in a timely fashion? Summarize and compare the resources the State Department is devoting to pursuing Vienna Convention rights of consular access in child abduction cases abroad.

Answer:

The Department has been conducting a program with and for law enforcement and other federal, state, and local officials to improve the understanding of, and compliance with, U.S. obligations under the Vienna Convention on Consular Relations and bilateral consular conventions concerning "consular notification and access." These are the rules governing when consular officers must be informed that their nationals have been arrested or detained, have died, or are the subject of a guardianship proceeding in a foreign country. The purpose of the program is to improve U.S. compliance with these rules, which in turn will help ensure that the U.S. can continue to insist upon compliance by other countries.

We have always placed great importance on having other countries comply with these obligations, and U.S. consular officers abroad have routinely raised issues of failure of consular notification with host governments. Until recently, however, we have done relatively little to ensure similar compliance by the United States. The current

program was undertaken after it had become clear that there was widespread non-compliance in the United States with consular notification requirements, apparently because of lack of awareness of those requirements. The effort was officially launched in early 1998 with the publication of a new brochure and a "pocket card", which are made available upon request to federal, state, and local law enforcement and other officials needing them in their official capacities. Distribution of these publications is supplemented by activities, such as providing guidance over the telephone and in writing, and conducting formal and informal training sessions for law enforcement and other officials. In October 1998, one senior full-time officer was temporarily assigned to this effort. A second officer was temporarily assigned in September 1999. Otherwise, all of the outreach work, including the mailing of the brochures and pocket cards, has been incorporated into the existing workload of employees with other related functions. To date, publications, travel, and other expenditures in direct support of the program have been less than \$100,000.

These efforts and the resources devoted to them cannot be compared to the resources the Department is devoting to pursuing rights of consular access in child abduction cases abroad. The Consular notification program is largely an information effort focused on legal requirements that are relatively straightforward. Its primary (although not exclusive) focus is on requirements regarding arrests and detentions. Moreover, the program cannot be viewed as independent of the efforts the Department makes for Americans abroad, since improved U.S. compliance will preserve and

enhance the ability of the United States to insist upon compliance by other countries with respect to Americans abroad.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

10. The State Department has opposed pending legislation (Section 203 of S.886) urging that this subject be addressed in the annual country reports on human rights. What position have you and the Bureau of Consular Affairs taken on this issue within the State Department?

Answer:

The Department of State has opposed efforts to include information on compliance with the Convention in the annual Country Reports on Human Rights Practices because the Office of Children's Issues already provides annual reports on Convention compliance.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

11. As you may know, the First Lady has repeatedly declared that international child abduction is a human rights matter, and did so in her remarks at the British Embassy on April 23, 1999, where she joined the wife of the British Prime Minister and others in inaugurating the new International Center for Missing and Exploited Children. Do you agree with the First Lady's position? If not, why not? Are you aware that provisions in many international human rights treaties are relevant, most notably Articles 9, 10, 11, and 18 of the Convention on the Rights of the Child which the U.S. has signed?

Answer:

We do not believe that the Country Reports are the appropriate vehicle for reporting on compliance with the Hague Convention. The Department already reports on compliance with the Hague Convention through reports from the Office of Children's Issues in the Bureau of Consular Affairs.

The State Department has already submitted to Congress a Consular Affairs Bureau report on compliance with the Hague Convention, and will continue to do so pursuant to congressional requirements, reflected in the James W. Nance and Meg Donovan Foreign Relations Authorization Bill passed November 29, 1999. The next report is due in April 2000.



Questions for the Record Submitted to  
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10/14/99

Question:

12. Looking at many of the subjects already addressed in the human rights reports, and the focus on what foreign governments do to their citizens, can you justify the exclusion of foreign government conduct that violates the human rights of Americans (by failing to provide effective remedies, and often directly supporting abduction/retention of American children)?

Answer:

The State Department addresses the problem of parental child abduction both in terms of compliance reporting and service, but we believe that the Country Reports are not the appropriate vehicle for reporting on this issue.

The Department already provides reports on compliance to the Congress. The Bureau of Consular Affairs' Office of Children's Issues will next report on compliance in April 2000.

Questions for the Record Submitted to  
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House International Relations Committee  
10/14/99

Question:

13. Few left-behind parents want any privacy or confidentiality, but rather want the world to know what the abductor and his/her government has done. Do you agree that left-behind American parents have a right to know everything that their government is doing, or failing to do, to gain the return of their children? If not, why not?

Answer:

We agree that a left-behind parent deserves a detailed explanation of what the Department is doing to assist him or her in the recovery of, or access to, abducted children; we routinely provide such information to parents. There may be instances, however, where it is not appropriate to disclose every action taken on a case in light of law enforcement or foreign policy considerations, or expectations of confidentiality surrounding diplomatic correspondence.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
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Question:

14. Do you request a Privacy Act waiver from every American parent, and explain that you can then facilitate networking among left-behind parents?

Answer:

Our office routinely sends a Privacy Act waiver form to parents who contact us for assistance in international abduction cases. This allows them to indicate which persons and/or organizations we can communicate with and release information to about their case. (The examples given on the waiver form are family members, friends, individual members of Congress, members of the press, or the general public.) We fully support parents learning from each other's experiences, and have suggested that parents in similar circumstances communicate with each other. We are facilitating this, too, through our meetings with groups of left-behind parents. We participated in the creation of the Department of Justice, Office of Juvenile Justice Delinquency Prevention's (OJJDP) "Project Hope" parent support group, which includes left-behind parents in international parental child abduction (IPCA) cases. OJJDP, in coordination with our office, is also working on a handbook written by parents for parents in these cases.

Questions for the Record Submitted to  
Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

15. Are you opposing the conclusion of bilateral child support enforcement agreements with the worst offenders in this area, such as Austria, Germany, and Sweden, who have a record of making aggressive demands for child support even in the most blatant abduction/retention cases? Are you opposing the conclusion of such agreements with any country unless the arrangement clearly excludes cases where the American parent has no enforceable visitation in the United States or where there has been a violation of U.S. laws or court orders, commission of Federal and/or state crimes, refusal to return children under the Hague Convention, and so on? If not, why not?

Answer:

We are not, at this time, pursuing discussions with Austria, Germany, or Sweden on bilateral child support enforcement arrangements because of our concerns about those countries' implementation record under the Convention. The arrangements that have been concluded with other countries simply provide for reciprocity of treatment under national laws. They do not address abduction cases or situations where access or custody is denied by one party, or is in dispute.

The Department of State recognized the potential problem of child support enforcement in cases where there are custody disputes, and we have made it clear to state authorities, which make the ultimate determinations in child support cases, that these international arrangements do not require the enforcement of such orders. We did not want to interfere with the state's discretion to make the factual and other determinations that might be relevant in a given case, so the Department of Health and Human Services (HHS) issued formal written guidance to state child support enforcement directors.

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Question:

16. What resources are being devoted to the negotiation and conclusion of child support enforcement agreements?

Answer:

One part-time attorney at the Department of State, in conjunction with private sector and state experts, leads the negotiation and conclusion of child support enforcement arrangements. Travel and per diem support is provided by the Department of Health and Human Services.

Questions for the Record Submitted to  
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Question:

17. In view of the inadequate resources for assisting parents of abducted children, why are any resources being devoted to pursuing bilateral child support enforcement agreements?

Answer:

We do not agree that U.S. custodial parents who cannot afford to raise their children because foreign ex-spouses are defaulting on child support payments are somehow less deserving of U.S. government assistance than U.S. parent victims of child abduction. HHS has advised that under current federal law, foreign parents can apply for support enforcement in the U.S.; individual states presently provide this at no cost. In order for U.S. parents to enjoy similar enforcement abroad, however, international agreements are almost always required. Due to the great need at the state and individual level, the Congress passed specific legislation authorizing federal action, codified as 42 U.S.C. sec. 659A. Consistent with the mandate of that legislation, the Department of State has been pursuing this initiative solely in the interests of U.S. parents who suffer from lack of support payments by persons residing abroad. The modest resources devoted to this program do not come from the U.S. Central Authority for the Convention.

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Question:

18. How many such arrangements have been concluded and with what countries?  
How many more are pending?

Answer:

Arrangements have been concluded with Ireland, the Slovak Republic, Poland, and the Canadian Province of Nova Scotia. We have also been in communication with over 25 other countries regarding their interest in such arrangements. As noted above, however, parents in foreign jurisdictions are already entitled to free enforcement under U.S. law, without any requirement of reciprocity.

Questions for the Record Submitted to  
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Question:

19. What guidance are you giving the states about enforcement of foreign child support orders in abduction cases, especially from consistent offenders such as Austria, Germany, and Sweden?

Answer:

The Department of Health and Human Services has informed all state child support enforcement directors that there is no requirement, under U.S. federal child support law, that would mandate any U.S. state to enforce child support where a custody dispute exists. No federal reciprocal support arrangement with a foreign country creates such a mandate.



Questions for the Record Submitted to  
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Question:

20. In view of the inherent disadvantages facing Americans in abduction/retention cases, have you pressured NCMEC to continue devoting its resources to helping foreign parents in "incoming" cases, when it wants to switch to helping American parents in "outgoing" cases?

Answer:

To the contrary, the Departments of State and Justice have been actively engaged in giving NCMEC a larger role and more formal mandate to help American parents in "outgoing" cases.

NCMEC, State and Justice entered into the cooperative agreement on incoming Hague cases in 1995 in an effort to better fulfill our treaty obligations of locating and facilitating the return of children who had been abducted to the U.S. We have been working with NCMEC for years on these cases within the U.S; as a domestic organization, they are well suited to provide these services in the United States in these cases (i.e. locating children and facilitating contact with state authorities). This cooperative agreement has never limited support services that NCMEC may choose to provide on outgoing cases. The most recent cooperative agreement includes an expanded role for NCMEC on outgoing cases. In drafting this agreement, we asked NCMEC what services they wished to perform; their list of services was included in the current agreement.

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Question:

21. There has been a history of State Department failure to cooperate with NCMEC in outgoing cases, and generally refusing to supply information. What have you done to change that?

Answer:

We have always cooperated with NCMEC on abduction cases. Even before our first formal agreement in 1995, we worked closely with them to locate missing children. We continue to have an excellent working relationship with NCMEC. We welcome the fact that they have been willing to expand their role in outgoing cases. As both our role and NCMEC services in these cases increase, we will continue to work closely to maximize our effectiveness and minimize duplication of effort. Our new NCMEC coordinator is assisting in enhancing this coordination. NCMEC has agreed to inform us when they become aware of an international parental abduction case and we will continue to provide NCMEC with a complete list of every open case, including contact information for the left-behind parents. NCMEC is also an important partner in our comprehensive interagency case management database. Our abduction checklist for parents, the very first item in our booklet "International Parental Child Abduction", directs parents to contact NCMEC immediately. Also in our booklet, NCMEC is listed as one of seven reference/resources for left-behind parents, and we suggest that parents get a copy of NCMEC's own abduction booklet. Furthermore, we routinely direct parents to NCMEC for a range of helpful services.

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Question:

22. What are the terms of the new agreement among State, Justice, and NCMEC, and are you confident that they will significantly improve assistance to parents involved in outgoing cases?

Answer:

The agreement prolongs the contractual arrangement in which NCMEC will continue to process incoming Hague cases. It also calls for expansion of NCMEC's role in outgoing cases, which includes serving as a point of contact, participating in a shared database, providing additional support for left-behind parents (such as legal and translation assistance and locating children), expanding services as yet to be determined, and participating in education and training efforts. It also re-establishes the position of NCMEC coordinator in the Office of Children's Issues (CI). We expect that this increased involvement of NCMEC in outgoing cases will significantly improve assistance to parents involved in both Hague and non-Hague outgoing cases.

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Question:

23. Will you support a transformation of the NCMEC role from handling incoming cases to outgoing cases?

Answer:

We support NCMEC's expanded role in outgoing cases. We will continue to provide NCMEC with the names of all outgoing cases and expect that they will provide the full range of their expanded services in all of these cases. NCMEC has indicated to us that they do not feel they are most effective when acting in a governmental role. By working in close partnership, however, taking advantage of our respective strengths and resources, we hope to provide the maximum assistance to U.S. parents.

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Question:

24. Will you allow NCMEC to hold the files of outgoing cases, as it now does for incoming cases?

Answer:

No. The welfare and protection of Americans abroad and our obligations under the Convention are core U.S. government responsibilities. Therefore, we will maintain files on these abducted U.S. citizen children at the Department. NCMEC will, however, continue to maintain its own files, covering the services it is providing to left-behind parents.

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Question:

25. Will you notify NCMEC immediately of all outgoing cases?

Answer:

We have, and will continue to, provide NCMEC with lists of our open outgoing cases, including left-behind contact information. NCMEC will also have access to this information via our new interagency case tracking system.

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Question:

26. Why did the State Department oppose all legislative proposals in 1999 (Section 203 of H.R. 2415 and Sections 201-203 of S. 886) while proposing nothing constructive in this field?

Answer:

We opposed portions of Section 201 of S. 886 as originally drafted and proposed changes, which were incorporated into a subsequent draft. While we shared the concerns of the Senate in Section 202 of S. 886 and Section 203 of H.R. 2415 about implementation of the Convention, we had concerns about our ability to respond to the reporting requirement as written. We provided suggestions to make it more concrete and quantifiable, which have been incorporated into the latest draft. We believe this will be more useful to the ultimate consumers of the report.

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Question:

27. With regard to the passport provisions in H.R. 2415, did the State Department notify the sponsors of the adverse and unfair effects these could have on left-behind American parents?

Answer:

Since this provision was first proposed in the Senate in 1996, the Department has consistently pointed out in discussions and briefings with staff in both the Senate and the House, including the staff of the sponsors of the passport for minors provision, that the proposal could present many difficulties for parents, especially for single parents and for abandoned or left-behind parents without custody orders.



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Question:

28. Should the United States extradite a left-behind American parent who rescues a child from a country that will not return the child under the Hague Convention, or otherwise will not extradite or prosecute the abductor, and will not or cannot guarantee enforceable visitation in the U.S. or anywhere else?

Answer:

We are not able to speculate on the outcome of a hypothetical extradition case. Decisions on extradition requests are made only by the Secretary or Deputy Secretary of State following review by appropriate offices of the State and Justice Departments and a judicial finding of extraditability. We ensure that any specific concerns about particular extradition cases that are raised with the Department in a timely way are brought to the attention of the Secretary or Deputy Secretary.

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Question:

29. Should the United States enter into new law enforcement treaties with countries that are already violating their treaty obligations to the U.S. in the same general field (i.e., the Hague Convention attempts to deal with criminal conduct by means of a civil remedy), and that are directly or indirectly engaged in facilitating or supporting criminal conduct against American children and their left-behind parents, in some cases through their police and prosecutors?

Answer:

The U.S. Government's law enforcement treaties provide broad, tangible and significant benefits to all our citizens by strengthening our efforts to fight narcotics trafficking, organized crime, terrorism, violent crime, money-laundering and other crimes. In deciding whether to seek such a treaty with a particular country, we take into account the overall interests of the United States, including not only a particular category of conduct or issues, but the overall benefits the treaty might bring.

One paramount consideration is whether we expect the other country to comply with its treaty obligations to extradite. It does not follow, however, that in each case in which there are problems with Convention implementation, the country in question would not comply with extradition treaty obligations. The reasons for problems in Convention cases are many and varied, and do not necessarily have any corollary or implications for extradition cases. Even for countries where there have been questions regarding compliance with the Convention, there could also be a history of compliance with obligations specifically concerning criminal law enforcement, including compliance with extradition obligations based on a pre-existing treaty. This is, therefore, an

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analysis that also must be done on country-by-country basis, taking into account all relevant factors.

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Question:

30. Knowing that hundreds – if not thousands – of American children in Hague countries have not been returned to the U.S., you informed Congress in your Report that there were only 56 “unresolved” cases, meaning that the other country had not yet finally denied the U.S. request. In view of the obvious interest and intent of Congress, why did you take the narrowest possible approach and fail to interpret “unresolved” as covering all cases where American children have not been returned?

Answer:

In our report on compliance with the Hague Abduction Convention, we were asked to address “unresolved” cases rather than cases in which children were not returned. The Convention contains a number of exceptions to return. Therefore, a list of cases where children were not returned would not be an indication of compliance. When judicial remedies pursuant to the Convention had been exhausted, we considered that the case, with regard to the Convention, was resolved. Therefore, we believe that our Report on Compliance with the Hague Abduction was appropriately responsive.

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Question:

31. Does your Bureau close cases when a Hague application is finally denied?

Answer:

Our current database has two separate listings for Hague and non-Hague cases. When all judicial remedies pursuant to the Convention have been exhausted, we may close the case in the Hague side of the database and then open a non-Hague case on the same child. Therefore, we still have an open non-Hague case on the child. Our new database will not have this duplicate system, but will track the progress of both the Hague and non-Hague aspects of a case.

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Question:

32. In listing countries that consistently violate The Hague Convention, why did you fail to list Germany and perhaps other countries that unquestionably violate the Convention routinely?

Answer:

While there have been enforced returns of children from Germany, there have also been problematic and even inconsistent judicial decisions on the Convention, specifically in the area of Article 13(b) and the views of very young children. Yet, as in the United States, the judiciary of Germany is independent. Therefore, their problematic interpretations of the Convention are not due to failed implementation by the German government.

The German government, recognizing these judicial inconsistencies, looked for a way to increase the fairness and consistency of judicial decisions. Legislation was enacted to consolidate the number of courts that can handle Hague cases. This became effective July 1, 1999. There are now 24 courts of first instance and 24 parallel appeals courts throughout the country that will adjudicate cases under the Convention. This is down from the estimated 600 courts which previously had the authority to hear Convention cases. We will watch closely to see if this consolidation will improve Convention implementation in Germany.

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Question:

33. What assistance has the U.S. government provided to foreigners litigating Hague cases and related child custodial matters in U.S. courts?

Answer:

The Convention provides that countries to which children are abducted pay for the legal costs of parents seeking return of their children from those countries. The U.S. took a reservation to this provision of the Convention. Therefore, American parents seeking return of children abroad may receive reduced fee or free legal assistance under the Convention, while parents from other Hague countries seeking return of their abducted children from the U.S. are not assured such legal assistance in the U.S.

To ensure that American parents continue to receive reduced fee or free legal assistance abroad, and to fulfill our obligations under the Convention to facilitate judicial proceedings, the Office of Children's Issues asked the Department of Justice to fund the creation of the International Child Abduction Attorney Network (ICAAN) program by the American Bar Association. NCMEC currently administers this program which provides free or reduced fee legal assistance to parents whose children were abducted to the U.S. from a Hague country.

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Question:

34. Is similar assistance provided to Americans under attack in U.S. courts in litigation financed by the abductor's government and intended to reverse or nullify U.S. court orders?

Answer:

As we explained in question 33, American parents enjoy the benefit of reduced fee or free legal assistance abroad under the Convention to which they would not otherwise be entitled. Absent the benefits of the Convention, Americans engaged in civil court proceedings in the U.S. are eligible for whatever state or local legal aid may be available. We understand that NCMEC is considering expanding the ICAAN program to assist left-behind parents in outgoing cases, and we would also support expansion of legal assistance services to help parents in all IPCA cases.

With respect to "litigation financed by the abductor's government" in U.S. courts, we note that legal aid programs of some countries are expansive, and may provide for assistance in proceedings outside their borders.



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Question:

35. How have you and your Bureau cooperated with GAO? Have you supplied all information and files requested?

Answer:

We welcome the General Accounting Office (GAO) review of the U.S. response to IPCA and have cooperated fully with the GAO in this process. We find that the GAO inquiry is complementary of our own efforts this past year to review the federal government response to international parental child abduction. We have provided GAO all of the information that they have requested, with the exception of detailed information on our resource requirements during FY-2000 and in following fiscal years. As we explained to the GAO, and as we testified before your Committee, the Department of State is committed to funding our important initiatives in terms of Children's Issues. However, the amount and timing of that support depends upon the final outcome of the Department's FY-2000 appropriations request. Once the Department's funding level is finalized, the Department will begin to implement further enhancements to our programs that support Children's Issues.

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Question:

36. What role has the Bureau of International Narcotics and Law Enforcement (INL) been allowed to play in dealing with this issue?

Answer:

Although the Bureau of International Narcotics and Law Enforcement does play a role in cases of violence against women and children, which includes trafficking, it plays no role in the federal response to international parental child abduction.

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Question:

37. What strategy does the State Department have for altering the behavior of the worst offending countries in this field? What incentives or risks is the State Department going to present to them?

Answer:

The U.S. has a comprehensive program to expand and improve the benefits of the Convention. We were among the original countries that met to create the Convention to address international parental child abduction, and we have continued to work to improve its operation. We also actively encourage appropriate countries to join the Convention. Some of the other things we do are:

- Call in representatives from each of the non-compliant countries to impress upon them their obligations under the treaty; to date we have met with Austria, Sweden, Mexico, and Honduras.
- Raise the issue of international parental child abduction at the highest levels with other governments, as Assistant Secretary of State for Consular Affairs Mary A. Ryan did with her Mexican counterpart. The two agreed on the importance of this issue and suggested that U.S. and Mexican experts meet as soon as possible to explore solutions. Other examples include 1) U.S. Ambassador to Sweden raising with the Swedes the need for Sweden to comply with its treaty obligation to find missing children, 2) U.S. Ambassador to Austria strongly impressing upon the Austrians our belief that the Convention needs to be better enforced, 3) the Director

of the Office of Children's Issues and a member of the Office of the Legal Adviser at the State Department meeting with the Central Authorities and other officials from Sweden, Austria, Germany, and Switzerland to discuss problem cases and the need for improving the implementation of the Convention. They also met with the Hague Permanent Bureau to discuss strategies aimed at improving the working of the Convention.

- Send a diplomatic note protesting the matter and/or make a demarche upon the host government. This has been done by our Ambassadors, Charges, and Deputy Chiefs of Mission in several European and Middle Eastern posts on specific cases, both Hague and non-Hague.
- Discuss the systemic problems both bilaterally and in broader fora with delegates to special review sessions of the Convention held at The Hague.

In addition, we have invited judges and Hague Central Authority representatives from a number of common law countries to a conference in Washington next fall to discuss how to improve the consistency of decisions and the implementation of the Convention. We are working with our counterparts in other Hague Convention countries, as well as with the Permanent Bureau, to educate new party states.

The Convention is a multilateral convention prepared under the auspices of the Hague Conference. An important element of improving the implementation of the Convention is support for the Permanent Bureau's efforts to disseminate information and educate current and potential party countries. In addition, we need to continue our

financial support for the Permanent Bureau, including funding our arrears. Through the Permanent Bureau, we can do the following:

- Explore the possibilities of a Permanent Bureau-produced periodic publication on items related to the Convention, such as improving effectiveness, information on resolutions, case studies, and judicial decisions.
- Support, participate, and help fund the creation of a worldwide database on court decisions on return and access requests under the Convention.
- Obtain information from each Hague Central Authority on the civil and criminal aspects of Hague cases, how they interact in that country, and efforts to improve the effectiveness of the Convention.
- Request that the question of access rights, not adequately addressed in the original Convention, be placed on the agenda of the next quadrennial session of the Hague Conference.

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Question:

38. If there is no strategy, does the Department favor maintaining the status quo, where foreign governments are happy because the U.S. returns more than 90 percent of the children requested (according to NCMEC figures provided to GAO), including virtually 100 percent to some of the worst offenders?

Answer:

The Department sees the need to encourage all party countries to fulfill their obligations under the Convention. By adhering to its rules and regulations ourselves, we set a positive example. Through efforts in education and training, as well as our publications, we will make statistical information (which may show trends of a particular country towards non-compliance) available to judges.

Under the convention, the courts in all party countries are expected to make a determination on whether return of the child to a particular country is required. This determination should be made without consideration of that country's record of compliance. Moreover, any attempt by the Department to influence a domestic or foreign independent judiciary to consider the compliance record of the child's country of habitual residence could lead to the risk of reduced compliance overall. This could have the undesirable result that the United States would be added to the list of non-compliant countries.

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Question:

39. Have you considered demanding bilateral agreements or arrangements to ensure visitation in difficult bilateral situations, as contemplated by the Convention on the Rights of the Child and in place to some extent between France and Germany?

Answer:

We need to explore a number of possibilities to decide the most effective way to improve the legal regime governing access. Given the inherent advantages of a multilateral regime, and the fact that access is addressed in the Convention, our preference would be to address this either under the Convention or in a separate multilateral regime. Another possibility is the Hague 1996 Convention on the Protection of Children. However, we should also explore the possibilities for bilateral arrangements. In either case, however, we need to consider to what extent we would face the same problems that are being experienced now, either in negotiating the agreement or in its implementation and enforcement.

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Question:

40. Does the Bureau (and our embassies) defer to foreign court orders and laws, rather than give priority to U.S. court orders and law?

Answer:

With regard to U.S. passport issuance and competing court orders, the Department of State may, at the request of a parent and upon receipt of an order from a court of competent jurisdiction (either U.S. or foreign), deny a U.S. passport (see State 22 CFR 51.27, copy attached). When we are in receipt of conflicting court orders we may ask the parents to have the appropriate court resolve the conflict.

Our primary interest in these matters is the welfare and protection of abducted American children. We view these children as U.S. citizen children regardless of the fact that the country to which they were taken may consider them to be dual nationals. We provide the full range of consular services to these victim children and left-behind parents regardless of custody orders or criminal charges. We do not require an NCIC entry, a missing children's report, or a court order to provide the full range of our services in these cases.



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Assistant Secretary Mary A. Ryan  
House International Relations Committee  
10/14/99

Question:

41. We all understand that there are various equities at stake in matters involving the rights of individual American citizens, and seeing that a foreign government respects those rights. One of the most disturbing complaints that I have heard from left-behind American parents is their frustration that the State Department seems to be more interested in preserving good relations with a foreign government than in being as forceful as one would hope in advocating our citizens' rights. Can you tell me what priority the State Department as an institution places on ensuring that the governments that are Hague Convention signatories fully live up to their obligations under this convention? In other words, are our demarches on non-compliance with the Convention routinely delivered by our Ambassador to the Foreign Minister, or do we send a diplomatic note in the mail?

Answer:

We place the highest priority on the welfare of American citizens abroad, including children who have been victimized by parental child abduction. The Department created the Office of Children's Issues in 1994 to better coordinate our response to this issue. We were at the forefront in the creation of the Convention to address this problem. We have an active program to encourage other appropriate countries to join the Convention. We often raise the issue of international parental child abduction at the highest levels with other governments and, as problems with implementation of that Convention develop, we raise these bilaterally with the other government involved.

We monitor the progress of each individual case to encourage the proper implementation of the Convention and raise these issues with foreign Central Authorities. If we believe that a party country is not taking all of the actions expected of

it under the Convention, the U.S. Central Authority brings the issue to the attention of the foreign Central Authority and/or other government entities. If appropriate action does not occur, then we may send a diplomatic note protesting the matter. Depending on the issue, the diplomatic note may be delivered by the Consul General, the Deputy Chief of Mission, the Charge d'Affaires, or the Ambassador.

Our Ambassador to Sweden has raised with the Swedes the need for Sweden to comply with its treaty obligations to find missing children. Our Ambassador to Austria has also strongly impressed upon the Austrians our belief that the Convention needs to be better enforced. The Assistant Secretary of State for Consular Affairs raised with her counterpart the difficulties we have had with these cases in Mexico. He agreed on the importance of this issue and suggested that U.S. and Mexican experts meet as soon as possible to explore solutions.

In addition, we take advantage of bilateral or multilateral meetings to discuss the general implementation of the Convention and how to improve it.

September 27, 1999

To Whom This May Concern:

I write this letter as a former parentally abducted child, in the hopes of helping other children and parents avoid having to go through the pain of parental abduction. Parental abduction is a crime, not only to the children and family members involved but to society as a whole. The ramifications are great, both on an individual level and on a larger, society-wide scale. The children, pawns in a feud between battling parents, are often uprooted from all that's familiar to them, made to live a life of fear and hiding, made to hate their left-behind families, receive little or no schooling, aren't allowed to have friends, are sexually, physically or emotionally abused, have their names and identities changed, and much more. Their futures, society's future, is put at risk. In my experience as founder of a support network for parentally abducted children called *The Link*, many grow up to commit crimes or commit suicide, or live lives of depression, isolation and fear.

The parents or guardians do not fare very well either. The left-behind parent is often left not knowing whether their children are dead or alive, and is tortured with fear, worry and depression, while at the same time must go on paying bills and looking after other children. They may incur huge bills in their search for their children, and get involved with unscrupulous people in their desperate and lonely searches. The legal and law enforcement responses to the problem are at best inconsistent and confusing, so the parents are left feeling alone and helpless.

The abductors, too, are in a bad state. Some have criminal records, a history of violence or abuse or serious mental health problems. Their actions may have resulted from a feeling of desperation or a need to run away. They need help too. Of course the children, as dependent, small beings, will bear the brunt of the abductor's problems. There are no winners when it comes to parental abduction.

By Cecillie Finkelstein (a formerly parentally abducted child)

October 12, 1999

International Child Abduction: The Victim's Story

There are no winners when it comes to parental abduction. Everyone involved loses, especially the children. I can offer my own case as an example. I was abducted by my father when I was 4 years old, and was missing for fourteen years. I lived those years on the run, in hiding, and in fear. We lived on Greyhound buses, and traveled through 3 countries and 34 states, all to run away from a mother who loved me. I had to dress like a boy, dye my hair different colors, beg for money and food, and change my name and identity many times. I didn't go to school much, or live in one place for very long, and was forced into inappropriate and dangerous situations. It was a life of fear, pain and homelessness.

As a very young child, I believed that my father did what he did because he loved me. At first, he told me that the reason my mother wasn't with us was because she didn't want to be, and was a bad person. With time, she became a faceless stranger who wanted to take me away, and I became alienated from her. I barely remembered her, and believed what my father told me. I helped him hide me. Children prefer the familiar to the unfamiliar, even if the familiar is abusive and awful.

It was only as I grew older that I began to see things differently. It all didn't make as much sense as it did before. I began to realize that my father's actions had nothing to do with my well-being. He was angry at my mother's desire for a divorce, and frustrated by life's challenges. But that's not a good enough reason, in my eyes, for a child to have to suffer the way I did. I was innocent. My mom was a loving, responsible parent who wanted the best for me, and wanted me to have a good relationship with my dad (I spent nearly as much time with him as with her). She was almost destroyed by what happened. My father had abducted other children before, two of his three sons from a previous marriage. It seems to be the way he dealt with his frustrations.

As a teenager I nearly destroyed myself, both emotionally and physically. I felt betrayed by those who were supposed to love and protect me, and my world fell apart. Every child's birthright, no matter what their parents feel about each other, is to have both parents in their lives, and not to live a life of hiding and fear. Barring any serious problems that risk harm to the child, no one has the right to take this birthright away. Living a life of hiding, fear and manipulation paves the way for serious emotional problems, depression, suicide, crime, drugs, and more.

I managed to find my mother when I was nearly 18. It was a difficult reunion in some ways, because part of me desperately wanted to hang on to the belief that what my father did was justified. It was almost too painful to believe otherwise. But I wanted the truth. I called my mother before my 18<sup>th</sup> birthday, and we met shortly after. The pain didn't end with meeting my mom, a wonderful person (I tried hard to find the fatal flaws that would have justified my father's actions—but they aren't there. She's wonderful). I had to figure out who I was, where I came from, and where I was going. It took many years to reestablish a relationship with my mother, come to terms with my past, and learn to trust myself, others, and my perceptions of the world.

Ever growing numbers of parentally abducted children will have to deal with these and other issues related to parental abduction. A painful past, an uncertain future, feeling trapped between two worlds. These are the pains, such unnecessary pains. Not knowing who to trust, what to believe, how to let one hurting parent into your heart and somehow come to terms with the hurt the other parent has inflicted. These are the agonies. How to learn to love all over again, and quiet the fear and pain. This is the legacy of parental abduction.

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Sincerely,

Cecilie Finkelstein

Cecilie Finkelstein  
274 Argyle Rd. Brooklyn, NY 11218

## HELPING PARENTS HELP KIDS



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Scottsdale, Arizona

October 14, 1999

Benjamin Gilman  
Chairman, Committee on International Relations  
House of Representatives  
Washington, D.C. 20515

Dear Chairman Gilman and Members of the Committee:

This is a statement for the record regarding  
your important hearing on INTERNATIONAL PARENTAL  
ABDUCTION.

We understand that Lady Catherine Meyer and  
other witnesses will speak at the hearing on the  
serious effects of parental kidnapping on the  
lives of children.

The Children's Rights Council has spoken out  
against parental kidnapping of children since our  
inception in 1985. Abduction often occurs in the  
context of custody battles. Such battles can have  
a lifelong negative effect on children.

One adult child of divorce who was abducted  
told an interviewer for the Children's Rights  
Council: 'I remember being in court. I must have  
been five or six years old. I remember the judge  
asking me, 'Who do you want to live with'?

I remember being terrified, absolutely  
terrified, and saying, 'I want to live with Mommy  
and see Daddy every day.'

A week later, the child was abducted by one  
of her parents. She was recovered 3 years later.

The authors of a book on abduction write:  
"For abducted children in the five to six age  
group, the potential for difficulties is  
acute...When a child of 7 to 10 years is  
abducted, 'the child's sense of ethics is  
undermined as he or she becomes an accomplice,  
sometimes unwittingly, in the abduction...'"  
from "When Parents Kidnap: the Families Behind the  
Headlines," by Geoffrey L. Greif and Rebecca L.  
Hegar.

A NON-PROFIT, TAX EXEMPT ORGANIZATION STRENGTHENING FAMILIES THROUGH EDUCATION  
AND ASSISTING CHILDREN OF SEPARATION AND DIVORCE

Vicki Lausky  
Author, Columnist  
Dorphaen, Minnesota

James Levine  
Families and Work Institute  
New York, New York

John Mowry, Ph.D., Professor of  
Medical Psychology and Pediatrics  
Johns Hopkins University and Hospital  
Baltimore, Maryland

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Fathers abduct as often as mothers. Mothers generally abduct prior to a custody decision; fathers often abduct after they have "lost" a custody battle.

Here are some ways this Committee could help to prevent abduction of children;

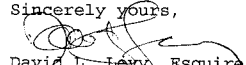
- 1) Make the situation a win-win, rather than a lose-lose, situation. Ask the states and foreign countries to create a presumption for shared parenting. When parents know they are both likely to be actively involved in the child's life, they are less likely to have an incentive to kidnap.
- 2) Tighten the loophole in the Hague Convention Against Parental Child Abduction, by making it more difficult for a child to claim that he or she wants to stay in the country to which the child has been taken. Having a child of 5 or 6 saying he likes his new country so much he wants to stay there, makes a mockery of child interviewing techniques.
- 3) Publicize the countries like Germany, Sweden, and Arab states which favor their own nationals--be their mothers or fathers--rather than adhering to Hague.
- 4) Tighten the Hague convention requirement that children be returned to enforce access (visitation) as well as custody orders. Some countries make parents travel half-way around the globe to have an occasional visit with their children.

At our request, Congressman George Gekas, when he was drafting the bill to provide criminal sanctions against abductors found in the U.S., stated that interference with access rights was also a criminal penalty. Access rights should be fully recognized by all organizations helping parents in the U.S., as well as recognized fully by the Hague Convention. Children should not be required to have their parents travel thousands of miles to see them in a foreign country.

The Children's Rights Council supports this Committee's efforts and offers to assist in any way we can.

Thank you.

Sincerely yours,

  
David L. Levy, Esquire  
President, CRC