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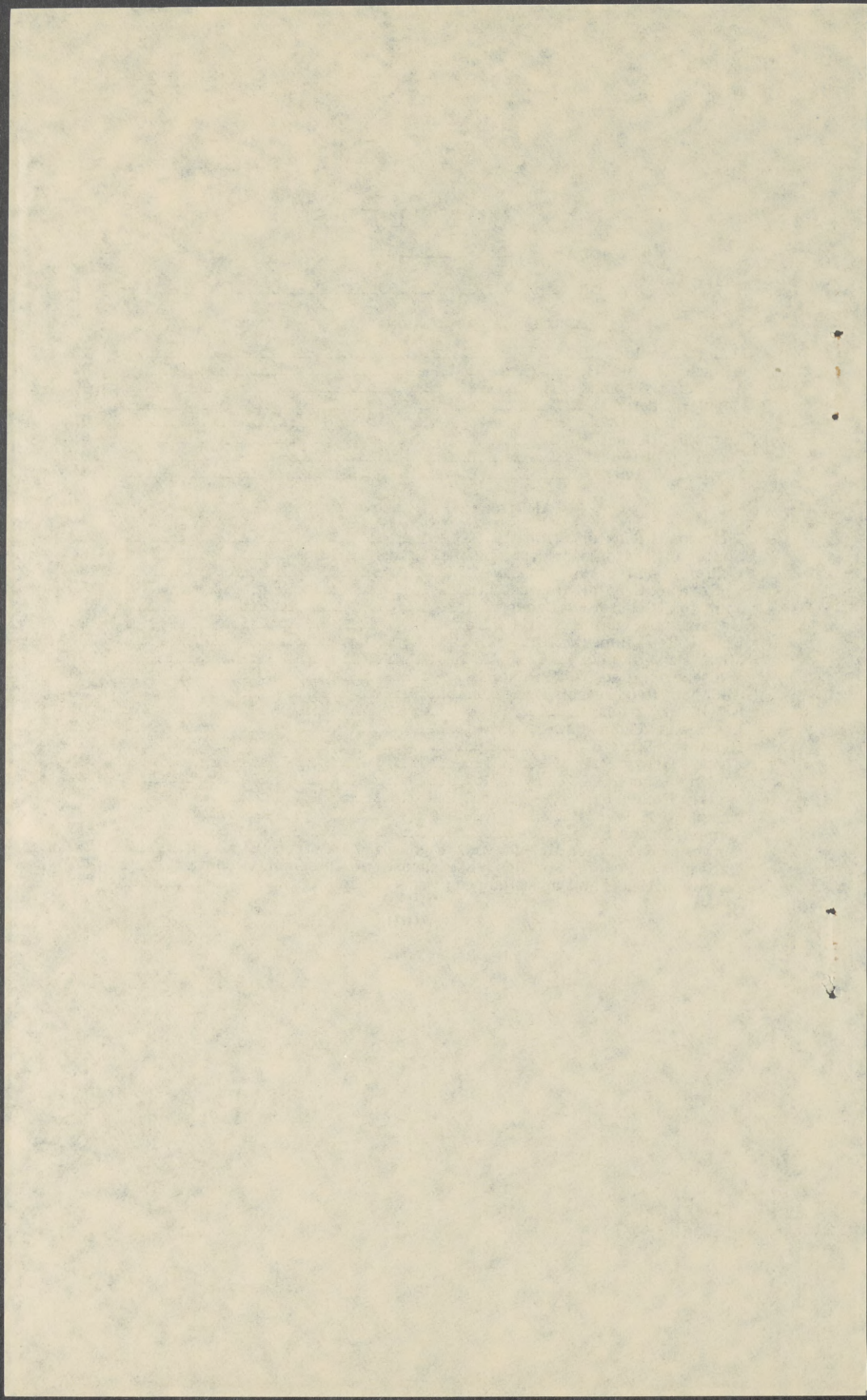
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APPENDIX

96TH CONGRESS
1ST SESSION

S. 105

To amend title 28 and title 18 of the United States Code to prohibit and remedy the interstate restraint of children in violation of rights of custody and visitation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 15), 1979

Mr. WALLOP (for himself, Mr. THURMOND, Mr. KENNEDY, Mr. MCGOVERN, Mr. CRANSTON, Mr. SIMPSON, Mr. HAYAKAWA, Mr. RIEGLE, and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28 and title 18 of the United States Code to prohibit and remedy the interstate restraint of children in violation of rights of custody and visitation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Parental Kidnaping Pre-
4 ventions Act of 1979".

5 FINDINGS AND PURPOSES

6 SEC. 2. (a) The Congress finds that—

1 (1) there is a large and growing number of cases
2 annually involving disputes between persons claiming
3 rights of custody and visitation of children under the
4 laws, and in the courts, of different States, the District
5 of Columbia, the Commonwealth of Puerto Rico, and
6 the territories and possessions of the United States;

7 (2) the laws and practices by which the courts of
8 those jurisdictions determine their jurisdiction to decide
9 such disputes, and the effect to be given the decisions
10 of such disputes by the courts of other jurisdictions, are
11 often inconsistent and conflicting;

12 (3) those characteristics of the law and practice in
13 such cases, along with the limits imposed by a Federal
14 system on the authority of each such jurisdiction to
15 conduct investigations and take other actions outside
16 its own boundaries, contribute to a tendency of parties
17 involved in such disputes to frequently resort to the
18 seizure, restraint, concealment, and interstate transpor-
19 tation of children, the disregard of court orders, exces-
20 sive relitigation of cases, obtaining of conflicting orders
21 by the courts of various jurisdictions, and interstate
22 travel and communication that is so expensive and
23 time consuming as to disrupt their occupations and
24 commercial activities; and

1 (4) among the results of those conditions and ac-
2 tivities are the failure of the courts of such jurisdictions
3 to give full faith and credit to the judicial proceedings
4 of the other jurisdictions, the deprivation of rights of
5 liberty and property without due process of law, bur-
6 dens on commerce among such jurisdictions and with
7 foreign nations, and harm to the welfare of children
8 and their parents and other custodians.

9 (b) For those reasons it is necessary to establish a na-
10 tional system for locating parents and children who travel
11 from one such jurisdiction to another and are concealed in
12 connection with such disputes, and to establish national
13 standards under which the courts of such jurisdictions will
14 determine their jurisdiction to decide such disputes and the
15 effect to be given by each such jurisdiction to such decisions
16 by the courts of other such jurisdictions.

17 (c) The general purposes of the Act are to—

18 (1) promote cooperation between State courts to
19 the end that a determination of custody and visitation
20 is rendered in the State which can best decide the case
21 in the interest of the child;

22 (2) promote and expand the exchange of informa-
23 tion and other forms of mutual assistance between
24 States which are concerned with the same child;

1 (3) facilitate the enforcement of custody and visi-
2 tation decrees of sister States;

3 (4) discourage continuing interstate controversies
4 over child custody in the interest of greater stability of
5 home environment and of secure family relationships
6 for the child;

7 (5) avoid jurisdictional competition and conflict be-
8 tween State courts in matters of child custody and visi-
9 tation which have in the past resulted in the shifting of
10 children from State to State with harmful effects on
11 their well-being; and

12 (6) deter interstate abductions and other unilateral
13 removals of children undertaken to obtain custody and
14 visitation awards.

15 **FULL FAITH AND CREDIT GIVEN TO CHILD CUSTODY**

16 **DETERMINATIONS**

17 **SEC. 3. (a)** Chapter 115 of title 28, United States Code,
18 is amended by adding immediately after section 1738 the fol-
19 lowing new section:

20 **"§1738A. Full faith and credit given to child custody**
21 **determinations**

22 **"(a)** The appropriate authorities of every State shall en-
23 force according to its terms, and shall not modify except as
24 provided in subsection (f) of this section, any child custody

1 determination made consistently with the provisions of this
2 section by a court of another State.

3 “(b) As used in this section, the term—

4 “(1) ‘child’ means a person under the age of
5 eighteen;

6 “(2) ‘contestant’ means a person, including a
7 parent, who claims a right to custody or visitation of a
8 child;

9 “(3) ‘custody determination’ means a judgment,
10 decree, or other order of a court providing for the cus-
11 tody or visitation of a child, and includes permanent
12 and temporary orders, and initial orders and modifica-
13 tions;

14 “(4) ‘home State’ means the State in which, im-
15 mediately preceding the time involved, the child lived
16 with his parents, a parent, or a person acting as
17 parent, for at least six consecutive months, and in the
18 case of a child less than six months old, the State in
19 which the child lived from birth with any of such per-
20 sons. Periods of temporary absence of any of such per-
21 sons are counted as part of the six-month or other
22 period;

23 “(5) ‘modification’ and ‘modify’ refer to a custody
24 determination which modifies, replaces, supersedes, or
25 otherwise is made subsequent to, a prior custody deter-

1 mination concerning the same child, whether made by
2 the same court or not;

3 “(6) ‘person acting as a parent’ means a person,
4 other than a parent, who has physical custody of a
5 child and who has either been awarded custody by a
6 court or claims a right to custody;

7 “(7) ‘physical custody’ means actual possession
8 and control of a child; and

9 “(8) ‘State’ means a State of the United States,
10 the District of Columbia, the Commonwealth of Puerto
11 Rico, or a territory or possession of the United States.

12 “(c) A child custody determination made by a court of
13 a State is consistent with the provisions of this section
14 only if—

15 “(1) such court has jurisdiction under the law of
16 such State; and

17 “(2) one of the following conditions is met:

18 “(A) such State (i) is the home State of the
19 child on the date of the commencement of the
20 proceeding, or (ii) had been the child’s home State
21 within six months before the date of the com-
22 mencement of the proceeding and the child is
23 absent from such State because of his removal or
24 retention by a contestant or for other reasons, and
25 a contestant continues to live in such State;

1 “(B) it is in the best interest of the child that
2 a court of such State assume jurisdiction because
3 (i) the child and his parents, or the child and at
4 least one contestant, have a significant connection
5 with such State other than mere physical pres-
6 ence in such State, and (ii) there is available in
7 such State substantial evidence concerning the
8 child’s present or future care, protection, training,
9 and personal relationships;

10 “(C) the child is physically present in such
11 State and (i) the child has been abandoned, or (ii)
12 it is necessary in an emergency to protect the
13 child because he has been subjected to or threat-
14 ened with mistreatment or abuse;

15 “(D)(i) it appears that no other State would
16 have jurisdiction under subparagraph (A), (B), (C),
17 or (E), or another State has declined to exercise
18 jurisdiction on the ground that the State whose
19 jurisdiction is in issue is the more appropriate
20 forum to determine the custody of the child, and
21 (ii) it is in the best interest of the child that such
22 court assume jurisdiction; or

23 “(E) the court has continuing jurisdiction
24 pursuant to subsection (d) of this section.

1 “(d) The jurisdiction of a court of a State which has
2 made a child custody determination consistently with the pro-
3 visions of this section continues as long as the requirement of
4 subsection (c)(1) of this section continues to be met and such
5 State remains the residence of the child or of any contestant.

6 “(e) Before a child custody determination is made, rea-
7 sonable notice and opportunity to be heard shall be given to
8 the contestants, any parent whose parental rights have not
9 been previously terminated, and any person who has physical
10 custody of a child.

11 “(f) A court of a State may modify a determination of
12 the custody of the same child made by a court of another
13 State, if—

14 “(1) it has jurisdiction to make such a child
15 custody determination; and

16 “(2) the court of the other State no longer has
17 jurisdiction, or it has declined to exercise such jurisdic-
18 tion to modify such determination.

19 “(g) A court of a State shall not exercise jurisdiction in
20 any proceeding for a custody determination commenced
21 during the pendency of a proceeding in a court of another
22 State where such court of that other State is exercising juris-
23 diction consistently with the provisions of this section to
24 make a custody determination.”.

1 (b) The table of sections at the beginning of chapter 115
2 of title 28, United States Code, is amended by inserting after
3 the item relating to section 1738 the following new item:

"1738A. Full faith and credit given to child custody determinations."

4 (c) In furtherance of the purposes of section 1738A of
5 title 28, United States Code, as added by subsection (a) of
6 this section, State courts are encouraged to—

7 (1) afford priority to proceedings for custody
8 determinations; and

9 (2) award to the person entitled to custody or visi-
10 tation pursuant to a custody determination which is
11 consistent with the provisions of such section 1738A,
12 necessary travel expenses, attorneys' fees, costs of pri-
13 vate investigations, witness fees or expenses, and other
14 expenses incurred in connection with such custody
15 determination, in any case in which—

16 (A) a contestant has, without the consent of
17 the person entitled to custody or visitation pursu-
18 ant to a custody determination which is consistent
19 with the provisions of such section 1738A, (i)
20 wrongfully removed the child from the physical
21 custody of such person, or (ii) wrongfully retained
22 the child after a visit or other temporary relin-
23 quishment of physical custody; or

24 (B) the court determines it is appropriate.

1 PARENT LOCATOR SERVICE

2 SEC. 4. Section 453 of the Social Security Act (42
3 U.S.C. 653) is amended as follows:

4 (1) At the end of subsection (a), strike out the
5 period and insert in lieu thereof a comma and "and in-
6 formation as to the whereabouts of any absent parent
7 or child when such information is to be used to locate
8 such parent or child for the purposes of enforcing sec-
9 tion 1203 of title 18, United States Code, or making
10 or enforcing a child custody determination, as defined
11 in section 1738A of title 28, United States Code, enti-
12 tled under that section to be enforced by the appropri-
13 ate authorities of other States."

14 (2) Insert "or for the most recent address of any
15 absent child" immediately after "parent" the first time
16 it appears in subsection (b).

17 (3) At the end of subsection (b), strike out the
18 period and insert in lieu thereof ", (c)(4), (c)(5), (c)(6),
19 or (c)(7).".

20 (4) At the end of paragraph (2) of subsection (c)
21 strike out "and".

22 (5) At the end of subsection (c), strike out the
23 period and insert in lieu thereof a semicolon.

24 (6) Add the following new paragraphs after para-
25 graph (3) of subsection (c):

“(4) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under the law of such State to enforce a child custody determination, as defined in section 1738A of title 28, United States Code, entitled under that section to be enforced by the appropriate authorities of other States;

8 “(5) any court having jurisdiction to make or ep-
9 force such a child custody determination, or any agent
10 of such court;

11 “(6) any parent, legal guardian, attorney, or agent
12 of a child sought to be located pursuant to subsection
13 (a) of this section: and

14 “(7) any agent or attorney of the United States
15 who has the duty or authority to investigate, enforce,
16 or bring a prosecution under section 1203 of title 18,
17 United States Code.”.

18 (7) In subsection (f), insert “or a child who is the
19 subject of subsection (c)(4), (c)(5), (c)(6), or (c)(7)” after
20 “(c)(3)”.

PARENTAL KIDNAPING

22 SEC. 5. Chapter 55 of title 18, United States Code, is
23 amended by adding immediately after section 1202 the fol-
24 lowing new section:

1 **“§ 1203. Parental kidnaping**

2 “(a) Subject to the jurisdictional requirements of subsec-
3 tion (c), whoever intentionally restrains a child in violation of
4 any other person’s right of custody or visitation arising from
5 a custody determination entitled to enforcement under section
6 1738A of title 28, United States Code, and who has a rela-
7 tionship to that child as described in subsection (b), and—

8 “(1) conceals the child without good cause and
9 holds him in a place where he is not likely to be found
10 for more than seven days, shall be fined not more than
11 \$10,000, or imprisoned not more than six months, or
12 both; or

13 “(2) restrains the child without good cause for
14 more than thirty days, shall be fined not more than
15 \$10,000, or imprisoned not more than thirty days, or
16 both.

17 “(b) Persons having the relationship required under sub-
18 section (a) are relatives by blood or marriage, guardians,
19 foster parents, and agents of such persons.

20 “(c)(1) The provisions of subsection (a) shall apply
21 only if—

22 “(A) the child is willfully transported in interstate
23 or foreign commerce;

24 “(B) the exercise or enjoyment of the right of cus-
25 tody or visitation violated by this offense requires the

1 crossing of a State or United States boundary by the
2 child or the person entitled to the right violated by this
3 offense;

4 “(C) any such act against the child is done within
5 the special maritime and territorial jurisdiction of the
6 United States;

7 “(D) any such act against the child is done within
8 the special aircraft jurisdiction of the United States as
9 defined in section 101(32) of the Federal Aviation Act
10 of 1958 (49 U.S.C. 1301(32)); or

11 “(E) the child is a foreign official, an internation-
12 ally protected person, or an official guest as those
13 terms are defined in section 1116(b) of this title.

14 “(2) In the absence of facts indicating a lack of Federal
15 jurisdiction, the failure to release the victim of an offense
16 under this section within sixty days of the offense is a suffi-
17 cient indication of the possibility that Federal jurisdiction
18 exists, by virtue of the movement of the victim across a State
19 or United States boundary, to justify the commencement of a
20 Federal investigation subject to the provisions of subsection
21 (g) of this section.

22 “(d) As used in this section, the term—

23 “(1) ‘child’ means a person of not more than four-
24 teen years of age;

1 “(2) ‘consent’ includes, but is not limited to, will-
2 ing assent, but does not include assent given by a
3 person—

4 “(A) who is legally incompetent to authorize
5 the conduct assented to;

6 “(B) who is, by reason of age, mental dis-
7 ease or defect, or intoxication, manifestly unable,
8 or known by the person alleged to have violated
9 this section to be unable, to make a reasonable
10 judgment as to the nature or harmfulness of the
11 conduct assented to; or

12 “(C) whose assent is induced by force,
13 threat, intimidation, or deception; and

14 “(3) ‘restrain’ means to restrict the movement of
15 the child without consent of the person whose right of
16 custody or visitation is violated, so as to interfere with
17 that child’s liberty, by—

18 “(A) removing him from his place of resi-
19 dence or school; or

20 “(B) confining him in any place or moving
21 him from one place to another, unless such con-
22 finement or movement is trivial.

23 “(e) It is a defense to a prosecution under this sec-
24 tion that—

1 “(1) no person claiming entitlement to a right vio-
2 lated by this offense reported the offense to local law
3 enforcement authorities within ninety days after the
4 beginning of the restraint; or

5 “(2) the person alleged to have violated this sec-
6 tion returns the child unharmed not later than thirty
7 days after the issuance of a warrant for the arrest of
8 that person.

9 “(f) Any sentencing guidelines promulgated for an of-
10 fense described in this section shall include a reduction in the
11 term of imprisonment, or penalty, or both, in any case in
12 which the defendant returns the child unharmed.

13 “(g)(1) Any person claiming entitlement to a right vio-
14 lated by an offense under this section shall—

15 “(A) notify local law enforcement authorities; and

16 “(B) request assistance from the State parent lo-
17 cator service in locating the child and the person al-
18 leged to have violated this section.

19 “(2) The State parent locator service shall promptly
20 seek the assistance of the Federal Parent Locator Service in
21 locating the child and the person alleged to have violated this
22 section.

23 “(3) The Federal Bureau of Investigation may not com-
24 mence an investigation of an offense under this section unless
25 sixty days have elapsed after both—

1 “(A) a report is filed with local law enforcement
2 authorities in accordance with subsection (g)(1)(A) of
3 this section; and

4 “(B) a request for assistance of the State parent
5 locator service is made in accordance with subsection
6 (g)(1)(B) of this section.”.

7 (2) The table of sections at the beginning of chapter 55
8 of title 18, United States Code, is amended by inserting after
9 the item relating to section 1202 the following new item:

 “1203. Parental kidnaping.”.

Additional Submissions of
OUR GREATEST Arnold J. Miller

RESOURCE

... OUR CHILDREN

A PUBLICATION OF CHILDREN'S RIGHTS, Inc.
3443 17TH STREET, N.W. WASHINGTON, D.C. 20010 PHONE: (202) 462-7573

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FALL 1979

Federal Child-Snatching Bills

You will all be glad to learn that the U.S. Senate Subcommittee on Criminal Justice has tentatively scheduled hearings on S.105 (The Parental Kidnapping ACT) for late January 1980!! If you want to have input, contact the members of the Subcommittee:

SENATE SUBCOMMITTEE ON CRIMINAL JUSTICE

Chairman: Joseph Biden, Jr., DE

* Edward Kennedy MA	* Charles McC Mathias MD	John Culver IA	Thad Cochran MS
* Dennis DeConcini AZ	Paul Laxalt NV	Patrick Leahy VT	Orin Hatch UT

* co-sponsors of the Act.

The sponsor of S.105 is Senator Malcolm Wallop of Wyoming. The twenty-two co-sponsors are:

Kennedy MA	McGovern SD	Moynihan NY	Young ND
Bumpers AK	Levin MI	Thurmond SC	Domenici NM
Stevens RI	Riegle MI	Hollings SC	Schmitt NM
Inouye HI	DeConcini AZ	Weinz PA	Simpson WY
Mathias MD	Hayakawa CA	Durenberger MN	Johnston LA
	Cranston CA	Randolph WV	

In the U.S. House of Representatives, H.R.1290 (The Parental Kidnapping Act) is still collecting cobwebs in the Subcommittee on Crime, chaired by John Conyers, Jr. of Michigan. Mr. Conyers has still failed to comprehend the serious nature of the problems of child-snatching and child restraint.

To urge hearings on H.R.1290 in the near future, WRITE — CALL — TELEGRAM John Conyers, Jr., as well as the members of the Subcommittee:

HOUSE SUBCOMMITTEE ON CRIME

Chairman: John Conyers, Jr., MI

* Henry Hyde IL	* James Sensenbrenner WI	Robert Kastensmeyer WI	Harold Volkmer MO
* Lamar Gudgeon NC	Michael Lynn Synar OK	Don Edwards CA	John Ashbrook OH

* co-sponsors of the Act.

The sponsor of H.R.1290 is Representative Charles E. Bennett of Florida. The fifty-four co-sponsors for the bill are:

Addabbo NY	Lagomarsino CA	Mazzoli KY	Aucoin OR
Rangel NY	Goldwater CA	D'Amours NH	Duncan OR
Lafolce NY	McCloskey CA	Cleveland NH	Boland MA
Richmond NY	Johnson CA	Florio NJ	Young MO
Ottinger NY	Fazio CA	Thompson NJ	Seiberling OH
Ferraro NY	Mineta CA	Gudger NC	Oberstar MN
Peyser NY	McKinney CT	Fountain NC	Byde IL
Mitchell NY	Long MD	Flaherty VA	Price KS
Downey NY	Spellman MD	Whitaker VA	Whittaker KS
Buchanan AL	Hamilton IN	Bailey PA	Glickman KS
Evans GA	Fitchman IN	Ertel PA	English OK
Shroeder CO	Fascell FL	Murphy PA	Aspin WI
Bezell IA	Hutto FL	Dougherty PA	Sensenbrenner WI
	Mica FL	Bonker WA	

If any of these are your Senators or Congresspersons, let them know how you feel on the child-snatching issue.

OUR GREATEST

RESOURCE

OUR CHILDREN

A PUBLICATION OF CHILDREN'S RIGHTS INC

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SUMMER 1979

Federal Child-Snatching Bills

As many of you probably already know, the House Subcommittee on Crime was scheduled to hold hearings on H.R.1290 (the House version of the Parental Kidnapping Prevention Act of 1979) on 27 June 1979. CRI submitted a list of experts who would be willing to testify. However, the Subcommittee has postponed hearings on this bill indefinitely. There was some discussion of holding joint subcommittee hearings on the issue; at present, there is no hearing scheduled at all.

The final decision to hold hearings rests with the Chairman - John Conyers, Jr., of Detroit, Michigan. He has closed his mind and heart to the 100,000 children victimized by child-snatching each year. Repeatedly, Mr. Conyers has demonstrated an ignorance of the problem, as well as a lack of concern for American children. CRI finds this an astonishing response from a Congressman during this International Year of the Child.

If you wish to make yourself heard: WRITE — CALL — SEND TELEGRAMS to John Conyers, Jr., as well as the members of the Subcommittee:

House Subcommittee on Crime

Don Edwards	CA
Michael Lynn Synar	OK
*Henry Hyde	IL
*Lamar Gudger	NC

Chairman: John Conyers, Jr.	MI
Harold Volkmer	MO
John Ashbrook	OH
*James Sensenbrenner	WI
Robert Kastenmeier	WI

You may wish to contact the subcommittee advisors as to why this issue is not being pressed; if so, get in touch with the two following gentlemen:

Hayden Gregory, Esq.
Subcommittee on Crime
U.S. House of Representatives
Washington DC 20515

Frank Dunbaugh, Esq.
Subcommittee on Crime
U.S. House of Representatives
Washington DC 20515

or call the Subcommittee direct at 202/225-1695.

The Sponsor of H.R.1290 is Charles E. Bennett of Florida; the co-sponsors are the following Congresspersons:

Buchanan	ALA	Lagomarsino	CAL	Fascell	FLA
Evans	GA	Hamilton	IND	Hutto	"
Shroeder	COL	Bedell	IA	Mica	"
Hyde	ILL	Mazzoli	KEN	Whittaker	KAN
Price	"	Boland	MAS	Glickman	"
Long	MD	Young	MO	AuCoin	ORE
Spellman	"	Seiberling	OH	Duncan	"
Addabbo	NY	LaFalce	NY	Ottinger	NY
Rangel	"	Richmond	"	D'Amours	NH

co-sponsors of H.R.1290, continued:

Florio	NJ	Gudger	NC	Bailey	PENN
Thompson	"	Fountain	"	Ertel	"
Sensenbrenner	WIS	Fisher	VA	Murphy	"
		Whitehurst	"		

There have still been no hearings scheduled on S.105, the Senate version of the Parental Kidnapping Prevention Act of 1979; this bill is presently in the Senate Subcommittee on Criminal Justice, the members of which are:

Senate Subcommittee on Criminal Justice

		Chairman, Joseph Biden, Jr.	DE
*Edward Kennedy	MA	John Culver	IA
*Dennis DeConcini	AZ	Patrick Leahy	VT
*Charles McC Mathias	MD	Thad Cochran	MS
Paul Laxalt	NV	Orrin Hatch	UT

In the Senate, the bill's sponsor is Senator Malcolm Wallop of Wyoming; the co-sponsors on S.105 are:

Kennedy	MAS	McGovern	SD	DeConcini	ARIZ
Moynihan	NY	Young	ND	Heinz	PENN
Bumpers	ALSK	Inouye	HAW	Simpson	WYOM
Cranston	CAL	Levin	MICH	Domenici	NMEX
Hayakawa	"	Riegle	"	Schmitt	"
		Thurmond	SCAR		

* co-sponsors of the Act who are also on the responsible sub-committees.

If any of these co-sponsors are your Congresspersons or Senators, thank them for supporting this legislation. Let them know how you feel on the child-snatching issue — show them your support.

We feel very strongly that these bills should be passed in 1979 — the International Year of the Child. Child-snatching and child restraint are, our data shows, increasing at an incredible rate, not only in the U.S., but all over the world. It is imperative that hearings be scheduled immediately!!

INTERNATIONAL TASK FORCE

In the past year, we have had an increasing number of children taken out of the U.S. — to the Middle East, Western Europe, South America, Canada, Mexico and the Far East. Many of you have provided us with wonderful contacts for parents whose children are abducted to foreign countries, but we will always need to know more! It would be greatly appreciated if those of you who have had to deal with foreign cases would take a few moments to jot down information for us, using the following format, so that we can compile an ITF Handbook similar to the Handbook discussed above. Basically, we need to know:

Name of Agency or Individual
Address and Telephone Number
Contact Person (if an agency)
Type of assistance provided
Your appraisal (Good, Fair, Worthless)

If you could provide this information for foreign social agencies, attorneys, Embassies — anyone who could help (or hinder!) a parent in that country, it would help dozens of parents dealing with cases in the area you are familiar with.

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SPRING 1979

Federal Child-Snatching Bills

The Parental Kidnapping Prevention Act of 1979 was introduced in both houses of Congress on 23 January 1979. In the Senate, the measure (S.105) is sponsored by Senator Malcolm Wallop of Wyoming; its House of Representatives companion bill (H.R.1290) is sponsored by Congressman Charles E. Bennett of Florida. CRI has been working on this legislation for years, and testified for Mr. Wallop's legislation in 1978; we have just learned that the House Subcommittee on Crime plans to hold initial hearings on H.R.1290 in late June. The Senate has not scheduled hearings for 1979 yet. These bills are nearly identical, and provide for:

- Full faith and credit in custody matters, based on the American Bar Association's Uniform Child Custody Jurisdiction Act;
- Use of the national Parent Locator Service to trace abducting parents and children (the PLS now locates parents for non-support);
- Criminal provisions for the 7-day concealment or 30-day restraint of a child. This provision contains fines of \$10,000 and possible prison sentences for these offenses.

CRI feels that the Parental Kidnapping Prevention Act is a giant step toward relieving the traumas created by child-snatching and child restraint. We urge all our Members and supporters to write their Congressperson and Senators, urging their support for these bills.

In the Senate, the bill is before the Senate Judiciary Committee, chaired by Senator Edward Kennedy of Massachusetts, who is a co-sponsor of S.105. The House bill, H.R.1290, is before the House Judiciary Committee, Subcommittee on Crime, which is chaired by Congressman John Conyers, Jr. of Michigan. We urge letters to these gentlemen, as well as to the members of their committees.

All U.S. Senators may be addressed:

The Honourable _____
United States Senate
Washington DC 20510

All Members of the House may be addressed:

The Honourable _____
U.S. House of Representatives
Washington DC 20515

Below is a listing of the members of the House Judiciary Committee and the Subcommittee on Crime. It is particularly important that you write to these persons NOW!! Because the subcommittee will hold hearings in late June, it is imperative that we have proof of public concern with these issues.

HOUSE JUDICIARY COMMITTEE

Peter W. Rodino, Jr., N.J., chairman	Robert T. Matsui, Calif.
Jack Brooks, Tex.	Abner J. Mikva, Ill.
Robert W. Kastenmeier, Wis.	Michael D. Barnes, Md.
Don Edwards, Calif.	Richard C. Shelby, Ala.
John Conyers, Jr., Mich.	Robert McClary, Ill.
• John F. Seiberling, Ohio	Tom Haislack, Ill.
George E. Danielson, Calif.	Hamilton Fish, Jr., N.Y.
Robert F. Drinan, Mass.	M. Caldwell Butler, Va.
Elizabeth Holtzman, N.Y.	Carlos J. Moorhead, Calif.
• Romano L. Mazzoli, Ky.	John M. Ashbrook, Ohio
William J. Hughes, N.J.	• Henry J. Hyde, Ill.
Sam B. Hall, Jr., Tex.	• Thomas N. Kindness, Ohio
• Lamar Gudger, N.C.	Harold S. Sawyer, Mich.
Harold L. Volkmer, Mo.	Jon Lunnen, Calif.
Herbert E. Harris II, Va.	• F. James Sensenbrenner, Jr., Wis.
Michael Lynn Synar, Okla.	

Subcommittee on Crime

John Conyers, Jr., Mich., chairman	John M. Ashbrook, Ohio
Robert W. Kastenmeier, Wis.	Henry J. Hyde, Ill.
Don Edwards, Calif.	F. James Sensenbrenner, Jr., Mich.
Lamar Gudger, N.C.	
Harold L. Volkmer, Mo.	
Michael Lynn Synar, Okla.	

• Co-sponsors of H.R.1290, on the Committee.

• Co-sponsors of House Bill H.R.1290:

Joseph Addabbo (NY)	Billy Lee Evans (GA)	F. James Sensenbrenner, Jr (WI)
Edward Boland (MA)	Romano Mazzoli (KY)	John J. LaFalce (NY)
Norman D'Amours (NH)	L. H. Fountain (NC)	Lee Hamilton (IN)
Dante Fascell (FL)	Berkley Bedell (IA)	Dan Glickman (KS)
Joseph Fisher (VA)	Don Bailey (PA)	Les AuCoin (OR)
James Florio (NJ)	Clarence Long (MD)	Patricia Schroeder (CO)
Earl Hutto (FL)	Charles Rangel (NY)	John Seiberling (OH)
Austin Murphy (PA)	Robert Lagomarsino (CA)	Richard Ottinger (NY)
Frank Thompson, Jr. (NJ)	G. Wm. Whitehurst (VA)	Robert Young (MO)
Lamar Gudger (NC)	Sob Whittaker (KS)	Frederick Richmond (NY)
Dan Mica (FL)	John Buchanan (AL)	Robert Duncan (OR)
Allen Ertel (PA)	Henry Hyde (IL)	Melvin Price (IL)

Co-Sponsors of Senate bill S.105:

Edward Kennedy (MA)	Daniel Patrick Moynihan (NY)	Strom Thurmond (SC)
George McGovern (SD)	Milton Young (ND)	Alan Simpson (WY)
Alan Cranston (CA)	John Heinz (PA)	S. I. Hayakawa (CA)
Donald Riegle (MI)	Dale Bumpers (AK)	Harrison Schmitt (NM)
Dennis DeConcini (AZ)	Daniel Inouye (HI)	Pete Domenici (NM)
Carl Levin (MI)		

I. Y. C.

CRI is proud to have been appointed to the National Organizations' Advisory Council to the National Commission on the International Year of the Child. Through the efforts of CRI, thirteen members of Congress have asked the Commission to study the issue of child-snatching for inclusion in the final Commission Report to President Carter.

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WINTER 1979

CRI'S POSITION ON PROPOSED CHANGES TO THE WALLOP AMENDMENT

Our organization is, and has been, the only national organization to deal specifically with the problems of child-snatching and child restraint. Our files contain thousands of cases in these categories, and we feel a great responsibility to our members in discussing these issues with legislators on both state and national levels.

After five years of trying to resolve these problems through the legislation of a very concerned Congressman, Charles E. Bennett, the news that Senators Wallop, Kennedy, Thurmond and McGovern had introduced child-snatching legislation (now widely referred to as "the Wallop Amendment") excited families all across the country. We at CRI headquarters have spent the past several months explaining the intricacies of the legislative system to these parents, whose faith in the ability and willingness of Congress has been reaffirmed time and again by our organization.

Congress, in this new session, will have an opportunity to remedy one of the most distressing situations in the country — a situation described by Albert J. Solnit, M.D., Director of the Yale Child Study Center, as one in which "children can be plunged into a despair so deep that it causes persistent fearfulness and distrust."

It is the hope of our organization and the thousands of families around the country which we represent, that the Wallop Amendment as presented in the Congressional Record of 25 January 1978 will be introduced as a separate bill in both the Senate and the House in the 96th Congress, First Session.

Several points must be kept in sight at all times in discussing solutions to the child-snatching and child restraint problems:

- these actions are psychologically (and sometimes physically) abusive.
- the vast majority of these actions (over 70% of the cases in our files) occur prior to custody determinations.
- the Justice Department has consistently opposed any federal government involvement in making custody determinations.

With these points in mind, let us now examine the original Amendment and the proposed changes.

Civil Provisions

Basically, these provisions follow the Uniform Child Custody Jurisdiction Act, which CRI has always supported. To date, twenty-eight states have adopted the Act, and we are proud of the role our organization has played in supporting passage of the Act in many states. CRI feels that the definition

of "home states" should be modified, however, to require that, in instances of child-snatching and child restraint, the "home state" should be the one in which the child resided for the six-month period preceding such child-snatching or child restraint. Otherwise, the absence of an original custody order prior to such action may well leave an unnecessary loophole for parents who want to abduct their children.

The Amendment also provides for use of the Federal Parent Locator Service in child-snatching cases, which should take the burden of most of the investigative work from the shoulders of the F.B.I.

Criminal Provisions

In the original Amendment, the definition of "right of custody" can be paraphrased as follows:

A person is guilty of an offense if he intentionally restrains his child in violation of any person's right of custody or visitation arising from:

- (A) a valid child custody determination (court order);
- (B) a valid written agreement (such as a separation agreement) between the child's parents or guardians; or
- (C) the relationship of parent and child, or guardian and ward, absent the circumstances set forth in (A) and (B) above.

CRI was instrumental in forming this language, and our membership is highly disturbed by the proposal to eliminate definitions (B) and (C). This proposal would cause there to be an offense only if a parent intentionally violates a valid custody decree. This is unacceptable under all free of the criteria stressed earlier, for the following reasons:

- the proposed change implies that only children covered by a custody decree are adversely affected, which is obviously and patently absurd. There has been more than ample evidence that child-snatching and child restraint are abusive — to any child, not just a child fortunate to have been under a court order at the time of such act.
- the proposed change is manifestly unjust and discriminatory, as it will, in practice limit access to legal remedy to less than 30% of the victims of these abusive actions. The inclusion of definitions (B) and (C) was deliberate, and the sole purpose of that inclusion was to guarantee that all victims would be eligible for assistance under the law. The blatant discrimination in the proposed change is precisely what the original Amendment tried to avoid, by spelling out any possible legal situations in which child-snatching and childrestraint take place. The dilution of this language into a sugar-water political gesture of concern will be considered a Congressional failure by families victimized by these actions.
- while the Justice Department has adamantly opposed intervention in domestic disputes or custody determinations, this change would throw that Department into the thick of the imbroglio — requiring that Department to determine whether a custody order is valid and "entitled to enforcement pursuant to the provisions of 28 U.S.C. 1738A." This does not fit what the Justice Department has stated it would be willing to accept as its duties under this type of law.

Basically, then, we feel that the Wallop Amendment as originally stated in the Congressional Record of 25 January 1978 is the best, most viable solution to the problems of child-snatching and child restraint. We feel that the proposed change sanctioned by the staff of the Senate Judiciary Committee and the Justice Department are an affront to the intention of the amendment's sponsors, unresponsive to the need for protecting children from these abusive actions, discriminatory against the majority of the victims of such actions, and in direct conflict with the oft-stated wishes of the Justice Department.

In the interest of finding a viable solution, and in the spirit of truly helping victims of these abusive actions, CRI hopes that the Wallop Amendment will be re-introduced in toto as originally set forth in the Congressional Record of 25 January 1978.

UNIFORM CUSTODY

There are now 28 states which have adopted the Uniform Child Custody Jurisdiction Act, according to the National Conference of Commissioners on Uniform State Laws. We remind our members that UCCJA will not end child-snatching, though it will very likely cut down on "court shopping." The new list of adopting states is:

Alaska	Georgia	Maryland	Ohio
Arizona	Hawaii	Michigan	Oregon
California	Idaho	Minnesota	Pennsylvania
Colorado	Indiana	Missouri	Rhode Island
Connecticut	Iowa	Montana	South Dakota
Delaware	Kansas	New York	Wisconsin
Florida	Louisiana	North Dakota	Wyoming

"RETURN OUR CHILDREN" NEWSLETTER

Mr. Harold Miltch, a marketing specialist, has developed a direct mail campaign covering all schools in the U.S. and Canada. The purpose of the campaign will be to locate missing school-aged children. The cost of participating in the campaign is approximately \$500 and there are no guarantees. For further information, please contact:

Harold Miltch
1 Lamplighter Lane
Rochester NY 14616

716/ 663-3169

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WINTER 1978

THE SENATE/CURRENT LEGISLATION

The U. S. Senate recently passed the revised criminal code (S.1497), which includes Senator Wallop's amendment to the Kidnap Statute. This amendment would:

- increase the scope of the Parent Locator Service to provide information in cases of missing children;
- add a new "Restraint of a Minor" section, which would:
 - make abduction and concealment of a child a Federal Class B Misdemeanor, and
 - make restraint of a child without concealment a Federal Class C Misdemeanor;
- require that individual States honor previous custody awards by other States.

This is the most powerful and comprehensive piece of Federal legislation on child-snatching yet, and we support it whole-heartedly. Your support is needed too; don't let us down, write your Congresspersons and Senators today!!

The Wallop Amendment distinguishes between child-snatching and child restraint; explains how and when the FBI would become involved (based on CRI's 30/90 Day Proposal of December 1975); calls for the use of the Parent Locator Service for preliminary searching; and incorporates much of the American Bar Association's model for uniform custody.

To conclude the Senate activities, Senator George McGovern has introduced a twin to the Moss-Edwards bill in the House (H.R.988), which calls for full faith and credit between States in Custody awards.

THE HOUSE/CURRENT LEGISLATION

In the past several months, a number of new bills have been introduced in the U.S. House of Representatives to deal with the child-snatching problem. We are very happy to see this interest in such a serious problem.

S BENNETT BILL (H.R.762) is the original child-snatching legislation. would:

- include parental abductions of children under the Federal Kidnap Statute, and
- provide child-snatching penalties of one year imprisonment and/or \$1,000 fine.

THE KASTEN BILL (H.R.10493) would:

- include child-snatching under the Federal Kidnap Statute,
- require States to honor previous custody awards by other States, and
- provide child-snatching penalties of one year imprisonment and/or \$5,000 fine.

THE SAWYER BILL (H.R.9478) would:

- include child-snatching in violation of a custody order under the Federal Kidnap Statute,
- include persuading a child to leave a parent in violation of a custody order under the Federal Kidnap Statute,
- provide penalties of one year imprisonment and/or \$1,000 fine for first offenses, and
- provide penalties of two year's imprisonment and/or \$2,000 fine for repeat offenses.

THE FISH BILL (H.R.9913) would:

- place State custody awards under the jurisdiction of Federal District Courts, so that if custody were violated, a Federal warrant could be issued.

THE MOSS BILL (H.R.988) would:

- require full faith and credit between States in custody awards.

All of these bills are in the Judiciary Committee of the U. S. House of Representatives, and at present none of them are scheduled for hearings.

In an effort to resolve the child-snatching problem, Congressman Fish circulated a letter to the other sponsors of child-snatching legislation in the House (all those listed above), seeking their signatures and urging for either individual hearings on their respective bills or joint hearings on the child-snatching issue. Four of the five Congressmen signed the letter (Congressman Moss declined to sign). The letter was then forwarded to the Chairmen of the subcommittees in which these bills are pending, i.e., John Conyers, Jr. (Subcommittee on Crime) and George E. Danielson (Subcommittee on Administrative Law). Congressman Danielson said he would hold hearings as soon as he gets an opening; as expected, Congressman Conyers has not replied.

There is no single House bill that really resolves the child-snatching issue. The Bennett and Kasten bills are the most promising. Our main objection to the Sawyer approach is that it would only be of assistance in those child-snatching cases where custody had been awarded prior to the taking of the child. Unfortunately, that only addresses about 30% of the cases. The Fish bill approaches the problem from a civil point of view, rather than a criminal one. It, like the Sawyer approach, addresses only the 30% of cases in which custody was awarded prior to the child-snatching. The U. S. Justice Department should not be directly involved with the problem of enforcing custody orders. As far as CRI is concerned, child-snatching is not a custody problem, but is actually a form of child abuse, and should be treated as a crime against the child.

We're hoping that Congressman Fish will remain as flexible towards solutions as the intent of his letter to the subcommittee chairmen implies.

The best solution, we believe, would be for the House Subcommittee on Criminal Justice (chaired by Congressman James R. Mann) to adopt the Wallop Amendment into the House version of the rewrite of the U. S. Criminal Code (H.R.6869). The Subcommittee on Criminal Justice is currently reviewing both H.R.6869 and the Senate version, S.1437 — CRI will be giving testimony on the child-snatching issue in early March. Wish us luck!!!

CHILD-SNATCHING/RESTRAINT

Child-snatching is a situation in which one parent abducts and con-
als a child from the other parent.

Child restraint is a situation in which a child is kept away from
 the parent, without the elements of abduction and concealment.

Although CRI has been predominantly concerned with child-snatching for the past three years, we have had huge numbers of calls and letters from parents who know where their children are, but are still legally helpless as far as being able to see or communicate with their children. We feel that the withholding of the child is extremely harmful, whether he is actually being concealed from the victim parent or not, and are therefore very happy that both child-snatching and child restraint are considered in the Wallop Amendment to S.1437.

This legislation resolves the problems of child-snatching and restraint, without being concerned with issues of custody, court orders, etc. These are issues that local courts should handle — they are not problems for the Federal Government to resolve.

As far as the child is concerned, he should not be burdened with the decisions of court orders or custodial rights. He has THE RIGHT TO KNOW AND LOVE BOTH PARENTS. When a parent snatches or restrains a child, the result is the same — the child is the loser. His need to express love for both parents is being ignored; he is being used as a pawn to spite the other parent; he loses his sense of community and friends. Parents engaging in these actions have managed to teach their children a very sad lesson that it is not worthwhile to trust adults. Reconstructing that trust and love is a long, hard road. Credit goes to those parents who refuse to give up.

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FALL 1977

CHILD-SNATCHERS

Perhaps the most often-asked question about child-snatching is: "Who does it most often — the mother or the father?" The answer is simple enough on the surface — the father — but we must examine the issue further for a true explanation.

The social phenomenon of child-snatching occurs when a couple has decided to separate or divorce. As expected, emotions usually run high and rationale is quite low. The child would probably prefer no separation at all — unfortunately, it seldom works out that way, and the children are caught in the middle. They must find a way to love both parents without losing the love of either.

In most jurisdictions throughout the United States, mothers are awarded custody of the children more often; therefore, fathers (as the non-custodial parent) are more frequent child-snatchers at this time. We would like to explore some of the motives of the abducting parent:

- * Loss of (or fear of losing) custody.
- * Bitterness or anger at something the ex-spouse has said or done.
- * Retaliation for denial of visitation.
- * Difficulty in the adjustment of having to make child-support payments without having free access to the child.
- * Resentment about being excluded from the decision-making process in the child's life and upbringing.

If the above motives come into play, the parent may give very little thought to the child's best interests, and it's at this point that we finally understand why parents snatch their children, and why fathers are now the more frequent snatchers. True, it's usually the father who does the taking, but it's really the non-custodial parent — not because he's the father, but because he is the parent most likely to lose in court.

BUT WHATEVER THE REASON, PARENTS SHOULD REALIZE THE EFFECT CHILD-SNATCHING WILL HAVE ON THEIR CHILDREN, AND TAKE ALL PRECAUTIONS TO AVOID THIS CRIME AGAINST THEIR LOVED ONES.

Many fathers' organizations are battling for equal rights in the courtroom in custody matters all around the United States. CRI supports the equal rights philosophy, but wants to caution its members one major point: if through the years the domestic court judges equalize their custodial decisions between fathers and mothers, this will not change the status of child-snatching!! There will simply be as many mothers engaging in child-snatching as fathers. This is why we must understand that it is not "the father" but the non-custodial parent, the parent most likely to lose, who commits this crime against our children.

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SPRING 1977

THE REAL SOLUTION

Child-snatching has many causes, and many "solutions" have been offered by people all around the country. Aside from many that are clearly unworkable (such as tattooing each child's social security number on his or her foot), three alternatives seem to be most widely talked about. In order to clarify these alternatives, and to answer the many questions you have raised about them, we will discuss (non-legally) all three right here and now!

#1. Uniform Custody. This refers to the Uniform Child Custody Jurisdiction Act, which has been adopted by the following eleven States: California, Colorado, Delaware, Hawaii, Maryland, Massachusetts, Michigan, North Dakota, Oregon, Wisconsin and Wyoming.

Uniform custody would (hopefully) end the increasingly common practice of "court shopping," in which a parent who lost custody in one State moves to another State and tries again. It is not uncommon to hear of children whose parents each have valid and legal custody in one or more States. Essentially, a State which had adopted uniform custody would refuse to accept jurisdiction in a custody issue in which another State had already made a decision. The parent seeking a change in custody would have to continue proceedings in the original State. In this way, one court would presumably have all the relevant facts and testimony. Many people believe that this would end child-snatching. However, it should be noted that uniform custody does not provide for verifying whether another State has already awarded custody, or for returning the child to the original State. Further, there is little evidence that child-snatchers seek legal custody in their new State — indeed, they seem to avoid doing anything that could provide a clue for the victimized parent. **THUS, ALTHOUGH UNIFORM CUSTODY MIGHT WELL CUT DOWN ON COURT-SHOPPING, IT IS UNLIKELY THAT IT WOULD HAVE MUCH EFFECT ON CHILD-SNATCHING.**

#2. Full Faith and Credit. Bills have been introduced in both Houses of Congress (H.R. 988, by Congressmen Moss and Edwards, and S. 797 by Senator McGovern) "to exercise the power of Congress under Article IV of the Constitution to declare the effect of certain State judiciary proceedings respecting the custody of children." Basically, this would provide that the decision of the first court must be upheld by courts in other States. This legislation complements the uniform custody concept, and would have a similar effect. Other than the shortcomings of uniform custody discussed above, there is another technical drawback: previously, full faith and credit has required States to uphold only final orders of other States' courts. Custody decrees are subject to modification in the best interest of the child, and are therefore generally not considered final orders. **THEREFORE, IT IS UNLIKELY THAT CONGRESS WILL REQUIRE THE INDIVIDUAL STATES TO HONOR NON-FINAL DOMESTIC CUSTODY DECREES.**

#3. Amend Kidnap Statute. A bill has been introduced by Congressman Bennett (H.R. 762) which would amend the present Federal Kidnap Statute so that a parent would be held accountable for taking and concealing a child from the other parent. It would also provide for a modified penalty (one year imprisonment and/or \$1,000 fine) for such parental kidnapers. By making child-snatching a Federal kidnap offense, the actual location of the parent and child would be possible — AN OBSTACLE NEITHER UNIFORM CUSTODY NOR FULL FAITH AND CREDIT PROVIDE SOLUTIONS FOR. Also, because it is amending an already-existing Federal law, it doesn't have the disadvantage of extending Federal intrusion into State matters; custody would still be decided and enforced by the States. THIS BILL WOULD PROVIDE FOR LOCATING THE PARENT AND CHILD, AND HOLDING THE ABDUCTOR ACCOUNTABLE FOR HIS/HER ACTIONS.

Perhaps what is needed legislatively is a combination of all three alternatives.

But the real solution is for parents to realize that child-snatching and court-shopping are temporary gains at best. As long as the attitude prevails that children are prizes to be won in a courtroom, nobody wins.

A MESSAGE FROM THE PRESIDENT

On 25 March, CRI presented testimony for public hearings on child-snatching in Los Angeles County. I would like to present excerpts from that testimony as my message to victim parents and interested persons:

"We compliment your State for her effort to eliminate the trauma of child-snatching. California is the first State to pass comprehensive legislation on this issue, and we hope that others will soon follow her example.

"However, the fact still remains that sister States can disregard California warrants and requests for extradition, and can also disregard custody orders, choosing instead to grant custody to the parent now residing within their own jurisdiction. Our files are filled predominantly with parents who have been unsuccessful in locating their children and ex-spouses. These are problems that the States cannot resolve.

"California has provided for use of the Parent Locator Service for finding missing children. However, in most States use of this service is prohibited except for locating parents who are not making child support payments. Clearly, there is much work to be done before the States will be capable of even making a token attempt to locate victims of child-snatching.

"Our records also show that the majority of child-snatchings occur prior to custody being awarded — indeed, many occur prior to either parent's filing for custody. Thus, often there is no court order or even an active proceeding when the children are taken. This leaves the victim parent in an incredible situation. The fleeing parent cannot be charged with custodial interference or non-support, and there are no avenues available for assistance. But even for those parents who have court orders, assistance is meager and arbitrarily handled. In most States, custodial interference is a matter of being in contempt of court — it's usually difficult to get a bench warrant, and even that doesn't help if the parent has left the State. We have heard numerous Judges complain that their custody orders are unenforceable; they are quite concerned about the open door available to parents who have lost custody, fear losing custody, or simply don't want to be bothered with court appearances and legal fees.

"And yet, custody is not the issue here: children are the issue. Regardless of whether a parent has custody or visitation rights — regardless of whether custody has been awarded — the question is really 'Does any person have the right to interfere with a child's right to know and love both parents? Does any person have the right to conceal a child and thereby violate the rights of the other members of the family unit to maintain contact with one another?' We feel that when one parent intentionally interrupts the love relationship between a child and the other parent, something needs to be done about it. Since 1934, this country has condoned the act of child-snatching by excluding parents under the Federal Kidnaping Statute. It is time to bring our laws up-to-date.

"We truly feel that even if a State could pass a perfect law, it wouldn't help unless there were Federal legislation to back it up. As long as States can ignore one another's warrants and court orders, and as long as the cost of locating the abducting parent is the responsibility of the victim parent, there will be no end to child-snatching. Only with Federal legislation to allow locating and prosecution of these actions will we see even a hope for ending this irresponsible action.

"The matter of location is one which has bothered us from the very beginning. It is far too easy to get 'off the track' and discuss uniform custody, full faith and credit, and so on. These issues don't even come up for most of the parents in our files — they can't even find their ex-spouses, much less try to get them extradited or into a courtroom! It is not unusual for a parent to spend ten or twenty thousand dollars to find their children, over a course of several years. The idea of then spending thousands more to fight a custody battle in a foreign jurisdiction is overwhelming. And, of course, there is no guarantee that the parent will not abduct the children again, either before or after custody is awarded. Custody is not the issue. Too many parents in our records have custody in two or three States, — but they don't have their children.

"And what of the children? What has happened to them during the intervening years? A dismally small number of the parents we know of have found their children. Almost without exception, the children are frightened, even terrified. Why? Because the abducting parent has told them that mommy or daddy will hurt them — kill them — take them far away. Some children have become hysterical at seeing what they thought was a ghost — they had been told the other parent was dead.

"Almost all of these children have required psychiatric or psychological counseling. It is not unusual for the entire family to participate. Adults we have talked with, who were abducted as children, feel quite confused about what happened to them. They were surprised to find that the parent left behind was looking for them all those years, worrying about them and wondering what had become of them. They usually feel that they were cheated out of a meaningful and important relationship — and they don't understand why.

"The fact that child-snatching goes unpunished, even when the parent can be found, only makes the action more tempting, and we feel quite strongly that Federal legislation which will provide not only for the location but also the prosecution, of child-snatchers is the only solution. If, when a parent asks an attorney what the result would be if he or she simply took a child, the reply could be something other than 'probably nothing,' we feel that child-snatching would be reduced drastically."

Arnold I Miller
President

OUR GREATEST

RESOURCE

... OUR CHILDREN

3443 17TH STREET, N.W.

A PUBLICATION OF CHILDREN'S RIGHTS, Inc.

WASHINGTON, D.C. 20010

PHONE: (202) 462-7573

VOL. 2, NO. 2

SUMMER 1976

CUSTODY & CHILD-SNATCHING

The efforts of CRI and the American people are saying that we want the policies of government changed — CRI has no doubt they will be, but time is the most crucial factor. When a parent experiences the disappearance of his child, he soon realizes the child's plight in wanting to know and love both parents. Helplessness, panic, depression and similar feelings set in, because each day that goes by is another day the child is deprived of his parent's love. Add to this the financial drain on lawyers and private detectives, and you have a situation that SHOULD NOT HAVE TO HAPPEN!

The welfare of the child and his best interests should be foremost. It is time we accept greater responsibility for our children — our country's greatest resource, and the muscle fiber of our future.

Children don't know about and aren't interested in custody awards, visitation agreements, unfit parents, etc. A child's love is almost limitless, and invariably he will defend a parent in spite of "stories." Parents must become aware that they and they alone are responsible for making the court order work; they alone can make the child feel comfortable and secure in strange new schedules; and they alone can assure that the child won't have to make a choice between parents, by behaving like the kind of mature adults they want their children to become.

When two good, law-abiding parents walk into a courtroom in a custody dispute, the Judge is supposed to make his decision "in the best interests of the child." He sees before him two people who claim to love their child very much, yet he hears a verbal dispute which falls short of the child's best interests. A King Solomon decision is necessary in these cases. Many parents are aghast at the final decision a domestic judge makes, yet they must understand the judge's point of view: he is handing down a decision which is unenforceable. The strength of his decision does not rest with the court, but with the parents involved.

If the parents are sincere in wanting what is best for the child, they will work within the guidelines set by the court; if one parent is unwilling to accept those guidelines, problems such as withholding visitation and child-snatching occur -- AND THE VICTIMS OF THESE ACTIONS ARE THE CHILDREN!

It is "not illegal" for a parent to abduct a child and disappear across state lines. This is the essence of Congressman Charles Bennett's legislation, H.R.2965: that this type of abduction should be classified as crime. One problem is that over 60% of these abductions take place prior to a custody award; in many instances, custody is obtained after an abduction without the other parent's knowledge. CRI feels that custody means nothing in child-snatching cases. A parent gets no "points" because he holds a piece of paper awarding him custody of children he can't find. Custody is custody, and child-snatching is child-snatching; the former a civil issue -- the latter a crime against children. Let's concentrate our efforts on this criminal act against our children.

ANY PERSON WHO ABDUCTS A CHILD, CROSSES STATE LINES AND CONCEALS HIM, REGARDLESS OF WHETHER HE IS A PARENT OF THE CHILD, SHOULD BE HELD ACCOUNTABLE FOR THIS ACT.

We need Federal assistance to locate the missing children and to penalize abducting parents. The states have demonstrated time and again that they are incapable of coping with this problem, and the incidence of child-snatching is growing. We need Federal assistance, and we need it now!

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VOL. 2, NO. 1

SPRING 1976

It is very important, since there are no official records kept of child-stealing cases, that we get as much valid data as possible on as many cases as possible; for this reason, we have inserted a case sheet — if you know of other child-snatching victims who would like case sheets, just let us know. Also, all Chapter Coordinators and Lend-An-Ears will also have extra copies. We greatly appreciate your assistance in validating the figures we present in our arguments to Congress and the statistics we give the press. Many of our cases we simply have incomplete information on, such as knowing that there were two children taken, but not how old they were or when they were taken. We are also very interested in compiling data on whether children are taken before custody is granted, perhaps because the abducting parent fears losing custody. Also, we want to know whether children are taken under fairly "normal" circumstances, such as during visitation weekends, or whether they are abducted during the night from their usual home, etc.

It is also very important to know whether custody has been granted to victimized parents after the child(ren) are taken, because we need to know how importantly to stress custody — ex parte custody decrees may not be considered valid in many jurisdictions, and many parents may have spent a great deal of money to obtain such custody only to find it useless.

We also need to know how many parents have been successful in obtaining custodial interference or other State warrants against the abducting parent, and whether having such warrants has been significant in locating or extradicting the abducting parent. Many of the cases we know of have had similar experiences to Mrs. Dunlap's, i.e., having the sheriff state that there is no money or manpower to effect extradition, even though the warrant has been obtained and the abducting parent found.

We have asked about using private detectives, because we get many letters from parents either asking us if we can recommend detectives (which we can't) or complaining that they feel they were "taken to the cleaners" by the ones they have hired. Occasionally we wonder just how many parents feel this way, so we thought this would be a good time to ask. After all, in almost every case in which the children have been found, they have been found by private investigators, not police.

We seem to get a lot of letters from parents who feel that their children have been taken to specific states or areas of the country. For this reason, we have asked whether you have any ideas as to the possible location of your child(ren). We may, at some future time, discover that certain States are "havens" for child-snatchers, and be able to get such States to cooperate in prosecuting child-snatchers found within their borders.

Additional Submissions of
Harold H. Miltch



Return Our Children

VOL. I, No. 1
JANUARY 1980

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PARENTAL KIDNAPING KIDNAPING

by Harold H. Miltch

Director, Stop Parental Kidnaping

Parental kidnaping (i.e. child-stealing or child snatching) is defined as "the abduction and concealment of a child by the parent without the consent of the other." The child is usually taken away from the parent who has custody.

The Library of Congress has estimated that over 25,000 children are kidnaped in this fashion each year. This means that thousands of children are suffering immeasurable emotional harm from one of the most subtle forms of child abuse.

One obvious reason why parental kidnaping is running rampant today is parents are not subject to prosecution under current federal law — and state and local laws have proved to be exceedingly difficult to enforce in interstate and international cases.

There are currently several measures being taken to halt this ever-increasing form of crime. Legislation has been introduced in Congress that would make parental kidnaping a federal crime and many states are joining together in effecting the return of kidnaped children to their custodial homes.

Interstate cooperation has been extremely successful. In Monroe County (Rochester, NY), for example, active investigations have yielded the return of almost every child who has been stolen.

Parental Kidnaping has been formed to assist the victims (both custodial parents and children) as well as police agencies in parental kidnaping cases.

This first issue of the *Return Our Children* newsletter represents our organization's major thrust in disseminating information that can lead to the return of many kidnaped children to an emotionally stable home life.

Your cooperation is required in order to make our program a success. Your efforts will ultimately result in sparing many children from one of society's most subtle forms of child abuse — parental kidnaping.

THE REAL VICTIM

by Thomas J. Lauricella

Senior District Attorney Investigator

In my experience in investigating custodial interference cases involving children (commonly known as child snatching), it has become painfully evident that there is always an innocent victim involved. The victim is not the individual from whom the child was taken, but the child, regardless of age. In cases where arrests have been made, and the child taken into protective custody, I have observed terror, confusion, anxiety and, most of all, fear.

When police or investigators act upon criminal warrants, teletypes are issued to all police agencies. These teletypes authorize the immediate arrest of the "child snatcher." Does the parent doing the "snatching" realize the potential danger involved in an arrest?

For example: An officer stops the parent for a traffic infraction and approaches the vehicle. What will this parent do? Will he or she remain or flee?

If the parent remains, apprehension is imminent. And if the parent flees, what will the police officer do? A vehicle chase? A physical apprehension?

During this tension-filled time, what is the child observing? More importantly, how is the child being affected both physically and mentally? What will he or she be learning about relationships with the police? Has any of this been taken into consideration?

In the final analysis, the ultimate tragedy is the resultant effect on the child. The parents who have come to hate one another through no fault of the child participate in ultimate debilitation of the child. This emotionally charged disruptive situation leaves permanent scars upon the child. It is the children who suffer this type of tragedy today that become the abusing parents of tomorrow.

COOPERATION IS THE KEY

by Howard R. Rein

Assistant District Attorney

The Monroe County (Rochester, NY) District Attorney's Office is vitally concerned about parental kidnaping. Our office has demonstrated that, with cooperative efforts, it is possible to assist victims and obtain the return of the child to his or her lawful custodian.

We have assisted local police agencies in the preparation of warrants of arrest, presentation of cases to the Grand Jury, and locating children who have been taken from their parents. Full-time investigators are available who have the experience and willingness to help parental victims find their children.

We, along with all local police agencies, will do everything within our power to prosecute such cases under specific Penal Law sections, such as *Kidnaping and Custodial Interference*. We stand ready to contact other agencies throughout the United States in order to assist parents who have had their child taken.



Return Our Children is published by **Stop Parental Kidnaping, Inc.**, 460 State Street, Suite 304, Rochester, New York 14608, (716) 454-4860. All articles contained in this newsletter may be used with permission.

IF YOU BELIEVE ONE OF THESE CHILDREN IS ATTENDING YOUR SCHOOL



**DAVID SCHIPENBERG (KAPLAN)
(MALKY)**

Date of Birth: 5/22/67

Description: 4'6", 64 lbs., blue eyes,
dirty blonde hair

Other: Special School Test Number
134209992

Date of Picture: 1974

Contact:

Det. Frank Rosano (201) 229-5000
Marianne Malky (201) 544-9022



MARK JOSEPH BARTELL

Date of Birth: 1/20/68

Description: 4'8", 110 lbs., blue
eyes, light brown hair

Other: Left-handed

Date of Picture: 1977

Contact:

Susan Bartell (414) 763-6881



JOHN W. SMITH III

Date of Birth: 4/17/69

Description: 3'6", 50 lbs., brown
eyes, brown hair

Other: Sucks right thumb

Date of Picture: 1977

Contact:

Rev. Chas. R. Pleasant (412) 362-8893
Linda Harris (412) 441-4697



MATTHEW TYLER COLE

Date of Birth: 5/11/71

Description: 4'1", 60 lbs., blue eyes,
blonde hair

Other: Rash around mouth

Date of Picture: 1977

Contact:

County Att'y. Macey (602) 792-8275
Det. Daniel Martin (602) 791-4455
Janet Duberry (608) 274-4130



JAMES FRANCIS KRAMER III (Spivey)

Date of Birth: 8/9/71

Description: 3'2", 35 lbs., hazel blue
eyes, blond/brown hair

Date of Picture: 1976

Contact:

Police Chief Wm. H. Chamar (216) 257-7234
James Kramer (216) 257-1679
(216) 266-4029



SHERRY ANN BAYLIS

Date of Birth: 6/30/72

Description: 65 lbs., blue eyes,
blonde hair

Date of Picture: 1977

Contact:

Sgt. Paul Currie (315) 866-3460
Barbara Baylis (315) 894-8543

PLEASE CALL COLLECT TO THE CONTACT LISTED BELOW THE PHOTO



MICHELE LYNN BAYLIS

Date of Birth: 3/24/70

Description: 60 lbs., brown eyes, brown hair

Other: Left-handed

Date of Picture: 1977

Contact:

Sgt. Paul Currie (315) 866-3460
Barbara Baylis (315) 894-8543



WOJCEICH BENJNAROWICZ

Date of Birth: 7/25/70

Description: 4'8", med. wt., brown eyes, brown hair

Other: Fluent in Polish, English accent, prominent front teeth

Date of Picture: 1977

Contact:

Mel Sloan, Esq. (312) 332-3771
or (312) 381-3136



MITCHELL COHEN (Paul) (Katz)

Date of Birth: 8/29/70

Description: 4'5", 75 lbs., blue/green eyes, black hair

Date of Picture: 1978

Contact:

Det. Carl Davis (215) 686-7608
Martin Cohen (215) 289-6319



ADAM JOSEPH KITZIS

Date of Birth: 2/10/73

Description: 3'11", 50 lbs., brown eyes, brown hair

Date of Picture: 1978

Contact:

1. Richard Natoli (215) 642-1000
an B. Kitzis (215) 667-3029



CALEB MATTHEW GROGAN

Date of Birth: 3/8/73

Description: 3'8", 30 lbs., blue eyes, blonde hair

Other: Left-handed

Date of Picture: 1978

Contact:

Police Inv. Wingate (518) 279-3403
Constance Grogan (716) 664-7961



SILVIA GRAHAM

Date of Birth: 3/30/74

Description: 3'4", 42 lbs., brown/wavy hair, brown eyes

Date of Picture: 1977

Contact:

Dist. Atty. Flippo (408) 373-2184
Barbara Sobczak-Graham (408) 384-3574

 STOP
PARENTAL
KIDNAPING, INC.
460 STATE STREET
SUITE 304
ROCHESTER, NY 14608

URGENT!

**SEE PHOTOS INSIDE
YOU MAY RECOGNIZE
A KIDNAPED CHILD
WHO IS ATTENDING
YOUR SCHOOL!**

Additional Submission of Thomas Alexander, Jr.

AFFIDAVIT of David G. Clark in support of motion for Injunctive Relief:

February
On Sunday ^h11, 1979, it is a fact that:

I called to ask if I could stop by and see my children and give them gifts (a doll and an erector set), Mrs. Meyers refused to let me come but said she would come and pick up the gifts. She never came.

I called back, Mr. Meyers informed me that if I come by I would be arrested for trespassing and not paying support. (Note: I pay \$250.00/mo. support for two children and am in full compliance with the Order of the Family Court of the State of Delaware which is the same amount that I commenced paying voluntarily to my ex-wife even before this Order had been sought.)

On Wednesday, February 28, 1979, it is a fact that:

I called and asked if I could stop by and see my children on Sunday, March 4, 1979.

My ex-wife (Laura M. Clark) said no, indicating she was busy on Sunday, I asked if I could by and see my children on Saturday, March 3, 1979, instead, Laura said no, same reason.

On Friday March 2, 1979 it is a fact that:

I called and asked if I could talk to my son. My ex-sister-in-law Karen Williams says yes- then hands phone, not to son, but to Mrs. Meyers, who says he's not there.

On Saturday, March 3, 1979, it is a fact that:

I called and found out that Laura had not left for the weekend so I could have seen my children on that day, I asked to speak to my son, Laura says he is out playing. She refused to call him in to speak with me.

On Sunday March 4, 1979, it is a fact that:

I called to talk with my children and Mrs. Meyers informs me they were'nt there.

On Wednesday March 7, 1979 it is a fact that:

I called to talk to my children and ask to have permission to stop by and see my children on Sunday March 11, 1979. Laura said she had plans for that day and visitation would be impossible. I called again to arrange to stop by on Saturday, March 10, 1979, in lieu of her "busy Sunday" she just went out the door and I was unable to make any arrangements.

On Monday, March 12, 1979, It is a fact that:

I called to speak to my children and Mrs Meyers said they were'nt there.

On Tuesday, March 13, 1979, It is a fact that:

I called to ask to speak to my children, Mrs Williams said that they were not there.

On Wednesday, March 14, 1979, It is a fact that:

I called to speak to my children and Mrs Meyers informed me they 'were'nt there". I said "they never are when I call, are they"! Mrs Meyers said "No". She also intimated that 'we'll be waiting for you' if I come up to see my children on Sunday, March 18, 1979.

On Thursday, March 15, 1979, It is a fact that:

I called to speak to my children and to firm up plans to see them on Sunday, March 18, 1979. the telephone number had been changed to an unlisted number.

It is a fact that Mrs Weber of the Delaware Family Court wrote to the Nassau County Support Unit on March 21, 1979, in my behalf requesting their aid so that I could contact her to arrange for visitation with my children.

It is fact that:

Laura, on April 7, 1979, wrote to the Nassau County Support Unit a response to this enquiry and stated that she did'nt have a phone number at which she could be reached directly and never did have such a phone number. She also stated that the reason for the change of her parents phone number was because of 'harassing' phone calls from me.

It is a fact that:

she has a phone of her own, presumably has had one for some time. Also, she lives in her parents home which is a split-level and has an extension phone in her room of the house. Our children sleep upstairs in the same area of the house as Mr. and Mrs Meyers, thus the inconvenience so implied was a one level flight of stairs.

On Friday, ~~JUNE~~ 15, 1979, It is a fact that:

I wrote a letter directly to Nassau Family Court Support Unit to get help contacting my children. No answer was received.

On Wednesday, July 18, 1979, It is a fact that:

I talked with a representative of the Nassau County Support Unit who was sympathetic but had no 'authority' to help me in this matter.

I stopped by to see my children and to give them the gifts not delivered on Feb. 11, 1979.

I spoke briefly to my children thru the garage door window. My son ran in to Mrs Meyers yelling "Oma-Oma- my daddy's here", Mrs Meyers put my children in the garage again and met me at the front door. She refused to let me talk further with my children. She threatened to have me arrested for trespassing. She refused to take the gifts and give them to my children for me. I slipped the gifts thru the door and left. I Note: my son has since informed me that they never received the gifts.

On July 19, 1979, It is a fact that:

I sent a mailgram stating my intention to visit my children Sun. July 22 1979.

On July 21, 1979, it is a fact that:

I sent a amligram stating my intention to visit on Sunday, July 29, 1979.

On July 22, 1979, It is a fact that:

I arrived to see my children at 8:45 AM. only to discover Mr and Mrs Meyes getting into thier car with my children to take them to the airport to fly them to California.

A conversation between a companion of mine and a police officer (Montestic), and Mr and Mrs Meyers took place.

Simultaneously, a conversation between myself and my children took place, until such time as Mr Meyers came back rolled up the car windows so that I could'nt talk to them further, and stated 'get off the god damn door, this is my car'.

The police officer told Mr and Mrs Meyers to calm down, to be civil, to stop antagonizing, etc. He also told them I had a legal right to visit my children.

My companion informed Mr and Mrs Meyers that no previous notification was necessary (although they had in fact been notified), and that I had a legal right to be there.

My children informed me of their intention to go swimming in the ocean and I told them of my experiences with the waves. Before the window was closed I handed them two small gifts which have, to the best of my knowledge, been *Thrown* away, by Laura or her parents.

Mr. Meyers threatened to have my companion arrested for trespassing, called him a no good son of a bitch, threatend to 'give it to him right in the mouth'. etc.

Mrs. Meyers ordered everybody off her property, accused me of not believing in the American flag and called me an atheist.

Visitation was denied, and they went off to California for the week.

On July 23, 1979, it is a fact that.

I received a copy of a telegram which informed me that visitation on Sunday July 22, 1979, would be impossible.

⇒ On July 19, 1979, it is a fact that:

I arrived at 8:57 and was made to wait outside until 9:00 AM sharp to go inside.

Mr. Meyers told the policeman (whome I had asked to accompany me, to arrest me for parking on the wrong side of the street, the policeman told Mr. Meyers he was inconveniencing the police department by forcing me to wait).

A conversation that I was having with my daughter between 9:00 and 9:10 was made virtually impossible by Laura's tuning the T.V. so loud we couldn't carry on a decent conversation.

At 9:10 my daughter is called away to breakfast- then after breakfast-for-vitamins- then back upstairs to get dressed.

At 10:30 I see my daughter again- and my son for the first time (he was sleeping because they got in late from California), until that time he was in the 'off limits' portion of the house. I asked about the two sets of gifts neither one knew what happened to them.

At 11:00 a 'brunch' is set up 15 feet from the couch I'm relegated to sit on.

Mr. and Mrs. Meyers, Mr. and Mrs. Williams, Laura and our children all have 'brunch' in front of me - totally ignoring me, and my presence.

At 12:00 brunch was done and a small pool is set up for the kids, when I try to splash the water and play with them it is stopped because we're splashing water out of the pool. So much for fun.

At 12:45. Laura's boyfriend Robert Gerlarils arrived, big hug and kiss from Laura, who is in very scant bathing suit, considering the circumstances.

He brings a kitten and it is my son's job to take care of it for the afternoon.

Between 12:45 and 3:30, a sort of continuous cocktail party with drinks and food is held in the backyard.

My son shows me his clubhouse- but the conversation is stopped when Laura calls him to her boyfriend's cat.

My daughter and I are playing on the swing- then she is called inside and up to Mrs. Williams.

My son and I are playing a game called 'trouble', he is called away to find the boyfriend's cat again.

Laura said I could't come next week (Sunday August 5, 1979) the door was locked behind me when I went to the car to get the game and then again when I returned it.

At 3:30, everybody goes upstairs (off Limits to me) to have dinner. The kids are kept busy upstairs and I don't see them again. Everybody includes my children, Mr. and Mrs. Meyers, Mr. and Mrs. Williams, boyfriend Bob, Laura, and boyfriend's Bob's cat.

On Sunday August 5, 1979, it is a fact that:

I was told that I could not keep a small suitcase (in which was a change of clothes, some small toys I brought) in the house. It was put in the garage.

The kids came down at 9:20 but were immediately called upstairs (off limits) to change clothes and eat breakfast.

Mrs. Williams arrived to stay all day

Mr. Williams arrived and stayed all day

Boy friend arrived and stayed all day

Laura's friend 'Ann' with her son, arrives and stays until 3 pm.

Small pool is set up again- but I can't play with my kids in it since it will splash all the water out. Daughter preoccupied with 'Ann's' son. My son is sent to a neighbours pool next door to swim for an hour.

Since they don't give anything to eat or drink, I had a friend drop a sandwich off for me, Laura threw it in the pool.

Neighbour's child comes over to play with my son. Cocktail party set-up again. My son is kept busy getting things, drinks, ice, crackers, snacks, and taking care of boyfriend's cat again.

At three o'clock, everybody goes in for dinner - upstairs in the 'off limits' portion of the house. Everybody again includes boyfriend Bob, Laura,

Mr. and Mrs. Meyers, Mr. and Mrs. Williams. At 3:45 dinner is over, my kids come downstairs but, they are called back for desert. At 4:45, my son is called outside to 'see something', next I see my son riding down the street on his bicycle with boyfriend 'Bob' on a bike with him. At 4:45 their called

in and upstairs for drinks and crackers and kept busy there until 5:pm at which time I leave.

> On Sunday, August 12, 1979, it is a fact that:

I arrived to visit at 9 am, was told to go to backdoor, then had to wait 5 minuits in the rain before Laura opened the door and let me in. Both children came right down- but are called upstairs (off limits). Both came back down at 9:45. At 10:00 they'r called back upstairs. At 10:15 They come back down. At 10:20, Mrs. Meyers calls them back upstairs. At 10:30 they come back down. Since it is raining out, everybody is in one room with me trying to visit: Everybody includes Mr. and Mrs, Meyers, Mr. and Mrs. Williams, Laura, boyfriend Bob, me, my two kids, and a neighbours child who had stopped in to play. The TV is on so loud no one can hear straight.

I'm forced (coerced) to put my suitcase, with change of clothes and some small toys in it, out in the car. House door locked when I come back. Persitent knocking leads me to be let in again.

At 1pm, rains lets up so that boyfriend Bob and Laura take kids outside to watch Bob fly a kite. ~~_____~~

Between 1:30 and 2:15 the kids are having dinner in the 'off limits' portion of the house.

Between 2:45 and 3:05 they'r gone for snacks,

Between 3:30 and 4:00 the cildren are sent ut to take 'naps'. I went out to get away from the TV blair. House door locked upon returning. After persistent knocking they let me in.

At 4:45 I'm asked to take my bag of toys out of the house so that Laura can 'vacume'. House door locked when I return. After persistent knocking they let me in.

> On August 18, 1979, it is true that I received a copy of a telegram noting that due to an unezpected circumstance, visitation would be impossible on Sunday, August 19, 1979. (I have since determined that the said 'unexpected circumstance' was a visit to the home of Mr. and Mrs. Williams).

On Sunday August 19, 1979, it is true that:

I arrived to visit at 9:00, but did not see my children until 9:15. Laura turns TV up so loud you can;t hear well.

At 9:40 that kids are called away to take a bath until 10:20.

At 10:30 the kids are distracted away and persuaded to go outside and ride their bikes.

Laura orders the bag of toys I brought out of the house for the day (they're in the way). I refuse, Laura threatens to call the police, then she calls boyfriend Bob, he comes storming in, doesn't know what's going on, swears a blue streak, threatens to 'punch me out'. To avoid a fight, I took the bag of toys outside, when coming back in, Bob threatens to belt me if I show up next week 'cop or no cop'. I wait by my car 'til things calm down, then asked Bob if I could take them back in. He said OK.

My son is encouraged to go to a neighbour's house to play, I don't see him again until 12:45. My daughter is kept busy with Laura until the same time. We start playing 'blow out'- the kids are called in to lunch into the 'off limits' portion of the house.

We're playing again- they're called in to see another neighbour's new chain saw.

We're playing again- they're called in to say goodbye to boy friend Bob.

We're playing again- they're called in and sent out to go bike riding again.

- On August 28, 1979, I sent a mailgram to Laura notifying her of my intent to visit on Sunday, Sept 2, 1979.
 - On August 30, 1979, Laura informed me by telegram that visitation on Sunday, Sept 2, 1979, is impossible.
 - On Sunday Sept 2, 1979, I arrived at 9:00 to visit my children. No one was home. Checked back at 12:30. Still no one home.
 - On Sunday September 5, 1979, I sent a mailgram to Laura notifying her of my intent to visit my children on Sunday, Sept. 9, 1979.
 - On September 9, 1979, I arrived at 9:10 and it is true that I'm ordered to go downstairs, although my children are upstairs and boyfriend Bob is still sleeping in Laura's fold down double bed in the downstairs room.
- I refuse to visit with my kids on a couch with sleeping boyfriend Bob, and proceed to go upstairs where my kids are. Laura threatens to push me down the stairs. Boy friend Bob jumps up and blocks the stairs. Finally, boyfriend Bob lets me go down stairs.
- When the children are brought down, the TV is turned on so loud conversation is impossible.

Went into the backyard to play with the children.

When we start to play jump rope, Laura takes the rope away.

When we start to play 'tackle' using an old fishing line, Laura takes the line away.

When we start to play 'baseball' Laura decides the lawn needs watering- which puts an end to backyard games.

At 10:30, the children are called in to get dressed to go out. They leave at 10:45. come back at 12:20.

Mr. Meyers knocked the ' legos' toys we were playing with off the picnic table. I ended up picking them up.

My son is called into the 'off limits' part of the house to do his homework for 20 minutes.

Both children called in at 2pm for dinner- don't see them again until 3pm
At 3:30 Laura starts hosing down the cars. Encourages the children to help
Laura discourages me from helping by holding the full flowing, open water hose over my head for a time- soaking me head to foot and necessitating a change of clothes.

I was ^{told} that 'Caroline' was sick and could't run in games too much- yet Laura let her get soaked washing the cars.

The house door was locked so many times I lost count.

Laura stated if I tried anything with Family Court she would get me- one way or the other.

The quote of the day was when my son said, as he got out of the car at 12:20 "She had 'em and she's gonna keep 'em".

The general confusion for the day was caused by Mr. and Mrs. Meyers, Mr. and Mrs. Williams, Robert A. Gerlonik (boy friend Bob), and Laura, all of whom were present and attempted to distract the children from having anything to do with me.

On September 13, 1979, it is true that I notified Laura of my intent to visit my children on September 16, 1979.

On Sunday, September 16, 1979, it is true that:

I arrived at 9:00 and was ordered downstairs, the children are upstairs having breakfast, Brian looked down at me- but Mrs. Meyers called him back into the kitchen.

At 9:30 the kids came downstairs in their pajamas.

At 9:35 the kids are taken upstairs to get dressed.

At 9:45 the kids are ushered outside to get their bikes and are encouraged to go to a neighbour's house to play (209 West End Avenue).

Mr. and Mrs. Williams arrive.

At 10:30, Laura goes and gets the children from the neighbours, they (Laura, Mrs. and Mrs. Williams and the children leave with Mrs. Meyers driving.

At 12:00 they come back, my son jumps out of the car, says 'you're never going to see us again- it's amazing-you see less and less of us each day they literally run to their bikes and go back to the neighbour's house again.

(They had been told to do just that).

At 1:00, they are called back- but upstairs for lunch.

At 1:30, they were sent back to the neighbour's house.

At 2:10, company came so the children were called back to visit upstairs with them.

At 2:30, my children came out to play. Laura takes a picture of us playing together, (to prove something), then, at 2:45, the children are called upstairs to 'brunch' (cocktail party with the company).

At 3:10 children are directed to car washing routine.

At 4:00, I heard one of the visitors say that they were going to take the children out for ice cream.

The total time I had with either of my children in a reasonable atmosphere in ~~my~~ seven hours ~~combined~~ was exactly 20 minutes.

Boy friend Bob, Mr. and Mrs. Williams, Mr. and Mrs. Meyers around and interfering all day long. For example, Mrs. Meyers drove them away at 10:30,

Mr. Meyers got my son to look for a tool, Mr. Williams directed the car washing routine, and Mr. Gerlonick calls them over before he leaves to talk to them (3:00). The company who came ^{knew of the purpose} ~~the~~ silent treatment' given to me continually- so they (Pat Dahl, Mrs Dahl, and, I think Pat's sister) played along and participated in creating the atmosphere. At one point during my visit, there were all of the above mentioned people, plus my children and a neighbour's child and me, all in the house at once.

I had brought a gift for my children- I didn't see them enough to give it to them.

I have to take my toys each time and then take them back or they would be thrown away. Most of their toys are in their bedrooms in the 'off limits' portion of the house- and thus not usable for me to enjoy with my children.

On September 19, 1979, it is true that I sent a mailgram to Laura notifying her of my intent to visit my children on September 23, 1979.

On September 23, 1979, it is true that:

Mr. and Mrs. Williams arrived at 9:02.

I arrived at 9:03.

Ordered downstairs- children upstairs.

My daughter asked Mrs. Meyers if she could come down. Answer is no.

At 9:50 - they are ushered directly outside, Mrs. Williams and Laura ride them up the street on bikes.

At 10:25 - they are ushered in and upstairs to change clothes.

At 10:50, they (Mrs. Williams, Laura, Mrs. Meyers, and the children) leave.

At 12:10 they return, Mrs. Williams takes my daughter's hand, Laura takes my son's hand and they are led inside. My daughter is led upstairs to make a get-well card for boyfriend Bob. My son is told he has to do homework. He asks if he can do it downstairs with me, Laura says no it has got to be done upstairs. on the dining room table. Laura then spit in my face three times, I left with her saliva dripping from my nose.

On September 27, 1979, it is a fact that I notified Laura by mailgram of my intent to visit on September 30, 1979.

On September 28, 1979, it is a fact that I received a telegram indicating that I could not visit my children on September 30, 1979.

On October 1, 1979, it is a fact that I sent a mailgram to Laura indicating my intention of visiting my children on Sunday, October 7, 1979, and my intention of visiting my children on each and every succeeding Sunday.

On October 7, 1979, it is a fact that:

On arriving at 9:00, I was ordered downstairs, upstairs are my children, a 3rd child (Jerry Petrilla), Mr. and Mrs. Petrilla, Mr. and Mrs. Meyers Mr. and Mrs. Williams, Mr R.A. Gerlonick (boyfriend Bob), and Laura.

I did as ordered- I went downstairs, upstairs - the children did not come down, so I went upstairs. They called the police. Boyfriend Bob hits me in the jaw which drops me back on the steps and jerks my head back. Laura yells "does he have a mark"- he has no mark" - I said " if he hit me a second time I'd have a mark - it'd be easy because I don't retaliate: Police arrive, after 40 minutes of conversation the police convince me I can't go upstairs - or out in the backyard - and they ^(the police) try to convince ^(my ex-wife, etc.) them that they can't make my visitation impossible, In short, the police told them that they could'nt do the things they've been doing: Disappearing for over an hour at a time in the car, sending them to neighbour's houses, blasting the stereo, locking the doors, keeping them and encouraging them to stay away from me. etc. I left after the incident because I didn't want to expose my children to another one of boyfriend Bob's outbursts.

I sent a mailgram to Laura indicating my intention of visiting my children October 14, 1979.

On October 14, 1979, It is a fact that:

At 9:00, I arrived and was ordered downstairs, My children were upstairs with the following array of people: Mr. and Mrs. Petrilla and their daughter Jerry, Mr. and Mrs. Meyers, Mr. and Mrs. Williams, Mr. R.A. Gerlonick, Laura Clark.

At 9:15, Laura took my son out to the car and they drive away. My daughter is still upstairs preoccupied with Petrilla's daughter Jerry.

Mr Petrilla come down and convinces me to 'take a walk'

Arriving back at 10:30, my son is back upstairs, I wait until 11:15 until he comes down.

Laura turned the TV on so loud you can't hear yourself think.

My daughter comes down and says 'how come the TV is on so loud, then they both are called back upstairs to try on their halloween costumes - which does a fine job of interrupting a building project we had begun using an erector set.

Lunch served upstairs and children remain upstairs doing something (some building project - a wall was mentioned) with Mr. Petrilla and boyfriend Bob.

The TV volume and the fact that the children did not come back down after lunch forced me to leave at 2:45.

On October 15, 1979, it is a fact that:

I sent a amligram to Laura indicating my intention to attempt to visit my children on October 21, 1979.

General notes and comments:

It is a fact that, for any and all attempts at visiting with my children has been accompanied by the following actions and attitudes.

The visitation 'area' is limited to a 12'x 20' downstairs room in the split level house. (Note: Until 10/7/79, the 60'x 30' backyards area could also be used. But since 10/1/79 this area is no longer allowable for me to use in my attempted visitation. The children are continuously and repeatedly sent, encouraged to go, and literally taken to places not accessible to me during reasonable visitation hours.

The top floor of the house, containing the bedrooms, living room, and kitchen area 'off limits' to me.

The children are continually and repeatedly called upstairs and encouraged to stay there and, in fact, eat up there.

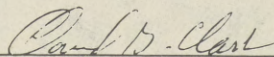
All persons participate in giving the 'silent treatment' during my presence. House doors are locked behind me when exiting to get personal items from my car and persistent knocking is necessary until they'll allow me back inside.

The general 'modus operendi' is to plan to have as many people as possible be in and around the house during my visitation to distracting my children's attention away from me.

The TV and radio in the visitation room are 'off limits; to me, they are turned on so loud that even when my children are there, which is rare, it's too loud to carry on conversation or, in fact, think straight.

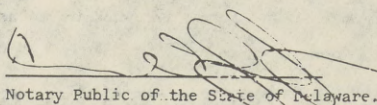
Gifts which I have attempted to give my children have been thrown away, forcing me to bring my own toys up with me and then take them back when I visit with the children. When not near them, the toys have been moved, stepped on, and kicked.

Good wholesome conversations which I had with my children within the last three months, this communication has deteriorated because of the corporate effort of many people, most noticeably Mr. and Mrs. Meyers, Mr. and Mrs. Alton Williams, Mr and Mrs. Patrick Petrella, Mr. Robert A. Gerlonick, the occupants of 213 West End Avenue, Moscapequa, N.Y., the occupants of 209 West End Avenue, Moscapequa, N.Y., Mr. Walter Zobel, Mr. A. Gerbraldi Mrs. P. Dahl, Mr. Dahl and others who have participated in giving me the 'silent treatment' during my visits and have aided in distracting my children in many ways possible so that any relationship that is present or could be developed between my children and myself has been destroyed.



David G. Clark

SWORN TO AND SUBSCRIBED before me this 18 day of October, 1979.



Notary Public of the State of Delaware.

Additional Submissions of
George F. Doppler

"What we're up against is the annihilation by the American judicial system of the relationship of fathers and children when parents separate."

George F. Doppler

Divorced fathers want their kids, too

By MARY ELLEN HASKETT
United Press International

Time was when talk about fathers' rights in child-custody cases brought smiles, if not guffaws. When was that? A year ago? Six months?

Today, divorced men seeking a fair shake in custody cases have a full-fledged movement going. They are organized. They have groups from coast to coast with names like Fathers United, Male Equality Now, Fathers' and Children's Equality.

"What we're up against," says George Doppler, "is the complete annihilation by the American judicial system of the relationship of fathers and children when parents separate."

Doppler is coordinator of the National Council of Marriage and Divorce Law Reform and Justice Organization. It is an umbrella organization for about 165 state and local groups across the country, whose goal is to end discrimination against males in child custody and cases.

Typically, Doppler says, "this is a father's rights movement."

The council thinks parents should continue sharing in the rearing of their children after

divorce; this is what Doppler terms co-custody, as differentiated from joint custody.

"In co-custody," he says, "the children would reside with one parent, but both parents would have responsibility for all decisions affecting the children. Sole custody generates a lot of hostility. It hurts kids as well as fathers."

The divorced men pressing for fathers' rights blame a lot of their problems on judges who use their discretion to award custody to women, bowing to the traditional attitude that women are more fit to raise children. (Ironically, the law itself is usually neutral on the matter of custody.)

In Pennsylvania, for example, state statistics for 1975 show that 31,575 of the 34,000 divorce cases which involved children resulted in the mother's winning custody.

JoAnne Suder, president of the Maryland Women's Bar Association, said the only issue the court considers is what is best for the child, adding that many decisions in child custody cases are not contested.

"If the child has been at home with one parent, judges have to give weight to the time spent with the parent," Mrs. Suder said. "And

in most cases, it's the female . . . who's been at home with the child most."

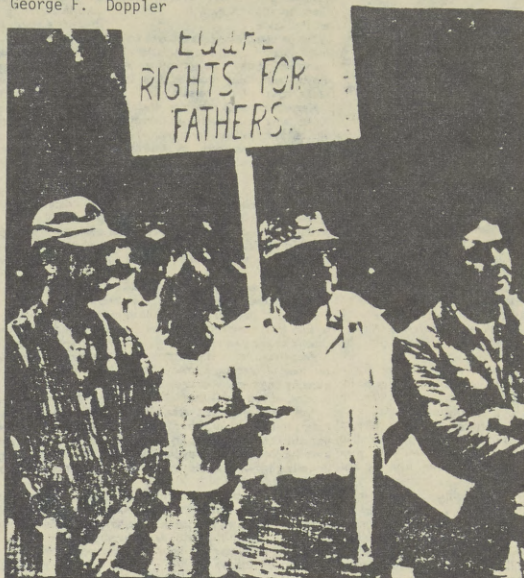
Baltimore attorney Leonard Kerpelman feels the problem is that judges have no concept of the present state of marriage. His feelings are reflected in a poster which hangs in his cluttered office, reading: "Superman Couldn't Get Justice in Domestic Courts."

Kerpelman urges that fathers picket and campaign against judges who generally award children to women, fight for jury trials in child custody cases, and most controversial, snatch — physically take away — their children in some cases.

"The courts would frequently use, as a reason in awarding custody, the fact that the kids were already with their mother, so we began to grab the kids," said Kerpelman, who gets backing from Doppler on child snatching. "It's not illegal if there has been no court order," he added.

Kerpelman's tactics have attracted some unwanted attention. The Maryland Attorney Grievance Commission charged he unethically overcharged in divorce cases and advised a cli-

Please Turn to Page 2



Fathers in Washington, D.C., recently demonstrated for a fairer shake in custody battles. More and more groups are organizing.

ent to take a child after the mother was custody.

least some of the groups favor of juries in custody cases. Karpman says men would benefit from trials because the panels would understand the problems better than judges. Judges, he says, are often "old-fashioned jerks, male chauvinists who think women have to be protected."

Mrs. Suder, however, said jury trials would not be any fairer. She said the danger is that more contested child custody cases would become what she called a "never-ending battle."

Tom Alexander, national president of Male Equality Now as well as Delaware's Male Parents for Equal Rights, said the basic intent of most divorce and child custody laws is "pretty sound."

"What we've observed is what I call an abuse of discretion. All the statutory intent gets lost in the process."

Alexander echoed Kerpelman's support for jury trials in child custody cases and said support for the concept is growing nationwide.

"We're trying to break the habit of automatically awarding children to mothers," he said. "We have seen shift away from it in the last few years."

One of Kerpelman's clients, a 24-year-old Baltimore city truck driver who asked not to be identified, wants custody of his children, ages 1 and 2, from his marriage of three years. So several weeks ago, when his wife refused to let him visit them, he said he "snatched" them.

"I'm worried about the judge," he said, "but I don't care what the cost is. I'm going to try."

"I feel I can take care of them better than her. The house is not clean and the kids are sick because they don't eat right. Since I've had them, they've not been sick."

Silas Dingle, a member of Equal Rights for Fathers in Detroit, said he has supported his children since

1967, but has not been able to visit them because his ex-wife moved to Jr. said in the ruling.

Dingle complained that judges enforce custody laws, but not fathers' visitation rights. "I'm not anti-women," he said, "but something must be done to make the laws fair," he said.

Kerpelman said men are asking for no more than equality as parents and added that he feels women's groups are insincere in seeking equality because they do not support Fathers United and Male Equality Now.

The National Organization for Women said it has no position on child custody but on such considerations as earning ability to support and rear the child.

While the men's groups said child custody is their main concern, they also support changes in divorce laws to stop what they consider to be excessive alimony awards.

Kerpelman, who is "outraged at the idea of lifetime alimony," said he is considering a bill that would give alimony payments should be limited to between two and 10 years.

"Anybody who can't rehabilitate himself in 10 years is a parasite," he said. "Nobody likes to support somebody they have of self-support. Alimony would go no feeling for — it causes psychological damage."

The U.S. Supreme Court ruled in May, Henry Durand Irwin, 62, March 5 in a case that originated in Alabama that laws barring alimony award since the Supreme Court decision. He was ment, which guarantees equal protection under the law.

"No longer is the female dependent of the founder of Phillips solely for the home and the rearing of the family and only the male for Irwin's attorney, Philip Solomon, the marketplace and the world said his client has been unemployed

for many years and has lived apart from his wife since their separation in 1975.

Under the terms of the settlement, Irwin will receive \$1,800 a month as long as he is unmarried and will get half of the proceeds of the sale of the Southbury, Conn., estate where he now lives, which is in Mrs. Irwin's name and worth an estimated \$250,000.

Before the Supreme Court's March 5 ruling, there were cases of courts ordering women to contribute to the support of their children, but some states required that fathers pay the full costs of child support without regard to a mother's finances.

There are indications since that some judges will be more inclined to order women to pay child support, with some of the first such orders coming from Alabama where the case originated.

The fathers' groups also believe there is a human rights issue involved, according to Radh Achuthan, who organizes annual Father's Day rallies in Washington, D.C., New York and other cities.

The men's groups have sent a letter to the United Nations division on human rights complaining that President Carter and the Supreme Court have failed to enforce the basic human rights of men.

While no action has been taken against Carter and U.S. courts still have a long way to go in awarding child custody free of sex discrimination, Achuthan is hopeful that enough men are getting so angry they will force change.

"We are lighting a fuse that will burn across the country," he said.

FOCUS

The Bulletin

Sunday, July 22, 1979

NATIONAL COUNCIL OF MARRIAGE AND DIVORCE LAW REFORM AND JUSTICE ORGANIZATIONS

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Child Custody Contests in Historical Perspective

BY ANDRE P. DERDEYN, M.D.

The author reviews the historical background of interparental child custody disputes. The father's superior right to custody in the nineteenth century continued the English common law tradition, but in the twentieth century the mother's claim became superior to the father's, reflecting women's generally increasing rights and the assumption that women are better suited to caring for children. Partly as a result of recent cultural changes leading to a beginning equalization of parental rights and partly because of greater concern for children, courts are starting to focus more on children's emotional needs. It is likely that courts will increasingly call on psychiatrists and other mental health professionals for help in making their decisions.

CONCERN FOR CHILDREN involved in interparental custody contests has recently been increasing. Efforts to change court practices to conform to the needs of children and to improve both the quantity and the quality of psychiatric consultation reflect this new interest.

Knowledge of the historical background of child custody contests affords some perspective on the current trends for change. This paper will touch briefly on practices in the older Western world and will treat in detail developments in the United States up to the present time.

PRACTICES IN THE OLDER WESTERN WORLD

Roman law gave the father absolute control over his children, whom he could sell or condemn to death with

impunity (1). This concept of absolute right carried over into English law, where it prevailed until the fourteenth century without appreciable change (2). In the Middle Ages childhood was not seen as the unique phase of life we now consider it to be (3). It was customary to send children as young as 7 into service or apprenticeship, where learning was secondary to the labor a child performed for his or her master (4). The child and the servant appear to have been indistinguishable in terms of how they were treated, even the language often failed to use separate terms for each (3, p. 366). It was not until the sixteenth century that children began to be looked on as being of particular interest, having important and specific developmental tasks to perform, and being worthy of affection.

In eighteenth-century England the father's right to custody was almost without limit (5). Because the father owned or managed all of the family property, there was the practical consideration that should the child be removed from the custody of the father, the financial support of the child was in question (6). However, the idea began to evolve that custody involved not only rights but also responsibilities for the care of the child. The English courts assumed jurisdiction over the welfare of children under the developing doctrine of *parens patriae*, which held that the Crown should protect all those who have no other protector (7). Percy Shelley in 1817 was one of the first men to lose custody of his children (8). Custody was refused because of his "vicious and immoral" atheistic beliefs.

The doctrine of *parens patriae* was given substance in 1839 in Talfourd's Act, which gave the court the power to determine custody of infants under the age of 7. The right of the mother to custody in England was gradually increased in a series of acts until the Guardianship of Infants Act of 1925 proclaimed the equality of the mother and father with respect to the custody of their children (9). It was at about the same time that such equality was achieved in the United States.

Presented at the 129th annual meeting of the American Psychiatric Association, Miami Beach, Fla., May 10-14, 1976.

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The reader should compare the position of the father of past time as revealed by this article to the current day. Today's father is held in slavery and degradation by today's in power authorities, the court system, the legislature, our society and cultural thinking.

CHILD CUSTODY CONTESTS

DEVELOPMENTS IN THE UNITED STATES TO THE MID-TWENTIETH CENTURY

The Father's Superior Right to Custody

In the United States child custody decisions reflected English common law in that they considered the father to have the superior right to custody. As in England, custody decisions took into account the fact that the father was vastly more competent financially than the mother. An 1826 text stated that "in consequence of the obligation of the father to provide for the maintenance of his infant children . . . he is entitled to the custody of their persons, and to the value of their labor and services" (10, pp. 162-163). An 1824 Rhode Island decision explained that the father's right to custody "is not on account of any absolute right of the father, but for the benefit of the infant, the law presuming it to be for his interest to be under the nurture and care of his natural protector, both for maintenance and education" (11, p. 31).

The right of the father remained superior to that of the mother throughout the last century. An 1842 New York decision stated, "The question then is, which of these parties, the father or the mother, has the best title to the custody of the child? The opinion of this court has been repeatedly expressed that by the law of the land the claims of the father are superior to those of the mother" (12, p. 659). In 1857 a New York judge wrote that a husband with regard to his wife was "wanting in respectful and kind attention to her, and has often used harsh, profane and vituperative expressions to her, and to others concerning her, but he has been guilty of no such misconduct as would justify the wife in a separation" (13, p. 522). The judge added,

The only difficulty, if any, in the present case, in regard to the right of the father to retain the child, arises from the child being of tender age, and deriving its sustenance, in part, from the breasts of the mother. But upon the evidence, I think these circumstances form no obstacle to the father's right. (13, p. 523)

Custody was thereupon awarded to the father. An 1860 New Hampshire opinion started with,

It is a well-settled doctrine of the common law, that the father is entitled to the custody of his minor children, as against the mother and everybody else; that he is bound for their maintenance and nurture, and has the corresponding right to their obedience and their services. (14, p. 273)

In a similar vein, it was stated in an 1878 Virginia decision that "the father is the legal custodian of the minor children, and they will not be taken from his custody without the strongest reasons therefore" (15). In that case a wife who refused to live with her husband was denied a divorce and also denied not only custody but visitation with the couple's 4-year-old boy.

An 1881 Arkansas case held,

It is one of the cardinal principles of nature and of law that, as against strangers, the father, however poor and

humble, if able to support the child in his own life style, and of good moral character, cannot, without the most shocking injustice, be deprived of the privilege by anyone whatever, however brilliant the advantage he may offer. It is not enough to consider the interests of the child alone. (16, p. 28)

A consideration of child support at the end of the nineteenth century reflects the financial basis of the father's primary right to custody as well as the relative unimportance of the child's welfare. The historical view of children as essentially the property of the father continued to be influential. An 1891 law text explained the linkage of support with the father's primary right to custody: "As the first duty to support the child rests on the father, he is *prima facie* and before all others . . . entitled to the custody" (17, p. 453). This principle was followed to its logical extreme in some courts, which absolved a father deprived of custody of the duty to support his child. An 1883 Massachusetts case held that "a father is not liable for the support of his minor child, after the custody of the child has been given to the mother by a decree of this court" (18, p. 187). In 1895 a Maine court addressed the same issue, stating,

When a divorce is granted to a wife, and as a consequence of it she has committed to her the care and custody of her minor child, it follows that the father becomes entirely absolved from the common law obligation which previously rested upon him to support such child. (19, p. 796)

These were by no means idiosyncratic opinions. An 1881 text reads,

It seems to be a principle of the unwritten law, that the right to the services of the child and the obligation to maintain them go together. The consequence of which would be, that, if the assignment of the custody to the mother extends to divesting the father of his title to the services of the children, he cannot be compelled to maintain them otherwise than in pursuance of some statutory regulation. (20, p. 473)

The concept that a father has some responsibility to children not in his custody developed in statutes and in case law in the early 1900s (21, 22). Up to the present time the courts have quite consistently held to the responsibility of the father to support, regardless of whether or not he has custody. Therefore, an important financial constraint against awarding custody to the mother was removed in the early part of the twentieth century (23).

The Changing Status of Women

Many social changes began to impinge importantly on the issue of custody. By the middle of the nineteenth century the United States was beginning to change from a primarily agricultural, rural society to an industrialized, urban one. There were a number of

Additional Submission of Sara M. Keegan

The Evening Bulletin

Providence, Rhode Island, Friday, Aug. 31, 1979

A heartbroken father finds the law no help



Mark Patinkin



George Hadley:
He just wants to
be a father
to Erik



PAWTUCKET — George Hadley's young son Erik was snatched away from him five months ago, but his apartment is still filled with the presence of a little boy. A fishing pole stands in the corner, a stuffed rabbit stares with one eye from the small bed and airplanes with broken propellers line the shelves.

George, 32, a soft-spoken railroad engineer, sometimes brings other toys home, hoping he'll soon get Erik back. He knows that may never happen.

Erik, 6, is far away, guarded by a person who refuses to give him up, refuses even to let George near the child. Erik is with his mother, Denise.

She whisked him from Rhode Island last April after a Family Court judge found her to be an unfit parent and gave custody of Erik to George.

GEORGE TRACED his ex-wife to Louisiana, took her to court there, showed a

judge that she had been charged with kidnapping and contempt and proved that he alone had been granted custody of the boy. But the Louisiana judge gave custody back to Denise pending a future hearing. That was in June.

Dejected, George returned alone to his empty Garden Street apartment and has been waiting since.

In a way, he was not surprised that Denise was able to skirt the legal system. Ever since he and Denise separated in 1975, he has been fighting, with little success, to remain a father to his son.

When his divorce was made final, he asked only that he be allowed two afternoons a week with Erik. But Denise periodically refused to let George take his son for visits, and sometimes months would go by before he could get the court to make her comply. He saw his son turn against him, and for years there was almost nothing he could do.

And when he finally won by following the law, he lost because Denise defied it.

Many fathers have shared his ordeal, but George's was exceptional in two ways. First, he eventually got custody of his child. Second, after he did, his wife took the child and fled, something that happens in Rhode Island only once every few years.

"That child is part of me and I find I can't continue my life without him," he said. "I'm consumed. Getting Erik back is all I think about."

He dreams about it. This week, as he does almost every week, George dreamed of sitting by a pond, fishing with his brown-haired, blue-eyed son, and sharing the two phrases that had been their private bond ever since Erik began to talk.

"That's my Erik," George said in the dream.

"That's my daddy," Erik said back.

GEORGE AND DENISE married rather young. He was 24 and just out of the Air Force; she was 18 and a waitress, small,

trim and attractive. George was smitten because she cared so much for him. They had a big wedding, a big hope chest and a dream honeymoon at Disney World.

But the marriage began to unravel, and after three years, when Erik was 1½, they separated, on Jan. 7, 1975. She got custody and he was given visitation rights — two afternoons a week. Gradually, a wall grew between George and Denise.

"Before she went to a lawyer, at least we were speaking," said George. "Afterward, she began to freeze over."

Soon, like other divorced parents, George found that he had almost no rights if Denise refused to include him in decision-making. George had no say in picking his son's school, his doctor, his dentist, his hairstyle.

THEN THE PROBLEMS with visitation began. He would drop by to pick up Erik

and no one would be home. He would call and Denise would hang up.

George did the only thing he could do. On May 23, 1975, five months after the separation, he went to court, charging Denise with contempt for defying his visitation rights. And then, because it takes time to schedule court hearings, he waited. He waited almost two months, until July 18, when a judge told Denise to let the father see his son.

She did — for a while. But soon the problem began again. And again, George was becoming a stranger to his 2-year-old. Unwilling to wait for a hearing, he went to the police. The police told him sorry, it's a civil matter, see your lawyer. He did, he waited, and finally, on Oct. 22, 1975, he got a judge to admonish Denise a second time for her refusal to let him visit.

"This kept happening," he said. "And

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Continued from Page One

she never even got fined. Her punishment was car fare to come to court."

THE DIVORCE became final on Oct. 8, 1976. Denise got Erik, the house and \$67 a week in support. For a year, things went well. George became a twice-a-week Disneyland Daddy, taking his son to the park and the circus and the fishing ponds.

"That's my Erik," George would say. "That's my daddy," Erik would say. The bond grew back between father and son and George was content. But his contentment was shortlived.

On Sept. 14, 1977, Denise remarried, becoming Denise Champagne. Shortly thereafter, Erik seemed to turn against his father. "He'd cry and say, 'I don't want to go with you,'" George recalled. "And then Denise would shut the door."

WEEKS WENT BY, and then one day young Erik's resistance turned to venom. "I don't want to go with you," Erik told George as the child stood in his mother's house by his mother's side. "I hate you."

"That broke my heart," he recalled. "You're pretty lonely when you're divorced anyway. The only thing with any real meaning was my child, and now that was being destroyed."

George began to think of all that he had missed: Erik's first tooth and his second birthday and his first day at school. Sometimes, Erik would grow an inch between meetings. George feared he was losing a son, not only because his ex-wife was blocking him but because the system was bogging him down. He was getting delays, not justice.

To fight back, he got a new lawyer, Alfred Factor, and on Feb. 15, 1978, he went to court asking for more time with his son. On May 11, a judge awarded George a weekend with Erik every month. That July 4, the father and son went camping.

"For the first time in a while, I felt like a complete man," he said. "The bachelor's life isn't what I want. I wanted to be a father to my child."

THAT SAME MONTH, Denise unexpectedly moved to Seekonk. George tracked her down and on Sept. 6, 1978, he rang the bell and asked for Erik. George later testified that Denise opened the door and said, "You're not the child's father — he is the child's father." She pointed to her new husband, Michael.

Angry words were exchanged. Michael, who is well over six feet, and George, who is 5-feet-6, scuffled as Erik watched. George filed assault charges with the Seekonk police. They were later dropped, but a civil assault suit George filed against Champagne is pending.

Things deteriorated from there. George would stop by on visitation days and honk. The door to the Seekonk house would open. Erik would yell, "I don't want to go with you," and the door would shut. Months went by and George never had a single day with his son. He became severely depressed and began therapy at Pawtucket Family Services.

IN LATE OCTOBER, 1978, a hearing on another of George's contempt charges was convened before Family Court Judge Robert Croughley. Denise insisted she was not cravhing the child. Erik, she said, had been mistreated by his father and had grown to hate him on his own. The judge ordered the child brought to court. Erik arrived and George sat with him in the cafeteria.

"I miss you, son," he said. "I love you. Don't you want to go with me?"

"No," said Erik, "I hate you, I don't want to see you."

George didn't know it, but as he spoke, Denise was standing behind him, scowling and shaking her head at Erik. The child would glance at her apprehensively before answering "No," to his father. A lawyer named Richard Jessup was nearby and noticed what Denise was doing. Jessup testified that day to what he had seen.

On Dec. 12, 1978, Judge Crouchley ordered that Erik spend a week with George. On Dec. 27, before the visit could take place, Denise and Erik disappeared.

That was enough for lawyer Al Factor. On Feb. 2, 1979, he asked that George be awarded custody of his son. Denise returned three weeks later and reiterated that Erik's hatred for George was genuine, not coached. She asked the court to appoint a guardian to speak for Erik. Lawyer Anthony Iannuccillo was named.

GEORGE FINALLY got an afternoon with his son, March 25, their first visit in six months. It went well and Erik went home with a bag full of gifts. The bag, still full, reappeared on George's driveway two days later. Afterward, the legal battle seemed to go to the trenches.

On March 30, Denise charged that Erik had been abused by George during the visit. At Factor's urging, however, George had taken photos which showed only a joyful reunion. The guardian, Iannuccillo, found no evidence of mistreatment, and testified that the child seemed to have

been swayed against his father by a mother bent on keeping him away at any cost.

"Certainly no 4-year-old should be so vociferous with hate against one parent," Iannuccillo said recently. "It was as bad as I've ever seen in 30 years of practice — to the extent where the child had to have been coached."

Joseph Florio, Denise's lawyer, said she became convinced she was being denied a chance to tell her side. She felt threatened, harassed.

"She loves the child immensely," said Florio. "She's a model mother. She honestly felt the child didn't want to go to the father. But she began to react emotionally."

ON MARCH 31, when George came by to pick up Erik, Denise appeared at the door. "Give it to him, Erik," George claimed she said. Erik stuck out his tongue.

That did it. On April 4, George again asked for custody. Denise repeatedly failed to show up in court, and finally Judge Crouchley saw it was time to make a decision. He was confident that both parents loved Erik, but it was obvious their bitterness was tearing Erik apart. Crouchley wasn't sure why Denise was so defiant, but the fact remained that she had repeatedly ignored court orders to let the father see his son. That defiance, he believed, made her an unfit mother.

On March 23, with Denise absent and George on the edge of his seat, Crouchley read his final decree.

"The court finds as a fact that (Denise) has been trying to make a sham and mockery of the judicial system," Crouchley declared her an unfit mother. He charged her with contempt and ordered her to appear March 27 to say why she shouldn't be sent to prison.

Instead, she disappeared with Erik.

GEORGE CHARGED her with kidnapping in a complaint filed in Massachusetts District Court in Taunton. Then he hired private detectives who spent six weeks tracing her to the New Orleans area.

Now, finally, after five years, George knew Erik would be his. Both Rhode Island and Louisiana had passed the Uniform Child Custody Reform Act which requires states to honor the custody orders of other states. George had a custody order, the kidnapping charge and a contempt citation. He had followed the law, and now it was time for the law to reward him. On June 10, George had Denise ordered to court in Louisiana on the Massachusetts kidnapping charge. He waited in the court hallway for his son — in vain. The judge returned Erik to Denise and scheduled another hearing in 2½ months.

GEORGE RETURNED to Rhode Island and began a continuous search for help. He went to Massachusetts, but Massachusetts won't extradite on the kidnapping. He went to Child Welfare, but Child Welfare won't step in because Erik is not considered in danger. It's a civil matter, everyone says — contact your lawyer.

George has nothing left but his custody order, the one accusing Denise of making a mockery of the court. In George's mind, the order itself is becoming a mockery, a worthless piece of paper. Judge Crouchley tends to agree, but only because he has no power once a defendant flees the state.

"I can't comprehend why Louisiana isn't complying with my order since it was so recent," said Crouchley. "I would think the state will eventually carry it out, but she could take off again. She could run forever. I'd hate to see that happen because the system is going to begin to fail if everyone does that. But it's possible."

And if Louisiana sides again with Denise?

"I guess George could steal the child," said Factor, George's attorney. "But I'm afraid that's about it."

AS THE DAYS tick by, the loss dominates George, especially when he is home with memories like the wall plaque bearing a lacquered trout. "First fish," it reads, "caught by Erik Hadley, age 2 years, 11 months, April 28, 1978."

Erik is now 6. "None of this should have happened," George said. "All I wanted to do was visit my child two times a week. But I couldn't, and now that I know he's down there being fed a lot of information about how rotten I am, I'll never give up until I get him back."

The Louisiana hearing, the crucial hearing, was scheduled for today. Frustrated

by courts so often, George didn't expect much, but he still flew down to see it through. And he showed at least one glimmer of hope.

He bought one ticket on Eastern Flight 381 leaving Providence yesterday for New Orleans. He bought two tickets, one a child's fare, on Flight 546 returning from New Orleans to Providence tomorrow.

Meanwhile, what of Erik? "No one ever wins in bitter divorce cases," said Florio, "and the child is always the big loser. It's the good parent who believes the child still needs the other parent, but the child here will either end up with no father or no mother, and he'll get ripped apart."

THE LAST VISIT between father and son took place last March 24. Denise's father dropped off the boy, and Erik was so hateful and scared it took an hour before George could even touch him. Gently, George reminded Erik of the times they went fishing, snowsliding and pony-riding in Lincoln Woods. Slowly, the hate washed out of Erik's face. They sang old songs, opened long-overdue gifts, and at last Erik embraced his father.

Too soon, the visit was over. Denise's father pulled up outside. George looked at his son as they stood in the doorway and he smiled a goodbye.

"That's my Erik," said George. Erik glanced worriedly at his grandfather's car.

"I can't say it," Erik said.

"Yes, you can," said George. "Whisper it."

Erik leaned close and whispered.

"That's my daddy," he said, and then he was gone.

That was five months ago. George Hadley has not spoken with his son since.

Law



Rick and Susan Downer with their son and snapshots of three missing children

Moving to Stop Child Snatching

Is a federal law the answer?

Eighteen months ago, a California designer named Susan Downer received a chatty telephone call from her three children (ages eleven, six and four), who were visiting her divorced husband in Manhattan. It was the last time she ever heard from them. When Mrs. Downer drove to the Los Angeles airport to pick them up, they were not aboard their designated flight. Ex-Husband Seth Gerchberg, it later developed, had remarried, liquidated his assets, obtained a passport and disappeared with the children. Since then Mrs. Downer and her second husband have spent \$40,000 on a futile investigative legal odyssey that finally cost them their Pacific Palisades home and landed them on welfare. Increasingly disconsolate over having allowed the court-ordered Manhattan visit, Mrs. Downer now wonders: "Why was I so stupid as to obey the law?"

It is an understandable question. An estimated 25,000 to 100,000 child-snatching cases occur every year, and so the parent who observes court orders risks ending up the loser. In most states, kidnapping of children by one of their parents is not treated as a crime. Parents, even those denied custody in divorce arrangements, are exempted from the federal kidnap law. Lacking jurisdiction, the FBI almost never helps locate or return abducted offspring, even when state lines are crossed. Maybe, says Mrs. Downer, "I should tell them I've had three cars stolen, and their names are Joslyn, Heather and Terry." Says another victimized parent: "If my former husband stole a neighbor's cow,

the authorities would follow him to the end of the world. But they can't do a thing to help me find my girls."

The situation leads to disrespect for court orders and some spectacular snatches. After Pittsburgh Millionaire Seward Prosser Mellon and Wife Karen were divorced in 1974, a Pennsylvania court awarded custody of their two girls to Mellon. During a visit, however, their mother took the children to New York and later gained legal custody in a court there. Two years ago, three men employed by Mellon seized the two girls as they were on their way to a Brooklyn school, and the millionaire still has them.

Twenty states* have moved to stop nose thumbing at court orders by passing the Uniform Child-Custody Jurisdiction Act, which generally promises respect for custody terms worked out in other states. That still leaves 30 states as potential havens for child snatchers, however, and the act does not provide a mechanism to track abductions across state lines. An obvious answer is federal standards, but lawmakers are reluctant to thrust Washington into family spats. Says U.S. Representative John Conyers of Michigan, whose House Judiciary subcommittee has buried several federal bills: "Whenever there is onerous conduct, everybody says there ought to be a law." Last week the influential American Bar Association House of Delegates solidly repudiated, 135 to 82, a resolution that would subject parental child snatchers to federal kidnap laws. Cried Washington, D.C., Attorney Lee Loewinger: "Do we really want to make loving parents into federal criminals?"

That may happen anyway. Last

*Alaska, California, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Iowa, Maryland, Michigan, Minnesota, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Wisconsin, Wyoming.

month Wyoming Senator Malcolm Wallop successfully tacked an antismatching amendment on S.1437 before that bill overhauling the federal criminal code was approved by the U.S. Senate. It would require states to give "full faith and credit" to legitimate custodial orders from other states, make parental child snatching a misdemeanor, and provide for FBI child hunts after 60 days. The entire bill is now being considered by a House subcommittee, and many anguished parents hope for speedy passage. Says Pasadena, Calif., Psychologist Dr. Philip Weeks: "Child stealing is one of the most subtle and brutal forms of child abuse."

Briefs

SEX EDUCATION

Clovis, N. Mex., police picked up rumors last year that a frisky housewife had been entertaining juveniles at sex parties in her home. After an inquiry, a Curry County grand jury indicted Mrs. Ernestine Favella, 23, married, mother of two small children, on charges of contributing to the delinquency of a 15-year-old boy. But two weeks ago, a divided state appeals court threw out the indictment. Judge Ramon Lopez explained that delinquency was defined as conduct that would be criminal in an adult, and noted that New Mexico had eliminated criminal penalties for consensual sex between adults. Concurring, Judge Lewis Sutin called intercourse with a young boy "nothing more than sex education essential and necessary in his growth toward maturity and subsequent domestic family life." This was too much for the New Mexico Supreme Court. On its own motion, the state high court last week reversed the appeals court and reinstated Mrs. Favella's indictment. If convicted, she faces up to five years in prison plus a \$5,000 fine.

ALIMONY BLUES

Only two weeks after she was awarded \$160 a month in alimony in 1974, Mrs. Anna Northrup of Rochester, N.Y., began living openly with another man. In her new quarters, she shared a bedroom, cooked meals, did the wash and shared household expenses. Her former husband soon stopped the alimony, contending he was legally justified because she was "habitually living with another man and holding herself out as his wife," grounds for cutoff under state law. In a 5-to-2 decision last week, New York's highest court disagreed. The law provides a two-part test, the Court of Appeals majority held, and even though she lived with the other man, she had never suggested to anyone that they were married. Back alimony payments? Northrup's attorney said he had not heard from his client in years, and chances of any collection by Mrs. Northrup appear dubious at best.

Additional Submissions of
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CHARACTERISTICS OF PARENTAL CHILD STEALING OFFENSES

by

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CHARACTERISTICS OF PARENTAL CHILD STEALING OFFENSES

America is quickly learning that the family is no longer an oasis of serenity and comfort. Crime and violence between family members has become increasingly common and serious.¹ The dissolution of a marriage can also be characterized by conflict and violence.² Control over children frequently becomes complicated when the family unit is dissolved through divorce. The custody of children when parents are divorced or separated exists even when the parties make an effort to resolve their differences amicably. For many persons, however, divorce is not a clear resolution that immediately severs family relations. As Westman and Cline note:

...divorce is an "adjustment of relationship" that does not erase the past nor create an unrelated future. For the departing husband it may mean a major change, living alone. For the wife and children life may be much the same, only more difficult. Divorce legally dissolves the marriage, but it only realigns the material and intangible bonds between the affected parties.³

One repercussion from dissolving the family unit has been an increase in parental child stealing -- a parent abducting or detaining a child from the other parent in violation of a custody decree.⁴ Parental child stealing may occur during the initial stages of a dissolution of marriage or after a divorce action. In

California, the abduction of a child by a parent is a criminal act only if it occurs after the implementation of a custody order.⁵

This paper will report on the frequency of parental child stealing and examines the characteristics of parental child stealing crimes. To date no study has examined the characteristics of child snatching in detail.

EXTENT OF PARENTAL CHILD STEALING

There is a scarcity of accurate statistical data on the frequency of parental child stealing in America. Official figures are usually incomplete, combined within multiple offense categories, or non-existent. The Federal Bureau of Investigation does not compile information to assess the extent of parental child stealing on a national basis. Arrest Register data from the California Bureau of Criminal Statistics found 136 adults arrested during 1977 and 208 arrested in 1978 for parental child stealing.⁶ The Los Angeles County District Attorney reports that between January 1975 and April 1979, 400 cases of parental child stealing were screened of which 240 were rejected for prosecution.⁷ The Los Angeles Sheriff's Department reported 60 parental child stealing cases in 1977 with that figure increasing to 86 in 1978.⁸ The Los Angeles Police Department reports 163 cases of parental child stealing for 1977 while the 1978 figure increased to 190 cases.⁹

There is strong reason to suspect that the official picture of child stealing suffers from substantial underreporting. Unofficial estimates suggest that there are 25,000 to 100,000 outright parental

child thefts per year in America.¹⁰ When the retention of children after visitation is included the taking of children from custodial parents may reach 400,000 cases annually.¹¹ And indications surmise that parental child snatchings are increasing rapidly in the U.S., perhaps as many as 25,000 cases each year.¹²

The extent of parental child stealing can only be crudely estimated because law enforcement agency data is incomplete, but the potential for parental child thefts can be better gauged. Divorce is rapidly increasing in America. In 1978 Americans divorced 1,122,000 times.¹³ The rate of divorce has increased steadily, and from the 1960 rate of 2.2 divorces per 100,000 population the rate increased in 1970 to 3.5, and in 1978 the rate of divorce peaked at 5.1.¹⁴ The number of children involved in divorce has nearly tripled between 1960 and 1976, increasing from 463,000 to 1,117,000 children.¹⁵ With parental child stealing estimates between 25,000 to 100,000 this amounts to about one child theft for every 22 divorces. Such a rapid increase in the divorce rate signals the potential for an alarming epidemic of parental child stealing. Recognizing that not every divorce contains the social chemistry which spawns parental child stealing the potential for victimization has, nevertheless, greatly increased.

The national data also notes a rapid increase in the number of one-parent families between 1960 and 1978. In 1978, 19 percent of families with children were maintained by one-parent -- 17 percent by mothers and 2 percent by fathers.¹⁶ This increase of one-parent

families rose from the 1960 figure of 8.5 percent -- 7.4 percent by mothers and 1.1 percent by fathers.¹⁷ Today almost two million children live in one-parent families. And recently, more fathers are desirous of custody of their children. Single fatherhood increased 32 percent between 1970 and 1979 with nearly one million American children under the age of 18 living with their male parents.¹⁸

FINDINGS

In terms of the sex of offenders and parental victims the Los Angeles data indicates that fathers steal children twice as frequently as do mothers. Males were the offender in 71 percent (65) of the crimes while females accounted for 29 percent (26) of the offenses. It must be recognized that child stealers are overwhelmingly males because custody awards almost always favor mothers as the custodial parent.

Racially, Caucasians are largely involved in parental child stealing. Caucasians comprised 68 percent (62) of the offenders and 69 percent (63) of the parental victims in Los Angeles. Blacks made up 14 percent (13) of the offenders and 11 percent (10) of the parental victims. Mexican-Americans comprised 17 percent of the abductors and 14 percent (13) of the parental victims while Orientals accounted for one percent of the offenders and 6 percent (5) of the parental victims.

The age distribution of participants indicates that both offenders and parental victims are generally young and within the

same age group. Most offenders, 35 percent (32), and most parental victims, 35 percent (30), were between 27 and 31 years of age. The next most common age group for offenders and parental victims was between 32 and 36 years of age -- 25 percent (23) of the offenders and 22 percent (20) of the victims. The youthfulness of participants in parental child stealing is evident since 73 percent (67) of the offenders and 76 percent (65) of the parental victims were 36 years of age or younger. The mean age of offenders was 36 years and the mean age of parental victims was 33 years.

The type of relationship between offenders and parental victims in Los Angeles reported that 85 percent (77) of the cases involved ex-spouses. In only 14 percent (13) of the crimes were the parties separated prior to a formal dissolution of marriage action and one case reported a cohabitation relationship between the parties. For most participants of parental child stealing relations are usually limited to arranging visitation periods and resolving financial support obligations. Parental child stealing may be the product of a marital relationship that is strained. The abduction of a child by a parent becomes the final mechanism in attempting to reconcile a degenerating marital relationship. Such instances depict a realization by the offender that the marriage is severely ruptured. The following case of a 34 year old offender and 30 year old parental victim with custody of the child attempting to reconcile following a divorce illustrates such a case:

R 5199720

...The R/P states that she and her husband, also the Suspect, were attempting to bring the marriage back together ever since the Court Order and that they had been living together during this time but for the past month or so, her husband had lost all interest in the children and responsibility. She advised that he is unable to hold on to any job and has no desire in helping her with the payments that come due each month. She advised that they continually fight in front of the children, therefore, she told the Suspect that she felt it necessary to recontact her lawyer to complete the divorce proceedings. She advised her husband that she was going to take the kids back to Mexico when the divorce was final for their own safety and that she would be leaving as soon as she was able to move out.

R/P states that on 9-10-77 approx. 9:00 am the Suspect told her that he was going to take the two victims sailing in Long Beach and that he would be back before long. She advised that approx. 6 to 8 hours after he left the residence he telephoned her and stated, "If you don't stop the divorce you won't ever see your kids again." R/P advised it appeared that he was calling long distance as she could barely hear his voice and he also advised her that he was no longer in California. He further advised her that when she recontacted her lawyer and dropped the divorce proceedings that he would send her money so that she could come and join him and his children.

Analysis of parental child thefts by month of year finds crimes well distributed throughout all seasons of the year. Contrary to findings for other types of crime, parental child thefts are not highest during the warm weather months.¹⁹ The Fall accounted for 30 percent (27) of the thefts, Summer 29 percent (26), Winter 22 percent (19), and the Spring season 21 percent (12). April and September are the peak months for parental child snatching -- each accounting for 13 percent (12) of the Los Angeles

crimes. May was the least likely month for a child theft, recording only 2 percent (2) of the offenses.

Parental child stealing takes place during the weekend days. Friday was found to be the most perilous day with 21 percent (19) of the crimes followed by Saturday and Sunday each recording 17 percent (15) of the crimes. The weekend days of Friday, Saturday and Sunday accounted for 55 percent (49) of all parental child thefts. The midweek days were the safest from snatchings with Tuesday reporting only 7 percent (6) and Thursday 10 percent (9) of the offenses.

The large number of parental child thefts occurring during the weekend may partly be explained by the fact that most custody decree's specify weekends as the visitation period for non-custodial parents. Although the visitation parent has guardianship over the child through the weekend Friday may be reported as the last day the custodial parent had possession of the child. Also, offenders may find the weekend, especially Friday, particularly convenient -- the child will be in transit moving openly between home and school, the weekend provides a buffer for travel and relocation into a new community or employment for the offender. Table 1 presents the day of week for parental child stealing offenses.

The location of parental child thefts provides an understanding of the circumstances surrounding the crime. An offenders actions are directed, in large part, by a crime site that affords physical access

Table 1

DAY OF WEEK OF PARENTAL CHILD THEFT

Day of Week	Number	Percent
SUNDAY	15	17 %
MONDAY	13	14
TUESDAY	6	7
WEDNESDAY	14	15
THURSDAY	9	10
FRIDAY	19	21
SATURDAY	15	17
TOTAL	91	101 % (error due to rounding)

Table 2

PRECIPITATING CIRCUMSTANCE TO PARENTAL CHILD THEFT

Circumstance	Number	Percent
DAY VISIT	11	12 %
WEEKEND VISIT	30	33
SUMMER VISIT	9	10
FROM BABYSITTER	15	16
DENIAL OF VISITATION	7	8
SEPARATED PRIOR TO DIVORCE	6	7
SURPRISE/PHYSICAL FORCE	5	5
OTHER CIRCUMSTANCES	8	9
TOTAL	91	100 %

to the child. The most dangerous location for parental child snatching is the victims residence. The home is the location of occurrence for 67 percent (61) of the cases while the childs school was the crime site in 12 percent (11) of the offenses. Abductions from public facilities/outdoors accounted for 14 percent (12) of the thefts.

Communication of some form between offender and parental victim following the crime occurred in 47 percent (43) of the 91 cases examined. Of these 43 cases communication was by telephone in 72 percent (31), by mail in 16 percent (7), and in person for 12 percent (5) of the crimes. Communication between participants of parental child stealing takes three forms: 1) communiques that announce the offenders attention and safety of the child, 2) communication intended to use the abduction as a mechanism to influence the relationship between the offender and parental victim, and 3) communications that rationalize the child theft. The following verbatim accounts of communication between the parties from the crime investigation report illustrates each type, (all were by telephone):

A 444020

Announcement of intention and safety of child,

I've got the boys and I'm gone. Now you can think about how I've been feeling. I'll be leaving with the boys for a 35 hour bus ride in a while. You aren't going to see them again.

Mechanism to influence relationship,

A 586963

You will never find her. If you won't change your mind it won't be us that suffers, it would be the family.

Rationalization of the crime,

R 1406630

I am going to take my boy back to Ill. to live and you are not going to stop me. I don't want my boy raised in Los Angeles.

Understanding the process that enables a non-custodial parent to seize control of the child requires an analysis of the situational elements immediately prior to the crime. Examination of the precipitating circumstances discovered that most parental child snatchings, 33 percent (30), are perpetrated under the guise of an ex-spouse exercising weekend visitation privileges. The second most popular medium for gaining physical possession of a child was from a baby-sitters care as found in 17 percent (15) of the cases. Day visitation privileges were used as part of the crime scheme in 12 percent (11) of the crimes. Table 2 presents the precipitating circumstances to the theft that enables an offender to take possession of the child.

DISCUSSION

The dominant sense of parental child stealing according to the Los Angeles data is that the crime occurs after a divorce action and following a period of compliance with court ordered visitation privileges. Young Caucasians are generally involved and fathers overwhelmingly abduct children from mothers. Crimes occur equally throughout all seasons of the year. Child thefts more frequently take place during the weekend days. Children are usually snatched from their residence or school. In nearly half of the crimes

communication between the parties following the child theft occurred. Such communication generally announced the offenders intention to retain the child, attempted to influence the severed relationship between the parties, or to justify the crime. Parental child thefts most frequently are perpetrated by an offender exercising court sanctioned visitation rights or acquiring the child from a babysitters care.

Parental child thefts are rarely characterized by a surprise abduction and the use of force. The offenders use of court approved visitation privileges to gain possession of the child suggests that such compliance is incorporated into the crime plan. The use of visitation privileges to snatch a child may illustrate a concern on the part of the offender not to frighten or harm the child. Such actions indicate that offenders utilize the minimum degree of force necessary to acquire the child.

The characteristics of parental child stealing that emerge from the present study suggests a desire by the offending parent to maintain a parental relationship with the child or to re-establish the ruptured marital relations. A tug-of-love for the child is created between parents when a divorce signals the termination of a marriage. The awarding of custody to one parent may convey a sense of failure to the non-custodial parent. The visitation parents time with the child is carefully monitored by the guardian parent. The non-custodial parent may feel excluded from the general duties of parenting -- an

appendage to the new single-parent family. Recognizing that legal custody of the child has been lost a parent may view child snatching as the remaining option to gain possession of the child.

The second dimension of parental child stealing indicates that the crime is intended to aid in the re-establishment of the disjointed marital relations. The abducted child becomes an agent to influence a spouse to withdraw a divorce action or bring about a reconciliation. These cases portray parental child stealing as symptomatic of a more serious and continuing pathology in the domestic relationship between offender and parental victim. In such instances the offenders desire to possess the child appears secondary to restoring the marriage.

Before firm conclusions can be drawn about the patterns of parental child stealing additional study is required to assess the preliminary findings from Los Angeles. Studies using cases from various jurisdictions, uniform definitions of the crime, and data from offending parents will be valuable. Such research can illuminate our understanding of this rapidly increasing, serious, and complex behavior.

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PROBLEMS IN THE PROSECUTION OF
PARENTAL CHILD STEALING OFFENSES

by

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PROBLEMS IN THE PROSECUTION OF PARENTAL CHILD STEALING OFFENSES

Crime between family members has become increasingly common. Child abuse, homicide, or spousal assault illustrates the physical harm and dramatic aspects of intrafamily crime.¹ Yet crime between family members can take a less violent form that continues even after relations have been legally severed by divorce. A new and growing family crime -- parental child stealing -- portrays this non-violent but serious dimension of domestic disharmony.² Parental child stealing is the abduction or detention of a child by a parent in violation of a custody decree. Parental child thefts can occur after a dissolution of marriage or during a separation prior to a divorce action.

Enforcing obedience to a custody order can be a delicate and difficult task. One particularly important process of the criminal justice system in such instances is the decision of a prosecutor to initiate criminal action against an offender.³ For parental child stealing, the prosecutor must untangle complex family relations, clarify intricate legal rights and responsibilities, and deal with emotional or hostile attitudes between parties. The prosecutor determines which parental child stealing cases will escape criminal action. He also decides which instances

require the initiation of criminal charges. In this key role the prosecutor encounters a number of difficulties in dealing with a parent who abducts a child in violation of a custody decree.

The present article examines the extent of parental child stealing, describes guidelines of one agency for determining prosecution in parental child stealing offenses, and reports findings from a study in progress on parental child stealing. The research examined 91 cases of child theft screened for prosecution by the Los Angeles County District Attorney's Office between July 1, 1977 and June 30, 1978. Interviews with Complaint Deputies were also conducted during this period to supplement the analysis.

THE NUMERICAL PERSPECTIVE

There is a scarcity of accurate statistical data on the frequency of child stealing in America. Official figures are usually incomplete, combined with multiple offense categories, or non-existent. The FBI does not compile information to assess the extent of child stealing on a national basis. Arrest Register data from the California Bureau of Criminal Statistics found 136 adults arrested during 1977 and 208 arrests in 1978 for parental child stealing.⁴ The Los Angeles County District Attorney reports that between January 1975 and April 1979, 400 cases of child stealing were screened, of which 240 were rejected for prosecution.⁵ The Los Angeles Sheriff's Department reported 60 child stealing cases in 1977, with that figure increasing to 86 in 1978.⁶ The Los Angeles Police Department reports 163 cases of child stealing for 1977, while the 1978 figure increased

to 190 cases.⁷

There is strong reason to suspect that the official picture of child stealing suffers from substantial underreporting. Unofficial estimates suggest that there are 25,000 to 100,000 outright child thefts per year in America.⁸ When the retention of children after visitation is included, the taking of children from custodial parents may reach 400,000 cases annually.⁹ And indications are that child snatchings are increasing rapidly in the U.S., perhaps as many as 25,000 cases each year.¹⁰

The extent of child stealing can only be crudely estimated because law enforcement agency data is incomplete, but the potential for possible child thefts can be better gauged. Divorce is rapidly increasing in America. In 1978, Americans divorced 1,122,000 times.¹¹ The rate of divorce has increased steadily, and from the 1960 rate of 2.2 divorces per 100,000 population, the rate increased in 1970 to 3.5; and in 1978, the rate of divorce peaked at 5.1.¹² The number of children involved in divorce has nearly tripled between 1960 and 1976, increasing from 463,000 to 1,117,000 children.¹³ With child stealing estimates between 25,000 to 100,000, this amounts to about one child theft for every 22 divorces. Such a rapid increase in the divorce rate signals the potential for an alarming epidemic of parental child thefts. Recognizing that not every divorce contains the social chemistry which spawns child stealing, the potential for victimization has, nevertheless, greatly increased.

The national data also notes a rapid increase in the number of one-parent families between 1960 and 1978. By 1978,

the data indicates that 19 percent of families with children were maintained by one parent -- 17 percent by mothers and 2 percent by fathers.¹⁴ This increase of one-parent families rose from the 1960 figure of 8.5 percent -- 7.4 percent by mothers and 1.1 percent by fathers.¹⁵

Today, almost two million children live in one-parent families. And recently, more fathers are desirous of custody of their children. Single fatherhood increased 32 percent between 1970 and 1979, with nearly one million American children under the age of 18 living with their male parents.¹⁶

PROSECUTION GUIDELINES

For a prosecutor in the Los Angeles County District Attorney's Office, the primary element when screening parental child stealing cases for prosecution is determining if the act is in violation of a custody order.¹⁷ The initial desire is to settle the matter without creating a criminal action. This can be accomplished in two ways: first, the use of a letter from the District Attorney's Office to the offending party informing him or her of the law, corrective actions, and the possibility of criminal charges being initiated; secondly, the use of mediation in the form of an office conference may be sufficient in rectifying the case. This is especially useful in cases where a custody order is vague, or violations minor or infrequent. Should a mediation session be impractical, a filing of criminal charges will be customary.

The second policy step for responding to parental child thefts is to initiate a misdemeanor prosecution. Misdemeanor

complaints can be issued either by the District Attorney's Office or the case will be referred to the City Attorney for review and action. Misdemeanor charges are usually indicative of less serious but more continuing domestic disharmony culminating in a child theft.

The final course of action is the filing of felony charges. Felony prosecutions are utilized in aggravated cases that might include a history of prior thefts, elaborate schemes, or the disappearance of the parent or child. If a child's whereabouts is unknown or the child is believed to be in another jurisdiction, a felony charge is appropriate in order to invoke extradition proceedings.

FINDINGS

A rejection to file felony child stealing charges constitutes one of the following four actions: (1) a recommendation that further investigation be made; (2) a recommendation that the case be referred to the City Attorney to be handled as a misdemeanor; (3) a decision to have the District Attorney handle the case as a misdemeanor; or (4) an outright rejection with no recommendation for referral or further investigation.

Parental child stealing is a low risk crime. In 79 percent (72) of the cases the offender was not arrested or in custody at the time of the crime investigation. Of the 91 cases reviewed, child stealing charges were filed in 55 percent (50) of the cases, while prosecution was rejected in 45 percent (41) of the cases.

Of the 41 cases rejected for prosecution of parental child

stealing charges, 32 percent (13) were because of incomplete evidence to connect the suspect to the crime, and 32 percent (13) were also referred to the City Attorney for possible misdemeanor prosecution. Charges were dismissed in the interest of justice for 20 percent (8) of the rejected cases. The above three factors account for 84 percent (34) of the cases rejected for prosecution. Table 1 presents the reason for rejections of parental child stealing charges.

It should be recognized that rejections for incomplete evidence and referrals for misdemeanor prosecution (usually under Penal Code Sections 17b4-5) may, in fact, be refiled and prosecuted successfully in a lower court. The prosecution of parental child stealing offenses, when viewed broadly within the criminal justice system, should increase beyond figures derived solely from the District Attorney's Office.

A broader dimension of the prosecutor's problems in dealing with parental child stealing cases becomes evident when the final disposition [or last proceeding point] is viewed. In 23 percent (21) of the 91 cases examined, a bench warrant for the offender's arrest was issued. In 17 percent (15) of the cases, the charge was handled as a misdemeanor, while 10 percent (9) of the cases were dismissed in the interest of justice. The parental victim/witness refused to prosecute in 6 percent (5) of the instances. Table 2 presents the final disposition [or last proceeding point] for child stealing cases examined.

DISCUSSION

The prosecution of parental child stealing offenses is

Table 1

REASON PARENTAL CHILD STEALING CASE REJECTED FOR PROSECUTION

REASON	NUMBER	PERCENT
Incomplete Evidence	13	32 %
Dismissed-Interest of Justice	8	20
Misdemeanor Referral-17b(4)	13	32
Victim Requests No Prosecution/Uncooperative	2	5
Other	5	12
Total	41	101 % a

a = error due to rounding

Table 2

FINAL DISPOSITION OR LAST PROCEEDING POINT OF PARENTAL CHILD STEALING CASES

DISPOSITION	NUMBER	PERCENT
Arrest Warrant Issued	21	23 %
Misdemeanor Referral-17b(4) Reduced	15	17
Dismissed-Interest of Justice	9	10
Victim/Witness Refused Prosecution	5	5
Incomplete/Insufficient Evidence	13	14
Plea as Charged or as Lesser Offense	9	10
Guilty/Nolo Contendre	4	4
Other Evidence Problems	6	7
Other	9	10
Total	91	100 %

limited primarily by the failure of information to link the suspect with the crime, locating the offending parent, or the desire to resolve such matters without criminal action. The prosecutor's decision of whether or not to initiate criminal charges against a parental child snatcher, therefore, involves delicate considerations.

The abduction of a child by a parent may fall outside the purview of the law. Many of the cases screened for prosecution failed to meet specific criteria defined by law. The abduction may have been committed prior to a custody order. If a custody order has been issued, the offending parent may not have been informed of such a judgment prior to the snatching. The offending parent may also have been acting in accordance with a second, conflicting custody order obtained from another jurisdiction. The following charge evaluation summary illustrates the lack of criminal criteria common to child stealing cases screened for prosecution:

R 5847460

In as much as the court order awarding custody of suspect's wife was issued yesterday and suspect had the children since 1-23-78 at his home in Florida, it is highly unlikely that def. is even aware of the order. Therefore, he could not reasonably be expected to comply and his failure to do so would not manifest the mens rea appropriate to the crime of child stealing. Rejected, pending suspect's advisement of the order and demand for compliance therewith.

When criminal action is initiated in parental child stealing cases, the major impediment to prosecution is locating the offending parent. Nearly a quarter of the study cases did not move beyond the issuance of a bench warrant for the offender's arrest. If an offending parent leaves the jurisdiction and is not involved in future criminality and felony charges have not been filed he is well insulated from prosecution. Should an

offending parent choose not to seek legal custody in another jurisdiction the chance of locating that parent becomes remote.

The prosecutor's summary below reports on such a case:

R 1398320

Natural mother takes child on 9-23-77 and does not return child per arrangement on 9-25-77. Child still missing on 10-5-77. Custody w/father. Mother entitled to reasonable visitation (not specified). Mother & her new husband have moved & have no forwarding address. Case does not warrant felony filing at this time. No showing of V. being taken out of State. Resubmit if evidence located to show fleeing State.

Satisfied with physical possession of the child, the offending parent's failure to seek legal custody reduces contact with the criminal justice system. Increased mobility and the ease of adopting new identities and integrating into new communities further enhance the offender's escape from criminal action.

The prosecutor's desire to use non-criminal or minimal action to elicit compliance with a custody order is in response to the complex family relations characteristic of many parental child thefts. The following account notes the use of a standardized letter for such instances by prosecutors in one branch office:

R 1398490

Victim has custody rights to children. Suspect, the former husband, took children on visitation and failed to return them. Suspect has re-enrolled children in Visalia school system. At this stage of proceedings a prosecution is not deemed necessary. A letter will be sent to the Suspect advising him that the visitation period has expired and that if the children are not returned, charges will be filed.

Because the parental victim is concerned foremost with the safe and speedy return of the child, cooperation with prosecutors may extend only until the child is returned. Parental victims may believe the threat of criminal prosecution to induce the return of a child particularly useful. Compassion toward the offender

may also motivate the parental victim to withdraw from prosecution. The charge evaluation below reports on such a case:

R 1407110

Suspect took children for visitation and did not return them. Ex spouse called police immediately following failure to return children. She demanded police pick up children who she assumed would still be with the Suspect in Malibu home. She does not wish Suspect arrested or prosecuted but asks only that police recover children. In view of refusal to prosecute by aggrieved party charges will not be filed.

Strained family relations can also be a factor in determining if criminal action should be applied to parental child stealing offenses. The parties may be separated or attempting to reconcile the marriage, and the filing of criminal charges may rupture the already delicate relationship between the parties. The divorce may have been particularly traumatic or an ex-spouse may have failed in legal attempts to gain custody of the child. Prosecutors must be cognizant and sensitive to the tangled relations common in crimes of parental child stealing and deal with the matter in a legally responsive yet compassionate manner. The strict application of the criminal process by a prosecutor is, therefore, rare.

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PARENTAL CHILD STEALING: CALIFORNIA'S LEGISLATIVE RESPONSE

by

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PARENTAL CHILD STEALING: CALIFORNIA'S LEGISLATIVE RESPONSE

Parental authority over their children has been a fundamental aspect of our society. This authority becomes complicated when the nuclear family unit is dissolved through divorce. The problem of child custody and support where the parents are separated or divorced exists even when the parents are responsible, cooperative, and make an effort to resolve their differences amicably. The bounds of parental authority are exceeded, however, when a parent abducts his child against the will of the other parent or guardian. This new phenomenon called "child stealing" is the act of a parent or individual taking, abducting, or detaining a child from the other parent or guardian who has lawful custody or control over the child. Such activity may occur prior to a custody determination in a divorce action or after custody has been awarded to a spouse.

The present essay will examine the dimensions of this new domestic crime and California's legislative response to curb this unique activity. Based upon the authors research project under progress in California child stealing can encompass two general forms: the unannounced abduction of a child from the custodial parent following a divorce and custody determination, or the unauthorized extension of the visitation period in which the offending parent refuses to return the child to the custodial parent following a court ordered visit.

The first case describes the snatching of two children, aged 3 and 4 years, from their divorced mother who was awarded legal custody of the children:

The R/P stated that she and her husband, also the Suspect, were attempting to bring the marriage back together ever since that Court Order and that they had been living together during this time but for the past month or so, her husband had lost all interest in the children and responsibility. She advised that he is unable to hold on to any job and has no desire in helping her with the payments that come due each month. She advised that they continuously fight in front of the children and she feels that this could be damaging to the children, therefore, she told the Suspect that she felt it necessary to recontact her lawyer to complete the divorce proceedings.

She advised her husband (Suspect) that she was going to take the kids back to Mexico when the divorce was final for their own safety and that she would be leaving as soon as she was able to move out.

R/P states that on 9-10-77, approximately 9:00 a.m., the Suspect told her that he was going to take the two victims sailing in Long Beach and that he would be back home before long. She advised that approximately six/eight hours after he left the residence, he telephoned her and stated, "If you don't stop the divorce, you won't ever see your kids, again."

R/P advised it appeared that he was calling long distance as she could barely hear his voice and he also advised her that he was no longer in California. He further advised her that when she recontacted her lawyer and dropped the divorce proceedings, that he would send her money so that she could come and join him and his children.

The second case reports on the fourth such attempt by the ex-spouse to detain his two children beyond the court designated visitation period and the mother's daring attempt to re-steal the children:

The victim/informant stated that the two children who went to visit their father over the Thanksgiving holiday have not been returned home by him. The victim and the father are divorced. The court in Clayton, MO, granted custody of the two children to the victim (mother). The father was granted visitation rights.

On 11-23-77, at approx, 0030 hours, the victim placed the two children on a TWA flight to St. Louis, Missouri, at L.A. International Airport. She confirmed their arrival in St. Louis, MO when she talked to them over the phone. She was told at this time that the children would return to L.A. International Airport on 11-27-77 at approx, 2021 hours, flight #269. The victim went to the airport and was informed that the children had not arrived at LAX.

She called her ex-husband in St. Louis, MO, wanting to know where the children were. The ex-husband answered that they were there with him and he was going to keep them until he went to court to get custody of the two children. The victim called her ex-husband again at 0600 11-28-77 to try to talk to the children. The ex-husband refused to let the children talk to her, telling the victim to call back in a couple of days.

The victim wants to press charges against the ex-husband on the grounds that she is the legal guardian of the children and that the ex-husband is keeping the children against their wishes and the orders of the court.

I made contact with V/I about the re-taking of her children. She related the following:

On 12-12-77 at about 6:00 p.m. she and her husband, arrived in St. Louis. They rented a car and drove to the Suspect's residence, St. Louis, MO.

At the Suspect's residence they observed Suspect exit the house and go to a vehicle parked in the driveway. Suspect opened both front doors to the vehicle and then returned to the house. A few minutes later Suspect and the two children came out of the house and started across the yard to the vehicle. Upon observing the V/I, Suspect pushed the two children into the vehicle and closed the door. The children upon observing their mother, R/P, exited the other side and ran crying to their mother.

At this time Suspect jumped V/I's husband and knocked him to the ground, and a scuffle took place. During the scuffle V/I requested a neighbor to call the police. Upon arrival of the police Suspect and V/I's husband were taken into custody for disturbing the peace. The children were then detained for their own protection.

After V/I produced a certified copy of the custody order the children were released to her custody.

EXTENT OF CHILD STEALING

There is a scarcity of accurate statistical data on the frequency of child stealing in America. Official figures are usually incomplete, combined within multiple offense categories, or non-existent. The FBI does not compile information to assess the extent of child stealing on a national basis. Arrest Register data from the California Bureau of Criminal Statistics found 136 adults arrested during 1977 and 208 arrests in 1978 for parental child stealing.¹ The Los Angeles County District Attorney reports that between January 1975 and April 1979, 400 cases of child stealing were screened, of which 240 were rejected for prosecution.² The Los Angeles Sheriff's Department reported 60 child stealing cases in 1977, with

that figure increasing to 86 in 1978.³ The Los Angeles Police Department reports 163 cases of child stealing for 1977, while the 1978 figure increased to 190 cases.⁴

There is strong reason to suspect that the official picture of child stealing suffers from substantial underreporting. Unofficial estimates suggest that there are 25,000 to 100,000 outright child thefts per year in America.⁵ When the retention of children after visitation is included, the taking of children from custodial parents may reach 400,000 cases annually.⁶ And indications surmise that child snatchings are increasing rapidly in the U.S., perhaps as many as 25,000 cases each year.⁷

The extent of child stealing can only be crudely estimated because law enforcement agency data is incomplete, but the potential for possible child thefts can be better gauged. Divorce is rapidly increasing in America. In 1978, Americans divorced 1,122,000 times.⁸ The rate of divorce has increased steadily, and from the 1960 rate of 2.2 divorces per 100,000 population the rate increased in 1970 to 3.5; and in 1978, the rate of divorce peaked at 5.1.⁹ The number of children involved in divorce has nearly tripled between 1960 and 1976, increasing from 463,000 to 1,117,000 children.¹⁰ With child stealing estimates between 25,000 to 100,000, this amounts to about one child theft for every 22 divorces. Such a rapid increase in the divorce rate signals the potential for an alarming epidemic of parental child thefts. Recognizing that not every divorce contains the social chemistry which spawns child stealing, the potential for victimization has, nevertheless, greatly increased.

The national data also notes a rapid increase in the number of one-parent families between 1960 and 1978. By 1978 the data indicates that 19 percent of families with children were maintained by one parent -- 17 percent by mothers and 2 percent by fathers.¹¹ This increase of one-parent families rose from the 1960 figure of 8.5 percent -- 7.4 percent by mothers and 1.1 percent by fathers.¹²

Today, almost two million children live in one-parent families. And recently, more fathers are desirous of custody of their children. Single fatherhood increased 32 percent between 1970 and 1979, with nearly one million American children under the age of 18 living with their male parents.¹³

Early California Law

Prior to July 1, 1977, California law had provided that the father and mother of a legitimate unmarried minor child were "equally" entitled to its "custody, services and earnings,"¹⁴ and Civil Code section 198 held that the father and husband had no rights superior to those of the wife and mother in regard to the "care, custody, education and control" of the child while they lived apart from each other.¹⁵ Because parents had equal rights, neither parent was in violation of the law, Civil or Criminal, by taking and concealing their child in the absence of a court order awarding custody to a particular parent.

In addition, while Civil Code sections 4600 and 4603 provided for a court adjudication of custody whether or not a divorce decree had been filed, there was no requirement that such a decree be made.¹⁶ Under past California law, in the absence of a judicial order granting custody to one parent, it was not a crime for one parent to detain or conceal the child. Child-stealing circumvented the legal statutes of California because it was possible for a parent to take the child, or leave the state or country, even after a petition for dissolution of marriage had been filed, without violating a court order. California Civil Code statutes were, therefore, clearly inadequate to curb child-stealing by parents.

California Penal Codes have previously defined "child stealing" as a form of child abduction. The Code was an alternate felony-misdemeanor with punishment ranging from four years in prison and a \$10,000 fine, or both, to one year in jail and a \$1,000 fine, or both. Section 278 stated:

Every person, not having a right of custody, who maliciously takes, entices away, detains or conceals any minor child with intent to detain or conceal such child from a parent, guardian, or other person having the lawful charge

of such child...¹⁷

The effectiveness of this Code was limited for a number of reasons. First, kidnapping charges were usually dismissed because of the inability to establish "malicious" taking. Proof of "malice" required a showing by specific facts that the abducting parent intended to annoy or injure another person (usually the other parent) or do a wrongful act.¹⁸ Even if the prosecution could show malice, the offending parent had an opportunity to show that he or she was acting in the best interests of the child, and if so, held an adequate defense against child abduction.

A second problem with section 278 was that the prosecution had to show that the offending parent had intended to detain or conceal the child at the time of the taking. It was not a crime for a natural parent to merely detain or conceal the child, and incapable of proving a felony, extradition was lost. Thus, the statute was ineffective because the initial taking by a parent usually was neither forcible nor fraudulent.

The second California statute attempting to deal with child-stealing was Penal Code section 279.¹⁹ This code prescribed as a misdemeanor any person's acts in violation of a custody order. The detention, concealment, or removal of a child after a visitation period or the refusal to allow such rights, and a parent who "keeps said child in this state after the expiration of such period without the consent of the person or persons entitled to custody of such child" was prohibited.²⁰ The ability of this statute to restrain child-stealing was limited because the prosecution had to establish that the conduct occurred in California and that the parent acted "without good cause." Once again, in the absence of a charged felony, extradition was practically impossible.

New California Law

As a result of Assembly Concurrent Report 236²¹ in 1974, which documented the limitations and omissions of the California laws, Assemblyman Mike Antonovich introduced, on September 5, 1975, legislation designed to reform existing law and make child abduction in absence of a custody decree a criminal offense.²² The legislation, Assembly Bill 2549,²³ was signed into law October 1, 1977, and became operative July 1, 1977. By transferring child-stealing from the Civil to the Criminal jurisdiction, the new California law is a strong and direct response to this increasingly common activity.

AB 2549 toughens sanctions and clarifies certain legal procedures dealing with child-stealing. Sections 278 and 279 of the Penal Code were modified and re-enacted as the present 278 and 278.5.²⁴

Penal Code 278, child abduction, now applies to "person(s) not having a right of custody."²⁵ It is no longer necessary to establish that the offending parent intended to take the child at the time of the taking. It is sufficient to show only that the child was detained or concealed. This makes the law more prosecutable. Malice for a criminal act must still be proven of anyone who "takes, entices away, detains or conceals any minor child from a parent or guardian ..."²⁶ The section is applicable mainly to friends, relatives, or strangers other than parents who take or conceal a child from an individual with the right of custody. This section is punishable as an alternate felony-misdemeanor and stipulates imprisonment in state prison for one, two, three, or four years, a fine of not more than \$10,000, or both, or one year in county jail and a \$1,000 fine, or both.²⁷

Penal Code section 278.5, which replaced Penal Code section 279, directly relates to parents who act against a custody decree and take a child from the legal custodian. This section also enforces a parent's visitation rights and makes it a crime for a parent to refuse visitation privileges incorporated in a custody decree.

The statute reads:

Detention or concealment of child in violation of custody decree/ (a) Every person who in violation of a custody decree takes, retains after the expiration of a visitation period, or conceals the child from his legal custodian, and every person who has custody of a child pursuant to an order, judgment or decree of any court which grants another person rights to custody or visitation of such child, and who detains or conceals such child with the intent to deprive the other person of such right to custody or visitation shall be punished by imprisonment in the state prison for not more than one year, a fine of not more than one thousand dollars (\$1,000), or both.

No longer is the criminal act required to take place in California. If, for example, a child leaves the custodial parent in California for visitation with the second parent in another state, and that parent refuses to return the child to the custodial parent in California at the expiration of the mandated visitation period, Penal Code 278.5 is still applicable. If the custodial parent is a resident of California, a violation of Penal Code 178.5 can be shown. Also, since "good cause" is no longer a defense for child-stealing, the offending parent's motives are irrelevant.

Penal Code section 278.5 is an alternate felony-misdemeanor offense which allows the prosecution to charge a felony if desired. The charging of a felony makes available the possibility of extradition to properly adjudicate the case.

The new legislation also requires a petition for temporary custody to be included with a filing for dissolution of marriage pending a final custody determination.²⁹ In addition, Courts may issue arrest warrants to insure the appearance of offending parties at hearings.³⁰ Courts will also notify persons having rightful custody of a child who may be in another state, as well as the out-of-state district attorney, after refusing jurisdiction because of wrongdoing on the part of the parent who has physical custody of the child.³¹ Also, courts now have authority to order persons in California lacking legal custody to return a child to persons having rightful custody or for the Court to assume temporary custody of the child unlawfully removed from California at the offending parent's expense.³²

One of the primary difficulties in child-stealing is the rapid location of the

abducted child and his return to the appropriate jurisdiction for custody adjudication. AB 2549 instructs District Attorneys in California to "take all actions necessary to locate such party and the child and to procure compliance with the order to appear with the child for purposes of adjudication of custody."³³ In addition, the cooperation of all state, county and local agencies in the location of abducting parents and stolen children is mandated.³⁴

The Central Registry of Absent Parents in the California Department of Justice locator service, previously limited to finding parents for enforcement of child support obligations, will be expanded to provide local agencies assistance in child abduction cases.³⁵ It has access to records of all public agencies. The new legislation also authorizes the Attorney General to utilize the federal Parent Locator Service of the Department of Health, Education and Welfare when necessary.

AB 2549 addresses many major problems of the previous California law relating to child-stealing. The legislation, however, fails to address certain specific types of child-stealing: For instance, parents A and B initiate dissolution of marriage proceedings. Prior to being served formal court dissolution and temporary custody decrees, parent A takes the child and flees California. Parents who take their child and leave California prior to a custody decree are acting within their parental rights and are not acting illegally. A second type of child-stealing outside the purview of California's new legislation is when A and B are married and have a child. The parents obtain a divorce and A receives custody of the child. B receives visitation rights. Parent A leaves the state and takes the child. The distance eliminates, as a practical matter, visitation rights of B, leaving B no legal recourse. Another instance of child-stealing not addressed by AB 2549 is where A and B are living together with no marriage contract and have a child. If either father or mother absconds with the child, no custody decree has been violated. Such actions regarding child-stealing are exempted by AB 2549.

This California legislation is a significant effort toward clarifying numerous legal discrepancies and oversights which have prompted parents to utilize child-stealing as an extra-legal method of securing their children. Although the new California laws fail to categorically address every possibility of child-stealing by parents, they can be viewed as a major contribution to the reduction of this serious and growing national problem.

REFERENCES

1. Correspondence with Dennis Bartholomew, September 1979. This figure also includes 280b offenses.
2. Correspondence with Martin Oghigian. September 1979.
3. Correspondence with Captain Murl Hess, September 1979.
4. Correspondence with J.D. Smith, September 1979.
5. See Joy Horowitz, "The Law has few answers for child-stealing cases," Los Angeles Herald-Examiner, March 21, 1977, and Los Angeles Daily Journal, "Child Custody Law Nears Uniformity," November 13, 1978.
6. "Abduction of Own Child Could Result in Felony," Los Angeles Daily Journal, March 3, 1976.
7. Meredith McCoy, Parental Kidnaping: Issues Brief No. IB 77117, Congressional Research Service, 6-22-78, Washington, D.C.
8. U.S. Department of Commerce, Bureau of the Census, Current Population Reports: Divorce, Child Custody and Child Support, Special Studies Series P-23, No. 84, June 1979.
9. Ibid, p. 1.
10. Ibid, p. 8.
11. Ibid, p. 1.
12. Ibid, p. 9.
13. U.S. Department of Commerce, Bureau of the Census, Current Population Reports: Marital Status and Living Arrangements, March 1978, Series P-20, No. 338, May 1979, p. 6.
14. Cal. Civil Code 197.
15. Ibid, 198.
16. See Cal. CC 4600-4603 prior to July 1, 1977.
17. Cal Penal Code 278 prior to July 1, 1977.
18. Malice as used in the Statute imports a wish to vex, annoy or injure the person having lawful charge of the child or an intent to do a wrongful act. Cal. PC 7(4).
19. Cal. PC 279 prior to July 1, 1977.
20. Ibid, (a).
21. Report to the Legislature - ACR 236, California Department of Justice, September 1974.

22. This repeals Cal. CC 198 which gives "equal" rights to parents.
23. Assembly Bill 2549 (Antonovich), California Legislature, 1975-76 Regular Session.
24. AB 2549 also affects the following: repeals CC 198; amends CC 197, 4600, 4603, 5157, 5160, 5169, WIC 11478 and 11478.5; adds CC 4604 and 4605.
25. Cal. PC 278, after July 1, 1977.
26. Ibid (a).
27. Prior to AB 2549, maximum punishment was 20 years.
28. Cal. PC 278.5, after July 1, 1977.
29. Cal. CC 4600.1
30. For cases within California, see CC 5160 (0), and for interstate warrants, see CC 5169 (3).
31. Cal. CC 5157.
32. Ibid, 4605.
33. Ibid, 4604 (a).
34. Cal. Welfare & Institutions Code 11478.
35. Ibid, 11478.5.

Department of Justice
Washington, D.C. 20530

Additional Submissions of
Russell M. Coombs

Honorable Peter W. Rodino
Chairman, Committee on the
Judiciary
House of Representatives
Washington, D.C. 20510.

Dear Mr. Chairman:

This responds to your requests for the views of the Department of Justice on several bills intended to remedy the problem of "child snatching". For the reasons stated below, this Department could support a proposal imposing upon states a federal duty, under standards derived from the Uniform Child Custody Jurisdiction Act, to give full faith and credit to the custody decrees of other states if they meet certain criteria. We would oppose, however, the creation of a criminal penalty for "child snatching" or the creation of a federal forum for resolving custody disputes.

The Problem

The Full Faith and Credit Clause of the Constitution (Article IV, Section 1) provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State" and authorizes Congress "to prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." A child custody order, however, is subject to modification where changed circumstances warrant a different custody arrangement. Consequently, since child custody orders are continually subject to modification, a court deciding a custody case is not, as a federal constitutional requirement under current judicial interpretation of the Full Faith and Credit Clause, bound by a decree entered by a court of another state in an action involving the same parties. See Halvey v. Halvey, 330 U.S. 610; Kovacs v. Brewer, 356 U.S. 604; Ford v. Ford, 371 U.S. 187. As a result, individuals who are unsuccessful (or who

expect to be unsuccessful) in an action in one state will attempt to evade that state's jurisdiction by taking the child to another state and relitigating the custody issue there. The second state will often switch custody to the parent within its jurisdiction, thereby encouraging "child snatching" by rewarding the *de facto* physical custodian notwithstanding the existence of an order or decree to the contrary. The problem therefore has its basis in the fact that our form of government is a federation of states, each of which retains jurisdiction over domestic relations within its own boundaries. And domestic relations questions, particularly those involving child custody, have traditionally and exclusively been reserved to state courts, which have developed an expertise in such matters heretofore lacking in federal courts.

The Uniform Child Custody Jurisdiction Act (UCCJA) is one method which would enable the states to deal with this problem. The Act, which is not reciprocal and may be enacted by individual states, establishes standards for choosing the most appropriate forum to determine custody. Once the jurisdictional tests are met, usually by the "home state" of the child, any other state which has enacted the Act will defer to the appropriate forum and cooperate with its jurisdiction. The Act also provides that out-of-state custody decrees be recognized and enforced.

The number of states which have adopted the UCCJA has increased recently from nine to twenty-eight. This dramatic increase suggests that concern about child snatching is mounting within the states.

We believe it would also be appropriate for the Congress to approach the matter, since it is the province of the federal government to resolve problems which are interstate in origin and which the states, acting independently, seem unable to resolve. Federal legislation would need to be designed so as to preserve the traditional state court control over child custody determinations and, at the same time, restrict forum shopping and non-compliance with state court orders. Such legislation must also preserve the delicate balance between state and national jurisdictions that is the foundation of our federal system.

Suggested Solutions

Suggested solutions on the federal level to the problem of child snatching basically fall into three main categories. H.R. 762 (Bennett) and H.R. 9478 (Sawyer) would make it a criminal offense for a parent to kidnap his minor child. / H.R. 9913 (Fish), H.R. 11273 (Fish), and H.R. 11722 (Dornan) would amend title 28 of the Code to grant jurisdiction to the federal courts to enforce state custody decrees. Finally, S. 1437 (Wallop amendment, proposed 28 U.S.C. 1738A) would impose on states a federal duty, under enumerated standards derived generally from the UCCJA, to give full faith and credit to the custody decrees of other states. / As discussed below, we cannot support creating a criminal penalty for child snatching or a federal forum for resolving custody disputes. We do, however, support the civil provisions of S. 1437.

Criminal Penalties

The Department of Justice has consistently opposed the federal criminalization of parental conduct involving the restraint of the parent's minor child. One reason for our opposition has been a concern that the resources of the Federal Bureau of Investigation would be severely and unduly strained by the creation of such an offense, in view of the thousands of such incidents that occur each year. Moreover, sending the F.B.I. to locate and apprehend a parent may, in the case of an emotionally distraught parent, carry the potential for violence and, consequently, danger to the child. In addition, prosecution of such an offense could involve the courts in a difficult process of interpretation of the law in an area without certain guideposts. In short, we question whether the federal investigative, prosecutive, and judicial apparatuses should be thrust into such issues in a criminal context at least until concrete experience with civil remedies has clearly demonstrated the advisability of a criminal approach to the "child snatching" problem.

/ S. 1437, the proposed Criminal Code Reform, also establishes a criminal penalty for child snatching.

/ H.R. 988 (Moss) and S. 797 (McGovern) also adopt a full faith and credit approach, but do not condition the requirement of enforcement on compliance with jurisdictional criteria designed to exclude from that requirement custody decrees resulting from forum shopping, from child snatching prior to the making of any decrees, or from application of inadequate jurisdictional criteria.

Federal Court Jurisdiction

We are also concerned about approaches which would increase the workload of the federal courts. The increasing pressure of criminal prosecutions has resulted, in many federal districts, in extensive delays in important civil proceedings. Furthermore, as noted previously, the state courts have developed an expertise in domestic relations matters which is totally lacking in the federal courts.

Apart from these practical problems with the federal forum approach, there is some question as to the constitutional basis for Congress' power to enact bills such as H.R. 9913. While Article III of the Constitution sets forth nine categories of cases over which the federal courts may exercise judicial power when authorized by Congress, we believe that only two -- diversity of citizenship and federal question jurisdiction -- are arguably relevant here. However, we question whether support for these bills can be found in diversity jurisdiction, since the proposals are not limited to granting jurisdiction to "citizens". Nor does the legislation establish a federal substantive law -- it would give the district courts jurisdiction to enforce the custody orders of state courts and the law which will be applied is purely state law -- and, accordingly, federal question jurisdiction likewise may not lie. Finally, we doubt that the Full Faith and Credit Clause (Art. IV, Sec. 1) would itself provide a source of Congressional power sufficient to sustain these proposals. Thus, we are unable to support this proposed solution to the "child snatching" dilemma.

Uniform Child Custody Jurisdiction Act Approach

For all these reasons, we have concluded that the soundest approach to this problem is that adopted by the civil provisions of proposed 28 U.S.C. 1738A. / In essence, this provision would impose on states a federal duty, under enumerated standards derived from the UCCJA, to give full faith and credit to the custody decrees of other states. Such legislation would, in effect, amount to federal adoption of key provisions of the UCCJA for all states for purposes of interstate custody cases, and would eliminate the incentive for one parent to remove a minor child to another jurisdiction

/ H.R. 988 also adopts a full faith and credit approach. We prefer the provisions of S. 1437.

and render unlikely the existence of conflicting custody determinations in different states. We believe that Congress' power under the Commerce Clause could sustain such legislation upon a properly substantiated record.

The Senate-adopted amendment to S. 1437, introduced by Senator Wallop, would create both civil and criminal remedies for child snatching. While, as we have discussed, the Department of Justice strongly opposes the use of the federal criminal justice system for child snatching cases, we suggest that any bill concerning civil remedies for child snatching be patterned after the civil remedies provided in the Wallop amendment and that, if the Committee decides, in spite of our objections, to adopt federal criminal remedies, they also be patterned after the Wallop amendment. We would, however, suggest that the Wallop amendment, as passed by the Senate in S. 1437, be revised to read as shown in the attachmentsto this letter. The suggested changes are identified and explained in the footnotes to the attachments, but briefly they are as follows:

a. In proposed 28 U.S.C. 1738A(a), the reference to consistency with "subsections (b) through (f) of this section" is changed to refer to consistency with "this section". The change is clarifying, and accomodates the new subsection (g) referred to in paragraph d. below.

b. In proposed 28 U.S.C. 1738A(a), the revision deletes the two exceptions to the requirement of enforcement and non-modification. Reasons for the deletion include the following:

(1) Both exceptions seriously weaken the effectiveness of the proposal, and have been severely criticized on that account.

(2) Both exceptions require the second state involved in a case to reexamine and evaluate the details of the judicial proceedings of the first state.

(3) Both exceptions are inconsistent with the UCCJA.

(4) Both exceptions would present serious obstacles to use of the proposal's criminal provision, if over our objection it is retained. In determining whether a person should be investigated, prosecuted, or convicted for the criminal offense, issues would arise as to whether the custody order violated by the suspect was punitive or was based on the best interests of the child, and as to whether the order was inconsistent with the public policy of other states.

(5) The first of the two exceptions would represent a federal dictation to the states of which substantive grounds for custody will command interstate respect and which will not. We doubt whether this is an appropriate invasion by the federal government of the province of the states in the substantive law of domestic relations.

(6) The purposes of the first exception can better be achieved through legislative or judicial action in each state than by creation of a federal exception rewarding child snatching and forum shopping by parents.

(7) There is no adequate means, other than deletion of the exceptions, to solve these problems.

c. In proposed 28 U.S.C. 1738A(c)(1), the phrase "jurisdiction to make the child custody determination" replaces the phrase "such jurisdiction". This is a strictly technical correction.

d. A new subsection (g) is added to proposed 28 U.S.C. 1738A. It is parallel to UCCJA section 6a, and was recommended in an article submitted to the House. It prevents a second state from exercising jurisdiction over custody of a child as to whom a custody proceeding has been filed, but has not yet resulted in an order, in another state.

e. The criminal provision is revised to eliminate or minimize several serious problems created by the Senate draft, which are identified below. It must be noted, however, that the Department strongly opposes enactment of a criminal provision even if these revisions are made:

(1) The revision limits the criminal provision to restraint in violation of an order entitled to enforcement under proposed 28 U.S.C. 1738A, by deleting two alternative sources of rights capable of criminal violation, a "valid written" custody agreement and a "right of custody or visitation arising from . . . the relationship of parent and child, or guardian and ward. . . ."

The deleted language would have created a number of serious problems. It would have required federal authorities to determine rights of custody, the best interests of children, and the validity of custody agreements without the benefit of

prior civil court rulings in the cases. It would have permitted a vindictive parent to bypass his state civil and criminal remedies in favor of the more harsh and less constructive federal criminal sanction. It would have increased the number of cases involving federal authorities, by preventing state authorities from screening out groundless claims. It would have placed federal authorities, in some cases, in a crossfire between conflicting charges of federal crime by both spouses and conflicting orders of two or more states. It would actually have encouraged parents to snatch their children before litigation, by offering parents who were successful in such a tactic the prospect that federal criminal authorities would then enforce the new status quo. It would have created the anomalous situation that some state court orders that were not entitled even to civil enforcement by other states would receive criminal enforcement by the federal government, and this is an area of law where state responsibility is primary and practically exclusive.

On the other hand, deletion of that language does not deny the aid of the federal criminal authorities; rather, it merely requires that a claimant establish his right in a civil court of the appropriate state before invoking the federal criminal role. Since a temporary order satisfactory for that purpose can be obtained expeditiously under the proposal, deletion of this language does not substantially weaken the criminal provision.

(2) In proposed 18 U.S.C. 1203(a)(2), reference to the "parent, or guardian" is changed to "the person entitled to the right violated by the offense", to conform to the deletion of the reference to a parent or guardian discussed in the immediately preceding paragraph of this letter.

(3) The definitions are revised to achieve greater clarity, but without achieving substantive results different from those of S. 1437.

(4) The period of restraint of a victim the lapse of which gives rise to a rebuttable presumption of federal investigative jurisdiction is changed from 24 hours to 60 days, to conform to the 60-day period delaying federal investigation. The change has no practical effect, but should serve to avoid confusion caused by two seemingly inconsistent time periods.

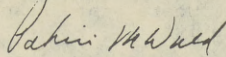
(5) The provision relating to sentencing guidelines is made more general than in the Senate-passed version, without affecting the substance of the provision.

Conclusion

In sum, then, the Department of Justice supports the enactment of legislation imposing upon states a duty, under standards derived from the Uniform Child Custody Jurisdiction Act, to give full faith and credit to the custody decrees of other states. We strongly oppose, however, the establishment of criminal penalties for "child snatching" or the creation of a federal forum for resolving custody disputes._/

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Patricia M. Wald
Assistant Attorney General

/ We note that the "Wallop amendment" to S. 1437 also contains a modification of title 42 to enlarge the functions of the Parent Locator Service within the Department of Health, Education and Welfare to include the location of parents and children who travel from one jurisdiction to another and are concealed in connection with custody disputes. In the view of the Department of Justice, this may not be an inappropriate function for the Parent Locator Service. However, we recognize that this is a matter primarily within the jurisdiction of the Department of HEW, which is also considering the Wallop proposal.

PROPOSED REVISION OF TITLE 28 PROVISIONS OF
S. 1437 RE "CHILD SNATCHING"

..... CONGRESS
..... SESSION

H.R.

(Original signature of Member)

IN THE HOUSE OF REPRESENTATIVES

Mr. introduced the following bill; which was referred
to the Committee on

A BILL

(Insert title of bill here)

A bill to revise title 28 of the United States Code,
and for other purposes.

- 1 *Be it enacted by the Senate and House of Representatives of the United*
- 2 *States of America in Congress assembled, That the Congress finds that*
 - (a) There is a large and growing number of cases annually involving disputes between persons claiming rights of custody and visitation of children under the law, and in the courts, of different states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.
 - (b) The laws and practices by which the courts of those jurisdictions determine their jurisdiction to decide such disputes, and the effect to be given the decisions of such disputes by the courts of other jurisdictions, are ill-defined, conflicting, and in many instances, unsound.
 - (c) Those characteristics of the law and practice in such cases, along with the limits imposed by a federal system on the authority of each such jurisdiction to conduct investigations and take other actions outside its own boundaries, contribute to a tendency of parties involved in such disputes to resort frequently to the seizing, restraint,

concealment, and interstate transportation of children; disregard of court orders; excessive re-litigation of cases; obtaining of conflicting orders by the courts of various jurisdictions; and interstate travel and communication that is so expensive and time-consuming as to disrupt their occupations and commercial activities.

(d) Among the results of those conditions and activities are the failure of the courts of such jurisdictions to give full faith and credit to the judicial proceedings of the other jurisdictions; the deprivation of rights of liberty and property without due process of law; burdens on commerce among such jurisdictions and with foreign nations; and harm to the welfare of children and their parents and other custodians.

(e) For those reasons it is necessary to establish national standards under which the courts of such jurisdictions will determine their jurisdiction to decide such disputes and the effect to be given by each such jurisdiction to such decisions by the courts of other such jurisdictions.

SEC. 2. Chapter 115 of title 28, United States Code, is amended as follows:

(a) A new section 1738A is added after section 1738 as follows:

"§1738A. Full faith and credit given to child custody determinations

"(a) The appropriate authorities of every state shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made by a court of another state consistently with the provisions of this section. 1/

"(b) As used in this section:

"(1) 'child' means a person under the age of eighteen;

"(2) 'contestant' means a person, including a parent, who claims a right to custody or visitation of a child;

"(3) 'custody determination' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, includes permanent and temporary orders, and includes initial orders and modifications;

"(4) 'home state' means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

"(5) 'modification' and 'modify' refer to a custody determination which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody determination concerning the same child, whether made by the same court or not;

"(6) 'person acting as a parent' means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

"(7) 'physical custody' means actual possession and control of a child; and

"(8) 'state' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"(c) A child custody determination made by a court of a state is consistent with the provisions of this section, whether or not the child is physically present in such state, only if:

"(1) such court has jurisdiction to make the child custody determination 2/ under the law of such state; and

"(2) one of the following conditions is met:

"(A) such state (i) is the home state of the child at the time of commencement of the proceeding; or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from such state because of his removal or retention by a contestant or for other reasons, and a parent or guardian continues to live in such state; or

"(B) it is in the best interest of the child that a court of such state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with such state, and (ii) there is available in such state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

"(C) the child is physically present in such state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected; or

"(D) (i) it appears that no other state would have jurisdiction under paragraphs (A), (B), (C), or (E), or another state has declined to exercise jurisdiction on the ground that the state whose jurisdiction is in issue is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

"(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

"(d) The jurisdiction of a court of a state which has made a child custody determination consistently with the provisions of subsections (b) through (f) of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such state remains the home of the child or of any contestant.

"(c) Reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child, before a child custody determination is made.

"(f) A court of a state may, if it has jurisdiction to make a child custody determination, modify a determination of the custody of the same child made by a court of another state if the court of the other state no longer has jurisdiction, or it has declined to exercise such jurisdiction, to modify such determination.

"(g) A court of a state shall not exercise jurisdiction to make a child custody determination in any proceeding commenced during the pendency of a proceeding in a court of another state exercising jurisdiction to make a determination of the custody of the child consistently with the provisions of this section."

(b) The section-by-section analysis at the beginning of the chapter is amended by adding after the item relating to section 1738 the following new item: "1738A. Full faith and credit given to child custody determinations."

ATTACHMENT B

PROPOSED REVISION OF CRIMINAL PROVISION OF
S. 1437 RE "CHILD SNATCHING"

Chapter 55 of title 18, United States Code, is amended
as follows:

- (1) A new section 1203 is added after section 1202 as follows:

"§1203 Restraint of a minor child by a parent

"(a) Whoever intentionally restrains his child
of not more than fourteen years of age in violation of
any person's right of custody or visitation arising from
a child custody determination entitled to enforcement
pursuant to the provisions of 28 U.S.C. 1738A 4/ and in
so doing secretes the child, and holds him in a place
where he is not likely to be found, for a period exceeding
seven days, or restrains the child without good cause
and for a period exceeding thirty days, shall, if:

"(1) the child is willfully transported in inter-
state or foreign commerce;

"(2) the exercise or enjoyment of the right of
custody or visitation violated by the offense requires
the crossing of a state or United States boundary by the
child or the person entitled to the right violated by
the offense; 5/

"(3) any such act against the child is done within
the special maritime and territorial jurisdiction of the
United States;

"(4) any such act against the child is done within
the special aircraft jurisdiction of the United States as
defined in section 101(32) of the Federal Aviation Act
of 1958, as amended (49 U.S.C. 1301(32)); or

"(5) the child is a foreign official, an interna-
tionally protected person, or an official guest as those
terms are defined in section 1116(b) of this title;

be fined not more than \$10,000 or imprisoned not more than 30

days, or both; but if he secretes the child, and holds him in a place where he is not likely to be found, for a period exceeding seven days, he shall be fined not more than \$10,000 or imprisoned not more than six months, or both.

"(b) As used in this section: 6/

"(1) 'consent' includes, but is not limited to, willing assent, but does not include assent given by a person:

"(A) who is legally incompetent to authorize the conduct assented to;

"(B) who is, by reason of age, mental disease or defect, or intoxication, manifestly unable, or known by the actor to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct assented to; or

"(C) whose assent is induced by force, threat, intimidation, or deception;

"(2) 'restrain' means to restrict the movement of the child without consent of the person whose right of custody or visitation is violated, so as to interfere with his liberty, by:

"(A) removing him from his place of residence or business; or

"(B) confining him in any place or moving him from one place to another, unless such confinement or movement is trivial.

"(c) It is a defense to a prosecution under this section that:

"(1) no person claiming entitlement to a right violated by the offense reported the offense within ninety days after the beginning of the restraint; or

"(2) the child was returned unharmed by the defendant and prior to arrest or issuance of a warrant for arrest for this offense.

"(d) The Federal Bureau of Investigation may not commence an investigation of an offense under this section unless at least sixty days have elapsed after the filing of a report with local authorities.

"(e) In the absence of facts indicating a lack of federal jurisdiction, the failure to release the victim of an offense under this section within sixty days of the offense is a sufficient indication of the possibility that federal jurisdiction exists, by virtue of the movement of the victim across a state or United States boundary, to justify the commencement of a federal investigation of the offense. 7/

"(f) Any guidelines promulgated for an offense described in this section shall prescribe the effect that the return of the minor child, other than a return that is a defense, should have on the sentence". 8/

(2) The section-by-section analysis at the beginning of the chapter is amended by adding after the item relating to section 1202 the following new item:

"1203. Restraint of a minor child by a parent.".

FOOTNOTES

1/ This revision makes one technical change and one very important substantive change from the Senate-passed proposal.

As to the technical revision, the Senate-passed bill limited the enforcement and non-modification requirement to determinations made consistently with the provisions of "subsections (b) through (f) of this section", while this revision refers more simply to consistency with the provisions of "this section". The change accommodates a subsection (g) added to the section in this revision, and should also prevent any doubt that a modification in violation of section 1738A(a) would not be entitled to interstate enforcement -- doubt that might arise were subsections (b) through (g) mentioned and subsection (a) not specified.

The substantive change is the deletion of two exceptions to the requirement of enforcement and non-modification. The Senate-passed bill imposed that requirement unless:

- (1) The primary basis for the child custody determination was punishment of a contestant and not the best interests of the child; or
- (2) the child custody determination is inconsistent with a strong public policy of the former state.

It is convenient to discuss first the elimination of paragraph (2).

That exception to the requirement of enforcement is subject to five possible criticisms. First, the exception is capable of such broad application that it could seriously undermine the effectiveness of proposed section 1738A in preventing and dealing with child-snatching. Second, since the UCCJA contains no such exception, federal enactment of the exception would create an inconsistency with the UCCJA in the states that have enacted it. Third, the exception would require states to re-examine and evaluate aspects of the judicial proceedings of other states that would not require reexamination absent such an exception. Fourth, the question has been raised whether this exception makes section 1738A inconsistent with the full faith and credit clause and therefore unconstitutional. Letter from Professor Brigitte M. Bodenheimer to Patricia M. Wald, Assistant Attorney General, U.S. Department of Justice (February 24, 1978). The fifth reason relates to the federal system. The proposal as a whole is based on the view that the proper role of the federal government in relation to child-snatching is not to determine which parent has a right to custody, but to establish which state has a right to make that determination; in other words, the federal government's

Footnote 1/ continued

basic role in the proposal is to intervene not between parents but between states. That limitation of the federal role reflects the fact that in American law family matters are largely reserved as state concerns. It is a departure from that limited role to make a federal question the inquiry of whether a particular public policy of a state is a "strong" one such that it justifies disregard of an otherwise enforceable custody order of another state.

The exception in paragraph (1) of the Senate version of section 1738A(a) is subject to the same criticisms, and some additional ones.

First, it would encourage child-snatching and forum-shopping by leaving the door open for a second state to disregard the custody order of a first state, thereby giving a losing parent hope that he can turn defeat into victory by taking his child to a second state. An exception limited to modifications would bring fewer parents under such temptation than one applicable also to initial orders, but the number still would be large.

Second, the exception would create an inconsistency between the federal law and the UCCJA, which contains no such exception. UCCJA states differ among themselves as to whether to apply an exception for "punitive" modifications by judicial interpretation of the UCCJA, and as to the scope and applicability of any exception.

Third, it would require a second state to review and evaluate the proceedings held in the first state, a process that section 1738A will avoid if the exceptions are deleted. The evaluation would not be a simple one, since modifications considered "punitive" by proponents of such an exception often are based not on blatant vindictiveness but on a judgment that, in all the circumstances of a particular case (including the specific consequences of a relocation), the best interests of a child will be served by a modification.

Fourth, a "punishment" exception would be an even more extreme departure from the proper role of the federal government than a "public policy" exception. If Congress excepted so-called "punitive" decrees or modifications from the requirement of enforcement and modification, it would be dictating not just which state could make a custody order entitled to interstate enforcement, but what substantive criteria the state could and could not use in choosing between parents to make such an order.

Footnote 1/ continued

Fifth and finally, application of such a criterion is contrary to the basic policies and purposes of the proposal. There are various grounds upon which one state can justifiably disapprove of another state's custody order or modification, its "punitive" character being only one of many. Nevertheless, the basis of both this proposal and the UCCJA is a recognition that a rational set of rules should determine which state can exercise jurisdiction, and that society is better served if other states rely on that state to exercise jurisdiction wisely, than if other states are free to review the wisdom of its exercise and parents are free to resort to child-snatching and forum shopping to obtain such interstate review.

Enactment of the proposal would alleviate the child-snatching problem most effectively if both exceptions are deleted. Congress should leave responsibility for avoiding punitive orders, like that for avoiding other unjust orders, to the state duly exercising jurisdiction, while at the same time it prevents the disregard of one state's order by another. Moreover, deletion of both exceptions should maximize the effectiveness of section 1738A against child-snatching. The problem that the exceptions in the Wallop proposal attempted to deal with -- the use of unwise or improper criteria by state courts for choosing between parents in the making or modification of custody orders -- is a real problem, and it arises in all kinds of cases, not just cases of discipline of a parent. It is not, however, a part of the "child-snatching" crisis, nor is it a proper subject for federal dictation to the states. It is, instead, a problem that can and should be solved by each state. A parent aggrieved by an unsound award or modification of custody should use the remedy of appeal to a higher court of the same state, not the lawless remedies of "seize and run" and forum-shopping. If this federal legislation is to discourage rather than encourage child-snatching, it should omit any "punishment" or "public policy" exceptions, and rely on state legislatures and appellate courts to prevent the making or modification of custody orders by their lower courts on punitive or other bases not dictated by the welfare of the affected children.

2/ In this paragraph, the phrase "jurisdiction to make the child custody determination" replaces the phrase "such jurisdiction" in the corresponding paragraph in S. 1437. This is a technical change, the need for which arose when, shortly before the Wallop amendment to S. 1437 was offered on the Senate floor, a staff revision of the amendment apparently deleted an earlier use of the word "jurisdiction" in conjunction with the phrase "to make a child custody determination", and thereby deleted the antecedent of the word "such".

It is possible under section 1738A(c), as it is under section 3 of the UCCJA, for two states at once to have jurisdiction to make an initial child custody determination. It therefore could happen that, after a state A proceeding was instituted but before the state A court could give "reasonable notice and opportunity to be heard" and make a temporary order, a state B court could be asked by an absconding parent to exercise its jurisdiction. In order to prevent such an exercise of jurisdiction, the revised proposal includes this new subsection (g) of section 1738A, which is modeled in substance on UCCJA section 6(a) and which was recommended in an article submitted to the House. While such a provision might encourage a race to commence proceedings in different states where two states have jurisdiction, the absence of such a provision would tend to encourage not only that kind of race but also a race between litigants and states to press the proceedings to the making of at least temporary orders. In any event, the courts need not, under this proposal, reward the winner of such a race to commence proceedings by exercising jurisdiction in every case where it exists and is invoked. On the contrary, the proposal clearly envisions the declining of jurisdiction by a state that finds its jurisdiction is concurrent with that of another state that is a more appropriate forum in the circumstances.

4/ At the corresponding point in S. 1437, there were stated two additional, alternative sources of rights capable of violation under the criminal provision, a valid written agreement and the parental relationship. The accompanying letter explains their deletion.

5/ The phrase "by the child or the person entitled to the right violated by the offense" replaces the phrase "by the child, parent, or guardian", since the antecedent of the last three words of the latter phrase has been deleted.

6/ In the proposed title 18 in S. 1437, a key word in section 1624 was "restrain", the definition of which contained another defined word, "consent". "Consent" was defined in section 111, a section applicable throughout the proposed new title 18, in this manner:

... "consent" includes willing assent, but does not include assent given by a person (a) who is legally incompetent to authorize the conduct assented to; (b) who is a member of a category of persons whose improvident consent is sought to be prevented by the law describing the offense; (c) who is, by reason of age, mental disease or defect, or intoxication, manifestly unable, or known by the actor to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct assented to; or (d) whose assent is induced by force, threat, intimidation, or deception;...

Footnote 6/ continued

Section 111 also contained a provision that " 'includes' is to be read as if the phrase 'but is not limited to' were also set forth . . . " "Consent" was further defined, and "restrain" was defined, in section 1625(a), a section applicable only throughout subchapter 16C on kidnapping and related offenses, in this manner:

(1) "consent" does not include assent given by the victim if in fact he is less than fourteen years old or is incompetent and if his parent, guardian, or other person responsible for his welfare has not acquiesced in the movement or confinement;

(2) "restrain" means to restrict the movement of a person without consent, so as to interfere with his liberty, by:

(A) removing him from his place of residence or business; or

(B) confining him in any place or moving him from one place to another, unless such confinement or movement is trivial.

Proposed section 1203 in this revision similarly uses and defines the terms "restrain" and "consent". Some changes are made, however. As is explained above, in S. 1437 the definitions of those terms were found in proposed 18 U.S.C. 111 (applicable throughout title 18) and 18 U.S.C. 1625 (applicable throughout the subchapter on criminal restraint). Parts of those definitions were inappropriate for an offense of child-snatching, but the courts could have been expected to recognize the need to apply to child-snatching only those parts of general definitions that could reasonably be applied to that offense. In this revised proposal, on the other hand, the definitions apply only to proposed section 1203, so irrelevant parts of the Senate definitions have been omitted. The omitted portions are clause (b) of the section 111 definition of "consent" and the entire "consent" definition in section 1625(a)(1). In addition, in the definition of "consent" the words "but is not limited to" are added, carrying forward the result of the definition of "includes" in proposed 18 U.S.C. 111 of S. 1437. Also, the definition of "restrain" has been clarified by indicating explicitly that it is the aggrieved parent, rather than the child, whose consent is material, and by referring to the person restrained as "the child" rather than as "a person".

7/ The provision of S. 1437 corresponding to this subsection as proposed section 1625(c) of title 18, which was applicable throughout subchapter 16C and provided:

(c) INITIATION OF INVESTIGATION -- In the absence of facts indicating a lack of federal jurisdiction, the failure to release the victim of an offense under section 1621, 1622, 1623, or 1624 within twenty-four hours of the offense is a sufficient indication of the possibility that federal jurisdiction exists, by virtue of the movement of the victim across a state or United States boundary, to justify the commencement of a federal investigation of the offense.

The proposal in this revision provides that the period of restraint of a victim the lapse of which gives rise to a rebuttable presumption of federal investigative jurisdiction is 60 days, a change from the 24 hours in the Senate-passed version. In the Senate bill, use of two different periods of time -- a presumption that investigative jurisdiction existed after 24 hours, and a prohibition against exercise of that jurisdiction for 60 days -- made sense, since the two provisions were different in their sources, purposes, and applicability. The 24 hour period was derived from present 18 U.S.C. 1201(b), was intended to determine presumptively the existence of investigative jurisdiction, and was applicable to the entire subchapter on criminal restraint. The 60-day period was derived from the 30/90 day proposal advocated by Children's Rights, Incorporated, was intended to govern only the exercise of jurisdiction assuming it existed, and was applicable only to parent-child restraint because of a special desire to defer to state and civil authorities in such cases. In this revision however, the same practical result is achieved with a 60-day period in both provisions, and the proposal thereby avoids the additional confusion that would arise from use of two widely different periods applicable only to a single section. Even in the revised proposal, the two 60-day periods will fail to correspond precisely, unless the report to local authorities is filed the very day of the offense. The difference between the two periods is minimized, however, by use of a 60-day period in each instance, and it is expected that confusion will be minimized as well.

8/ S. 1437 would have created a United States Sentencing Commission and directed it to promulgate guidelines for sentencing, in proposed 28 U.S.C. 991-98. Proposed 28 U.S.C. 994 included this subsection:

(m) The Commission, in promulgating guidelines pursuant to subsection (a), for an offense described in section 1624 of title 18, United States Code, shall consider the effect that the return of the minor child, other than a return that is a defense under section 1624(b)(2) of title 18, United States Code, should have on the sentence.

Footnote 8/ continued

The revised proposal seeks to incorporate the substance of proposed 28 U.S.C. 994(m) in language devoid of an assumption that guidelines relating to this particular offense will be promulgated or, if they are issued, that they will come from a particular agency.

Additional Submissions of
Wallace J. Mlyniec

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February 15, 1980

DAVID J. MCCARTHY, JR.
Dean

JOHN R. KRAMER
Associate Dean
for Clinical Programs

RE: S. 105

Dear Senator Mathias,

Thank you once again for giving us the opportunity to testify regarding S. 105. As Ms. Hiestand and I indicated at the hearing, we are submitting additional comments regarding Senator Wallop's proposed amendments (see Testimony of Senator Malcolm Wallop, January 30, 1980, p. 16), and answers to questions submitted to us by you on February 11, 1980. For the purposes of clarity, we have included the proposed amendment or question prior to the response.

I. RECOMMENDATIONS BY SENATOR WALLOP

1. "Authorizing the F.B.I. to promptly enter any case in which the child is threatened with imminent harm without regard to the 60-day waiting period;"

Authorizing the F.B.I. to enter the case prior to the expiration of the 60-day waiting limit in cases of threatened harm poses two problems. We believe the criminal provisions of S. 105 should complement state domestic relations procedures and the use of the Parent Locator Service. Reliance on the criminal provisions and the F.B.I. should not be routine but rather extraordinary. The information regarding a threat of harm will usually come from an aggrieved parent. Actual proof from other sources would be difficult to obtain. Reliance on the aggrieved parent would, therefore, provide an easy method of using the criminal provisions vindictively rather than as a last necessary resort. Further, if harm is seen in its broadest sense, any snatched child is probably psychologically harmed by the snatch, thereby potentially eliminating the 60-day waiting period entirely. For these reasons we believe that this amendment should not be adopted.

2. "providing that criminal charges under section 1203 be dismissed if the child is returned unharmed within 30 days after an arrest warrant has been issued instead of treating the return as an affirmative defense to prosecution;"

We believe that this amendment is sound. While the proper administration of current provisions should usually result in a dismissal before trial, it seems to make sense both financially for the litigants and administratively for the courts to avoid trials if possible.

3. "treating the restraint or concealment of a child outside the United States as a felony for purposes of our extradition treaties;"

We believe that creating a felony for restraints and concealments outside the United States of America is a necessary provision to invoke extradition treaty mechanisms. We believe it is also necessary to warn would-be child snatchers that the added difficulties and expenses attendant to an international search would result in harsh punishment. Parenthetically, we believe unsurmountable equal protection problems would arise if the only reason for enhanced penalties was the extradition problem.

We would caution the Congress, however, to use the concept of lenity in prescribing the penalty. The primary purpose of this bill is to protect state court custody decrees and children. Punishment of recalcitrant parents is only a secondary goal. Despite the testimony repeatedly given at the hearings, it is difficult to believe that all snatchings are motivated by feelings other than love for a child. However, even if revenge is a motive, penalties should not be extreme. Psychologists tell us that children blame themselves for parental separation. How much greater would be the harm if the child felt responsible for the long-term incarceration of his parent. In sum, while the felony provision should be enacted to permit international extradition and in recognition of the more serious nature of the offense, the penalties should be the minimum necessary for felony classification.

4. "authorizing the temporary placement of children in appropriate settings so that proper transportation arrangements can be made;"

Perhaps the most significant proposed amendment is that which would authorize temporary placements of children after arrest of a parent. Since the F.B.I. will be involved, the Attorney General should be given the power to contract with state facilities for temporary housing as he does for securing placements under the Federal Juvenile Delinquency Act. 18 U.S.C. 5031 *et seq.* More importantly, however, the bill should include a prohibition against placement in any closed or institutional setting or setting in which delinquent children are housed. An institution is defined as a structure housing more than eight people. Hearings on H.R. 3434 have shown how poorly states now treat their own neglected children. Surely the trauma of these

twice-snatched children should not be compounded by a restrictive setting, no matter how short. I would also recommend that the bill require that children should be returned to the other parent at public expense no later than three days after the snatching parent is arrested.

5. "expressly authorizing the parental locator services to act on requests from foreign countries;"

Authorizing the Parent Locator Service to act on foreign requests is reasonable. With respect to the locator service generally, it is hard to believe that the Carter Administration would argue that the two hundred thousand dollars (\$200,000) necessary to expand the service is too great an expense. With all due respect to the President, the Administration's position on eliminating the service because of the cost is at best unsupportable.

6. "direct the National Uniform Crime Report division of the F.B.I. to conduct a study of the number of child-snatching incidents."

We have no problems with statistics being compiled.

II. QUESTIONS FOR COMMENT SUBMITTED BY SENATOR MATHIAS

1. "In addition to the Full Faith and Credit Clause of the Constitution, is it your opinion that Congress has the power under the Commerce Clause to enact S. 105?"

We believe Congress has the authority to enact S. 105 pursuant to the Commerce Clause of the United States Constitution as well as the Full Faith and Credit Clause. Article I, Section 8, gives Congress the authority "(t)o regulate commerce. . .among the several States. . ." It can hardly be doubted that the criminal provision of S. 105, amending Chapter 55 of Title 18 of the United States Code, is a proper exercise of Congressional power under the Commerce Clause. The Supreme Court has on numerous occasions upheld the validity of similar criminal measures. 1/ Furthermore, the imposition of such "protective conditions" by Congress need not be limited to solely commercial activities. 2/

1/ See, e.g., Brooks v. United States, 267 U.S. 432 (1925)(ban on interstate transportation of kidnap victims); Hoke v. United States, 227 U.S. 308 (1913)(ban on interstate transportation of women for immoral purposes); Champion v. Ames, 188 U.S. 321 (1903)(ban on interstate transportation of lottery tickets).

2/ See generally, L. Tribe, American Constitutional Law #5-6 (1978)("Congress may impose whatever conditions it wishes, so long as the conditions themselves violate no independent prohibition. . .").

This "protective principle" under which Congress may exercise its Commerce Clause power extends to non-criminal as well as criminal legislative measures. As the Supreme Court has noted, "(t)he determinative test . . . is simply whether the activity sought to be regulated is 'commerce which concerns more States than one' and has a real and substantial relation to the national interest." 3/

The civil provisions of S. 105 meet the criteria set forth in the above test and thus constitute a proper exercise of Congressional authority under the Commerce Clause. That child snatching has a "real and substantial relation to the national interest" cannot be doubted. Children are this nation's most valuable resource and their well-being is of prime concern to all citizens. The gravity of the problems arising from child-snatching incidents and the national concern therewith is evidenced by the extensive testimony by numerous parties during hearings on S. 105 and similar bills.

Second, it is well-settled that interstate commerce encompasses the movement of persons across state borders -- and that of course includes children. In *Heart of Atlanta Motel, Inc. v. United States*, 4/ Justice Clark outlined the history of the Supreme Court's development of this theory that commercial intercourse extends to the transportation of people as well as property. 5/ Of particular importance is the Court's opinion in *Caminetti v. United States* 6/ which states that:

The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the Commerce Clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from . . . injurious uses has been frequently sustained, and is no longer open to question. 7/

Justice Clark's opinion also makes clear that the transportation of persons need not be commercial in character and that Congress is not restricted from exercising its regulatory power merely because it is dealing with a moral or social wrong. 8/

3/ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 255 (1964).

4/ *Id.*

5/ *Id.* at 255-56.

6/ 242 U.S. 470 (1917).

7/ *Id.* at 491.

8/ 379 U.S. at 257.

Without the enactment of S. 105, parents may very well be hesitant about permitting their children to travel -- on vacation for example -- for fear that once outside the residential state, the child may not be returned, thus violating a custody order. Moreover, snatching parents who take children from one state to another are themselves involved in interstate commerce.

Congressional authority under the Commerce Clause is limited to the extent that "... Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." ^{9/} Only once in the last forty years has the Supreme Court invalidated federal legislation on the grounds that it undermined a state's sovereignty. In National League of Cities v. Usery, ^{10/} the Court declared unconstitutional amendments to the Fair Labor Standards Act extending minimum wage and maximum hour requirements to state and municipal employees. Because those regulations hampered a state's freedom "to structure integral operations in areas of traditional governmental functions," they infringed on matters which were "essential to (the) separate and independent existence" of a state. ^{11/} Despite the fact that the legislation itself was within the scope of the Commerce Clause, the matters which it sought to affect were beyond the reach of Congressional power under that clause. ^{12/}

Although the impact of the decision in National League of Cities is unclear, it has been suggested that the Court will strike down legislation only when it undermines the ability of states and local governments to perform those duties which the federal government has left to them. ^{13/} S. 105 does not impair the states' integrity or their ability to function effectively. To the contrary, it supports the integrity of a state's judicial process by requiring that enforcement be given to its child custody orders if certain jurisdictional requirements are met.

Any argument that those few states which have not enacted the Uniform Child Custody Jurisdiction Act are hampered in their ability to make child custody determinations by the enactment of S. 105 is inapposite. When conflicts exist among state regulations, the Supreme Court has given deference to the majority rule. ^{14/} There is, therefore, no reason why Congress itself cannot accomplish by legislation what that Court has done through its decision-making process. In fact, the stronger argument is that Congress is the more appropriate body to regulate conflicting state provisions in those areas of grave national concern.

^{9/} Fry v. United States, 421 U.S. 542, 547 n.7 (1975); accord, National League of Cities v. Usery, 426 U.S. 833 (1976).

^{10/} 426 U.S. 833 (1976).

^{11/} Id. at 845, 852.

^{12/} It should be noted that the Court suggested that regulations which affect integral operations of state governments may be permissible under alternate sections of the Constitution. Id. at 852 n.17.

^{13/} See generally, Tribe, supra note 2 at 85-22.

^{14/} See, e.g., Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959) (prohibition by one state of measure which was legal and at least 45 others held to be invalid).

By enacting the Uniform Act, thirty-nine states have expressed their desire that mutual recognition be given to validly ordered judicial child custody decrees. Such a clear expression should not be undermined by a small minority of states which might choose to disregard that legitimate concern, and it is appropriate for Congress to assist the states in avoiding such conflicts. 15/

2. "The FBI, as you have pointed out, has taken the position that they should not get involved in domestic relations matters. In your statement you assert that this position was misplaced from the beginning and is further diminished by the Full Faith and Credit Clause provisions. Can you elaborate on your statement?"

When I indicated that the F.B.I.'s concern about getting involved in domestic relations matters was misplaced, I meant that their activities authorized by this bill in no way affects domestic relations decisions. That is left up to state courts. The role of the F.B.I. pursuant to this bill is to assist in the protection of people. That is their historical purpose. In terms of the harm caused and fears induced, a child victim of a snatch is no different than any other victim of a kidnapping. Consequently the F.B.I. is used in a manner which is consistent with its traditional role.

3. "John Van De Kamp, District Attorney for Los Angeles County, California, has recommended extending the period of time a parent has in which to report an offense from 90 days to 180 days. Do you see a need for this?"

We would recommend against extending the period of time within which a person claiming a right under the criminal provisions of the legislation must notify local authorities beyond the 90-day period that is now contained in S. 105. As stated in our testimony, we believe that criminal prosecution of a kidnapping parent is to be used only as a last resort and the provisions of the bill itself reflect this intent. 16/

It may be assumed that parents who discover that their child has been restrained and who desire the safe return of that child will soon turn to local law enforcement authorities for help. It is conceivable that an attempt may initially be made to privately settle matters. However, after a few days without success, it would become apparent that such efforts are futile and outside help is needed. Ninety days is certainly sufficient time within which to make such a determination.

Any argument that the ninety-day period may pass before the parent realizes that the child has been restrained is unwarranted. The "restraint," as defined in the legislation, does not commence until the child is removed from his home or school or confined or moved from one place to another without the consent of the person whose right of custody or

15/ Interestingly, research by one of our colleagues has uncovered no case in which Usery was relied upon to invalidate a statute.

16/ For example, returning the child unharmed in 30 days is a defense to prosecution; penalties are minimal; and the F.B.I. is not involved until the Parent Locator Service has first been utilized.

visitation is violated. Thus, in the first instance, notice of restraint is immediate. The second situation might arise when a child is visiting one parent on vacation and that parent decides not to return the child. The time for measuring "restraint" would begin not at the time the visitation period began but when the agreed-upon period ended and it became clear that the child would not be returned.

Although the idea of imposing criminal sanctions of a parent attempting to gain custody of his child is troubling, we believe such sanctions are necessary to help deter child snatching. However, as stated above, it should be seen as a last resort, and ninety days is ample time within which to give a parent the chance to notify local authorities.

4. "In your view, should the criminal sanction apply to child restraints and concealments that began prior to the date of the enactment of this bill, as it is drafted to do?

As I understand this bill, the criminal provisions prohibit concealing or restraining a child, not snatching per se. Children who have been snatched prior to the enactment of this bill who remain concealed or restrained after its enactment remain victims of an activity which Congress seeks to make illegal. Consequently, those parents who continue to conceal or restrain a child who was originally snatched prior to its passage are criminally liable. Those who would seek to avoid criminal liability could do so by returning the child within 30 days of enactment, thus establishing an affirmative defense or grounds for dismissal of the charges.

5. "Should the frustration of visitation by either parent, through either the refusal to allow court-ordered visitation or the abuse of the visitation right, subject the violator to the federal misdemeanor provision?"

We believe that frustration or abuse of visitation should not be made a crime unless restraint or concealment occurs. While visitation activities may have interstate ramifications, they are minimal in comparison to those involving concealing or restraining. In fact, the nexus between mere visitation problems and interstate commerce may not be sufficient to permit legislation in this area. (See cases cited in answer to Question #1.)

Furthermore, visitation orders have long been the province of the state courts. Current state laws plus the addition of full faith and credit implemented through other sections of this bill sufficiently protect the interests of children and parents where concealment or restraint does not occur.

Finally, as we have maintained throughout our testimony, federal criminal prosecution is a serious step to be undertaken only as a last resort and when other measures short of prosecution cannot alleviate the problem. The provisions establishing the return of a child as a defense demonstrate this concept. Clearly the Full Faith and Credit Clause supplemented by the state courts' own contempt power is sufficient to handle visitation problems where concealment and restraint are absent.

6. "Do you see a need for judicial workshops for family court judges on the Uniform Child Custody Jurisdiction Act, trends in family law and particularly with regard to developments in child custody?"

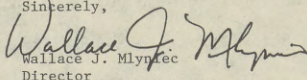
Certainly the education of the state judiciary is always important. Few lawyers come to the bench skilled in all aspects of law. Given the current selection processes for state judgeships, it is unlikely that a large number will be juvenile justice experts.

Several organizations exist which could provide this service. In addition to the state bar associations, the National Council of Juvenile Court Judges or state judicial conferences could provide training in this area. Given their resources, it is unlikely that any addition of funding is necessary to accomplish this goal.

We also believe that training programs should be established within the F.B.I. to prepare them to handle their new responsibilities in a sensitive manner.

I hope this additional information will assist you in your task. If any other information is required we will be happy to assist you.

Sincerely,


Wallace J. Mlyniec
Director

STATEMENT OF SENATOR STROM THURMOND (R-S.C.) BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE OF THE JUDICIARY COMMITTEE AND THE CHILD AND HUMAN DEVELOPMENT SUBCOMMITTEE OF THE LABOR AND HUMAN RESOURCES COMMITTEE. WEDNESDAY, JANUARY 30, 1980. ROOM 6226 DSOB. 9:00 A.M.

MR. CHAIRMAN:

As a cosponsor of S.105, entitled the "Parental Kidnapping Prevention Act," I am pleased to have this opportunity to express my views on this legislation.

As the members of the two subcommittees holding these hearings know, the Library of Congress has estimated that some 25,000 incidents of so-called "child-snatching" occur annually in the United States. Because of the increasing rate of divorce in this Country, an increase in this unfortunate activity will no doubt result.

This issue is not new to many of us on the Judiciary Committee. In the 95th Congress, during floor debate and consideration of S.1437, the Criminal Code Reform Act of 1978, amendments similar to the provisions of S.105 were adopted by the Senate. Similar provisions are now contained in S.1722, the most recent version of the criminal code bill, which is presently on the Senate calendar. Section 1624 of the bill would make it a Federal crime to restrain a minor child in violation of another's right of custody or visitation arising from a court order entitled to interstate enforcement.

Mr. Chairman, this is a new offense to Federal law, but one which I believe the Committee feels is justified under the present situation. Because of the current judicial interpretations of the Full Faith and Credit Clause of the Constitution, child custody orders are rendered almost unenforceable throughout the Nation. As a result, there is no enforceable remedy at the State level, either in civil court or by criminal

penalty. Thus, a Federal statute containing a limited Federal role was viewed by the Committee as the best way to provide Federal leadership in this area.

It should be noted that the approach taken under the criminal code legislation, as well as S.105, preserves the traditional State control over child custody determinations. Amendments to other provisions of Federal law give the States the ability to better enforce child custody orders, while leaving the Federal criminal offense as a last resort sanction to be used sparingly. The FBI's role, as well as that of other Federal officials, is carefully limited in this legislation.

Mr. Chairman, as one Senator who seeks to defend the family unit as the foundation of our society, it disturbs me greatly to see the rising rate of divorce and family break-ups that occur because of it. But I also understand human nature and I can understand why parents want their children to be with them, and not someone else. Unfortunately, kidnapping in violation of a bona fide child custody decree is not the solution; it only aggravates the problem. I hope that S.105, and similar provisions in S.1722, will help prevent this kind of "self-help" and preserve the role of the States in overseeing marital and family disputes. I urge this panel to act favorably on this legislation.

STATEMENT OF SENATOR ALAN K. SIMPSON
ON S. 105, THE PARENTAL KIDNAPPING PREVENTION ACT,
SUBMITTED TO THE SUBCOMMITTEE ON CRIMINAL JUSTICE AND
THE SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT

January 30, 1980

MR. SIMPSON: Mr. Chairman, I want to thank the Subcommittees on Criminal Justice and Child and Human Development for this opportunity to submit a statement today in support of S. 105, the Parental Kidnapping Prevention Act, introduced by my fine friend and colleague from Wyoming, Senator Malcolm Wallop.

Senator Wallop deserves special credit from us all for his efforts over the past three years in developing this legislation in response to a very real and serious problem which is ever-growing in this country. Senator Wallop noted the problem when he served on the Senate Judiciary Committee. In his usually perceptive way he has come up with a remarkable legislative solution.

During nearly 20 years of the practice of law in the State of Wyoming -- which included the handling of a great many domestic relations cases -- I personally witnessed and was involved in numerous custody "battles" between couples in the throes of divorce and the aftershock of it.

As the divorce rate has steadily risen, so has the number of disputed cases involving the custody of the often embittered couples' children. Disputes are often unpleasant, frequently bitter and -- wretchedly and sadly -- almost certainly disruptive to the best interests and welfare of the children involved. The most poignant and powerful

public comment can be observed in the excellent movie "Kramer vs. Kramer" -- a highly topical and remarkable effort.

And as one might imagine, the incidents of parental kidnapping -- the taking of a child by a parent who is not awarded legal custody -- or by that parent's agent -- and the transportation of the child across state lines are likewise growing in significant proportions.

Based on my own long personal experience and after reviewing the materials that prompted Senator Wallop to propose this legislation, I believe that the problem of parental kidnapping is a serious one in America and warrants the clear attention of the United States Congress. For these reasons, I was pleased to join with Senator Wallop in cosponsoring S. 105 when he introduced it early last year. I am pleased that the Subcommittees are considering it during this hearing today.

The legislation soundly addresses the heart of the issue. There is no effective deterrent now in either Federal or state criminal laws to dissuade parents from kidnapping their own children. Furthermore, the bill is structured on the premise that the problem is interstate in origin, that the states have failed to develop effective remedies and, consequently, the Federal government should have a rightful role in attempting to correct the problem. I agree with that premise.

The testimony received by the Subcommittees today will deal in some depth with the three major sections of the legislation:

1) the requirement that state courts give full faith and credit to custody decrees rendered by sister state courts; 2) expansion of the use of the Federal Parent Locator Service to include locating parents who take, restrain, or conceal their children; and 3) the addition of a new section 1203 to title 18 of the U.S. Code entitled "Parental Kidnapping".

This last section in my judgment has the real "teeth" of the legislation. It may also well prove to be the most controversial provision in the bill. This language would make it a Federal misdemeanor for any parent, relative, or other person specified in the statute to snatch and transfer a child across state lines in violation of a custody determination entitled to full faith and credit. The provision also authorizes the Federal Bureau of Investigation to investigate interstate child kidnappings.

Clearly this provision mandates a new responsibility for the FBI and raises some questions as well. The budgetary impact of the FBI's proposed activities related to parental kidnapping cases -- the number of cases which may be expected to arise each year -- and the allocation of FBI resources to this problem -- are all legitimate concerns which should be considered carefully. One of the most constructive results which could spring from this hearing today would be the views of the FBI on S. 105 -- and on the proposed involvement of the Bureau in interstate parental kidnapping cases. I am confident that supporters of this legislation are prepared to address and answer the concerns the Bureau may have.

I should like to stress my own willingness to continue to work with Senator Wallop and the other sponsors of S. 105 in order to achieve a fair and workable solution to this tragic, traumatic and wrenching drama of parental kidnapping. We must end this increasingly common and cruel practice.

Thank you for this opportunity to present my views.

Additional Submissions of Senator Wallop

SECTION BY SECTION ANALYSIS OF S. 105

The first section amends title 28 of the United States Code by adding a new subsection 1738A. The new provision adopts the principle jurisdictional provisions of the Uniform Child Custody Jurisdiction Act and, for the first time, requires state courts to give full faith and credit to custody determinations rendered by sister state courts consistent with these provisions.

All states will be required to enforce and not modify, except under specified circumstances, custody determinations made by sister state courts which exercise their jurisdiction in accordance with the provisions of this bill.

This section applies to "custody determination" which is defined in the bill to include both custody and visitation rights, including permanent, temporary, and initial orders. It thereby extends its protection to both mothers and fathers, irrespective of which parents exercises the right of custody or of visitation. It states no preference as to which parent should be awarded custody or visitation of the child which builds in the elasticity needed to accommodate any custody arrangements mutually agreeable to the to the parties, including joint custody and other equitable arrangements.

One of the major incentives for child-snatching will be eliminated by adopting the "home state" basis for jurisdiction found in the UCCJA. The "home state" is the state in which the child lived continuously for six months immediately preceding the commencement of a custody proceeding. The home state retains jurisdiction to make custody determinations for six months after the child leaves the state.

An order entered in the home state would be entitled to full faith and credit in other states and could not be modified as provided for in the bill.

If a snatching occurs before a court determination of custody has been made, the parent who remains in the home state has six months in which to obtain a custody determination which would then be entitled to be recognized and not modified by sister states. During this time no other state, with but a few exceptions would have jurisdiction to act in a custody case involving the snatched child. If a custody determination is in force at the time a snatching occurs, the state to which the child is taken would not, except in the enumerated circumstances have jurisdiction to modify the existing decree and would defer to the original court to make adjustments in that order.

This provision does not mandate a state to adopt the Uniform Child Custody Jurisdiction Act. It should serve, however, as a significant inducement to the 11 states and the District of Columbia which have yet to adopt the Uniform Act, since by doing so their custody and visitation decrees would then be entitled to be recognized, enforced and not modified by sister states. The most important immediate result of this provision will be the eradication of the so-called "haven-state" in which an abductor parent can still find refuge. Even those states will be required to enforce the decrees of sister states that have adopted the Uniform Act. Assuming all fifty states and the District of Columbia

do adopt the act, this statute will retain its usefulness in those cases in which a court might ignore the state law but would be hard pressed to ignore both the state and federal law. The combined effect should accelerate the process by which courts around the country interpret and apply the Uniform Act. Of course, once all the states and the District of Columbia have enacted the law, we should then reassess the scope and usefulness of the federal law.

The uniform custody approach to custody cases embodied in this provision should markedly reduce the number of custody cases which are relitigated in numerous states. This will have the desirable effect of conserving precious judicial time and bringing some semblance of continuity into the child's life.

The second section amends section 453 of the Social Security Act which established the parent locator service (PLS). The parent locator service was set up as part of the Child Support Enforcement Program to find parents who default on their child support payments, to establish paternity and to collect child support. This amendment expands the existing responsibility of the PLS to include locating children and parents who take, restrain, or conceal their children.

Parent locator services have been established in all 50 states, four territories as well as in the federal government. Since it began operating in 1976, over 1.1 million parents have been located and over \$2.6 billion collected! In 1979, child support

collections increased by 27% to more than 1.3 billion. Based on its huge success in locating parents in child support cases, the PLS should prove to be equally effective in child custody and parental kidnapping cases. This provision will promote cooperation among the states and the federal government in locating parents who snatch their children. Once the children have been found, legal proceedings and other appropriate steps can be taken to effect the return of the child to the place from which he or she was taken. This type of assistance will remove an enormous financial burden from the shoulders of parents who typically spend thousands of dollars trying to locate their children.

The third section of the bill adds a new section 1203 to title 18 of the United States Code, entitled "Parental Kidnapping" to close the loophole in the existing federal kidnapping law which exempts parents from prosecution. It does this by making it a federal misdemeanor for any parent, relative, or other person specified in the statute to restrain or conceal, and transport a child across state lines in violation of a new custody determination entitled to full faith and credit under new section 1738A of title 28 of the United States Code. The two minor offenses created, "restraining a child," and "concealing a child," are punishable by a maximum of 30 days imprisonment of a \$10,000 or both, and a maximum of six months imprisonment or \$10,000 or both, respectively.

This section is intended to cover the typical child-snatching case in which one parent takes his child in violation of a custody or visitation decree in favor of the other parent. It could also cover cases in which the snatching occurs before a custody determination is obtained. Under the full faith and credit provision, the parent who is left behind in the home state may obtain a custody determination in the home state within six months from the date the child has been snatched. If a custody determination is entered and the restraint and/or concealment continues for the specified periods of time, a prosecution could lie. This provision would apply to the private detective, friend, or relative who helps restrain or conceal the child in disregard of a custody determination entitled to full faith and credit.

If this amendment is enacted, the federal criminal courts will not become the arbiters of custody disputes. Federal criminal jurisdiction would only come into play where a parent violates a custody determination enforceable under new section 1738A of title 28. In other words, parties to a custody dispute are obligated to obtain a custody determination under the civil laws of a state before a federal prosecution could be brought under this section.

While this legislation recognizes the valuable assistance the FBI can bring to an interstate parental kidnapping case, it is also cognizant of the bureau's limited resources. These two interests are reconciled by postponing FBI involvement in an investigation until 60 days have passed from the time local law enforcement authorities and the state and federal parent locator services have been alerted about the offense and their assistance has been mobilized to find the missing child and parent.

Should the statute fail to achieve its primary purpose - the prevention of child- snatchings - it nonetheless encourages the parent who has snatched the child to return the child to the person who is entitled to the child's custody or visitation. It does this in two ways. First, it creates a defense to prosecution where a defendant returns the child unharmed to the other parent within 30 days after an arrest warrant has been issued. Second, it instructs the court to be lenient in sentencing a defendant who returns the child unharmed but too late to take advantage of the defense.

The federal criminal law will serve as an added deterrent to the parent who might otherwise disregard a custody or visitation right or resort to self-help by kidnapping his or her child. To the extent that it is effective, thousands of children will be spared the emotional consequences of child-snatching.

UNIFORM CHILD CUSTODY JURISDICTION ACT

The following States have adopted the Uniform Child Custody Jurisdiction Act:

Alaska	Nevada
Arizona	North Dakota
Arkansas	New Hampshire
California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Oregon
Georgia	Pennsylvania
Hawaii	Rhode Island
Idaho	South Dakota
Illinois	Tennessee
Indiana	Virginia
Iowa	Washington
Kansas	Wisconsin
Louisiana	Wyoming
Maine	
Maryland	
Michigan	
Minnesota	
Missouri	
Montana	
Nebraska	



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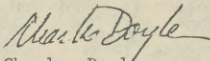
August 9, 1979

TO : Honorable Malcolm Wallop
Attn: Pat Hoff

FROM : American Law Division

SUBJECT: Parental Kidnapping - State Statutory Survey

Enclosed in partial response to your request for information to facilitate consideration of S.105 is a copy of a state statutory survey on parental kidnapping. The survey is an update and modification of an earlier survey conducted by Meredith McCoy of this division. Copies of the statutes in question are also enclosed.


Charles Doyle
Legislative Attorney



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PARENTAL KIDNAPPING: STATE STATUTORY SURVEY

The chart which follows summarizes the position of the various state laws with respect to parental kidnapping. A substantial number of states have enacted legislation to deal with parental kidnapping. The most common approach is the use of a custodial interference involves removal of the child from the state, "to assist in invocation of the extradition and federal fugitive felon provisions."^{1/} However, even in states which have enacted such statutes, where one parent removes a child from the custody of the other in violation of a custody agreement or judicial order, state kidnapping provisions or provisions prohibiting related offenses such as child snatching, false imprisonment or unlawful restraint may have been violated. In a number of jurisdictions parents are specifically exempted from the application of statutes prohibiting kidnapping or related offenses. In some instances, this is accomplished

^{1/} Practice Commentary following Tex. Penal Code § 25.03. Federal law prohibits interstate flight to avoid prosecution of a felony charge, 18 U.S.C. § 1073. Both the Uniform Criminal Extradition Act (§2) and federal law, 18 U.S.C. § 3182, speak in terms of "treason, felony or other crime" as providing grounds for extradition. The cases suggest that misdemeanor charges may form the basis for extradition, see Glover v. State, 257 Ark. 241, 515 S.W.2d 641 (1974); Graham v. State, 231 Ga. 820, 204 S.E.2d 630 (1974), although states may be more inclined to utilize extradition in felony cases.

with a simple exception such as that found in the federal provision.^{2/}
 However, more often the exception is more narrowly drawn.^{3/}

While custodial interference statutes are common, there are a number of jurisdictions which recognize a parental exception in their kidnap laws and have not enacted a custodial interference statute^{4/} or which have refused to apply either their kidnap or custodial interference provisions to parental kidnapping.^{5/}

^{2/} 18 U.S.C. § 1201 states in part, "Whoever unlawfully...kidnaps...any person, except in the case of a minor by the parent thereof... shall be punished by imprisonment for any term of years or life." (Emphasis added.)

^{3/} See, Ariz. Rev. Stat. Ann. § 13-1303, "B. In any prosecution for unlawful imprisonment, it is a defense that: ...2. The defendant is a relative of the person restrained and the defendant's sole intent is to assume lawful custody of that person and the restraint was accomplished without physical force."

^{4/} See, S.C. Code § 16-3-910.

^{5/} See, Ala. Code Commentary following § 13a-6-45 which contains a parental exception within its custodial interference provisions, "Special provision is made to prevent abuse in certain custody battles between estranged parents. Under § 13a-6-45(b), the offense of custodial interference cannot be committed if the actor is a 'relative' as defined in § 13a-6-40(3), and the actor's sole purpose was to assume lawful control or custody. This is the counterpart to § 13a-6-42(b) [second degree unlawful imprisonment] a similar exception based on custody wrangles." Supplemental Commentary on § 707-723 of the Hawaii Penal Code states, "Section 723 of the Proposed Draft of the Code had contained a third situation involving the offense of custodial interference. It provided that the offense was committed if a person, being a relative of a person less than eighteen years old, knowingly takes or entices the person from his lawful custodian, knowing that he has no right to do so, with the intent to hold the person permanently or for a prolonged period. However, the Legislature was concerned with complications involving domestic relations in such cases and rejected this offense."

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<u>State (Source)</u>	<u>Custodial Interference</u>	<u>Kidnapping Statutes</u> ^{1/}	<u>Parental Immunity</u> ^{2/}
Alabama (Ala. Code)			tit. 13A §§ 6-42, 6-45
Alaska (Alaska Stat.)	§ 11.41.320(F) (inter- state) (as of 1/1/80) § 11.41.330(M) (intra- state) as of 1/1/80	§ 11.15.290(F) (prior to 1/1/80) (child stealing)	§ 11.41.300 (as of 1/1/80) § 11.15.260 (prior to 1/1/80) (kid- napping)
Arizona (Ariz. Rev. Stat.)	§ 13-1302(F)		§ 13-1303
Arkansas (Ark. Stat. Ann.)	§ 41-2411(F) (interstate)/ (M) (intrastate)	§ 41-1704(2d degree false imprisonment)	
California (Cal. Penal)	§ 278.5(F)	§ 278 (child abduc- tion)(F)	
Colorado (Colo. Rev. Stat.)	§ 18-3-304(F)		§ 18-3-302
Connecticut (Conn. Gen. Stat. Ann.)	§ 53a-97(F) (interstate) § 53a-98(M) (intrastate)	§ 53a-96 (2d degree unlawful restraint) (M)	

M - misdemeanor
F - felony

1. Kidnapping and related offenses such as unlawful restraint whose terms would encompass parental child snatching in the absence of a contrary judicial interpretation of legislative intent.
2. Statutory immunity from the application of kidnapping and related offenses for parents.

CRS-4

<u>State (Source)</u>	<u>Custodial Interference</u>	<u>Kidnapping Statutes</u>	<u>Parental Immunity</u>
<u>Delaware</u> (Del. Code)	tit. 11 § 785(M)		tit. 11 § 784
<u>Florida</u> (Fla. Stat. Ann.)	§ 787.04(F) (interstate)	§ 787.02(F) (false imprisonment)	
	§ 787.03(M) (interstate)		
<u>Georgia</u> (Ga. Code Ann.)	§ 26-1312(F) (interstate)/ (M) (intrastate)	§ 26-1311 (kidnaping) (F)	
<u>Hawaii</u> (Hawaii Rev. Stat.)			§ 707-722
<u>Idaho</u> (Idaho Code)		§§ 18-4501, 18-4503 (F) (kidnapping)	
<u>Illinois</u> (Ill. Ann. Stat.)	ch. 38 § 10-5(F)	ch. 38 §§ 10-1, (F); 10-3(F)	
<u>Indiana</u> (Ind. Code Ann.)		§ 35-42-3-3(F) (criminal confinement)	
<u>Iowa</u> (Iowa Code Ann.)	§ 710.6(F) (interstate)/ (M) (intrastate)		§ 710.5
<u>Kansas</u> (Kan. Stat.)	§ 21-3422a(F) (interstate)/ (M) (intrastate)		
<u>Kentucky</u> (Ky. Rev. Stat. Ann.)	§ 509.070(M)		§ 509.060

CRS-5

<u>State (Source)</u>	<u>Custodial Interference</u>	<u>Kidnapping Statutes</u>	<u>Parental Immunity</u>
Louisiana (La. Rev. Stat. Ann.)	§ 14.45(F) (interstate)		
Maine (Me. Rev. Stat.)	tit. 17-A § 302(F) (interstate)		art. 27 § 337
Maryland (Md. Ann. Code)			
Massachusetts (Mass. Gen. Laws Ann.)	ch. 265 § 26(F)	§ 750.350(F) (kid- napping child under 14)	
Michigan (Mich. Comp. Laws Ann.)			
Minnesota (Minn. Stat. Ann.)	§ 609-26(F)		§ 609.255
Mississippi (Miss. Code Ann.)		§ 97-3-53(F) (kid- napping child under 10)	
Missouri (Mo. Ann. Stat.)	§ 565.150(F) (inter- state)/(M) (intrastate)	§ 565.140(F) (false imprisonment if inter- state)	
Montana (Mont. Rev. Codes Ann.)	§ 94-5-305(F)		

CRS-6

<u>State (Source)</u>	<u>Custodial Interference</u>	<u>Kidnapping Statutes</u>	<u>Parental Immunity</u>
Nebraska (Neb. Rev. Stat.)	§ 28-316(F)	§ 28-315(M) (false imprisonment in the 2d degree)	
Nevada (Nev. Rev. Stat.)	§ 200.359(M)	§§ 200.310 to 200.330 (kidnapping) (F)	
New Hampshire (N.H. Rev. Stat. Ann.)		§ 633:3 (false imprisonment) (M)	
New Jersey (N.J. Stat. Ann.)	§ 2C:13-4(M)		§§ 2C:13-2 (criminal restraint), 2C:13-3 (false imprisonment)
New Mexico (N.M. Stat. Ann.)	§ 30-4-4(F) (interstate)	§ 30-4-3(F) (false imprisonment)	
New York (N.Y. Penal Law)	§ 135.45(M)		
North Carolina (N.C. Gen. Stat.)	§ 14-320.1(F)	§ 14-41(F) (child abduction)	§ 12.1-18-03
North Dakota (N.D. Cent. Code)			

CRS-7

<u>State (Source)</u>	<u>Custodial Interference</u>	<u>Kidnapping Statutes</u>	<u>Parental Immunity</u>
Ohio (Ohio Rev. Code Ann.)		§ 2905.04 (child stealing) (F) (interstate)/(M) (intrastate)	
Oklahoma (Okla. Stat. Ann.)		tit. 21 § 891(F) (child stealing)	§ 163.225
Oregon (Ore. Rev. Stat.)	§ 163.245(F) (interstate)/(M) (intrastate)		
Pennsylvania (Pa. Stat. Ann.)	tit. 18 § 2904(M)		
Rhode Island (R.I. Gen. Laws)		§ 11-26-1 (kidnapping)	
South Carolina (S.C. Code)			§ 16-3-910
South Dakota (S.D. Compiled Laws)	§ 22-19-9(M)		
Tennessee (Tenn. Code Ann.)		§ 39-2602(F) (kidnapping a child under 16)	
Texas (Tex. Penal Code)	§ 25.03(F) (interstate)		

CRS-8

Parental ImmunityKidnapping StatutesCustodial InterferenceState (Source)Utah
(Utah Code Ann.)

§ 76-5-303(M)

Vermont
(Vt. Stat. Ann.)tit. 13 §§ 2401,
2402 (kidnapping)Virginia
(Va. Code)

§ 18.2-47(F)

Washington
(Wash. Rev. Code Ann.)§ 9A.40.040(F)
(unlawful imprisonment)West Virginia
(N. Va. Code)§ 61-2-14(F)
(child snatching)Wisconsin
(Wis. Stat. Ann.)

§ 946.71(F) (interstate)

Wyoming
(Wyo. Stat.)§ 6-4-202(F) (child
stealing)Currency of Materials Used

Alabama: 1978 Session Laws
 Alaska: 1978 Supplement*
 Arizona: 1979 Session Laws
 Arkansas: 1978 Supplement
 California: 1979 Session Laws as of June 19, 1979

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Colorado: 1978 Supplement
 Connecticut: 1979 Session Laws
 Delaware: 1979 Session Laws
 Florida: 1979 Session Laws as of May 16, 1979
 Georgia: 1978 Supplement
 Hawaii: 1978 Session Laws
 Idaho: 1979 Session Laws as of April 6, 1979
 Illinois: 1979 Session Laws as of April 5, 1979
 Indiana: 1979 Session Laws
 Iowa: 1979 Session Laws
 Kansas: 1978 Supplement
 Kentucky: 1979 Session Laws
 Louisiana: 1978 Supplement
 Maine: 1979 Session Laws
 Maryland: 1978 Supplement
 Massachusetts: 1979 Session Laws as of May 14, 1979
 Michigan: 1979 Session Laws as of June 14, 1979
 Minnesota: 1979 Session Laws
 Mississippi: 1979 Session Laws as of April 16, 1979
 Missouri: 1978 Supplement
 Montana: 1977 Supplement
 Nebraska: 1978 Supplement
 Nevada: 1977 Supplement
 New Hampshire: 1978 Supplement
 New Jersey: 1979 Session Laws as of April 26, 1979
 New Mexico: 1978 Supplement
 New York: 1979 Session Laws as of May 29, 1979
 North Carolina: 1979 Session Laws as of May 8, 1979
 North Dakota: 1977 Supplement

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Ohio: 1978 Supplement
 Oklahoma: 1979 Session Laws as of May 21, 1979
 Oregon: 1977 Supplement
 Pennsylvania: 1978 Supplement
 Rhode Island: 1978 Supplement
 South Carolina: 1978 Supplement
 South Dakota: 1979 Supplement
 Tennessee: 1979 Session Laws as of June 7, 1979
 Texas: 1979 Session Laws as of May 24, 1979
 Vermont: 1978 Supplement
 Virginia: 1978 Supplement
 Washington: 1979 Session Laws as of May 5, 1979
 West Virginia: 1979 Supplement
 Wisconsin: 1979 Session Laws as of June 15, 1979
 Wyoming: 1977 Supplement

* Regardless of the publisher's identification, supplements designated 1977, 1978 or 1979 contain the laws enacted through the 1977, 1978 or 1979 legislative sessions respectively.

STATES THAT HAVE NOT ADOPTED THE UCCJA:

Alabama

Kentucky

Massachusetts

Mississippi

New Mexico

Oklahoma

South Carolina

Texas (adopted jurisdictional principles of the Act in 1979)

Utah

Vermont

West Virginia

UNIFORM CHILD CUSTODY JURISDICTION ACT

PREFATORY NOTE

There is growing public concern over the fact that thousands of children are shifted from state to state and from one family to another every year while their parents or other persons battle over their custody in the courts of several states. Children of separated parents may live with their mother, for example, but one day the father snatches them and brings them to another state where he petitions a court to award him custody while the mother starts custody proceedings in her state; or in the case of illness of the mother the children may be cared for by grandparents in a third state, and all three parties may fight over the right to keep the children in several states. These and many similar situations constantly arise in our mobile society where family members often are scattered all over the United States and at times over other countries. A young child may have been moved to another state repeatedly before the case goes to court. When a decree has been rendered awarding custody to one of the parties, this is by no means the end of the child's migrations. It is well known that those who lose a court battle over custody are often unwilling to accept the judgment of the court. They will remove the child in an unguarded moment or fail to return him after a visit and will seek their luck in the court of a distant state where they hope to find—and often do find—a more sympathetic ear for their plea for custody. The party deprived of the child may then resort to similar tactics to recover the child and this "game" may continue for years, with the child thrown back and forth from state to state, never coming to rest in one single home and in one community.

The harm done to children by these experiences can hardly be overestimated. It does not require an expert in the behavioral sciences to know that a child, especially during his early years and the years of growth, needs security and stability of environment and a continuity of affection. A child who has never been given the chance to develop a sense of belonging and whose personal attachments when beginning to form are cruelly disrupted, may well be crippled for life, to his own lasting detriment and the detriment of society.

This unfortunate state of affairs has been aided and facilitated rather than discouraged by the law. There is no statutory law in this area and the judicial law is so unsettled that it seems to offer nothing but a "quicksand foundation" to stand on. See Leflar, *American Conflicts*

Law 585 (1968). See Clark, Domestic Relations 320 (1968). There is no certainty as to which state has jurisdiction when persons seeking custody of a child approach the courts of several states simultaneously or successively. There is no certainty as to whether a custody decree rendered in one state is entitled to recognition and enforcement in another; nor as to when one state may alter a custody decree of a sister state.

The judicial trend has been toward permitting custody claimants to sue in the courts of almost any state, no matter how fleeting the contact of the child and family was with the particular state, with little regard to any conflict of law rules. See Leflar, American Conflicts Law 585-6 (1968) and Leflar, 1967 Annual Survey of American Law, Conflict of Laws 26 (1968). Also, since the United States Supreme Court has never settled the question whether the full faith and credit clause of the Constitution applies to custody decrees, many states have felt free to modify custody decrees of sister states almost at random although the theory usually is that there has been a change of circumstances requiring a custody award to a different person. Compare *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947); and see Comment, Ford v. Ford: Full Faith and Credit To Child Custody Decrees? 73 Yale L.J. 134 (1963). Generally speaking, there has been a tendency to over-emphasize the need for fluidity and modifiability of custody decrees at the expense of the equal (if not greater) need, from the standpoint of the child, for stability of custody decisions once made. Compare Clark, Domestic Relations 326 (1968).

Under this state of the law the courts of the various states have acted in isolation and at times in competition with each other; often with disastrous consequences. A court of one state may have awarded custody to the mother while another state decreed simultaneously that the child must go to the father. See *Stout v. Pate*, 209 Ga. 786, 75 S.E. 2d 748 (1953) and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 788 (1953), cert. denied in both cases 347 U.S. 968, 74 S. Ct. 744, 776 98 L. Ed. 1109, 1110 (1954); *Moniz v. Moniz*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956); and *Sharpe v. Sharpe*, 77 Ill. App. 2d 295, 222 N.E. 2d 340 (1966). In situations like this the litigants do not know which court to obey. They may face punishment for contempt of court and perhaps criminal charges for child stealing in one state when complying with the decree of the other. Also, a custody decree made in one state one year is often overturned in another jurisdiction the next year or some years later and the child is handed over to another family, to be repeated as long as the feud continues. See *Com. ex rel. Thomas v. Gillard*, 203 Pa. Super. 95, 198 A.2d 377 (1964); *In Re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 744 (1966); *Berlin v. Berlin*, 239 Md. 52, 210 A. 2d 380 (1965); *Berlin v. Berlin*, 21 N.Y. 2d 371, 283 N.E.

2d 109 (1961), cert. denied 31 L.W. 512 (1963); and *Batchelor v. Fulcher*, 415 S.W. 2d 828 (Ky. 1967).

In this confused legal situation the person who has possession of the child has an enormous tactical advantage. Physical presence of the child opens the doors of many courts to the petitioner and often assures him of a decision in his favor. It is not surprising then that custody claimants tend to take the law into their own hands, that they resort to self-help in the form of child stealing, kidnapping, or various other schemes to gain possession of the child. The irony is that persons who are good, law-abiding citizens are often driven into these tactics against their inclinations; and that lawyers who are reluctant to advise the use of maneuvers of doubtful legality may place their clients at a decided disadvantage.

To remedy this intolerable state of affairs where self-help and the rule of "seize-and-run" prevail rather than the orderly processes of the law, uniform legislation has been urged in recent years to bring about a fair measure of interstate stability in custody awards. See Ratner, *Child Custody in a Federal System*, 62 Mich. L. Rev. 795 (1964); Ratner, *Legislative Resolution of the Interstate Child Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act*, 38 S. Cal. L. Rev. 183 (1965); and Ehrenzweig, *The Interstate Child and Uniform Legislation: A Plea for Extra-Litigious Proceedings*, 64 Mich. L. Rev. 1 (1965). In drafting this Act, the National Conference of Commissioners has drawn heavily on the work of these authors and has consulted with other leading authorities in the field. The American Bar Association has taken an active part in furthering the project.

The Act is designed to bring some semblance of order into the existing chaos. It limits custody jurisdiction to the state where the child has his home or where there are other strong contacts with the child and his family. See Section 3. It provides for the recognition and enforcement of out-of-state custody decrees in many instances. See Sections 13 and 15. Jurisdiction to modify decrees of other states is limited by giving a jurisdictional preference to the prior court under certain conditions. See Section 14. Access to a court may be denied to petitioners who have engaged in child snatching or similar practices. See Section 8. Also, the Act opens up direct lines of communication between courts of different states to prevent jurisdictional conflict and bring about interstate judicial assistance in custody cases.

The Act stresses the importance of the personal appearance before the court of non-residents who claim custody, and of the child himself, and provides for the payment of travel expenses for this purpose. See Section 11. Further provisions insure that the judge receives necessary out-of-state information with the assistance of courts in other states. See Sections 17 through 22.

Underlying the  Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants, residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child. If this can be achieved, it will be less important which court exercises jurisdiction but that courts of the several states involved act in partnership to bring about the best possible solution for a child's future.

The Act is not a reciprocal law. It can be put into full operation by each individual state regardless of enactment of other states. But its full benefits will not be reaped until a large number of states have enacted it, and until the courts, perhaps aided by regional or national conferences, have come to develop a new, truly "inter-state" approach to child custody litigation. The general policies of the Act and some of its specific provisions apply to international custody cases.

UNIFORM CHILD CUSTODY JURISDICTION ACT

SECTION 1. [Purposes of Act; Construction of Provisions.]

(a) The general purposes of this Act are to:

(1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(6) avoid re-litigation of custody decisions of other states in this state insofar as feasible;

(7) facilitate the enforcement of custody decrees of other states;

(8) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(9) make uniform the law of those states which enact it.

(b) This Act shall be construed to promote the general purposes stated in this section.

COMMENT

Because this uniform law breaks new ground not previously covered by legislation, its purposes are stated in some detail. Each section must be read and applied with these purposes in mind.

SECTION 2. [Defn . . .] As used in this Act:

(1) "contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings;

(4) "decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "home state" means the state in which the child immediately preceding the time involved lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months, and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period;

(6) "initial decree" means the first custody decree concerning a particular child;

(7) "modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "physical custody" means actual possession and control of a child;

(9) "person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) "state" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

COMMENT

Subsection (3) indicates that "custody proceeding" is to be understood in a broad sense. The term covers habeas corpus actions, guardianship petitions, and other proceedings available under general state law to determine custody. See Clark, *Domestic Relations* 570-582 (1968).

Other definitions are explained, if necessary, in the comments to the sections which use the terms defined.

SECTION 3. [Jurisdiction.]

(a) A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(1) this State (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this State because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this State; or

(2) it is in the best interest of the child that a court of this State assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this State, and (ii) there is available in this State substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(3) the child is physically present in this State and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected [or dependent]; or

(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3), or another state has declined to exercise jurisdiction on the ground that this State is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a), physical presence in this State of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this State to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

COMMENT

Paragraphs (1) and (2) of subsection (a) establish the two major bases for jurisdiction. In the first place, a court in the child's home state has jurisdiction, and secondly, if there is no home state or the child and his family have equal or stronger ties with another state, a court in that state has jurisdiction. If this alternative test produces concurrent jurisdiction in more than one state, the mechanisms provided in sections 6 and 7 are used to assure that only one state makes the custody decision.

"Home state" is defined in section 2(5). A 6-month period has been selected in order to have a definite and certain test which is at the same time based on a

reasonable assumption. See Ratner, *Child Custody in a Federal System*, 62 Mich. L. Rev. 705, 816 (1964) who explains:

"Most American children are integrated into an American community after living there six months; consequently this period of residence would seem to provide a reasonable criterion for identifying the established home."

Subparagraph (ii) of paragraph (1) extends the home state rule for an additional six-month period in order to permit suit in the home state after the child's departure. The main objective is to protect a parent who has been left by his spouse taking the child along. The provision makes clear that the stay-at-home parent, if he acts promptly, may start proceedings in his own state if he desires, without the necessity of attempting to base jurisdiction on paragraph (2). This changes the law in those states which required presence of the child as a condition for jurisdiction and consequently forced the person left behind to follow the departed person to another state, perhaps to several states in succession. See also subsection (c).

Paragraph (2) comes into play either when the home state test cannot be met or as an alternative to that test. The first situation arises, for example, when a family has moved frequently and there is no state where the child has lived for 6 months prior to suit, or if the child has recently been removed from his home state and the person who was left behind has also moved away. See paragraph (1), last clause. A typical example of alternative jurisdiction is the case in which the stay-at-home parent chooses to follow the departed spouse to state 2 (where the child has lived for several months with the other parent) and starts proceedings there. Whether the departed parent also has access to a court in state 2, depends on the strength of the family ties in that state and on the applicability of the clean hands provision of section 8. If state 2, for example, was the state of the matrimonial home where the entire family lived for two years before moving to the "home state" for 6 months, and the wife returned to state 2 with the child with the consent of the husband, state 2 might well have jurisdiction upon petition of the wife. The same may be true if the wife returned to her parents in her former home state where the child had spent several months every year before. Compare *Willmore v. Willmore*, 273 Minn. 537, 143 N.W. 2d 630 (1966), cert. denied 385 U.S. 898 (1966). While jurisdiction may exist in two states in these instances, it will not be exercised in both states. See sections 6 and 7.

Paragraph (2) of subsection (a) is supplemented by subsection (b) which is designed to discourage unilateral removal of children to other states and to guard generally against too liberal an interpretation of paragraph (2). Short-term presence in the state is not enough even though there may be an intent to stay longer, perhaps an intent to establish a technical "domicile" for divorce or other purposes.

Paragraph (2) perhaps more than any other provision of the Act requires that it be interpreted in the spirit of the legislative purposes expressed in section 1. The paragraph was phrased in general terms in order to be flexible enough to cover many fact situations too diverse to lend themselves to exact description. But its purpose is to limit jurisdiction rather than to proliferate it. The first clause of the paragraph is important: jurisdiction exists only if it is in the child's interest, not merely the interest or convenience of the feuding parties, to determine custody in a particular state. The interest of the child is served when the forum has optimum access to relevant evidence about the child and family. There must be maximum rather than minimum contact with the state. The submission of the parties to a forum, perhaps for purposes of divorce, is not sufficient without additional factors establishing closer ties with the state. Divorce jurisdiction does not necessarily include custody jurisdiction. See *Clark*, *Domestic Relations* 578 (1963).

Paragraph (3) of subsection (a) retains and reaffirms *parens patriae* jurisdiction, usually exercised by a juvenile court, which a state must exercise when a child is in a situation requiring immediate protection. This jurisdiction exists when a child has been abandoned and in emergency cases of child neglect. Presence of the child in the state is the only prerequisite. This extraordinary jurisdiction is reserved for extraordinary circumstances. See *Application of Lang*, 9 App. Div. 2d 401, 193 N.Y.S.2d 733 (1959). When there is child neglect without emergency or abandonment, jurisdiction cannot be based on this paragraph.

Paragraph (4) of subsection (a) provides a final basis for jurisdiction which is subsidiary in nature. It is to be resorted to only if no other state could, or would, assume jurisdiction under the other criteria of this section.

Subsection (c) makes it clear that presence of the child is not a jurisdictional requirement. Subsequent sections are designed to assure the appearance of the child before the court.

This section governs jurisdiction to make an initial decree as well as a modification decree. Both terms are defined in section 2. Jurisdiction to modify an initial or modification decree of another state is subject to additional restrictions contained in sections 8(b) and 14(a).

1 SECTION 4. [*Notice and Opportunity to be Heard.*] Before
2 making a decree under this Act, reasonable notice and opportunity
3 to be heard shall be given to the contestants, any parent whose pa-
4 rental rights have not been previously terminated, and any person
5 who has physical custody of the child. If any of these persons is
6 outside this State, notice and opportunity to be heard shall be given
7 pursuant to section 5.

COMMENT

This section lists the persons who must be notified and given an opportunity to be heard to satisfy due process requirements. As to persons in the forum state, the general law of the state applies; others are notified in accordance with section 5. Strict compliance with sections 4 and 5 is essential for the validity of a custody decree within the state and its recognition and enforcement in other states under sections 12, 13, and 15. See *Restatement of the Law Second, Conflict of Laws*, Proposed Official Draft sec. 69 (1967); and compare *Armstrong v. Manzo*, 380 U.S. 543, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965).

1 SECTION 5. [*Notice to Persons Outside this State; Submission*
2 *to Jurisdiction.*]
3 (a) Notice required for the exercise of jurisdiction over a person
4 outside this State shall be given in a manner reasonably calculated
5 to give actual notice, and may be:
6 (1) by personal delivery outside this State in the manner
7 prescribed for service of process within this State;
8 (2) in the manner prescribed by the law of the place in which
9 the service is made for service of process in that place in an
10 action in any of its courts of general jurisdiction;

- 11 (3) by any form of mail addressed to the person to be served
 12 and requesting a receipt; or
 13 (4) as directed by the court [including publication, if other
 14 means of notification are ineffective].
 15 (b) Notice under this section shall be served, mailed, or de-
 16 livered, [or last published] at least [10, 20] days before any hear-
 17 ing in this State.
 18 (c) Proof of service outside this State may be made by affidavit
 19 of the individual who made the service, or in the manner prescribed
 20 by the law of this State, the order pursuant to which the service
 21 is made, or the law of the place in which the service is made. If
 22 service is made by mail, proof may be a receipt signed by the
 23 addressee or other evidence of delivery to the addressee.
 24 (d) Notice is not required if a person submits to the jurisdiction
 25 of the court.

COMMENT

Section 2.01 of the Uniform Interstate and International Procedure Act has been followed to a large extent. See 9B U.L.A. 315 (1966). If at all possible, actual notice should be received by the affected persons; but efforts to impart notice in a manner reasonably calculated to give actual notice are sufficient when a person who may perhaps conceal his whereabouts, cannot be reached. See *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 805 (1950) and *Schroeder v. City of New York*, 371 U.S. 208, 83 S. Ct. 279, 9 L. Ed. 2d 255 (1962).

Notice by publication in lieu of other means of notification is not included because of its doubtful constitutionality. See *Mullane v. Central Hanover Bank and Trust Co.*, *supra*; and see Hazard, A General Theory of State-Court Jurisdiction, 1966 Supreme Court Rev. 211, 277, 298-37. Paragraph (4) of subsection (a) lists notice by publication in brackets for the benefit of those states which desire to use published notices in addition to the modes of notification provided in this section when these modes prove ineffective to impart actual notice.

The provisions of this section, and paragraphs (2) and (4) of subsection (a) in particular, are subject to the caveat that notice and opportunity to be heard must always meet due process requirements as they exist at the time of the proceeding.

1 SECTION 6. [Simultaneous Proceedings in Other States.]

- 2 (a) A court of this State shall not exercise its jurisdiction under
 3 this Act if at the time of filing the petition a proceeding concerning
 4 the custody of the child was pending in a court of another state
 5 exercising jurisdiction substantially in conformity with this Act,
 6 unless the proceeding is stayed by the court of the other state
 7 because this State is a more appropriate forum or for other reasons.
 8 (b) Before hearing the petition in a custody proceeding the court
 9 shall examine the pleadings and other information supplied by the
 10 parties under section 9 and shall consult the child custody registry

11 established under section 16 concerning the pendency of pro-
 12 ceedings with respect to the child in any states. If the court has
 13 reason to believe that proceedings may be pending in another state
 14 it shall direct an inquiry to the state court administrator or other
 15 appropriate official of the other state.

16 (c) If the court is informed during the course of the proceeding
 17 that a proceeding concerning the custody of the child was pending
 18 in another state before the court assumed jurisdiction it shall stay
 19 the proceeding and communicate with the court in which the other
 20 proceeding is pending to the end that the issue may be litigated in
 21 the more appropriate forum and that information be exchanged in
 22 accordance with sections 19 through 22. If a court of this state has
 23 made a custody decree before being informed of a pending pro-
 24 ceeding in a court of another state it shall immediately inform that
 25 court of the fact. If the court is informed that a proceeding was
 26 commenced in another state after it assumed jurisdiction it shall
 27 likewise inform the other court to the end that the issues may be
 28 litigated in the more appropriate forum.

COMMENT

Because of the havoc wreaked by simultaneous and competitive jurisdiction which has been described in the Prefatory Note, this section seeks to avoid jurisdictional conflict with all feasible means, including novel methods. Courts are expected to take an active part under this section in seeking out information about custody proceedings concerning the same child pending in other states. In a proper case jurisdiction is yielded to the other state either under this section or under section 7. Both sections must be read together.

When the courts of more than one state have jurisdiction under sections 3 or 14, priority in time determines which court will proceed with the action, but the application of the inconvenient forum principle of section 7 may result in the handling of the case by the other court.

While jurisdiction need not be yielded under subsection (a) if the other court would not have jurisdiction under the criteria of this Act, the policy against simultaneous custody proceedings is so strong that it might in a particular situation be appropriate to leave the case to the other court even under such circumstances. See subsection (3) and Section 7.

Once a custody decree has been rendered in one state, jurisdiction is determined by sections 8 and 14.

1 SECTION 7. [*Inconvenient Forum.*]

2 (a) A court which has jurisdiction under this Act to make an
 3 initial or modification decree may decline to exercise its jurisdiction
 4 any time before making a decree if it finds that it is an inconve-
 5 nient forum to make a custody determination under the circum-
 6 stances of the case and that a court of another state is a more
 7 appropriate forum.

8 (b) A finding of inconvenient forum may be made upon the

9 court's own motion or upon motion of a party or a guardian ad
 10 litem or other representative of the child.

11 (c) In determining if it is an inconvenient forum, the court shall
 12 consider if it is in the interest of the child that another state assume
 13 jurisdiction. For this purpose it may take into account the follow-
 14 ing factors, among others:

15 (1) if another state is or recently was the child's home state;
 16 (2) if another state has a closer connection with the child and
 17 his family or with the child and one or more of the contestants;
 18 (3) if substantial evidence concerning the child's present or
 19 future care, protection, training, and personal relationships is
 20 more readily available in another state;
 21 (4) if the parties have agreed on another forum which is no
 22 less appropriate; and
 23 (5) if the exercise of jurisdiction by a court of this state
 24 would contravene any of the purposes stated in section 1.

25 (d) Before determining whether to decline or retain jurisdiction
 26 the court may communicate with a court of another state and
 27 exchange information pertinent to the assumption of jurisdiction
 28 by either court with a view to assuring that jurisdiction will be
 29 exercised by the more appropriate court and that a forum will be
 30 available to the parties.

31 (e) If the court finds that it is an inconvenient forum and that
 32 a court of another state is a more appropriate forum, it may dis-
 33 miss the proceedings, or it may stay the proceedings upon condition
 34 that a custody proceeding be promptly commenced in another
 35 named state or upon any other conditions which may be just and
 36 proper, including the condition that a moving party stipulate his
 37 consent and submission to the jurisdiction of the other forum.

38 (f) The court may decline to exercise its jurisdiction under this
 39 Act if a custody determination is incidental to an action for divorce
 40 or another proceeding while retaining jurisdiction over the divorce
 41 or other proceeding.

42 (g) If it appears to the court that it is clearly an inappropriate
 43 forum it may require the party who commenced the proceedings to
 44 pay, in addition to the costs of the proceedings in this State, nec-
 45 essary travel and other expenses, including attorneys' fees, incurred
 46 by other parties or their witnesses. Payment is to be made to the
 47 clerk of the court for remittance to the proper party.

48 (h) Upon dismissal or stay of proceedings under this section the
 49 court shall inform the court found to be the more appropriate
 50 forum of this fact, of if the court which would have jurisdiction in
 51 the other state is not certainly known, shall transmit the informa-

tion to the court administrator or other appropriate official for forwarding to the appropriate court.
 Any communication received from another state informing this State of a finding of inconvenient forum because a court of this State is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this State shall inform the original court of this fact.

COMMENT

The purpose of this provision is to encourage judicial restraint in exercising jurisdiction whenever another state appears to be in a better position to determine custody of a child. It serves as a second check on jurisdiction once the test of sections 3 or 14 has been met.

The section is a particular application of the inconvenient forum principle, recognized in most states by judicial law, adapted to the special needs of child custody cases. The terminology used follows section 34 of the Restatement of the Law Second, Conflict of Laws, Proposed Official Draft (1967). Judicial restrictions or exceptions to the inconvenient forum rule made in some states do not apply to this statutory scheme which is limited to child custody cases.

Like section 6, this section stresses interstate judicial communication and cooperation. When there is doubt as to which is the more appropriate forum, the question may be resolved by consultation and cooperation among the courts involved.

Paragraphs (1) through (5) of subsection (c) specify some, but not all, considerations which enter into a court determination of inconvenient forum. Factors customarily listed for purposes of the general principle of the inconvenient forum (such as convenience of the parties and hardship to the defendant) are also pertinent, but may under the circumstances be of secondary importance because the child who is not a party is the central figure in the proceedings.

Part of subsection (e) is derived from Wis. Stat. Ann., sec. 262.19 (1).

Subsection (f) makes it clear that a court may divide a case, that is, dismiss part of it and retain the rest. See section 1.05 of the Uniform Interstate and International Procedure Act. When the custody issue comes up in a divorce proceeding, courts may have frequent occasion to decline jurisdiction as to that issue (assuming that custody jurisdiction exists under sections 3 or 14).

Subsection (g) is an adaptation of Wis. Stat. Ann., sec. 262.20. Its purpose is to serve as a deterrent against "frivolous jurisdiction claims," as G.W. Foster states in the Revision Notes to the Wisconsin provision. It applies when the forum chosen is seriously inappropriate considering the jurisdictional requirements of the Act.

SECTION 8. [Jurisdiction Declined by Reason of Conduct.]

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to

9 custody, has improperly removed the child¹¹ from the physical
 10 custody of the person entitled to custody or has improperly re-
 11 tained the child after visit or other temporary relinquishment
 12 of physical custody. If the petitioner has violated any other
 13 provision of a custody decree of another state the court may
 14 decline to exercise its jurisdiction if this is just and proper under
 15 the circumstances.
 16 (c) In appropriate cases a court dismissing a petition under
 17 this section may charge the petitioner with necessary travel and
 18 other expenses, including attorneys' fees, incurred by other parties
 19 or their witnesses.

COMMENT

This section incorporates the "clean hands doctrine," so named by Ehrenzweig, *Interstate Recognition of Custody Decrees*, 51 Mich. L. Rev. 315 (1953). Under this doctrine courts refuse to assume jurisdiction to reexamine an out-of-state custody decree when the petitioner has abducted the child or has engaged in some other objectionable scheme to gain or retain physical custody of the child in violation of the decree. See *Fain, Custody of Children*, The California Family Lawyer 1, 539, 546 (1961); *Ex Parte Mullins*, 28 Wash. 2d 410, 174 P. 2d 790 (1946); *Crocker v. Crocker*, 122 Colo. 49, 219 P. 2d 311 (1950); and *Leathers v. Lenthers*, 102 Cal. App. 2d 768, 328 P. 2d 853 (1958). But when adherence to this rule would lead to punishment of the parent at the expense of the wellbeing of the child, it is often not applied. See *Smith v. Smith*, 135 Cal. App. 2d 100, 286 P. 2d 1009 (1955) and *In re Guardianship of Rodgers*, 100 Ariz. 269, 413 P. 2d 744 (1966).

Subsection (a) extends the clean hands principle to cases in which a custody decree has not yet been rendered in any state. For example, if upon a de facto separation the wife returned to her own home with the children without objection by her husband and lived there for two years without hearing from him, and the husband without warning forcibly removes the children one night and brings them to another state, a court in that state although it has jurisdiction after 6 months may decline to hear the husband's custody petition. "Wrongfully" taking under this subsection does not mean that a "right" has been violated—both husband and wife as a rule have a right to custody until a court determination is made—but that one party's conduct is so objectionable that a court in the exercise of its inherent equity powers cannot in good conscience permit that party access to its jurisdiction.

Subsection (b) does not come into operation unless the court has power under section 14 to modify the custody decree of another state. It is a codification of the clean hands rule, except that it differentiates between (1) a taking or retention of the child and (2) other violations of custody decrees. In the case of illegal removal or retention, refusal of jurisdiction is mandatory unless the harm done to the child by a denial of jurisdiction outweighs the parental misconduct. Compare *Smith v. Smith* and *In re Guardianship of Rodgers*, *supra*; and see *In re Walker*, 228 Cal. App. 2d 217, 39 Cal. Rptr. 243 (1964) where the court assumed jurisdiction after both parents had been guilty of misconduct. The qualifying word "improperly" is added to exclude cases in which a child is withheld because of illness or other emergency or in which there are other special justifying circumstances.

The most common violation of the second category is the removal of the child from the state by the parent who has the right to custody, thereby frustrating the exercise of visitation rights of the other parent. The second sentence of subsection

(b) makes refusal of jurisdiction entirely discretionary in situation because it depends on the circumstances whether non-compliance with the court order is serious enough to warrant the drastic sanction of denial of jurisdiction.

Subsection (c) adds a financial deterrent to child stealing and similar reprehensible conduct.

SECTION 9. [Information under Oath to be Submitted to the Court.]

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath whether:

(1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

COMMENT

It is important for the court to receive the information listed and other pertinent facts as early as possible for purposes of determining its jurisdiction, the joinder of additional parties, and the identification of courts in other states which are to be contacted under various provisions of the Act. Information as to custody litigation and other pertinent facts occurring in other countries may also be elicited under this section in combination with section 23.

SECTION 10. [Additional Parties.] If the court learns from information furnished by the parties pursuant to section 9 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or

5 visitation rights with respect to the child, it shall order that person
 6 to be joined as a party and to be duly notified of the pendency of
 7 the proceeding and of his joinder as a party. If the person joined
 8 as a party is outside this State he shall be served with process or
 9 otherwise notified in accordance with section 5.

COMMENT

The purpose of this section is to prevent re-litigations of the custody issue when these would be for the benefit of third claimants rather than the child. If the immediate controversy, for example, is between the parents, but relatives inside or outside the state also claim custody or have physical custody which may lead to a future claim to the child, they must be brought into the proceedings. The courts are given an active role here as under other sections of the Act to seek out the necessary information from formal or informal sources.

1 SECTION 11. *[Appearance of Parties and the Child.]*

2 [(a) The court may order any party to the proceeding who is in
 3 this State to appear personally before the court. If that party has
 4 physical custody of the child the court may order that he appear
 5 personally with the child.]

6 (b) If a party to the proceeding whose presence is desired by the
 7 court is outside this State with or without the child the court may
 8 order that the notice given under section 5 include a statement
 9 directing that party to appear personally with or without the child
 10 and declaring that failure to appear may result in a decision
 11 adverse to that party.

12 (c) If a party to the proceeding who is outside this State is di-
 13 rected to appear under subsection (b) or desires to appear person-
 14 ally before the court with or without the child, the court may
 15 require another party to pay to the clerk of the court travel and
 16 other necessary expenses of the party so appearing and of the child
 17 if this is just and proper under the circumstances.

COMMENT

Since a custody proceeding is concerned with the past and future care of the child by one of the parties, it is of vital importance in most cases that the judge has an opportunity to see and hear the contestants and the child. Subsection (a) authorizes the court to order the appearance of these persons if they are in the state. It is placed in brackets because states which have such a provision—not only in their juvenile court laws—may wish to omit it. Subsection (b) relates to the appearance of persons who are outside the state and provides one method of bringing them before the court; sections 19(b) and 20(b) provide another. Subsection (c) helps to finance travel to the court which may be close to one of the parties and distant from another; it may be used to equalize the expense if this is appropriate under the circumstances.

1 SECTION 12. [Binding Force and Res Judicata Effect of Custody
2 Decree.] A custody decree rendered by a court of this State which
3 had jurisdiction under section 3 binds all parties who have been
4 served in this State or notified in accordance with section 5 or who
5 have submitted to the jurisdiction of the court, and who have been
6 given an opportunity to be heard. As to those parties the custody
7 decree is conclusive as to all issues of law and fact decided and as
8 to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this
9 Act.

COMMENT

This section deals with the intra-state validity of custody decrees which provides the basis for their interstate recognition and enforcement. The two prerequisites are (1) jurisdiction under section 3 of this Act and (2) strict compliance with due process mandates of notice and opportunity to be heard. There is no requirement for technical personal jurisdiction, or the traditional theory that custody determinations, as distinguished from support actions (see section 2(2) *supra*), are proceedings in rem or proceedings affecting status. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, sections 69 and 70 (1967); and James, Civil Procedure 613 (1965). For a different theory reaching the same result, see Hazard, A General Theory of State-Court Jurisdiction, 1965 Supreme Court Review 241. The section is not at variance with *May v. Anderson*, 345 U.S. 523, 73 S. Ct. 840, 97 L. Ed. 1221 (1953), which relates to interstate recognition rather than intra-state validity of custody decrees. See *Ehrenzweig and Lowisell, Jurisdiction in a Nutshell* 78 (2d ed. 1963); and compare *Reese, Full Faith and Credit to Foreign Equity Decrees*, 42 Iowa L. Rev. 183, 195 (1957). On *May v. Anderson*, *supra*, see comment to section 13.

Since a custody decree is normally subject to modification in the interest of the child, it does not have absolute finality, but as long as it has not been modified, it is as binding as a final judgment. Compare Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967).

1 SECTION 13. [Recognition of Out-of-State Custody Decrees.]
2 The courts of this State shall recognize and enforce an initial or
3 modification decree of a court of another state which had assumed
4 jurisdiction under statutory provisions substantially in accordance
5 with this Act or which was made under factual circumstances
6 meeting the jurisdictional standards of the Act, so long as this
7 decree has not been modified in accordance with jurisdictional
8 standards substantially similar to those of this Act.

COMMENT

This section and sections 14 and 15 are the key provisions which guarantee a great measure of security and stability of environment to the "interstate child" by discouraging relitigations in other states. See Section 1, and see *Ratner, Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 828 (1964).

Although the full faith and clause may perhaps not require the recognition of out-of-state custody decrees, the states are free to recognize and enforce them. See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 109 (1967), and see the Prefatory Note, *supra*. This section declares as a matter of state law, that custody decrees of sister states will be recognized and enforced. Recognition and enforcement is mandatory if the state in which the prior decree was rendered 1) has adopted this Act, 2) has statutory jurisdictional requirements substantially like this Act, or 3) would have had jurisdiction under the facts of the case if this Act had been the law in the state. Compare Comment, Ford v. Ford: Full Faith and Credit to Child Custody Decrees? 73 Yale L.J. 134, 148 (1963).

"Jurisdiction" or "jurisdictional standards" under this section refers to the requirements of section 3 in the case of initial decrees and to the requirements of sections 3 and 14 in the case of modification decrees. The section leaves open the possibility of discretionary recognition of custody decrees of other states beyond the enumerated situations of mandatory acceptance. For the recognition of custody decrees of other nations, see section 23.

Recognition is accorded to a decree which is valid and binding under section 12. This means, for example, that a court in the state where the father resides will recognize and enforce a custody decree rendered in the home state where the child lives with the mother if the father was duly notified and given enough time to appear in the proceedings. Personal jurisdiction over the father is not required. See comment to section 12. This is in accord with a common interpretation of the inconclusive decision in *May v. Anderson*, 345 U.S. 523, 73 S. Ct. 840, 97 L. Ed. 1221 (1953). See Restatement of the Law Second, Conflict of Laws, Proposed Official Draft, section 79 and comment thereto, p. 298 (1967). Under this interpretation a state is permitted to recognize a custody decree of another state regardless of lack of personal jurisdiction, as long as due process requirements of notice and opportunity to be heard have been met. See Justice Frankfurter's concurring opinion in *May v. Anderson*; and compare Clark, *Domestic Relations* 323-26 (1963), Goodrich, *Conflict of Laws* 274 (4th ed. by Scoles, 1964); Stumberg, *Principles of Conflict of Laws* 325 (3rd ed. 1963); and Comment, *The Puzzle of Jurisdiction in Child Custody Actions*, 38 U. Colo. L. Rev. 541 (1966). The Act emphasizes the need for the personal appearance of the contestants rather than any technical requirement for personal jurisdiction.

The mandate of this section could cause problems if the prior decree is a punitive or disciplinary measure. See Ehrenzweig, *Inter-state Recognition of Custody Decrees*, 51 Mich. L. Rev. 345, 370 (1933). If, for example, a court grants custody to the mother and after 5 years' of continuous life with the mother the child is awarded to the father by the same court for the sole reason that the mother who had moved to another state upon remarriage had not lived up to the visitation requirements of the decree, courts in other states may be reluctant to recognize the changed decree. See *Berlin v. Berlin*, 21 N.Y. 2d 371, 235 N.E. 2d 109 (1967); and *Stout v. Pate*, 120 Cal. App. 2d 699, 261 P. 2d 783 (1953); Compare *Moniz v. Moniz*, 142 Cal. App. 2d 527, 298 P. 2d 710 (1956). Disciplinary decrees of this type can be avoided under this Act by enforcing the visitation provisions of the decree directly in another state. See Section 15. If the original plan for visitation does not fit the new conditions, a petition for modification of the visiting arrangements would be filed in a court which has jurisdiction, that is, in many cases the original court. See section 14.

1 SECTION 14. [Modification of Custody Decree of Another State.]

2 (a) If a court of another state has made a custody decree, a

13 court of this State shall not modify that decree unless (1) it ap-
 14 pears to the court of this State that the court which rendered the
 15 decree does not now have jurisdiction under jurisdictional pre-
 16 requisites substantially in accordance with this Act or has declined to
 17 assume jurisdiction to modify the decree (and) (2) the court of this
 18 State has jurisdiction.
 19 (b) If a court of this State is authorized under subsection (a)
 20 and section 8 to modify a custody decree of another state it shall
 21 give due consideration to the transcript of the record and other
 22 documents of all previous proceedings submitted to it in accordance
 23 with section 22.

COMMENT

Courts which render a custody decree normally retain continuing jurisdiction to modify the decree under local law. Courts in other states have in the past often assumed jurisdiction to modify the out-of-state decree themselves without regard to the preexisting jurisdiction of the other state. See *People ex rel. Halvey v. Halvey*, 330 U.S. 610, 67 S. Ct. 903, 91 L. Ed. 1133 (1947). In order to achieve greater stability of custody arrangements and avoid forum shopping, subsection (a) declares that other states will defer to the continuing jurisdiction of the court of another state as long as that state has jurisdiction under the standards of this Act. In other words, all petitions for modification are to be addressed to the prior state if that state has sufficient contact with the case to satisfy section 3. The fact that the court had previously considered the case may be one factor favoring its continued jurisdiction. If, however, all the persons involved have moved away or the contact with the state has otherwise become slight, modification jurisdiction would shift elsewhere. Compare *Ratner, Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 821-2 (1964).

For example, if custody was awarded to the father in state 1 where he continued to live with the children for two years and thereafter his wife kept the children in state 2 for 6-1/2 months (3-1/2 months beyond her visitation privileges) with or without permission of the husband, state 1 has preferred jurisdiction to modify the decree. Despite the fact that state 2 has in the meantime become the "home state" of the child. If, however, the father also moved away from state 1, that state has modification jurisdiction interstate, whether or not its jurisdiction continues under local law. See *Clark, Domestic Relations* 22-23 (1968). Also, if the father in the same case continued to live in state 1, but let his wife keep the children for several years without asserting his custody rights and without visits of the children in state 1, modification jurisdiction of state 1 would cease. Compare *Brengle v. Hurst*, 403 S. W. 2d 418 (Ky. 1966). The situation would be different if the children had been abducted and their whereabouts could not be discovered by the legal custodian for several years. The abductor would be denied access to the court of another state under section 3(b) and state 1 would have modification jurisdiction in any event under section 3(a) (4). Compare *Crocker v. Crocker*, 122 Colo. 49, 219 P. 2d 311 (1950).

The prior court has jurisdiction to modify under this section even though its original assumption of jurisdiction did not meet the standards of this Act, as long as it would have jurisdiction now, that is, at the time of the petition for modification.

If the state of the prior decree declines to assume jurisdiction to modify the

decree, another state with jurisdiction under section 3 can proceed with the case. That is not so if the prior court has dismissed the petition on its merits.

Respect for the continuing jurisdiction of another state under this section will serve the purposes of this Act only if the prior court will assume a corresponding obligation to make no changes in the existing custody arrangement which are not required for the good of the child. If the court overturns its own decree in order to discipline a mother or father, with whom the child had lived for years, for failure to comply with an order of the court, the objective of greater stability of custody decrees is not achieved. See Comment to section 13 last paragraph, and cases there cited. See also *Sharpe v. Sharpe*, 77 Ill. App. 205, 222 N.E. 2d 340 (1966). Under section 15 of this Act an order of a court contained in a custody decree can be directly enforced in another state.

Under subsection (b) transcripts of prior proceedings if received under section 22 are to be considered by the modifying court. The purpose is to give the judge the opportunity to be as fully informed as possible before making a custody decision. "One court will seldom have so much of the story that another's inquiry is unimportant," says Paulsen, *Appointment of a Guardian in the Conflict of Laws*, 46 Iowa L. Rev. 212, 226 (1960). See also Ehrenzweig, *The Interstate Child and Uniform Legislation: A Plan for Extra-Litigious Proceedings*, 64 Mich. L. Rev. 1, 6-7 (1965); and Ratner, *Legislative Resolution of the Interstate Custody Problem: A Reply to Professor Currie and a Proposed Uniform Act*, 38 S. Cal. L. Rev. 183, 202 (1965). How much consideration is "due" this transcript, whether or under what condition it is received in evidence, are matters of local, internal law which are not affected by this interstate act.

1 SECTION 15. [Filing and Enforcement of Custody Decree of
2 Another State.]

- 3 (a) A certified copy of a custody decree of another state may be
4 filed in the office of the clerk of any [District Court, Family Court]
5 of this State. The clerk shall treat the decree in the same manner
6 as a custody decree of the [District Court, Family Court] of this
7 State. A custody decree so filed has the same effect and shall be
8 enforced in like manner as a custody decree rendered by a court of
9 this State.
10 (b) A person violating a custody decree of another state which
11 makes it necessary to enforce the decree in this State may be
12 required to pay necessary travel and other expenses, including
13 attorneys' fees, incurred by the party entitled to the custody or
14 his witnesses.

COMMENT

Out-of-state custody decrees which are required to be recognized are enforced by other states. See section 13. Subsection (a) provides a simplified and speedy method of enforcement. It is derived from section 2 of the Uniform Enforcement of Foreign Judgments Act of 1964, 9A U.L.A. 486 (1965). A certified copy of the decree is filed in the appropriate court, and the decree thereupon becomes in effect a decree of the state of filing and is enforceable by any method of enforcement available under the law of that state.

The authority to enforce an out-of-state decree does not include the power to

modify it. If modification is desired, the petition must be directed to the court which has jurisdiction to modify under section 14. This does not mean that the state of enforcement may not in an emergency stay enforcement if there is danger of serious mistreatment of the child. See Ratner, *Child Custody in a Federal System*, 62 Mich. L. Rev. 795, 832-33 (1994).

The right to custody for periods of visitation and other provisions of a custody decree are enforceable in other states in the same manner as the primary right to custody. If visitation privileges provided in the decree have become impractical upon moving to another state, the remedy against automatic enforcement in another state is a petition in the proper court to modify visitation arrangements to fit the new conditions.

Subsection (b) makes it clear that the financial burden of enforcement of a custody decree may be shifted to the wrongdoer. Compare 2 *Armstrong*, California Family Law 328 (1966 Suppl.), and *Crocker v. Crocker*, 195 F. 2d 236 (1952).

- 1 SECTION 16. [*Registry of Out-of-State Custody Decrees and*
2 *Proceedings.*] The clerk of each [District Court, Family Court]
3 shall maintain a registry in which he shall enter the following:
4 (1) certified copies of custody decrees of other states received
5 for filing;
6 (2) communications as to the pendency of custody proceedings
7 in other states;
8 (3) communications concerning a finding of inconvenient
9 forum by a court of another state; and
10 (4) other communications or documents concerning custody
11 proceedings in another state which may affect the jurisdiction of
12 a court of this State or the disposition to be made by it in a
13 custody proceeding.

COMMENT

The purpose of this section is to gather all information concerning out-of-state custody cases which reaches a court in one designated place. The term "registry" is derived from section 33 of the Uniform Reciprocal Enforcement of Support Act of 1958, 9C U.L.A. 61 (1967 Suppl.) Another term may be used if desired without affecting the uniformity of the Act. The information in the registry is usually incomplete since it contains only those documents which have been specifically requested or which have otherwise found their way to the state. It is therefore necessary in most cases for the court to seek additional information elsewhere.

- 1 SECTION 17. [*Certified Copies of Custody Decree.*] The Clerk
2 of the [District Court, Family Court] of this State, at the request
3 of the court of another state or at the request of any person who is
4 affected by or has a legitimate interest in a custody decree, shall
5 certify and forward a copy of the decree to that court or person.

- 1 SECTION 18. [*Taking Testimony in Another State.*] In addition
2 to other procedural devices available to a party, any party to the

3 proceeding or a guardian ad litem or other representative of the
 4 child may adduce testimony of witnesses, including parties and
 5 the child, by deposition or otherwise, in another state. The court
 6 on its own motion may direct that the testimony of a person be
 7 taken in another state and may prescribe the manner in which and
 8 the terms upon which the testimony shall be taken.

COMMENT

Sections 18 to 22 are derived from sections 3.01 and 3.02 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321, 320 (1966); from ideas underlying the Uniform Reciprocal Enforcement of Support Act; and from Ehrenzweig, the Interstate Child and Uniform Legislation: A Plea for Extrajudicial Proceedings, 64 Mich. L. Rev. 1 (1955). They are designed to fill the partial vacuum which inevitably exists in cases involving an "interstate child" since part of the essential information about the child and his relationship to other persons is always in another state. Even though jurisdiction is assumed under sections 3 and 7 in the state where much (or most) of the pertinent facts are readily available, some important evidence will unavoidably be elsewhere.

Section 18 is derived from portions of section 3.01 of the Uniform Interstate and International Procedure Act, 9B U.L.A. 305, 321. The first sentence relates to depositions, written interrogatories and other discovery devices which may be used by parties or representatives of the child. The procedural rules of the state where the device is used are applicable under this sentence. The second sentence empowers the court itself to initiate the gathering of out-of-state evidence which is often not supplied by the parties in order to give the court a complete picture of the child's situation, especially as it relates to a custody claimant who lives in another state.

1 SECTION 19. [*Hearings and Studies in Another State; Orders to*
 2 *Appear.*]

3 (a) A court of this State may request the appropriate court of
 4 another state to hold a hearing to adduce evidence, to order a party
 5 to produce or give evidence under other procedures of that state,
 6 or to have social studies made with respect to the custody of a child
 7 involved in proceedings pending in the court of this State; and to
 8 forward to the court of this State certified copies of the transcript
 9 of the record of the hearing, the evidence otherwise adduced, or any
 10 social studies prepared in compliance with the request. The cost
 11 of the services may be assessed against the parties or, if necessary,
 12 ordered paid by the [County, State].

13 (b) A court of this State may request the appropriate court of
 14 another state to order a party to custody proceedings pending in
 15 the court of this State to appear in the proceedings, and if that
 16 party has physical custody of the child, to appear with the child.
 17 The request may state that travel and other necessary expenses
 18 of the party and of the child whose appearance is desired will be
 19 assessed against another party or will otherwise be paid.

COMMENT

Section 19 relates to assistance sought by a court of the forum state from a court of another state. See comment to section 18. Subsection (a) covers any kind of evidentiary procedure available under the law of the assisting state which may aid the court in the requesting state, including custody investigations (social studies) if authorized by the law of the other state. Under what conditions reports of social studies and other evidence collected under this subsection are admissible in the requesting state, is a matter of internal state law not covered in this interstate statute. Subsection (b) serves to bring parties and the child before the requesting court, backed up by the assisting court's contempt powers. See section 11.

1 SECTION 20. [*Assistance to Courts of Other States.*]

2 (a) Upon request of the court of another state the courts of this
3 State which are competent to hear custody matters may order a
4 person in this State to appear at a hearing to adduce evidence or
5 to produce or give evidence under other procedures available in
6 this State [or may order social studies to be made for use in a
7 custody proceeding in another state]. A certified copy of the tran-
8 script of the record of the hearing or the evidence otherwise ad-
9 duced [and any social studies prepared] shall be forwarded by the
10 clerk of the court to the requesting court.

11 (b) A person within this State may voluntarily give his testi-
12 mony or statement in this State for use in a custody proceeding
13 outside this state.

14 (c) Upon request of the court of another state a competent court
15 of this State may order a person in this State to appear alone or
16 with the child in a custody proceeding in another state. The court
17 may condition compliance with the request upon assurance by the
18 other state that travel and other necessary expenses will be
19 advanced or reimbursed.

COMMENT

Section 20 is the counterpart of section 19. It empowers local courts to give help to out-of-state courts in custody cases. See comments to sections 13 and 19. The references to social studies have been placed in brackets so that states without authorization to make social studies outside of juvenile court proceedings may omit them if they wish. Subsection (b) reaffirms the existing freedom of persons within the United States to give evidence for use in proceedings elsewhere. It is derived from section 3.02 (b) of the Interstate and International Procedure Act, 9B U.L.A. 327 (1966).

1 SECTION 21. [*Preservation of Documents for Use in Other*
2 *States.*] In any custody proceeding in this State the court shall
3 preserve the pleadings, orders and decrees, any record that has been
4 made of its hearings, social studies, and other pertinent documents

5 until the child reaches [, 21] years of age. Upon appropriate
 6 request of the court of another state the court shall forward to the
 7 other court certified copies of any or all of such documents.

COMMENT

See comments to sections 18 and 19. Documents are to be preserved until the child is old enough that further custody disputes are unlikely. A lower figure than the ones suggested in the brackets may be inserted.

1 SECTION 22. [*Request for Court Records of Another State.*] If
 2 a custody decree has been rendered in another state concerning a
 3 child involved in a custody proceeding pending in a court of this
 4 State, the court of this State upon taking jurisdiction of the case
 5 shall request of the court of the other state a certified copy of the
 6 transcript of any court record and other documents mentioned in
 7 section 21.

COMMENT

This is the counterpart of section 21. See comments to sections 18, 19, and 14(b).

1 SECTION 23. [*International Application.*] The general policies of
 2 this Act extend to the international area. The provisions of this
 3 Act relating to the recognition and enforcement of custody decrees
 4 of other states apply to custody decrees and decrees involving legal
 5 institutions similar in nature to custody rendered by appropriate
 6 authorities of other nations if reasonable notice and opportunity
 7 to be heard were given to all affected persons.

COMMENT

Not all the provisions of the Act lend themselves to direct application in international custody disputes; but the basic policies of avoiding jurisdictional conflict and multiple litigation are as strong if not stronger when children are moved back and forth from one country to another by feuding relatives. Compare *Application of Lang*, 9 App. Div. 2d 401, 193 N.Y.S. 2d 763 (1959) and *Swindle v. Bradley*, 240 Ark. 903, 403 S.W. 2d 63 (1966).

The first sentence makes the general policies of the Act applicable to international cases. This means that the substance of section 1 and the principles underlying provisions like sections 6, 7, 8, and 14(a), are to be followed when some of the persons involved are in a foreign country or a foreign custody proceeding is pending.

The second sentence declares that custody decrees rendered in other nations by appropriate authorities (which may be judicial or administrative tribunals) are recognized and enforced in this country. The only prerequisite is that reasonable notice and opportunity to be heard was given to the persons affected. It is also to be understood that the foreign tribunal had jurisdiction under its own law rather than under section 3 of this Act. Compare *Restatement of the Law Second, Con-*

dict of Laws, Proposed Official Code, sections 10, 92, 98, and 109(2) (1987). Compare also Goodrich, *Conflict of Laws* 390-93 (4th ed., by Scoles, 1964).

1 [SECTION 24. *[Priority.]* Upon the request of a party to a cus-
2 tody proceeding which raises a question of existence or exercise of
3 jurisdiction under this Act the case shall be given calendar priority
4 and handled expeditiously.]

COMMENT

Judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. The need for speedy adjudication exists, of course, with respect to all aspects of child custody litigation. The priority requirement is limited to jurisdictional questions because an all encompassing priority would be beyond the scope of this Act. Since some states may have or wish to adopt a statutory provision or court rule of wider scope, this section is placed in brackets and may be omitted.

1 SECTION 25. *[Severability.]* If any provision of this Act or the
2 application thereof to any person or circumstance is held invalid,
3 its invalidity does not affect other provisions or applications of the
4 Act which can be given effect without the invalid provision or
5 application, and to this end the provisions of this Act are severable.

1 SECTION 26. *[Short Title.]* This Act may be cited as the Uniform
2 Child Custody Jurisdiction Act.

1 SECTION 27. *[Repeal.]* The following acts and parts of acts are
2 repealed:

- 3 (1)
- 4 (2)
- 5 (3)

1 SECTION 28. *[Time of Taking Effect.]* This Act shall take
2 effect. . . .

STATEMENT OF
SENATOR GEORGE McGOVERN
BEFORE THE SENATE SUBCOMMITTEES ON
CRIMINAL JUSTICE AND CHILD AND HUMAN DEVELOPMENT

S. 105

THE PARENTAL KIDNAPPING PREVENTION ACT OF 1979

6226 DIRKSEN SENATE OFFICE BUILDING

JANUARY 30, 1980

I am pleased to have the opportunity to state my support for the "Parental Kidnapping Prevention Act of 1979," and commend Senator Wallop for his commitment to this important issue and for his hard work in producing a much needed bill to close the loopholes in laws that presently permit parents to kidnap their children. Senators Mathias, Biden and Cranston, as well as other members of the Subcommittees on Criminal Justice and Child and Human Development are also to be commended for recognizing the need for this legislation.

There are many forces in our society today which cause, or contribute to, the serious problems suffered by many of our young people. The rise in juvenile crime, the increasing number of high school graduates who are illiterate, and the rising suicide rate, are too often the result of poor public policies for children. Children are obviously less powerful and influential than other members of our society. That is all the more reason for exercising extreme care in developing public policies to protect them.

No one can doubt that children kidnapped by a parent suffer a great deal from the experience. The absence of a stable home environment is a difficult hurdle to overcome. In a home where children feel a sense of security, permanence, and love, they are better able to cope with the pressures of a complex society. They know that if all else fails, home will be a refuge. The absence of a stable environment forces children to embark on their own course, with no one to trust and no one to turn to except equally inexperienced peers who can lead them to trouble. The horrifying experience of being kidnapped robs the child of this sense

of security and permanence. The Parental Kidnapping bill makes it difficult for parents to kidnap their children, and could help spare a child from the confusion and despair it brings.

The "Parental Kidnapping Prevention Act of 1979" contains three major provisions that will deter, and hopefully prevent, child snatching. First, it requires state courts to give full faith and credit to custody decrees rendered by sister state courts. This provision is based on the Uniform Child Custody Act which has been adopted by 39 states, including my home state of South Dakota, and establishes standards for choosing the most appropriate state to determine child custody. All states will be required to enforce, with very few modifications allowed, the custody decree of the state that has jurisdiction according to the provisions of the bill. At present, a parent can take a child, flee to another state, and begin court proceedings in that state to regain custody. For several reasons custody is usually granted: states treasure their independence to make such decisions; the other parent is not present to make a case; and the absconding parent may be surrounded by supporters willing to testify on his or her behalf. Under this bill, the kidnapping parent could not be granted custody of the children by any other state court. This provision should serve to deter a possible child kidnapper from taking the child across state lines, as there would be no hope of gaining custody of the child in another state.

The second major provision of the bill requires the Federal Parent Locator Service, whose present responsibility is to find parents who default on their child support payments, to search for parents who have restrained, seized, or concealed their children. The Federal Parent Locator Service would work with the states and the Federal government, as well as with parents, in finding children who have been snatched in violation of custody decrees which are entitled to full faith and credit under the child custody bill. Many times the victimized parent spends thousands of dollars on travelling expenses, detective fees, and legal fees to find the whereabouts of their children. The Parent Locator Service would save the parent much of this expense, promote cooperation between the states and the federal government, and because of its success in locating parents, would discourage parents from kidnapping their own children.

Finally, the third provision makes it a federal misdemeanor for anyone, including a parent or agent of a parent, to kidnap and transport a child across state lines in violation of a custody determination entitled to full faith and credit. It establishes two minor offenses, "restraining a child", punishable by up to 30 days imprisonment or \$10,000 or both, and "concealing a child", punishable by up to six months imprisonment or \$10,000 or both. The threat of this moderately tough penalty will serve to deter would-be child kidnappers. Under current law, a parent who kidnaps a child is often guilty of nothing more than contempt of court. With a \$10,000 fine and a short-term jail sentence as a penalty, parents will think twice before snatching their children.

The bill should help protect children from parents who wish to defy custody decrees by restraining or concealing their children. When parents know that no other state will grant them custody of their children, when they are aware that as soon as the children are missing, the Parent Locator Service will be on their trail, and when they realize they could receive a short-term jail sentence and be fined up to \$10,000, they will think twice before embarking on such a destructive venture.

Our present laws allow parents to defy custody orders; the result is fear, heartache, and anger on the part of each member of the family. I feel this bill is a viable solution to the problems of child kidnapping. It requires state courts to give full faith and credit to custody decrees rendered by sister states, but leaves to the states the responsibility of deciding custody cases. It involves the federal government only after the Parent Locator Service has been operating for at least 60 days, and it invokes fair but strict penalties.

No one can doubt that children kidnapped by a parent suffer a great deal from the experience. The absence of a stable home environment is a difficult hurdle to overcome. In a home where children feel a sense of security, permanence and love, they are better able to cope with the pressures of a complex society. They know that if all else fails, home will be a refuge. The absence of a stable environment forces children to embark on their own course, with no one to trust and no one to turn to except equally inexperienced peers who can lead them to trouble. The horrifying experience of being kidnapped robs the child of this sense of security and permanence.

The Parental Kidnapping bill makes it difficult for parents to kidnap their children, and could help spare a child from the confusion and despair it brings.

I look forward to working with Senators Wallop, Mathias, Cranston and others in seeing that this much-needed bill becomes law.

Statement of

SENATOR J. BENNETT JOHNSTON

on

S. 105, The Parental Kidnapping Prevention Act

Subcommittees on

Criminal Justice

and

Child and Human Development

Wednesday, January 30, 1980

Mr. Chairman, I am pleased to be a co-sponsor of S. 105, the Parental Kidnapping Prevention Act, and to have the opportunity to comment on this important legislation.

Parental kidnapping is an issue that affects us all. As human beings, it offends our sensibilities regarding the respect with which each of our fellow men and women are entitled to be treated. As Americans, parental kidnapping gives us cause to wonder about the future course of this great society as more and more of our future leaders are forced to bear the emotional scars caused by such an experience.

There can be no doubt that the present laws dealing with this issue are proving highly inadequate. Indeed, the current situation not only presents insufficient deterrence to child snatchers, it actually presents an incentive to anyone contemplating this action. With little or no fear of prosecution, one parent can kidnap a child, bring him to another State and initiate a court proceeding aimed at gaining "legal" custody with almost total confidence in a favorable decision. Of course, the party deprived of the child will make every effort to regain custody, often times resorting to the same tactics. As a result, the child becomes a pawn, being moved around from State to State, with no legal protection to insure him of any semblance of a stable home life. I believe this legislation takes a giant step toward providing this protection.

The first provision of this bill amends the United States Code by requiring State Courts to give "full faith and credit" to the custody determinations made by other States. While Article IV of the Constitution states that: "full faith and credit shall be given in each State to public acts, records and judicial proceedings of every other State," custody decrees have been exempt from this clause because they are not always viewed as final depending on the needs of the child involved. S. 105 retains the right of the State with jurisdiction to make proper modifications in order to allow for such needs, and sharply cuts back on such discretion by judges in other jurisdictions. Therefore, the child's well-being may be taken into account in the proper jurisdiction, while removing the incentive to snatch a child and seek a different ruling in another State.

The second section of this bill expands the responsibility of the Parent Locator Service to include locating parents who have violated custody orders entitled to full faith and credit. This Service has been established nationwide and, because of its great success in locating parents in non-support cases, will surely prove a valuable tool in the location of parents involved in parental kidnapping cases.

Due to the fact that many states do not have laws dealing with this problem, and that those that do are reluctant to pursue such cases, there is currently no uniform deterrence to prevent these occurrences. To address this problem, the third section

of this bill amends section 1203 of Title 18 of the United States Code to make parental kidnapping in violation of a custody decree entitled to full faith and credit a Federal misdemeanor. This provision sets forth appropriate penalties for violators; and includes not only the parent involved, but also private detectives, friends and relatives who aid in the snatching of a child. The FBI may also become involved in the case, but only after the Parent Locator Service has had sixty days to track down such violators. These measures send a clear signal to anyone thinking about kidnapping a child that he, or she, will no longer be able to operate without fear of prosecution, thereby serving as a needed deterrent to this crime.

Mr. Chairman, I wish to commend Senator Wallop for his effort and dedication in the shaping of this important legislation. S. 105 is a fair, yet firm, approach to a problem that plagues every one of us. It removes the incentives given by the current state of the law to persons wishing to snatch a child, and exacts definite penalties for violators. It provides a reliable mechanism for the location and apprehension of violators, while not unduly burdening the FBI by giving the Parent Locator Service sixty days to track down kidnappers. It does not put the Federal government in the business of determining custody awards; yet it provides the State governments with help in solving a problem, interstate in nature, which they have not been able to solve acting independently. It is not only in the province of the Federal government to take this action but, by providing help to enforce state decisions,

it is precisely the type of function the Founding Fathers envisioned for the central government. The Parental Kidnapping Prevention Act has my full support, and I urge its favorable consideration.

S. 105, the Parental Kidnapping Prevention Act

testimony submitted to the Senate Subcommittees on Criminal Justice and Child and Human Development January 30th

Senator S.I. Hayakawa

I am happy to testify before the Senate Subcommittees on Criminal Justice and Child and Human Development regarding my support for the Parental Kidnapping Prevention Act. I am a cosponsor of this legislation, and would like to urge my colleagues on these Subcommittees to report S. 105 favorably as soon as possible.

This legislation is vital to the interests of my constituents. Both men and women come to me asking for help in locating their children, or in regaining the custody that was legally granted to them. As current law specifically excludes parents from prosecution in the kidnapping of their own children, even when they do not have legal custody, it is impossible for me to intervene and help the deserving parent except in minimal ways. It has rapidly become apparent to me in my brief tenure in office that legislation to revise child kidnapping laws needs to be passed as soon as possible.

I congratulate Senator Wallop on the introduction of a fine piece of legislation, carefully researched and drafted to insure the children in question the least possible heartache. For it is indeed the children who are suffering most from the loophole in our laws which allow one parent to steal a child away from the custodial parent and take them to other states with little or no fear of prosecution. To correct this, the bill would make it a federal misdemeanor to transport children across state lines in violation of custody or visitation orders. The bill would also require all states to give "full faith and credit" to custody orders of other states. Although California already has such a policy, it would bring all the states in the Union into conformity, so that no state would provide a refuge for child-snatchers.

A very important section of the bill expands the responsibilities of the Federal Parent Locator Service, set up to find parents who default on their child support payments, to include locating parents who snatch their children. This aspect of the bill will prove a great help to parents in locating their missing children, the first step to regaining rightful custody.

I cannot stress strongly enough to my colleagues on these two Subcommittees the importance and need for the above measures. The law as it now stands oftentimes penalizes the law-abiding parent for following the terms of the custody order and sending the children to the other parent. The other parent who breaks the custody order and keeps the children is unable to be prosecuted. Meanwhile, the rightful custodian of the child is unable to get any assistance for the federal law enforcement authorities. Many of my constituents have been advised by legal counsel that their only recourse is to try to steal the child back. The child is the obvious loser in all of this.

S. 105 would stabilize and strengthen the law to discourage child-snatching, and encourage a stable environment for children who are already traumatized by the divorce of their parents. My thanks to my colleagues for their consideration of this bill.

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Prepared Statement of
Rep. James J. Florio

Congress of the United States
House of Representatives
Washington, D.C. 20515

January 25, 1980

COMMITTEES:
INTERSTATE AND FOREIGN
COMMERCE

CHAIRMAN,
TRANSPORTATION AND COMMERCE
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MINES AND MINING
SUBCOMMITTEE

PERMANENT SELECT COMMITTEE
ON AGING

HUMAN SERVICES
SUBCOMMITTEE

Senator Charles McC. Mathias, Jr.
Senate Committee on the Judiciary
Subcommittee on Criminal Justice
Washington, D.C. 20510

Dear Senator Mathias:

Thank you for your invitation to testify before the Subcommittee on Criminal Justice on January 30. I regret that my schedule does not permit me to personally appear. However, I appreciate the opportunity to submit a statement for the record in connection with your hearing on S. 105, which would prohibit and remedy the interstate restraint of children in violation of rights of custody and visitation.

I commend the Subcommittee for conducting hearings on this vital legislation and the concern it represents for the rights of children in the United States.

My comments on S. 105 are submitted in support of the bill, and its House equivalent, H.R. 1290, of which I am a cosponsor, introduced by Congressman Charles Bennett.

The problem addressed by S. 105, parental kidnapping or child snatching, has been described as a most brutal, though subtle form of child abuse. Further, this problem is one that is neither isolated, nor rare, for it is estimated that as many as 100,000 such child snatchings take place annually. Usually the parent who kidnaps a child crosses state lines seeking to obtain custody of the child, while making quite sure that no trail is left for the victimized parent to follow. Such a chain of events renders the offended parent virtually helpless, and deprives the child of his or her right to know and love both parents. Unfortunately, the present situation can only be expected to worsen as the divorce rate continues to rise, thus subjecting ever increasing numbers of children and parents to deplorable grief and stress.

These are the situations which S. 105 is designed to prevent, and with which our present legal system is not able to cope. Previously the position taken by members of Congress has been to try to foster familial peace through non-involvement, leaving the various States to apply their own judicial interpretations to offenses as they arise. These approaches are hardly uniform,

and unfortunately, the Full Faith and Credit clause of the Constitution is not currently interpreted to apply to child custody laws. Thus, it is virtually impossible for a concerned parent to enforce one State's custody laws after the other parent and the child have fled to another State.

An attempt has, and is being made, to amend this situation in the form of the Uniform Child Custody Jurisdiction Act (UCCJA) which provides that courts must recognize, and consider in court, custody decrees from other States. The UCCJA, however, requires individual State adoption and disappointingly in the twelve years since its inception, only 28 States have chosen to do so. Even if all 50 States do adopt the UCCJA, the worsening problem of child snatching will not abate, for it does not address one very critical facet of the parental kidnapping problem.

The aforementioned difficulty is that posed by the loophole present in the Federal Kidnapping statute, also known as the Lindbergh Act, which explicitly exempts parents from prosecution. A correlate to this loophole is that no provision has been made to date for Federal assistance in locating the missing child and parent. Therefore it is not uncommon for parents to be forced to spend unwarranted sums of money on private detectives merely to locate a missing son or daughter.

Hence, it is clear that our present legal framework is desperately in need of a comprehensive bill such as S. 105 to alleviate this situation and to provide a deterrent, which does not currently exist, to the parental kidnapper. S. 105, by requiring all States to enforce, except under specific circumstances, the custody rulings made by sister States, removes the incentive for the child snatcher to cross state lines in order to obtain a more favorable custody decision.

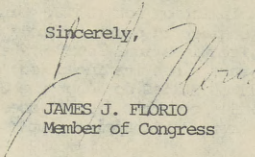
Further, by amending section 453 of the Social Security Act, S. 105 expands the duties of the Federal Parent Locator Service beyond finding those parents defaulting on their child support obligations. Under S. 105 the FPLS would also be made available to aid in the locating of parents who take, restrain, or conceal their children.

Finally, S. 105 would effectively close the loophole in the Lindbergh Act permitting parental kidnappers to escape prosecution by making it a Federal misdemeanor for any parent, relative, or other person to snatch and transport a child across state lines in violation of a custody agreement and levying appropriate sanctions against such actions.

We, as congressmen and citizens, have the moral obligation to protect the mental health and rights of parents, and to an even greater extent, the children of the United States. S. 105 embodies the commitment which must be made to this obligation on the Federal level. The Justice Department has stated that, "It is in the province of the Federal Government to resolve problems which are interstate in origin and which the States acting independently, are unable to resolve." The individual States are

indeed unable to deal adequately with this deplorable problem of child snatching. I therefore renew my own commitment to the children and parents of the United States by offering my fullest support for S. 105 and ask that my colleagues join me in this effort.

Sincerely,


JAMES J. FLORIO
Member of Congress

Prepared Statement of
Rep. Daniel Mica

Mr. Chairman, thank you for the opportunity to comment on H.R. 1290, the Parental Kidnapping Prevention Act of 1979. I have been approached by several of my constituents regarding this important piece of legislation.

To put a stop to the rash of kidnappings that had spread across this nation like a plague, culminating in the tragic death of the Lindbergh baby, the Congress passed an act that came to be known as the Lindbergh Law, making kidnapping a federal felony. It went far toward putting an end to the crime of child kidnapping in the United States, which in the 1920's and early 30's had become an epidemic of tragically large dimensions.

In the almost half-century since then, a different type of kidnapping has taken shape -- the snatching of a child or children by one or the other of the parents, most often as the result of a divorce settlement approved by a state court. Though perhaps not as cruel or vicious as child kidnapping by criminals intent only on receiving a ransom, it is kidnapping nonetheless. And it is criminal, because it defies the laws of the state in which the act takes place.

Mr. Chairman, this is the crime of parental kidnapping. Unfortunately, it is sometimes an act of misguided love -- a distraught parent unable to have his or her child because of court action can no longer handle the problem legally takes matters into his own hands. Selfishly not thinking of either the child's welfare or the other parent's feelings, he or she takes the child with no warning and, usually, flees across a state line to avoid prosecution... to escape jurisdiction of the court.

It is a shattering experience for the parent left behind. This parent suddenly realizes the child is not coming back. It is also traumatic for the kidnapped child. Unexpectedly snatched from home, the little boy or girl has no control over his fate, no knowledge usually of where he is being taken, no understanding of why he is being taken away from his home and, often, only a dread fear and a feeling of desperate homesickness. A day at the zoo with daddy or a shopping excursion with mommy is one thing, but when the day's outing suddenly transforms into a flight to nowhere, the child undergoes traumatic shock and can suffer intensive, deep psychological harm...suffering that continues.

Often, courts in states from which children are taken are powerless to get the parental kidnap victim back. Often, too, a judge in a state to which the child was taken refuses to set things aright and restore the three-way relationship among parents and child that existed prior to the kidnapping. The parent who is left behind often has no recourse, other than going to the state to which the child was taken and fighting the offending parent in a strange court. Not only does this entail the expenditure of large amounts of money, usually, it is a cruel blow to the parent forced to take such a step, and it is especially cruel to the child, forced to go through this tug of war between his parents, both of whom, presumably, he loves. Such scars on the child are deep, and they last for many years.

In the days when family unions seemed stronger in America and there were fewer divorces, parental kidnappings were almost unheard of. But passing years and changing mores and morals have altered the way people react. The selfishness of the "me generation" has penetrated even into the thinking

of parents who should be more concerned with the welfare of their children than they sometimes are. The result is that parental kidnappings are happening more and more frequently -- all too frequently, Mr. Speaker.

And if the states are unable to protect them, Mr. Chairman, the United States government must step in. Parental kidnapping must be made a federal criminal offense with severe enough penalties laid on the convicted persons guilty of these heinous crimes to reduce their frequency, if not wipe them out.

The Parental Kidnapping Prevention Act of 1979 (H.R. 1290) is the bill designed to accomplish this purpose. It is written to put a stop to the kidnapping of children by either parent. As the Lindbergh Law has decreased greatly other vicious kidnappings during the past more than 45 years, so, too, will the Parental Kidnapping Prevention Act of 1979 lower the rate of this newer type of kidnapping, with all its attendant shattering trauma and sad effects. Suddenly running off with a child, no matter what his or her blood relationship is to the kidnapper, is wrong -- very wrong, Mr. Speaker. H.R. 1290 is an act that will help to maintain what family unity is left in American homes split by divorce where children are involved. And it will further ensure the integrity and power of state courts.

I call on the members of this distinguished House to pass the Parental Kidnapping Prevention Act overwhelmingly, thus aiding in stopping the crime of child kidnapping by parents.

Thank you, Mr. Chairman.

STATEMENT OF HON. G. WILLIAM WHITEHURST
SUBCOMMITTEES ON CRIMINAL JUSTICE
AND CHILD AND HUMAN DEVELOPMENT
COMMITTEE ON THE JUDICIARY
JANUARY 30, 1980

Mr. Chairmen and members of the Subcommittees:

Let me state at the outset that I very much appreciate this opportunity to appear before you today and offer testimony regarding the clear need in this country to include effective sanctions against parental kidnapping in the federal criminal code reform legislation. As a cosponsor of H.R. 1290, the House companion bill of S. 105, the Parental Kidnapping Prevention Act, I urge you to give this legislation your utmost consideration for favorable action.

The longer we fail to act on this much needed legislation the worse the problem becomes. Indeed, while no official statistics are kept on the number of child-snatching incidents, reliable estimates are that at least 25,000 child-snatchings occur each year. Children's Rights, Inc., a Washington-based organization formed to call attention to the child-snatching problem, estimates that 100,000 child-snatching incidents occur each year. Other groups estimate that the number of these incidents has doubled in the past five years. As a congressman who frequently receives letters and telephone calls from parents whose children have been spirited away by their former spouses or their agents, I know first hand of the tragic repercussions that result from these incidents.

How unsettling it must be for a parent, be it the mother or the father, to live in constant fear that his or her child may suddenly be taken away. And let us not forget the psychological toll that is taken on these children, who are torn between disagreeing parents. What must it be like for a child caught in such a crossfire of loyalties? In effect, these children become pawns in a cruel game where there are many losers and few, if any, winners.

Unfortunately, our present legal system encourages rather than discourages a parent who does not have legal custody of his or her child to engage in this particular form of kidnapping. At this point, there is very little that can be done after the child is taken, and nothing to prevent it from happening.

The fundamental principle which is suppose to guide this nation's courts in child custody cases is a determination of what is in the best interest of the children. But most state laws classify parental kidnapping as a minor misdemeanor with extremely light penalties. In addition, the majority of states will not enforce child custody judgments rendered in another state. Consequently, when the parent without legal custody kidnaps the child and moves to another state, the parent with legal custody typically receives no help from law enforcement officials in locating and regaining custody of the child. Moreover, child custody decrees traditionally have not been considered final

judgments by the courts. Custody awards can be reconsidered on the slightest pretense. As a result, the child-snatching parent who takes the child to another state often can petition a court in a new state for legal custody, putting the other parent to the expense and inconvenience of contesting custody in a distant jurisdiction. The truly determined child-snatching parent can move from jurisdiction to jurisdiction until he finally finds a judge willing to grant him custody.

The legislation introduced by Senator Wallop will go a long way in ridding our society of child-snatchings. One of the most important aspects of the legislation is that the Federal Bureau of Investigation could be used in assisting parents in locating their children who become victims of child-snatchings. I think there is something seriously wrong with a system in which a divorced husband can take his wife's car across state lines against her will and the FBI will help her retrieve it, but nothing will happen if, instead of taking the car, he takes her child of whom his former wife has legal custody.

I believe the time has come that we can no longer sit back hoping that this situation will run its course and we will be done with it. If anything, the situation is getting worse. The legislation proposed by Senator Wallops is much needed and I wholeheartedly support it.

STATEMENT BY CONGRESSMAN JOSEPH P. ADDABBO
BEFORE THE SENATE SUBCOMMITTEES ON CRIMINAL
JUSTICE AND CHILD AND HUMAN DEVELOPMENT ON
S.105, THE PARENTAL KIDNAPING PREVENTION ACT

Mr. Chairman, it is with great pleasure that I have been asked today to submit a statement at this hearing on a most important and pressing issue-child snatching. I feel the time has come for Congress to take swift action on this matter and it is my sincerest hope that out of these hearings will come legislation that will put an end to this most tragic of games.

The family has long been considered vital to the stability of our society. It is within this unit that parents are granted various degrees of authority. At times however, the authority of a parent is exceeded. That is why we are here today, to address the problem of child stealing by parents.

Child stealing is increasing rapidly in the United States. According to the Child Stealing Research Center in California, 25,000 to 100,000 outright child thefts from mothers or fathers occur each year in the U.S. When the failure to return children after visitation in divorced homes is included the snatching of children may reach 400,000 cases per year, or one child snatching for every 22 divorces.

Basically, child snatching can be defined as the act of a child's abduction and concealment by one of his own parents in violation of a custody decree. At present, in the United States there are no effective deterrents in either Federal or State, Criminal and Civil law. This is because, among others reasons, the Federal Kidnaping Act, 18 U.S.C., Sec. 1201, explicitly

exempts parents from its sanctions. Known also as the Lindbergh Act, and adopted originally by Congress in 1932, the law made it an offense to knowingly transport in interstate or foreign commerce a person who had been kidnaped for ransom or reward, and was amended in 1934 to extend its application to transport of persons kidnaped for any reason, not just for ransom or reward. At the same time, Congress provided for the parent exemption.

What we have at the State levels are laws that are varied insofar as scope and punishment are concerned. Some States do not punish child stealing, while some statutes exempt parents explicitly or by judicial interpretation. The Civil remedies are just as ineffective. The Civil contempt process is of limited applicability and may be circumvented by contrary custody decree in another state. In a majority of States parental immunity persists. Although a parent who willfully defies a custody decree is subject to civil contempt charges, this deterrent is ineffective. Courts cannot enforce Civil contempt citations beyond the limits of the State, the typical refuge of abducting parents.

We are also faced with the hesitancy of the Supreme Court to apply the full faith and credit clause, of the Constitution. This encourages forum shopping by the parent, tempting them to flee to another State where a custody hearing will often be granted on the mere physical presence of the child within its borders.

Parents and children are faced here with two types of costs. The first, in terms of dollars and cents, is that a parent will literally drive him or herself into financial ruin searching for their children or preventing them from being abducted. It

is not unusual for a parent to leave his job and spend thousands of dollars locating the child and then have to do it all over again if the other parent follows with a counter snatch. Often the child is never found. It has recently been noted that the growth in kidnatching has led to professional abduction- child stealing for a fee. In some instances the body snatchers will collect a fee from one parent for abducting the child, and another fee from the other parent for finding the child.

The other costs are those that cannot be tabulated on a calculator. How can you measure what it means to a parent to have a child forcibly abducted and taken out of State, not for ransom, but rather for the privilege of custody? How can you measure the trauma the child goes through when one moment he or she is playing in the safety of a school yard, and the next instance removed to a waiting auto, destination unknown? And what happens to the psyche of the child when this happens over and over again? There is a great deal of similarity between being kidnaped by total strangers and one's own parents. In both cases personal liberty is being denied. In both instances both parent and child are put under a tremendous amount of pressure and uncertainty insofar as safe return is concerned, and at what cost, both financially as well as mentally. Parents fearing they may never see their children again, and vice versa.

The abduction of children by their own parents who are aware the courts are powerless to stop this cruel game only serves to make a mockery of our judicial system and most certainly is not conducive to the development of the child who is caught in the middle. Study after study has proven that the key to a child's emotional development is a stable environment. Being grabbed

from State to State, often by total strangers hired by the parents, is hardly conducive in giving the impression of security and stability that is most needed at the early years of a child's development.

That is why H.R. 1290 is a step in the right direction in improving the lives of children and parents all over this nation who are caught in this ugly game. This bill, which would require State courts in one State to honor custody decrees rendered by courts in another State, would put an end to forum shopping that is presently encouraged. Also, by providing for the use of the Federal Parent Locator Service in H.E.W. to locate parents who snatch their children, parents would not be faced with the burden of financial ruin while at the same time, minimizing FBI involvement. It would also put an end to the growth of professional abductors. And finally, the bill would make child snatching a Federal misdemeanor with uniform jail terms and fines. But we must be realistic in realizing that this bill is not a cure all, that even if the fines were a million dollars parents would still seek their children and face the consequences, perhaps even fleeing the country. In many respects I feel sorry that this sort of legislation is necessary, that somehow there would be a way to prevent the deterioration of marriages, deterioration that affects so many young and innocent children caught in the middle. But I also know that unless this bill is made into law, thousands upon thousands of parents and children will continue to participate in a process that in the end helps no one and causes grief to all. If we can save one family, one child the agony of abduction, then we have succeeded.

Statement of Congressman Allen E. Ertel in Support
of S. 105, Parental Kidnaping Act

Mr. Chairman, although the federal government has grown in size and scope, it has remained reluctant to enter directly into the private lives of its citizens. The support for this restraint has been mutual; i.e., the federal government prefers to have family problems resolved no higher than the state and local levels, and the families themselves are even more determined to escape federal inquiry. Nonetheless, when it becomes clear that certain family injustices can only be corrected at the federal level, the federal government must not be reluctant to address and correct those injustices.

The question of a federal response to instances of parental kidnaping, or "child snatching," provides a clear example of the need for the federal government to arbitrate certain family disputes. When Congress first grappled with the problem of kidnaping, it demonstrated its determination to avoid meddling in family matters. The Federal Kidnaping Act, adopted by Congress in 1932 and amended in 1934, explicitly exempts parents from its sanctions. For this reason, any parent seeking to redress even a blatant violation of custody determination is forced to work within the resources offered at the state and local levels.

My experience as a District Attorney, as well as the experience of my colleagues, have indicated clearly that the present means of handling interstate parental kidnaping cases are ineffective, cumbersome, and fundamentally traumatic for all parties involved, especially the children. Since the federal government has no comprehensive mechanism for dealing with these cases, the success of any endeavor to respond to child snatching depends on the coordination of diverse state programs and the resources of the specific individuals involved. Although thirty-nine states have adopted the Uniform Child Custody Jurisdiction Act (UCCJA), there is no guarantee that such a measure insures that the decisions of one state will be respected or adhered to by another. If a state grants custody to one parent, there is little to stop the other parent from abducting the child and gaining custody in a different state.

The ineffectiveness of this system increases the likelihood that parental kidnaping will occur in the first place. Any parent

considering abducting a child will weigh the chances of success along with the other factors. If there is little chance that the law will effectively locate, prosecute and punish the offender, there is equally little chance that the offender will be deterred by that law. With the empty threat of retribution, the offender need only consider the logistics of transporting the child to another environment.

As the struggle moves from state to state, the plethora of independent judgments and decisions required increases the likelihood that the proceedings will be dragged out over a number of years. The restraints of time become exacerbated by the restraints of money, as the parent seeking redress must suffer the expenses of litigation and the consequences of dislocation.

While the trauma for the parents involved becomes unbearable, the trauma experienced by the child is likely to be disastrous. Parental kidnaping usually occurs during the formative years of a child's life. At a time when the child should be receiving support and stability from the family, the child gets dragged from state to state and parent to parent. Not only does the present system insure that the ordeal will cover a number of years, it insures that the ordeal will cover the years most crucial to the development of the child. Past instances of child snatching have revealed that by the time a child is returned to the original parent, the child often does not recognize the parent. At best, the bond between the original parent and the child will somehow have remained in tact; but even in those situations the child will be scarred for life.

A recent example of child snatching, which occurred in Pennsylvania, illustrates the present inability of our legal system to handle these situations. In October, 1977, the custody of a fourteen month child was granted to the mother, with partial custody for the father specified by the court. Following a visitation according to that order of custody, the child was abducted by the defendant/father on May 28, 1978, and taken to Roanoke Rapids, North Carolina. Charges were filed on June 13, 1978. The defendant was located in the summer of 1979, and the District Attorney filed a request for the extradition of the defendant to Pennsylvania. The officials in North Carolina denied extradition, claiming that since both Pennsylvania and North Carolina were members of the Uniform Child Custody Act, justice would be better served if the parties resolved the matter through the procedures

under that act. The officials added that North Carolina views child custody disputes more as civil matters, not withstanding criminal overtones.

A year and a half has passed since the child was abducted, and the matter is by no means resolved. It is clear, however, that even with the Uniform Child Custody Act, there is little coordination between states. There is no fundamental consensus as to the nature of the crime itself, and there is no effective mechanism for resolving the dispute. Even if there were such a consensus, the fact that there are so many officials involved insures that the process will be slow and the impediments frequent. That it took over a year to locate the defendant and the child demonstrates the inability of our present system to begin any form of proceedings, let alone determine a swift and equitable solution. That the child was only one year old when the ordeal began increases the likelihood that he will never achieve stability, having spent his formative years in hiding, in flight, or in the midst of litigation. Even if the crisis were resolved today, the child would be scarred from having spent two of his first three years under those circumstances. Given our present means of response, it is clear that the crisis will not be resolved today.

Federal reaction to the problem of child snatching is long overdue. Although various proposals have been offered in the past, none has contained the strengths of S. 105, the Parental Kidnaping Act, which is presently before the Senate. S. 105 works from the premise that the foremost concern must be the welfare of the victimized child. It then tries to balance the claims of the aggrieved parents and to respect the conflicting decisions of custody arising from the interaction between states. The Kidnaping Act recognizes that while the problem should be handled at the state and local levels, the federal government must not hesitate to resolve the crisis when necessary. To achieve those capabilities, the federal government needs a law to determine the nature of the crisis, a mechanism for locating the parties involved, and an effective means of arbitrating the subsequent claims.

There are three major sections in the Parental Kidnaping Act, and only the combination of those three will render the federal government capable of improving the present situation. To eliminate, or at least diminish, the conflicting determinations between states, the Act requires state court to give "full faith and credit" to custody decrees rendered by other states. The bill also extends the authority

of the Federal Parent Locator Service (FPLS) to track down missing persons; at this time the FPLS merely searches for runaway parents who have reneged on child support. Finally, and most importantly, S. 105 makes it a federal misdemeanor for any parent, relative, or other person to snatch or transport a child across state lines or to "restrain or conceal" a child from another parent. The law carries with it a maximum penalty of six months in jail, \$10,000 or both.

By requiring states to give full faith and credit to other states decrees, the bill removes the offender's option of ignoring the custody determination of one state by fleeing to another and starting with a clean slate. Not only will this serve as a deterrent, but by eliminating many of the problems arising from the conflict between states, it will shorten the process and reduce much of the need for arbitration. By itself, however, that section of the bill will be ineffective unless the federal government has the means to track down the offender, and the grounds to punish. The FPLS provides the capability for the search, while the definition of the kidnaping as a federal misdemeanor defines the nature of the crime and creates a credible form of retribution. The success of the bill hinges on the classification of child snatching as a federal misdemeanor; only by demonstrating the willingness and ability to prosecute, can the federal government hope to improve upon the present situation.

It is to be expected that any bill which attempts to make such sweeping changes in the law will meet with resistance from a number of areas. The FBI, the Justice Department in general, and HEW have all expressed their opposition to certain aspects of the bill. It is worth noting, however, that none of these groups denies the need for action in this area. Each recognizes that the problem of child snatching is widespread and ineffectively handled. The reservations stem from the logistics arising from implementation of the bill, rather than from the bill itself.

The FBI fears the consequences of defining parental kidnaping as a federal misdemeanor, and claims that the full faith and credit section of the bill would achieve the same purpose. Given the frequent instances of the crime, as well as the "existing expertise" which state courts have in family law, the FBI feels that federal criminal litigation of this issue represents an inefficient use of the federal government's judicial resources. If child snatching becomes a federal

misdeemeanor, the FBI must be prepared to handle such cases, and the cost of enforcement is apparently beyond the FBI's resources. Finally, the FBI contends that criminalization "may increase the potential for violent confrontation and emotional trauma, if not physical danger to the child."

The Justice Department argues along similar lines, claiming that federal handling of these cases constitutes a "wholly inappropriate" involvement of the Federal Criminal Justice system in the area of domestic relations. If child snatching becomes a federal misdemeanor, the consequences could be "an investigative and prosecutorial nightmare." In addition, the Justice Department feels that the competing claims of the parents, culminating in litigation which often requires the testimony of the victim child against a parent, will be highly traumatic for all parties involved. HEW notes that FPLS does not have the means to take on the burdens arising from the bill; it adds that to extend the use of FPLS records would be inconsistent with the policies protecting the privacy of taxpayers and information supplied in their returns.

Each of these criticisms appears to be well-founded until analyzed in the context of the entire bill. We are faced with a wide-spread problem of parental kidnaping which the state courts have proved unable to handle. The staggering amounts of time and money, combined with the poor success rate, have led to a situation which is highly traumatic for all parties involved. Clearly, this situation is unacceptable. The arguments indicating the inability of FPLS or the FBI to handle these cases must fall by the wayside in light of the entire picture. The problem is a serious one, and better dealt with by expanding the resources of the FBI and FPLS than by doing nothing. Furthermore, the bill emphasizes that whenever possible, the matter should be handled at the state and local levels. Federal involvement and the use of the FBI are the last resort, rather than the general solution.

The trauma of litigation and the threat of violence arising from criminalization must be weighed against the trauma which now exists. It is true that a number of cases may be more traumatic and more violent because of the redefinition of child snatching as a federal misdemeanor. However, the increased effectiveness of punitive measures will act as a deterrent, thereby reducing the number of

such cases. The coordination between states and extended resources open to the plaintiff will decrease the time involved and increase the likelihood of a just solution; both those measures will ease the aggregate trauma.

I do not pretend to believe that the entrance of the federal government into this area will not bring with it certain problems. I hope that the subcommittee will realize that unforeseen complications are likely to emerge, and that, despite the good intentions on the part of the officials involved, in certain instances the federal response may not be adequate or equitable.

Any solution to the problem of child snatching must be judged by its capability to reduce the trauma involved, and specifically the trauma of the victimized children. To argue that this bill may create traumatic situations is not an adequate response; the present situation is highly traumatic. To argue that adequate funds and resources do not exist is even less acceptable; if the program will ease the trauma significantly, it is worth funding. I think S. 105, the Parental Kidnaping Act, provides an appropriate and effective response to the rampant problem of child snatching, and I support the passage of this bill.

Prepared Statement of Thomas J. Lauricella

OFFICE OF THE MONROE COUNTY
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STATEMENT OF THOMAS J.
LAURICELLA, SENIOR
INVESTIGATOR, MONROE
COUNTY DISTRICT ATTORNEY'S
OFFICE - January 30, 1980

In my experience in investigating custodial interference cases involving children commonly known as child snatching it has become painfully evident that there is always an innocent victim involved. The victim is not the individual from whom the child was taken, but the child itself, regardless of age. In these particular cases where arrests have been made, and the child taken into protective custody I have observed, terror, confusion, anxiety and most of all fear.

When police or investigators act upon criminal warrants, teletypes are issued to all police agencies. These teletypes authorize the immediate arrest of the "child snatcher" Does the parent doing the "snatching" realize the potential danger involved in an arrest? For example: an officer stops the parent for a traffic infraction and approaches the vehicle--What will this parent do? Will they remain or flee? If they remain apprehension is imminent. And if they flee what will the police officer do? A vehicle chase? A Physical apprehension? During this tension filled time what is the child observing? More importantly how is the child being effected bbth physically and mentally. What will he be learning about relationships with the police. Has any of this been taken into consideration.

In the final analysis the ultimate tragedy is the resultant effect on the child. The parents who have come to hate one another through no fault of the child participate in ultimate debilitation of the child. This emotional, disruptive situation

leaves permanent scars upon the child. It is the children who suffer this type of tragedy today that become the abusing parents of tomorrow.

THOMAS J. LAURICELLA

Senior District Attorney Investigator

BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE,
COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE

Prepared Statement of Harry L. Henning

Members of the Committee, my name is Harry L. Henning, I reside at 2610 Berwyn Road, Columbus, Ohio. This statement is submitted to this Subcommittee in connection with its hearings on S.105 The Parental Kidnapping Prevention Act.

As with many other people appearing before this Committee, I am one of the aggrieved parents who has attempted for years to enforce rights with respect to custody of my children. My case is slightly unusual and reaches points which are not specifically treated in S.105. I was divorced from my former wife in Ohio. Pursuant to that decree she was awarded custody of two minor children, Scott and Brian. She removed herself to another state and took up residence in a county adjacent to the county in which she was raised and in which her father was sheriff. Shortly thereafter, I obtained information indicating that she was exposing the children to drugs, alcohol, and conduct which was considered injurious to their health and well-being. I filed an action for change of custody with the local court. Numerous delays were granted at the request of the sheriff. Finally, after two hearings on the merits, with the local court continuing to refuse to rule, I dismissed that action and instituted an action with Ohio, the situs of the divorce, under the Ohio Uniform Child Custody Jurisdiction Act. At the hearing my former wife was represented informally by counsel. The Ohio Court of Common Pleas entered an order terminating my former wife's prior right to custody of the children and awarded me custody. At that time her state of residence did not have the Uniform Child Custody Jurisdiction Act; it was enacted shortly thereafter. As soon as it became effective, I caused a certified copy of the Ohio Order to be filed under the Act.

At that time, my local counsel conferred with members of the bench in the county in which she lived (and her father was sheriff). We were informed that they would not enforce the Ohio Order if an action were filed. Therefore, after considerable deliberation, I filed an action in the United States District Court in the form of a petition for a writ of habeas corpus. After hearing on the matter, a decision was issued finding that the Federal court in fact had no jurisdiction in the matter.

The plight I face is not precisely that of a parent whose child was kidnapped but rather that of a parent who has sought by every legal means to protect the best interests of his children, has obtained a change of custody order, but because of the political influence of the former spouse in the area in which she lives, I am totally without means to enforce that change of custody order. Thus, while S.105 is laudable in that it attempts to eliminate the problem of child kidnapping, the Bill could be much stronger if it also addressed the problem of enforcing orders where, despite the absence of kidnapping, the retention of the child is unlawful. If the problem of "forum shopping" exists for purposes of getting an order of change of custody, so much the more so does the problem exist where one can secrete oneself in an area where a valid change of custody order would not be enforced by the local courts. This latter question, that of enforcement, is equally as important as the one dealing with selective changes. S.105 could be amended to reach this specific question. In that connection, our suggestion is simple. We would recommend that the Committee consider amending S.105 by adding thereto a new §6 entitled Federal Habeas Corpus Jurisdiction to read as follows:

§6. Chapter 153 of Title 128, United States Code, is amended by adding subsection (e) to §2241 as follows:

(e) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the District Courts, and any

Circuit Judge within their respective jurisdictions in order to enforce a custody determination which must be given full faith and credit pursuant to 28 U.S.C. §1738A.

Further, in the enforcement of any custody action, the parent seeking enforcement continually runs the risk of being harassed in the local courts by virtue of some form of counterclaim or other civil action designed to drain that individuals' financial resources. I would therefore suggest a further amendment to S.105 by adding thereto a §7 be added:

§7. Chapter 115 of Title 28 U.S.C. is amended by adding immediately following new §1738A the following new section:

§1738B. Jurisdiction Not Conferred in
Other Proceeding.

Participation in any proceedings authorized by 28 U.S.C. §1738A does not confer upon any court jurisdiction over any of the parties thereto in any other proceeding.

I strongly suggest that the addition of these two sections would provide the necessary authority for individuals to seek and then enforce custody determinations in a manner which is meaningful.

We support totally the purposes of S.105 and encourage the Committee to report this Bill favorably to the entire Senate.

January 22, 1980

PREPARED STATEMENT OF HENRY H. FOSTER

1.

In 1951 I was teaching Family Law at the University of Nebraska and received a telephone call from an Assistant Attorney General who wanted to talk to me about a child-snatching case. We met and I was told that some months previously the mother of two children had deserted her family and eloped to California with her boyfriend. The father, being apprehensive that the mother might return and spirit off the two children, got a court order awarding him legal custody. Nonetheless, the children were snatched and taken to California. We prepared extradition papers and sent them to the then Governor of California, who steadfastly refused to cooperate. That Governor later became a famous Chief Justice. The lesson I learned from that experience was that inter-state cooperation in child snatching cases was the exception rather than the rule.

2.

Later, in the 1950's, I became a law professor at the University of Pittsburgh and continued to teach Family Law. My friend, Judge Paul Alexander of Toledo, Ohio, called me one day to ask that I assist a father in obtaining summer visitation rights. The man was the representative of a large American concern which had offices in Milan, Italy, the son of a countess, and the latter was anxious to see her grandchildren. We readily agreed to the posting of a \$25,000 bond to assure the return of the children to their mother after their visitation in Italy. The mother never saw her children again. The lesson: don't place too much stock in bonds.

3.

The next child-snatching incident involved the former wife of an ethics professor at a New York seminary. The couple separated and the wife obtained a divorce and was awarded custody of two daughters, then aged 7 and 9. Later she joined the faculty at the University of Pittsburgh and was assigned to an office near the one I occupied and I saw her occasionally at coffee breaks and learned something of her marital problems when she discovered that I taught Family Law. One afternoon she rushed into my office, nearly hysterical, and told me that her two daughters had just been kidnapped from in front of their home.

As I pieced together her story, it appeared that her former husband and a female companion had grabbed the two girls, loaded them into a stationwagon, and sped away as the mother watched helplessly from the top of the long steps leading to the apartment door. The female companion was identified as her former best friend and next door neighbor who had married her former husband immediately after both couples were divorced.

Neither the police nor the highway patrol was helpful or effective so I located an upstate New York attorney who was retained to bring a habeas corpus proceeding to get the children back. The local judge was a great arbitrator. He decreed that one daughter should remain with the father, the other returned to her mother. The lesson: beware of judges who think they are Solomon, for they are more apt to be wise guys than elder statesmen.

4.

Then there was the letter forwarded to me for an answer which

had been received by the president of the American Bar Association. The writer of the letter was the editor of The Saturday Evening Post. He reported that he had talked to a lawyer at a cocktail party in New York who told him that he was advising his client to use self-help in a custody dispute although such would be in violation of a court order. The editor wanted to know whether such advice was common, did it violate legal ethics, and what was being done about the problem. My letter in reply was a confession of guilt for the legal profession, the courts, law enforcement officials, and state legislatures. The lesson: As Justice Jackson put it, custody disputes are governed by "a rule of seize and run, where possession apparently is not merely nine points of the law but all of them and self-help the ultimate authority."

My post-graduate education on child-snatching problems occurred in New York. I served as an adviser in the drafting of the Uniform Child Custody Jurisdiction Act and the Uniform Marriage and Divorce Act and also as Chairman of the Family Law Section of the American Bar Association and at one time its chairman of the child custody committee. I also have been a member of state and local bar association committees concerned with child custody disputes. Currently I am a member of Professor Brigitte Bodenheimer's committee which is advising the Department of State with regard to a proposed international convention on child-snatching. I also have had a part in obtaining the enactment of the Uniform Child Custody Jurisdiction Act in New York and Pennsylvania, and am pressing for a revision of the New York Penal Laws so that the offense of "custodial interference" may become a more effective deterrent to

child-snatching.

Although it is too early to conclude that order is emerging out of chaos, there are some indications of changes in attitude on the part of the judiciary and stage⁺ legislators. About forty states have passed the Uniform Child Custody Jurisdiction Act. A few states, such as California and Iowa, have tightened up their criminal statutes regarding child abduction. Appellate courts have denounced child-snatching and have equated it with parental unfitness. The performance of trial judges also is improving. Relatively recently we succeeded in getting an upstate judge to defer to the prior custody jurisdiction of the English High Court of Justice because such would be in accord with the best interests of the child. The attitudinal changes are most welcome but much more must be done before the child-snatching problem is eliminated.

5.

The most frustrating and heart-breaking child-snatching case I have ever been involved with was Kajtazi v. Kajtazi. In June 1977, after being subjected to physical abuse, the wife left the family home in Queens and with her three-year-old child returned to her native home in California. There she commenced a matrimonial action and was awarded temporary custody. Although the husband was in California at the time, he did not deign to appear in the proceedings. Some six weeks later, while negotiations were underway to permit him visitation rights, the husband snatched the son and took him back to New York. In November, habeas corpus proceedings were begun in New York and the husband, his father, and his brother were all served because in the past all three had made violent threats as to what

they would do to the child, the wife, and her family. They obviously were working together as a family unit on behalf of the husband.

At the hearing, the husband's father and brother showed up without a lawyer. The husband did not appear. The father and brother told the court that they did not know where the husband and child were, that they had left on a vacation, and had not disclosed where they were going. Over strong protests by counsel, the court adjourned the hearing from Thursday to the following Tuesday, so that a lawyer might be retained to represent the father and brother, even though they had been served three days before the original hearing. The court was warned that further delay would result in the child being taken to Yugoslavia, the native country of the respondents. Nonetheless, the court refused to issue a warrant for the husband, and called the next case.

The following Tuesday the father and brother duly appeared with counsel. They admitted that the court had been deceived, and that in fact the husband had been at the family store and the child at the family home when the judge was told that they were somewhere on vacation. They also admitted that on the intervening Saturday the husband had flown with the child to Yugoslavia. The case was adjourned because the corpus was in absentia but the court did issue a bench warrant which was never used. Incidentally, the sheriff for Queens told me that in order to have the warrant served I would have to inform him of the exact time and place for service and that I would have to get another warrant and use another sheriff for service outside of Queens. The sheriffs on

tv appear to be much more cooperative.

After the above events we made a counter-effort on every front we could think of. The Yugoslav consulate, the embassy in Washington, and Yugoslav friends were contacted. The Attorney General, Department of State, Passport Control Office, members of Congress, etc., were informed of the facts, all to no avail. An attempt was made to have the father and brother cited for contempt due to their deliberate obstruction of justice. The court refused. The United States Attorney declined to consider prosecuting the father for depriving his son of his civil rights and his rights as an American citizen. In desperation, we dusted off our old books on Torts and brought a tort action on behalf of the mother and son in Federal Court for child abduction, false imprisonment, and the intentional infliction of mental suffering.

Although duly served, the father and brother did not bother to show up in the federal tort action and we secured a default judgment in the sum of \$181,000, the largest award ever made in such an action, and the first such federal decision. Moreover, it was an open-ended judgment, Chief Judge Mishler assessing additional damages for each day the child was not returned. Although later the father and brother succeeded in opening up the default judgment on certain conditions, the judgment led to the eventual settlement of the case. The family home in Queens was attached. The father and brother filed bankruptcy. They lost their business and were concerned about losing the family home. This financial pressure led to a settlement of the case and the return of the child to his mother. Then five years old, the child had forgotten most of his

English. The lesson: hit them where it hurts, i.e., the pocket-book. Courts should award damages against child abductors and the person deprived of his legal right to custody should recover from the abductor the costs of locating and getting the child back.

6.

The case of Lynn and Sarah illustrates the high cost of retrieving the child. Lynn divorced her husband because of his adulterous affair with one of his students, and was awarded custody of their young daughter. The husband was a native of Turkey and had threatened to flee there with the baby. A court order granted him visitation but enjoined him from taking the child out of the state or country. Nonetheless, when the child was sixteen months old, the father with his new wife (the former student) violated the court order and fled to Istanbul. They called the mother from there to check on the diet for the child. When the mother became our client we located and talked with a lawyer in Istanbul who spoke fluent English. We were told that legal proceedings would take at least eighteen months or longer and that it was very doubtful that an American mother could prevail against a father who had dual citizenship and would be regarded as a Turkish citizen by the court.

For the first and only time I considered the alternative of snatching back the child since an appeal to the Turkish court would be hopeless. Moreover, the Department of State, the Passport Control Office, and the Department of Justice, refused to give us any direct aid or support, despite the intervention of three

distinguished United States Senators. The latter did all they could do but were stonewalled by the federal bureaucracy. Considering the age of the baby, and her dangerous location, it was necessary to act promptly. We retained an English private detective, and the mother flew to London to consult with him and to plan the retrieval of the baby. Two detectives and the mother spent a week in Istanbul but could not find the child but heard rumors that the father, his new wife, and the baby were in Israel. Through an Israeli connection the rumor was confirmed and we located the child. The father unwittingly had gone to one of the most cooperative countries in the world insofar as child custody matters are concerned. We knew we had him. Within a week the father was served with the equivalent of habeas corpus papers and was faced with civil and criminal court proceedings and the loss of his position as professor at a West Bank school for Arabs. He gave up the child in return for the dismissal of the Israeli proceedings but since then has repeated his threats to abduct the child. The cost of the retrieval in detective fees was around \$25,000, and the total cost, without regard to mental pain and anguish, was around \$30,000. The lesson: only custodians with access to substantial means can finance the expenses of retrieval, and self-help in reverse is a costly and dangerous alternative that may be justified only as a last resort, when an appeal to the courts is hopeless. The proposed International Convention on child custody, if workable, may reduce the necessity for the "last resort" alternative where the child is taken to a signatory country.

7.

The final lesson, based on our experience, is that the perceived best interests of the child may relegate abduction to a matter of secondary importance and the longer the child is concealed the greater the likelihood that courts will refuse to take possession from the abductor, even though the traditional requirements for "adverse possession" are unmet. There was nothing "open and notorious" in Arnie Miller's case. The mother, in violation of a Maryland custody and visitation order, went underground and disappeared with the child for five years. The mother changed her name, and that of the child, and was constantly on the move. Arnie Miller, the father, spent approximately \$15,000 on lawyer and detective fees in a futile effort to find them. In the Spring of 1979, a popular national magazine ran an article on the case, with pictures of the mother and son, and telling about the father's work as founder of Children's Rights, Inc. A former neighbor of the mother when she lived in Massachusetts recognized the family from the pictures and called Arnie Miller, telling him that she had heard that mother and son were in Rockland County, New York. At that point, Arnie Miller contacted me and we drove to Rockland County armed with a writ and petition for habeas corpus.

The immediate problem was to get the child into court before the mother would again seize and run. With the assistance of a private detective and a probation officer from the Family Court, we went to the yeshiva and found the boy and it was agreed that he would be taken before the judge. Since the boy was in custody, we knew that the mother would respond to the writ and show up in

court. The reunion of Arnie Miller and the son he had not seen for almost five years, and who now was nine years old, was both touching and painful. At first the boy was not sure that he remembered his father. Later, when they had the opportunity to talk in private, the years were rolled back, and there was a glimmer of the old affectionate relationship.

During the habeas corpus proceedings it became clear that the judge would not change custody from the mother to the father, nor would he consider joint custody. A report from the staff psychiatrist recommended that custody be retained by the mother. Neither the judge nor the staff psychiatrist attached any significance to the mother's conduct in cutting off all contact with all relatives for five years and moving about from place to place. That was water over the dam. More important to them was the child's need to continue his current lifestyle and religious education at the yeshiva. Because the alternative of fighting the case, and probably taking appeals, would be so traumatic and expensive, the case was settled by leaving custody in the mother with set visitation rights for the father.

There have been problems since the settlement and neither the mother nor the father is happy with it. But the father has succeeded in reviving a warm relationship with his son and in a few years the son will be old enough to effectively express his own desires regarding custody and visitation. As a teen-ager, he may opt for living with his father, step-mother, and step-brother. The Arnie Miller case shows that locating the child may be sheer luck. It has been reported that seven out of ten custodians never

see the abducted child again. And if the child is gone for too long a time, even if found, courts may decline to disturb the status quo.

Comment

We have used abbreviated case histories in order to show the dynamics and human dimension of the child-snatching problem. We do so because in large measure the problem will not be alleviated unless and until there is a substantial change in public and official attitudes. And such attitudinal changes must be reflected in statute and law.

It is a most remarkable social phenomenon that child-snatching is condoned and in effect encouraged by our sins of omission and commission. The perspective is out of focus. Instead of viewing the problem from the standpoints of the child's welfare and the harm done to the innocent custodian, there is empathy for the abductor, who is viewed as a cousin of Robin Hood. In the vast majority of cases such sentimentality is misplaced and most abductors are serving their own selfish interests, not those of the child, no matter how they may rationalize their misconduct.

Unwarranted sympathy for the abductor colors and confuses the law and our thinking about child-snatching. The Lindberg Act excludes parents from its coverage. A few years ago, the draftsmen of the Model Penal Code rejected my suggestions that teeth should be put into the provision dealing with child abduction. The House of Delegates of the American Bar Association unfortunately was taken in by the arguments of lawyers with a background in criminal law who did not see the larger problem. Successive Attorney Generals,

I am told, have issued directives that child abduction does not come within the purview of the fugitive felon act. Apparently, at least in the past, the Department of Justice and the FBI have wanted no part of the problem.

Of course, federal, state, and local police intervention is absolutely essential in most cases in order to locate the child. Most people, unlike Lynn or Arnie, simply do not have the means to employ private detectives. Law enforcement intervention to locate is the proper objective, and so far as punishment is concerned, we would be satisfied with the sanction of reparation in lieu of a fine or a jail term. The cost for locating and returning the child should be imposed on the abductor. The so-called Wallop Amendment was on the right track when it stipulated certain defenses to the proposed federal offense because retribution, as such, is not the proper objective.

Notwithstanding the critical need for changes in the law relative to child abduction on federal and state levels, we are continually confronted with the objections raised by those who favor a "hands off" policy. Our experience in actual cases and as an advocate for reform of the law has been that the "hands off" philosophy is pervasive. Police don't want to get involved with family disputes; missing persons bureaus stay clear of child-snatching cases; local and state prosecutors are uncooperative; and the Department of Justice and FBI, save in extraordinary and rare cases, reject jurisdiction. The Attorney General of the United States, when I wrote concerning the Kajtazi case in February 1978, did not bother to reply, even though I told him I was the immediate past

Chairman of the Family Law Section of the ABA, and a former lawyer with the Department of Justice. The Department of State, even though I had served on two different advisory committees on international conventions concerning children, and knew Ambassador Kearney, gave me the run around. Stay clear of family disputes is the conventional wisdom of federal, state, and local officials.

In order to alleviate the child-snatching problem there must be:

1. A change in public policy and the attitudes of those having jurisdiction over parts of the problem;
2. Effective assistance for helping to locate and return abducted children;
3. A coordination of federal, state, and local law and its enforcement, so as to make self-help dangerous and futile.

To be more specific, the above objectives may be achieved if federal legislation is enacted along the lines of the so-called Wallop Amendment, so that child abduction across state lines is a federal offense, the pertinent portions of the Uniform Child Custody Jurisdiction Act are incorporated into federal law, the Federal and State Parent Locator Services become available for child-snatching cases, and state courts are compelled to give full faith and credit to prior custody and visitation awards where there was jurisdiction along the lines set forth in the Uniform Act.

Moreover, state law must be modified so that child-snatching is subject to extradition, and the taking or concealment of a child within the state is an offense. Under present New York law,

both the taking and concealing must occur within New York, so that if a child is seized in another state, brought to New York, and there concealed, it is not a New York offense. Again, the objective is to trigger off the intervention of law enforcement officials, and not to obtain retribution against the offender. It is rather ironic that under the Dyer Act and the Mann Act there may be federal-state cooperation for the recovery of a stolen automobile or an adventurous female, but there is no cooperation for the return of a child victim. Perhaps our present public policy is more concerned about automobiles and sexual morality than it is about helpless children.

To date, Congress has seen fit to recognize the problem of the physically battered child and has created a national agency to cope with the problem, but at the same time, despite the perennial bills of Congressman Bennett and others, it has ignored a prime example of psychological child abuse. Child-snatching is one of the most serious and damaging forms of child abuse. So far as I know, this is one of the few things that behavioral scientists agree upon without exception. And this is one form of psychological child abuse that is verifiable by objective evidence. The child victims usually are in their early years, between two and seven, and at an age where their removal from familiar and secure surroundings is apt to occasion the greatest harm.

It is with pleasure and a sense of urgency that I have responded to your invitation to submit a statement on the subject of child-snatching. It is assumed that there will be a number of statements and witnesses who will address themselves to the specific

details of proposed legislation. For that reason this statement is aimed at the overall problem of child-snatching and its many facets, in the light of my own experience as a professor and practitioner. With the exception of court orders for support, I know of no other area where court orders are violated with such frequency as those involving custody and visitation. Obviously, this leads to widespread disrespect for courts, lawyers, and the administration of justice in this country. It is a national disgrace that we have done so little to bring order out of chaos.

A final point may be worthwhile. Although the violation of court custody and visitation orders gives added force to the arguments set forth above, it is not intended that there be an implication that federal and state law should not concern itself with violations of agreements pertaining to custody and visitation, nor, indeed that it be inferred that the taking of a child from his lawful custodian should not be regarded as unlawful even though there is no court order or agreement. There is some authority for the sensible view that it is and should be no defense to a criminal or tort action for child abduction that the abductor had equal rights to the child at the time of the taking when that act deprives the other parent of his or her equal rights to access to the child. As a California court observed, there is nothing equal about it, when such a deprivation occurs. Since a substantial percentage of child-snatchings occur before agreement or court order, it is important that legal recognition be given to the rights of a co-custodian who is deprived of access, without his or her consent, by concealing the whereabouts of the child. Anything less than

that constitutes a denial of equal rights. Moreover, it is clear that, absent extraordinary circumstances, a child is entitled to the love, care, and association with both parents, and that such right of the child should be protected.

Henry H. Foster

January 15, 1980

Prepared Statement of Ellen Widen

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January 25, 1980

MILTON TALKIN
OF COUNSEL

The Honorable Charles M. Mathias
358 Russell Senate Office Bldg.
Washington, D.C. 20510

Re: Senate Bill No. 105

Dear Senator Mathias:

Thank you for this opportunity to voice my support of Senate Bill 105 and its attempts to deal with the national epidemic of what has become known as "child snatching." I appreciate your solicitation of my position, since I feel that the Bill's adoption should afford a unified and coherent framework of procedures and penalties to affected families.

I am well acquainted with the legal problems inherent in child snatching; during the past year, I have been involved in five such interstate cases and have represented parties on both sides of the issue. The costs in such cases, emotional as well as financial, have been high to the parents and the children, and their frustrations and anxieties have been enormous. Additionally, these cases pose unusual ethical dilemmas for the attorneys and even, in some cases, the judges involved, and I am hopeful that Senate Bill 105 may mitigate these problems.

An attorney who represents one parent in any custody case has an obligation to represent his or her client, and the client's interests may conflict with that of his or her children. For example, when custody is at issue and before a court has made any award, a parent seeking custody may be advised to take the child from the other parent even if the child is settled and doing well with the other parent. That parent may then be advised to take the child back, and if he demurs because that kind of tug-of-war will injure the child, his rights to custody may be irretrievably lost. I am presently involved in just such a case.

Sometimes a presiding judge must choose the best interest of a child in a complex and confusing situation. The choice may be between custody to a parent who had wrongfully taken the child from the other months or years before or to a parent who has been kept from the child for those months or years; even though the child's adjustment to the new residence and estrangement from the legal custodian seem complete, the judge must choose to legalize a wrongdoer or to again disrupt the child's life.

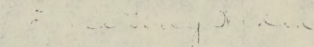
Often an attorney may have learned information, purposely or unwillingly, that could be helpful to the court or to the child, but ethical considerations of confidentiality prevent him or her from disclosing it. I have had painful experience in such a situation. About a year ago, I was retained to represent a man whose wife had been granted temporary custody of their four-year-old son and was restricting my client's access to the child. Despite my efforts to negotiate greater visitation rights, my client, apparently in frustration and without prior notice to me, vanished with the child. I was made aware of this by the mother's attorney, and my efforts to contact my client were unavailing. More than three weeks later, my client contacted me and explained that he had taken a leave of absence from his job and taken the child out of the state. I explained to him that he had violated a court order and warned of imminent contempt charges. My client asked me to remain as his counsel in his case, and I agreed to do so on the conditions that he would return the child when the court so ordered him and that he tell me where he and the child could be reached so that I could contact him and bring him before the Court, if necessary. After requesting and receiving assurance that I would maintain the confidentiality of his communications, he explained to me that he was at the home of his parent, outside of the United States. Although I considered the possibility then that my responsibility to my client might create some tension with my duties as an officer of the court, I believed that my client would return the child upon my request. I felt a moral obligation, under those circumstances, to remain as my client's counsel of record since I was apparently the only person who had information regarding the child's whereabouts and had access to either of them in case of an emergency.

About a month later, I was served with the mother's petition to cite my client in contempt of court for his violation of the court's earlier order of temporary custody. A hearing was set at which my client was required to appear and show cause why he should not be held in contempt. Another summons was served upon me personally to appear at that hearing and testify as to the whereabouts of my client. I immediately informed opposing counsel and the judge that such information was privileged and I was not at liberty to disclose it, but neither the attorney nor the judge would withdraw or quash the summons. Although I attempted to contact my client, I was unable to reach him until after the hearing. I was ultimately unable to persuade my client to appear before the court. Although I immediately attempted to withdraw from the case, I was not allowed to do so by the court. Instead, the presiding judge ordered me to reveal the child's whereabouts and held me in contempt of court when I invoked the attorney-client privilege. The law on privilege in such circumstances is unclear and I could then and now support my position with substantial authority. The judge's order was also supported by authority, and his conclusion was that the child's best interests compelled disclosure and sacrifice of my client's confidentiality.

My position remains that under such circumstances, an attorney should protect the client's privileged communications, especially when those communications provide a link-- in my case a tenuous one-- between the courts and the child and at least an opportunity to arrange a return of the child. Although attorneys may not advise a client to break the law, one who does violate a court order and then seeks legal counsel must be assured that confidences to an attorney will not be used against him. Nevertheless, very real tensions often exist between the exercise of this privilege and the protection of the best interest of a child, and the resolution of such problems is presently almost always unsatisfactory. The best way to reduce these tensions is to bring consistent legal remedies and competent enforcement mechanisms to the whole problem of child snatching.

I do not look upon Senate Bill 105 as a panacea to the problems involved in child snatching because the acts are manifestations of social, emotional and often economic factors that are too complex and too personal to be amenable to legislation. Nor do I feel that the Bill itself will completely shield members of the Bar from the kinds of choices they confront in such cases and the kinds of decisions judges may face. Nevertheless, the Bill is a first step toward giving the families involved some real recourse and relief which too often is unavailable to them now. As a parent and a constituent, I support the Bill's attempt to encourage domestic stability. As an attorney, I support its legal effects and protection.

Very truly yours,



Ellen Levy Widen

ELW/lw

Prepared Statement of "Douglas Wyatt"

CHILD SNATCHING: THE OTHER SIDE (OR THE SILENT GROUP)

I am a parent who "snatched" his own children. As a member of a group of quasi criminals which is growing at a rate of 100,000 per year, I want to tell another side of the story. Little has been written from the hunted side because of the obvious reason of giving away positions and thus the security and peace for the children which was so dearly come by. We are silent, not out of cowardice or ineloquence, but because we must protect the one thing which is most important to us now, our children. It is their peace and happiness, away from all the ugliness and trauma of domestic battle, which is uppermost in our thoughts. You could now ask, why am I speaking out at this time? The answer is simply that I think there is a danger that the anti-child snatching bill S105 may pass. Therefore, in order to once again protect my children from being treated like pawns by a system which does not consider their welfare and wellbeing as paramount, and the possible return of them to a far less capable natural parent to be further abused (if not destroyed), I will and am now taking this risk. I only hope and pray that I have covered our tracks well.

Anti-child snatching bill S105 may be unique in our history. Who ever heard of a bill possibly being passed without the slightest opposition being heard from the other side of an issue? The Senators who put their names on this bill would be derelict in their duties and irresponsible, if they had not previously thoroughly considered, and actively sought opinions and views of the other, silent side.

It is this side who obviously cannot publically organize, yet took this drastic step. Now the only open opposition is from the governmental agencies who are complaining about the difficulties, if not the impossibility of doing all the work in order to bring us to "Justice".

Let us agree that society has a problem when one parent feels that he or she must take their offspring and leave an area in order to do right by their children. Most of us who run away are law abiding citizens who honestly feel that they have done the right thing and had no other recourse. This problem will not be solved by designing a more lethal, efficient club such as bill S105 in order to catch, fine, or imprison these parents. The problem can be resolved by getting child custody cases out of the courts and into the hands of professionals who are trained in the human and social sciences. It is in the hands of these professionals that valid decisions can be made as to custody. The conclusions would be arrived at dispassionately without being tied to the outworn precedents now still used in the courts that the natural mother is almost always the best parent to rear the children. Now in the overwhelming majority of all custody battles the children go to the mother. Are mothers as a group so much better than fathers to warrant this more than 20:1 decision rate against the fathers? It is almost as if the courts were saying it's all right for the fathers to sire children but after that leave it to the

mothers because 95 out of 100 times we think she is better to raise the children, even if the father disagrees.

Actually the most important group to consider in this problem are the children. It is their welfare, both emotional and economical which must be uppermost. The undefendable idea that mother love is sacred and therefore untouchable must be washed away.

The legal system now so blatantly favors the mother that well over 60% of men are taking off with their children before a custody battle even comes into the courts. I foolishly went through a court battle. Unbelievably I listened to a judge tell me before and during the trial that the children would be given to me only if I could prove my ex-wife legally insane or a nymphomaniac. Nothing else would do. It mattered not that I was a professional with a B.S. and doctor's degree, and had a perfectly clean record both in the army and as a civilian. On the other hand my ex-wife freely admitted to adultery, a previous felony conviction, an education that went little past high school, and contempt of court. She had taken the children across country, openly living with her boyfriend for three months before returning for the trial. It was later found that she was three months pregnant at the time of our divorce and custody trial. The judge, after hearing all this and more, still had the opinion that there was no way she would give me custody of our children. In fact she threatened you had better

settle this case now because nothing you have shown will alter my decision to give these children to their natural mother. If, in fact, this trial continues to waste my time, I have known of cases where the father has been restrained from seeing his children for a year because the court deemed him a disruptive force....

One of the most important ideas of civilization is to prevent injustices, not to punish blindly in the name of justice. Careful, very careful consideration must be given before devising methods to enforce unjust court decisions and laws. We must first prevent the obvious injustices which make taking one's own children the only alternative to seeing their lives being ruined.

I don't want anyone to think this act of fleeing is done without much soul searching. To run means total understanding and acceptance of the facts. It will be as necessary as it is unpleasant that all relationships, both with family and friends, be completely broken. Great sums of money will be freely and quickly used to buy anonymity and a completely new start in life. As in my situation, I sold my professional practice at a sacrifice, my house, and all other possessions in order to flee the court's patently unjust decisions, and do what I knew was in the best interests of my children.

For those of us who have taken our children there will constantly be a "looking over one's shoulder" in the subtlest of ways. This will be done, as was all else, to protect the children at all costs. They have had enough sadness, which must and will stop now.

Prepared Statement of Melvyn B. Frumkes

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January 28, 1980

The Honorable Charles Mathias
United States Senator
358 Russell Senate Office Bldg.
Washington, D.C. 20510

Re: Parental Kidnapping

Dear Senator Mathias:

I am writing in response to your request of me to make a statement concerning problems that have occurred to me that can be alleviated by Federal Legislation or implementation of Federal Regulations to inhibit parental kidnapping.

First of all, please know that I am in complete support of S.B. 105. My published comments (and that of my colleague, Marsha B. Elser) are enclosed for your reference, same having appeared in the December 1979 edition of the Florida Bar Journal. (53 Fla Bar Journal 684).

There are a few other areas that I think should be pointed out for remedial action. I particularly refer to the retention and issuance of passports, on which minor children are joined, which frequently enable child snatching parents to secrete children in foreign countries.

The U.S. State Department recently implemented a regulation, 22 C.F.R. 51.27(d), by providing that passport issuing agencies within this country will refuse to issue a new passport to a non-custodial parent upon receipt of a certified copy of an order of appropriate jurisdiction prohibiting the removal of that child from the country or from that jurisdiction. There are, in my view, however, major loopholes in this regulation which need to be closed.

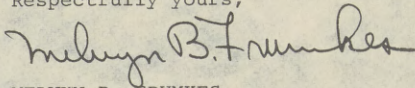
First, I am told by the State Department that the authority to deny a passport under 22 C.F.R. 51.27(d) only applies if the passport issuing agency receives a court order from a court within the country in which passport services are sought. This will, therefore, not prevent a non-custodial parent from, for example, snatching a child and running off to either Canada or Mexico, the crossing of whose borders do not require passports, and applying for a passport in the American Embassy or Consulate in that country. Since the order is issued from one of the states in the United States and not from either Mexico or Canada, the new regulation is not applicable to the foreign post. It seems to me that an agency of the United States government (i.e., a passport issuing agency), although situate abroad, ought to follow the same rules and regulations of honoring an order of a court of one of our states as must now a passport issuing agency located within the United States.

Secondly, there seems to be no mechanism for cancelling a passport that has already been issued for a parent which includes the child. A passport is good, I believe, initially, for three years. Same can be renewed upon request for an additional two years. Take for example a situation wherein Mother has a passport together with child, and prior to the expiration of that passport, custody is awarded to Father. Mother can, with her still valid passport, remove the child from the country. The court issuing the change of custody order may very well direct the non-custodial parent to turn over to the court, or other authority, the passport which includes the child; however, it does not appear that the State Department has any regulation to implement the court's order, although it should.

My co-author, Marsha B. Elser, joins me in these comments, and we hope they have been helpful.

At the request of your Legislative Aide, I am enclosing my resume which shows the experience that I have in the marital and family law field. If there is anything further I can contribute in reference to this matter, please do not hesitate to call upon me.

Respectfully yours,



MELVYN B. FRUMKES

MBF/jb

MELVYN B. FRUMKES, P.A.

THE FLORIDA BAR JOURNAL

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 *The
Child
and The
Law*



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THE FLORIDA BAR JOURNAL

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THE COVER

One-year-old Claire Catherine Dodd is the Journal's cover girl. Photography by her father, Harry T. Dodd.

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The Uniform Child Custody Jurisdiction Act¹

The Florida Experience

By Melvyn B. Frumkes & Marsha B. Elser

"Child-napping" (or call it "legalized kidnapping,"² "child snatching,"³ "child rustling"⁴ or "child abduction by one parent,"⁵ as do others) not only in the United States, but internationally, has grown to frightening proportions. Estimates of the annual number of such acts in this country alone range from 25,000⁶ to 100,000.⁷ Having a global theatre of operation internationally, the problem has taken on a dizzy chase from Australia to Austria, from Canada to France (and back, by way of a second abduction), from Berlin to Israel, England to Holland, Holland to Morocco and so on.⁸

Probably the most significant underlying reason for these incidences is frustration on the part of the noncustodial parent when unjustifiably deprived of visitation rights, and faced with the slowness of the decision-making process and the enormous expense and inefficiency of legal proceedings. Regrettably, an outlet has been provided by the judicial system through allowing multiple custody contests. The position of most courts, including Florida's, had been that if a child was physically present, the court would not hesitate to exercise its jurisdiction over that child.⁹ It rarely mattered how the child was brought to that state. As stated by the Uniform



Commissioners in their prefatory remarks to the Act:

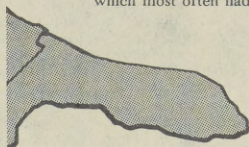
It is not surprising then that custody claimants tend to take the law into their own hands, The irony is that persons who are good law-abiding citizens are often driven into these tactics against their inclinations; and that lawyers who are reluctant to advise the use of maneuver of doubtful legality may

place their clients at a decided disadvantage.¹⁰

The attitude of the trial judges confronted with interjurisdictional custody disputes contributed much to the sad state of disorder. A second judge may disagree with or mistrust a prior custody judgment,

applying his own concept of "the best interest of the child." Judges are somewhat loath to defer to courts of other states and there is always the suspicion that even a judge will be more sympathetic with a constituent, tending to lend a more receptive ear to the parent who is a local resident.¹¹

Before its adoption of the Act in 1977, Florida was reputed to be one of the two states (the other was New York) which most often had



shown disdain for prior custody decisions. The authors of this observation noted that "In Florida, there is a literal de novo trial of custodial rights without reference to prior decrees of sister states."¹²

In their prefatory notes to the Act, the Commissioners commented that these problems were augmented by the law rather than cured by it. This was particularly felt since there was no certainty as to which state had jurisdiction to determine custody when more than one state had been sought out as a forum; nor could anyone be certain what custody decree of which state would be recognized and enforced in another state. Further, the failure of the United States Supreme Court to settle the question of whether "full faith and credit" applied to custody decrees seems to have given free reign to some states to modify the custody decrees of sister states.¹³

Recognizing these problems, the National Conference of Commissioners on Uniform State Laws promulgated the Act in 1969. That same year it was approved by the American Bar Association.¹⁴

In describing its purposes, the Commissioners emphatically stated:

Underlying the entire Act is the idea that to avoid the jurisdictional conflicts and confusions which have done serious harm to innumerable children, a court in one state

Before its adoption of the UCCJA, Florida was reputed to be one of the two states which most often had shown disdain for prior custody decisions.

must assume major responsibility to determine who is to have custody of a particular child; that this court must reach out for the help of courts in other states in order to arrive at a fully informed judgment which transcends state lines and considers all claimants residents and nonresidents, on an equal basis and from the standpoint of the welfare of the child.¹⁵

The first state to adopt the Act was North Dakota in 1969, followed at an accelerating pace by its sibling states. As of this writing,¹⁶ 39 states have adopted the Act; a 40th, Kentucky, has adopted the jurisdictional requirements but not the Act itself.¹⁷ That, then, leaves 10 recalcitrant, nonadopting states, to wit: Alabama, Massachusetts, Mississippi, New Mexico, Oklahoma, South Carolina, Tennessee, Utah, Vermont and West Virginia.

The Florida Legislature enacted the UCCJA in June 1977, making it effective October 1, 1977. Since this is not a reciprocal act,¹⁸ Florida is bound by its terms even when dealing with one of the 10 nonadopting states.

It is important to be aware of the 10 recalcitrant states, particularly when advising a client as to a child's visitation within a nonadopting state. The Act contemplates immediate enforcement of a foreign custody order,¹⁹ but there is no predicting what a court in a nonadopting state will do.

The UCCJA does not attempt to affect the substantive laws of custody determinations in any court. It is rather a procedural scheme to determine whether or not a court may assume jurisdiction to issue a custody judgment or to modify a custody judgment of a foreign court.²⁰ While it is possible under the Act that several states may have concurrent jurisdiction over a custody dispute,²¹ the basic premise is that only one court assume responsibility.²²

A participating state under the Act must recognize and enforce the custody decrees of a foreign state if that state assumed jurisdiction under statutory provisions substantially in accordance with the Act or where the jurisdictional standards of the Act are met.²³ The jurisdiction of that court continues and its decree shall not be modified unless a second state determines that the state which rendered the decree either no longer has jurisdiction under the Act's jurisdictional prerequisites, or has declined to assume jurisdiction.²⁴ Having determined that the rendering state no longer has jurisdiction, the second state must

Uniform Child Custody Jurisdiction Act

decide if it is the appropriate forum under the Act.²⁵

Jurisdictional Bases

Florida has four basic "legs" upon which it can stand to assert jurisdiction in a custody proceeding. First, it can have jurisdiction to make an initial determination or to modify a previous custody decree where Florida is the "home state" of the child at the time the proceedings are begun;²⁶ that jurisdiction continues for six months after a child has been removed from the "home state."²⁷ The latter provision is designed to protect the parent left by a spouse who has taken the child out of the state. The stay-at-home parent may then institute proceedings in his own state rather than pursue the fleeing parent and child into another state.²⁸

Florida may also assert jurisdiction where the child and one of the parties have significant connections with the state, and where the most substantial information pertinent to the child's custody is available within this state.²⁹ The "significant connection" doctrine may operate to extend the former home state's jurisdiction beyond six months after a child has been removed from the state.³⁰ While the physical presence of the child in a state is not sufficient to confer jurisdiction upon that state,³¹ unless that child has been abandoned or the child requires protection in an emergency situation,³² it is not a jurisdictional prerequisite for a child to be present within the state for that state to make a custody determination.³³

The Act contains a *forum non conveniens* section which permits a court to decline jurisdiction where it finds that another state is the more convenient forum.³⁴ A very practical provision of this portion of the Act encourages courts of one state to communicate directly with the court in another state to determine which is the more appropriate forum.³⁵ In fact, the Act contains many provisions

which delegate authority to assist courts in other states: in the collection of information as to decrees and proceedings occurring in that state or elsewhere;³⁶ in taking of testimony;³⁷ the holding of evidentiary hearings there or in another state;³⁸ and generally rendering assistance among each other to gather information for use in the forum state.³⁹ The authors have talked with several Florida circuit judges who have successfully employed these techniques.

The Act further provides that a state shall not exercise jurisdiction where proceedings are pending elsewhere in a state which has

Since the UCCJA is not a reciprocal act, Florida is bound by its terms even when dealing with the 10 nonadopting states.

exercised jurisdiction in substantial conformity with the Act,⁴⁰ nor must the court exercise jurisdiction where the petitioner violates the "clean hands" portion of the Act.⁴¹ The mandatory informational requirements⁴² of the UCCJA assist the courts in finding out whether there are any custody determinations or proceedings anywhere regarding the particular child.

The provisions of the Act are applicable internationally⁴³ and have been applied on numerous occasions.⁴⁴

One of the main purposes of the Act is to "avoid jurisdictional competition and conflict with courts of other States in matters of child custody. . . ."⁴⁵ The Act is limited to inter-, not intra-jurisdictional disputes. If a parent moves from one county to another within the State of Florida, the Act does not change the longstanding rule that any modification proceeding goes back to the court that originally entered the custody order because, as recognized by the

Third District Court of Appeal, the Act "is applicable only to interstate custody squabbles and not to intrastate."⁴⁶

Informational Requirements Often Overlooked

Probably the most overlooked portion of the Act by Florida family law practitioners is its informational requirements.⁴⁷ Those provisions mandate each party in his initial pleading, or in an affidavit to be attached to that pleading, to specifically set out, under oath, various facts dealing with places where the child or children have resided and whether there are any other proceedings pending or otherwise. Notwithstanding that the Act became effective in Florida on October 1, 1977, Florida practitioners too often neglect these informational allegations which are required whenever there are minor children involved, whether or not a custody battle is contemplated. The allegations not only belong in the petition for dissolution, or in an affidavit to be attached, but also in the answer of the responding claimant. This is required whenever there is any prayer, whether to be contested or not, for an award of custody of children.

The informational provision of the Act requires these allegations of each party to a "custody proceeding." The definitional provision of the Act⁴⁸ defines a "custody proceeding" as one "in which a custody determination is one of several issues," including determinations as to visitation rights.⁴⁹ These allegations are important because in any proceeding where a final adjudication of custody or visitation is sought under the Act, it is the duty of the court to screen the pleadings to determine, *inter alia*, whether there should be a joinder of additional parties and to identify the courts of other states which should be contacted under various provisions of the Act.⁵⁰

The nonexistence of a custody controversy does not excuse the failure to follow the informational requirements. Such inaction may later, in an interjurisdictional modification proceeding several years thereafter, give reason to attack the initial custody judgment. Therefore, the failure to make the

allegations could lead to a dismissal or a striking of the pleading.⁵¹ In an unreported Duval County Circuit Court case, a husband's petition for modification, upon a motion to dismiss on grounds of failure to furnish the informational requirements, was dismissed without prejudice with 10 days' leave to file an amended petition.⁵²

There are exceptions to the informational requirements as there always are in the practice of law and always should be. The Second District Court of Appeal recognized, albeit in dicta, that noncompliance with the informational requirements of the Act can be excused if an emergency is involved, recognizing that the information can be furnished at a subsequent time.⁵³

Another purely procedural aspect of the Act has received comment by the Florida courts. The Act requires recognition and enforcement of a decree of a court of another state.⁵⁴ In the past, the traditional way of proceeding was the institution of a petition for writ of habeas corpus.⁵⁵ The habeas corpus remedy, however, should not be employed when relief may be had or could have been procured by resort to another remedy.⁵⁶ The "other remedy" is now that which is spelled out in the Act recognizing out-of-state custody decrees and providing a procedure for their enforcement.⁵⁷

Nevertheless, even if the practitioner still labels the initial pleading to enforce as a petition for writ of habeas corpus, the court most probably will not treat it as fatal but will do as one circuit judge in Palm Beach County did, treating it as a petition under the Act.⁵⁸ Furthermore, under the provision of the Act dealing with enforcement of a decree from another state, a certified copy of the custody decree of that other state may be filed. The Palm Beach County circuit judge was not distracted by the argument that the intention of the legislature was to have, instead, an exemplified copy since all that the Act required was a certified copy.⁵⁹

Finally, the Third District Court of Appeal, in a recent case, noted that this portion of the Act asking for certified copies was merely "directive and says that a certified copy may be filed. It is not a

prerequisite to jurisdiction." In that case, a copy of the order was filed but the failure to certify it was fully explained to the trial judge.⁶⁰

Due Process Considerations

Some question has been raised among various commentators on the Act as to whether it will withstand a constitutional challenge by a parent who has not been personally served. In *May v. Anderson*,⁶¹ a plurality of the United States Supreme Court required in personam jurisdiction over a parent faced with the loss of custody of her child. The plurality decision has been so thoroughly restricted and criticized, however, that it is given little or no binding effect. The UCCJA was drafted with Mr. Justice Frankfurter's concurring view in the *May* case being reflected, that personal jurisdiction over the parent is not required. Consequently, the UCCJA permits the recognition of a foreign decree regardless of lack of personal jurisdiction, so long as the due process requirements of notice and opportunity to be heard are met.⁶² As stated by Professor Bodenheimer:

Any other reading of the [*May*] case would have seriously unsettling effect upon the lives of countless children. A child's security may be shattered years later by a party to the proceeding who claims that although he was duly notified out of State, the decree did not preclude his right of custody.⁶³

Notwithstanding what the commentators have said about the applicability of *May v. Anderson* to the Act, in a recent Ohio appellate decision⁶⁴ the principles of *May's* plurality were applied to an interjurisdictional question when the Ohio court refused recognition of an Illinois custody order. That case, however, in the opinion of the authors, can in no way be construed as threatening the constitutionality of the Act because of its fact pattern. There, a mother filed an action for divorce and custody in Illinois on July 5, 1978. On July 13, 1978, the father took the child for visitation to Ohio and refused to return her, filing his own action for divorce and custody in Ohio on July 17, 1978. On August 4, 1978, the Illinois court awarded temporary custody to the mother; final custody was granted on October 16, 1978. The Ohio court refused the mother's petition for writ of habeas corpus. An added element

undoubtedly was the punitive overtones of the Illinois order which will be discussed further below.

Florida's notice provision⁶⁵ is identical to that of the Uniform Act. In addition, the Commissioners suggested as an option, notice by publication. Florida allows notice by publication⁶⁶ as to persons outside the state but only by specific order of the court and then only if other means of notification are ineffective. As to persons outside the state notice is required at least 20 days before any hearing.⁶⁷ Even as to persons within the state reasonable notice and opportunity to be heard must be given.⁶⁸

A Palm Beach circuit judge properly found that a day and one-half's notice was sufficient under the Act because of "the exigencies of the circumstances existing."⁶⁹ There, the judge was asked by a mother to enforce a custody order in a 1977 Connecticut divorce judgment. In August 1978 the father unsuccessfully sought modification in Connecticut. He then took the

Directory Errata

Errors in two commercial listings within the yellow Lawyers Services Pages of the September 1979 directory edition of *The Florida Bar Journal* prompt this errata notice and the substitute entries that follow.

At page 747 under the "Corporation Services" heading, the correct listing should read:

Corporation Information Services, 216 S. Duval St., Ste. 208, Tallahassee 32301. (904) 222-9171 & Toll-Free Number 1-800-342-8086 (See Display Ad At Page 15)

[The Toll-Free number and page reference for this firm's display ad were printed incorrectly]

At page 753, within the Miami "Court Reporter" entries, the first boldface listing should read, as corrected:

H. ALLEN BENOWITZ & ASSOCIATES, INC., 720 Rivergate Plaza & 444 Brickell Ave., Miami 33131. (305) 373-9987, 373-9998 (See Display Ad On Following Page)

[The phone numbers for this firm were printed incorrectly]

Uniform Child Custody Jurisdiction Act

child to Florida during his two-week visitation period. After the father and child were here for three to four weeks while the father was setting up a medical practice, the mother filed a petition for the child which was granted upon further hearing.

Once such a petition is filed against a parent who has already "seized and run" with the child, a court should be extremely circumspect as to whether or not a similar occurrence is possible. A circuit judge in Ft. Lauderdale recently wanted to allow the child and the contestants there to "work out their differences" and try to reach some "mutual understanding." Therefore, instead of immediately involving the sheriff, he ordered the child turned over to the petitioning parent the next afternoon.⁷⁰ The court's order was nearly frustrated because immediately following the hearing, the child was spirited to another jurisdiction against the provisions of the order. The father followed the child to Illinois—a state which has adopted the UCCJ—and was successful in immediately getting custody of the child there.

In 1978 a Palm Beach County Circuit Court,⁷¹ upon petition of the father for recognition and enforcement of a custody decree from Alaska, entered an order directing the sheriff to immediately take the child into custody and deliver the child to the petitioning father or his attorney until an emergency hearing could be held before the court.

In another Palm Beach County case,⁷² the circuit judge, because of the acrimony between the parties, arranged with a volunteer deputy sheriff to have the child overnight until a hearing could be held the following day.

Under the jurisdiction section of the Act,⁷³ although the "home state" leg upon which jurisdiction can stand is the first one mentioned, it is merely one of four jurisdictional bases. This was noted in 1978 by the Second District Court of Appeal.⁷⁴ There, in a 1968 North Carolina

divorce, custody, by a later order confirming an agreement between the parties, was transferred to the mother. The mother then moved to Georgia in 1977 with the children, but the children ran away to be with the father because of numerous threats and acts of violence committed by the mother. The father filed in the Circuit Court of Hillsborough County a petition for custody; the mother followed this by petition for writ of habeas corpus. At the hearing—the day following the mother's petition—although no testimony was taken the circuit judge concluded that he had no jurisdiction to modify the

The drafters of the Uniform Act acknowledged that more than one state at a time could have jurisdiction.

North Carolina custody decree and thereupon directed the children be delivered to the mother. In reversing, the district court held that an evidentiary hearing should have first been held to determine the existence of jurisdiction for modification—if jurisdiction had existed further proceedings could have been held on the merits. The appellate court noted that although Florida was not the "home state" of the children, the Act has four alternative circumstances under which courts may exercise jurisdiction. The court further opined that if the father's allegations had been true, the trial court would have had jurisdiction because the children were present and it was necessary in an emergency to protect the children because they were subjected to or threatened with maltreatment or abuse.⁷⁵ In dicta, the court observed that Florida might also have had jurisdiction on two other bases: one, that it was in the best interests of the children that Florida assume jurisdiction because the children

and one parent had significant state connection;⁷⁶ and two, no other state would have had jurisdiction.⁷⁷

The drafters of the Uniform Act, acknowledged that more than one state at a time could have jurisdiction. However, it was recognized by the Fourth District Court of Appeal⁷⁸ that only one state can exercise that jurisdiction. In that action a family moved to Florida from Pennsylvania in mid-1977 but "shortly thereafter" (the court not specifying further) the wife returned to Pennsylvania with the children. The children came to Florida for summer visitation and at its conclusion, the father instituted an action for custody. The Florida circuit judge found that although there was no proceeding in Pennsylvania, the courts of both Florida and Pennsylvania had jurisdiction; both could exercise that jurisdiction and a temporary custody order that was entered was subject to modification by either court. This, the district court reversed upon the ground that only a court from one state should exercise jurisdiction. In its holding the district court said that if Florida is a convenient form, which the court below found, then jurisdiction should be exercised exclusively in Florida: "It goes far beyond the statutory intent to, in effect, confer the exercise of dual jurisdiction so that Florida and Pennsylvania can both act" There, the court's conclusion was correct but it apparently did not do thorough research. The opinion noted that "the model version of the Act has an express provision which states 'while jurisdiction may exist in two States . . . it will not be exercised in both . . . ' Whereas the Florida version contains no such language." While Florida has some deviations from the model version of the Act, this is not one of them. This language comes from the notes of the Commissioners commenting on the Act.⁷⁹ There, the comments throughout are extremely helpful in interpreting the Act but are not a part of the Act itself.

A deviation from the Uniform Act—which these writers consider unfortunate—is that the priority section of the model act, although in optional form, was not adopted by Florida.⁸⁰ Under the model

provision, if either party so requests, the case shall be given calendar priority and be handled expeditiously. This is because, as the Commissioners suggest, judicial time spent in determining which court has or should exercise jurisdiction often prolongs the period of uncertainty and turmoil in a child's life more than is necessary. A need for speed in adjudication of all matters dealing with custody exists, the lack of which contributes to the frustration which leads to some of the ills for which the Act was promulgated. While the Florida Legislature neglected to include this provision, hopefully the courts of Florida will employ these principles and allow for resolution as early as possible of not only the jurisdictional questions involved in custody disputes but of the entire custody controversy.

The Question of Continuing Jurisdiction

It is well established in Florida that where there are no interjurisdictional questions involved, the court that granted the initial custody judgment has the power at anytime to modify those provisions, and that power is retained even in the absence of a provision in the final judgment reserving jurisdiction as to custody.⁸¹ However, once one parent moves from the state, the question arises as to whether UCCJA changes that longstanding principle. These writers think that it does and should.

In *Detko/Robert v. Stikelther*,⁸² the Fourth District Court of Appeal apparently agreed. There, after the parties were divorced in Florida's 19th Circuit on September 3, 1976, the mother returned to Alabama with the minor child of which she was awarded custody. In April of 1977, the father filed in the 19th Circuit a petition for determination of visitation rights in which the mother appeared and contested. The Florida court set visitation at two weeks every two months. The mother then returned to Alabama where she sought protection of the Alabama court to prevent the child from being taken to Florida every two months. The father appeared in the Alabama proceeding, but before the final hearing there, he took the child from Alabama to Florida and on

June 10, 1978 he filed a petition for custody. Over the mother's objection, the Florida trial court took jurisdiction and ruled on the merits. The District Court reversed on the ground that Florida no longer had jurisdiction since the mother and the child were residents of Alabama and had been for more than six months. In its opinion, the district court noted that neither party is free from fault as both voluntarily litigated in one forum, suffered an adverse ruling and then retreated to another state in hope of a different result. The appellate court said that "this is exactly the

One purpose of the Act is to "discourage continuing controversies over child custody disputes."

kind of conduct [the Act] was designed to prevent." Cases such as these will inhibit child snatching, which, in effect, is what the father did. Note also, that although Alabama has not adopted the Act, Florida is bound by its provisions. Because the Act is not reciprocal, it is, therefore, binding on Florida notwithstanding the laws of another jurisdiction.

The facts differ somewhat in the First District Court of Appeal case of *Hofer v. Agner*,⁸³ where the court affirmed a finding of jurisdiction in the trial court based upon the "significant connection" leg on which jurisdiction can stand. There, the divorce and original custody award to the mother occurred June 9, 1975, in the Circuit Court of Suwannee County, Florida. Early in 1976 the mother remarried and moved with the children to New Jersey. The children visited their father during Christmas of 1976, summer of 1977 and again in summer of 1978. When the children were to be returned, the father petitioned the Suwannee County Circuit Court for a change of custody. A prior petition by the father filed the previous year had been denied. The mother's motion challenging jurisdiction under the UCCJA was denied with the court stating that it had jurisdiction because Florida was "the home state" during the initial proceeding and the father and children had a significant connection with Florida because they resided in Florida prior to the dissolution. The district court refused to grant the mother's petition for writ of prohibition, holding first that prohibition is appropriate only when a tribunal exceeds its jurisdiction, not to prevent an erroneous exercise of jurisdiction. The court then went on to opine, although actually in dicta, that, while admittedly New Jersey was the "home state" of the children, there were significant connections with Florida because it was noted that both the maternal and the paternal grandparents and other relatives and friends of the

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children lived in Florida, and the children had lived the majority of their lives in Florida.

While the *Hofer* court found that Florida had jurisdiction, one must ask whether Florida should have exercised that jurisdiction? One highly respected commentator of considerable note⁸⁴ submits that continuing jurisdiction exists until the children are emancipated and the issue of whether or not Florida should exercise that jurisdiction becomes a fact question to be analyzed under the provisions of the UCCJA. One point that may have made a difference when comparing *Detko/Roberts* with *Hofer* is that the mother in the latter case did not file an action in New Jersey, the state to which she had moved. The mother in *Detko/Roberts* had instituted proceedings in Alabama after bringing the child there. If a New Jersey proceeding was pending in *Hofer*, the Florida court would have been squarely faced with whether or not it would have run afoul of the prohibition under the Act excluding jurisdiction where a proceeding was pending in another state.⁸⁵

In the opinion of these writers, the *Hofer* court should not have exercised jurisdiction. Each time the children visited their father for the summer he started custody modification proceedings. One purpose of the Act is to "discourage continuing controversies over child custody disputes."⁸⁶ The trial judge

in *Hofer* was correct in returning the children to New Jersey until the final hearing, but query whether the father would have been deterred from further modification proceedings if he had had to litigate in New Jersey where the children then resided?

There is authority for the *Hofer* court to have found jurisdiction in Florida.⁸⁷ The eminent Professor Brigitte M. Bodenheimer noted: "It is generally acknowledged that the unfortunate tendency of courts to favor the local petitioner still persists."⁸⁸

An increasing number of opinions note the presence of grandparents when justifying jurisdictional requirements for "significant connections."

In a 1974 Colorado case⁸⁹ with three of six justices dissenting, jurisdiction in the Colorado courts was affirmed because one contestant was found to have had significant connection with Colorado although the child resided in Montana with the other contestant. However, Chief Justice Pringle's scathing dissent questioned whether, in light of the Colorado assertion of jurisdiction, he, if a judge in another state, would have permitted visitation in Colorado of any child under his jurisdiction.

There is also ample and more persuasive authority, these writers think, that Florida should not have exercised jurisdiction in *Hofer*—and, that once the case is concluded jurisdiction does not last forever.⁹⁰

The better approach in a *Hofer* situation, we think, would have been for the First District to have done what a California appellate court did in 1978.⁹¹ In that action a petition was filed by the noncustodial parent who resided in California. The divorce was originally entered in California and

custody was first awarded and later modified in that state. The custodial parent moved to Wyoming with the children five years prior. The court acknowledged that both California and Wyoming had jurisdiction, but that California should have granted a stay to permit such a proceeding to be brought in Wyoming, stating:

The primary consideration in a child custody determination is the best interest and welfare of the child... one of the stated purposes of the Act is to assure that litigation concerning custody takes place in the state having the closest connection with the children and their family and where the evidence is most readily available. The exercise of jurisdiction by California would contravene that purpose. As the state where most of the evidence is readily available and where the children have lived, for five years, Wyoming can better decide the matter.

In *Hofer* was Florida's First District Court of Appeal, therefore, still applying the "hometown" doctrine which has been severely criticized by the promulgators of the UCCJA?

As was the situation in *Hofer*, an increasing number of opinions, here and in other jurisdictions, note the presence of grandparents when justifying jurisdictional requirements under the "significant connections,"⁹² leg upon which jurisdiction can stand. In *Baird v. Baird*⁹³ the lower court's first finding in justifying its assumption of jurisdiction was that "the minor child, the petitioner [the natural mother], the maternal grandparents and the petitioner's sister all have a significant connection in the State of Florida in that all reside in Monroe County." The presence of relatives, particularly grandparents, of either side, therefore, help and should always be emphasized.

The Florida court in *Baird*, properly denied recognition of an Arizona court's "punitive" custody modification; however, it failed to say so.⁹⁴ There, in an Arizona divorce proceeding, custody of the minor child was awarded to the mother, with the father given visitation rights. When the mother and child moved to Florida the father obtained an Arizona court order directing the mother to return the child to Arizona. Upon her failure to comply, the Arizona court awarded custody to the father. The mother then applied to the Florida court for an order allowing her to keep custody of the child and



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remain in Florida. The father filed a motion to dismiss and a petition for writ of habeas corpus contending that under the UCCJA Florida did not have jurisdiction to change a custody decree of a sister state. The father argued also that the "home state" of the child was not Florida, even though the child had been continuously present in Florida for the requisite six months because her presence in Florida was unlawful, being in violation of the Arizona court's order that the mother return the child to that state. The judge in Monroe County assumed jurisdiction, denied the father's motion and awarded temporary custody to the mother. The father appealed and the district court affirmed, noting that "the controlling question presented is whether the Florida court had jurisdiction under the UCCJA to entertain a petition of the mother for custody of the child." The original Arizona decree did not prohibit the mother from moving from Arizona with the child. The district court said:

We find nothing in this record to show that the mother is wrongfully in the State of Florida or that the court has failed to recognize the judgment of an Arizona court. The court simply declines to enforce the Arizona decree upon a basis that the best interests of the child requires her continued presence with the mother.

An Oregon Court of Appeals opinion in 1975⁹⁵ with similar facts did not sidestep, but labeled the order of the foreign court as "punitive," defining it as an order "to discipline the mother for alleged interference with the father's visitation rights." The Oregon court went on to explain that the order was, therefore, subject to appropriate judicial inquiry and possible modification by another court in the state in which the children were physically present. To make the position clearer to Florida practitioners, it would have been better for the *Baird* court to have first recognized the Arizona order, labeled it as punitive, stated its refusal to enforce it for that reason and then modified it.

What is disturbing about the *Baird* opinion is that while the Third District came to the right conclusion, it appeared to do so for the wrong reasons—reasons which if followed could cancel the beneficial effects of the UCCJA

and again make Florida a haven for childnappers. Citing cases which predate Florida's adoption of the UCCJA,⁹⁶ the court stated that:

... It should be noted that Florida courts have not hesitated to exercise jurisdiction over the custody of children physically present in this state. Also, it has been universally held that when faced with an issue concerning the welfare and custody of a child in this state that the Circuit Court will exercise its jurisdiction and be governed principally by the welfare and best interests of the child. [citations omitted].

This philosophy is completely contrary to the purposes and language of the UCCJA.

Adherence to the continuing jurisdiction rule is, to the extent of any inconsistency with the Act, no longer of controlling authority.

What is even more confusing in attempting to understand the rationale of the court in light of the purposes of the UCCJA, is the Third District Court of Appeal's action in *Bias v. Bias*,⁹⁷ filed the same day as its opinion in *Baird*. There, in a 16-line per curiam opinion, without reciting any facts, the court found that a Florida trial court had jurisdiction when the presence of the child in another state was solely effected by the mother who maintained the child in that state in violation of a court-recognized stipulation. In a footnote, attempting to distinguish *Baird*, the court observed that in *Baird* the mother was not in violation of any court order when she initially brought her child into the State of Florida.

To attempt to understand the court's holding in *Bias* there must be an awareness of the facts; but once the facts are learned, the holding becomes more bewildering. Counsel for both parties were good enough to allow these writers access to their appellate briefs. From those documents, the facts involving the jurisdictional question appear to be

as follows. A final dissolution was entered in the Dade County Circuit Court on September 4, 1975, granting custody to the mother. On August 20, 1976, upon the father's petition for modification to the Dade County Circuit Court, temporary custody was awarded to him. However, upon the execution by the parties of a stipulation specifying terms for the care of the child, the child was returned to the custody of the mother. The stipulation was filed but a court order reflecting it was never entered. In mid-1977 the mother moved to North Carolina with the child; the father had been for the last five years a resident of Ohio. In August 1977, the father petitioned the North Carolina courts for visitation. On December 15, 1977, the father obtained a visitation order from the court allowing him to take the child to Ohio for Christmas week. During the visitation, the father brought the child to Florida and obtained an ex parte order for change of custody. Upon hearing in Florida in February 1978, custody was granted to the father which, as noted above, the Third District Court of Appeal affirmed.

That decision may very well have been "in the best interests of the child," but that is not the criteria under the UCCJA. If it were, then there would be open season for any court to entertain and re-entertain custody disputes whenever a child is present in that state. The UCCJA would literally get thrown out the window by the courts, at their whim.⁹⁸

The only conceivable basis for jurisdiction in *Bias* was that the court in Florida was the court that originally awarded custody in the dissolution proceedings. But here, the authors must again ask, does such jurisdiction last forever? Prior to the UCCJA, it did. Here, it is clear that the child's "home state" was, at the time, North Carolina; there were no significant connections shown in Florida.

In a 1977 Maryland case⁹⁹ the court noted that the UCCJA makes it clear that adherence to the continuing jurisdiction rule is, to the extent of any inconsistency with the Act, no longer of controlling authority. A Kentucky court, in 1974,¹⁰⁰ acknowledged that although its court rendered the final

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judgment for dissolution, "the provisions of the Act clearly provide that after [the mother] and the child moved to Indiana this state was divested of jurisdiction to make a child custody determination as the home state;" and as noted in 1976 by Kentucky,¹⁰¹ the court rendering the divorce "cannot retain indefinite jurisdiction over the custody of the children."

As can be seen, reception of the UCCJA in Florida has been mixed and somewhat confusing. There is much room for trial courts to exercise discretion and to make factual determinations to decide whether foreign courts have properly entered orders in compliance with the Act and whether or not to take jurisdiction under the provisions of the Act.¹⁰² If Florida courts can make such determinations by looking into whether other courts comply, then foreign courts can and will similarly scrutinize Florida judgments. Therefore, the Florida judgments should spell out compliance with the Act and the facts upon which the judgment is based so as to secure them from attack in a foreign jurisdiction.

Trial Judges Can Make Act Work

It is mainly up to the trial judge to make the Act work. It must work as one of the deterrents to the all too common phenomenon of child-snatching, forum shopping,

visitation retention and bitter parent frustration. The purpose clause of the Act¹⁰³ should be read and reread so that the courts will aim to limit areas of jurisdiction, rather than to proliferate them. However, the trial judges are on the firing lines between the warring contestants. To resolve questions of custody, even as to the initial question of jurisdiction in an interstate dispute, in many cases, in the well-informed opinion of Professor Bodenheimer, "requires almost super-human powers."¹⁰⁴ The appellate courts must, therefore, give the necessary guidelines to implement the Act.

On January 23, 1979, Senator Malcolm Wallop¹⁰⁵ introduced the Parental Kidnapping Prevention Act of 1979;¹⁰⁶ a similar bill has been introduced in the House of Representatives by Florida Congressman Charles E. Bennett.¹⁰⁷ If passed in substantially similar form, the legislation will have sweeping effects in three general areas.

First, the legislation will amend the United States Code¹⁰⁸ by adding a section which mandates full faith and credit to child custody determinations.¹⁰⁹ Second, the legislation amends the Parent Locator Service provision¹¹⁰ of the Social Security Act¹¹¹ to assist in locating parents who conceal their children. The third significant portion of the legislation amends the federal kidnapping law by making it a misdemeanor for a "contestant" to transport a child across state lines in violation of a custody decree which, under this legislation, would be entitled to full faith and credit.¹¹² This section of the legislation provides further that

60 days after notifying local law enforcement authorities and the Parent Locator Service, the FBI may begin an investigation.

At the federal level governmental policy has been one of "hands-off" in childnapping cases¹¹³ making Wallop's proposal a necessity in order to obtain federal assistance in this area. A thorough reading of Senator Wallop's proposed legislation shows that while the bill provides some powerful tools for the prevention of childnapping, the harshness of the criminal sanctions is tempered by the affirmative defenses provided for in the Act where the kidnapped child is returned unharmed.¹¹⁴

The UCCJA is helpful because it deters the second court from assuming jurisdiction and issuing a conflicting order, but it is of no help where the child-snatcher does not apply for an order to the second court.¹¹⁵ It is, therefore, readily seen that the Act alone will not solve the problems of child-snatching. On the international scene, it will take treaties and conventions, international meetings for which are now being held. Here in the United States, consideration should be given to full support of the proposed federal legislation of Senator Wallop and our own Congressman Charles E. Bennett.¹¹⁶ □

¹ Hereafter referred to as the "UCCJA" or as "The Act."

² Lewis, *Legalized Kidnapping of Children by Their Parents*, 80 DICKINSON L. REV. 305 (1976).

³ Foster and Freed, *Child Snatching and Custodial Fights: The Case For the UCCJA*, 28 HASTINGS L. J. 1011 (1977).

⁴ Morris, *Uniform Child Custody Jurisdiction Act: An Attempt to Stop Child Rustling* 12 WILLAMETTE L. J. 623 (1976).

⁵ DYER, DOCUMENTS PRELIMINAIRE No. 1, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (1978).

⁶ Wallop TRIAL, May 1979, at 34.

⁷ Bodenheimer, *Progress Under The Uniform Child Custody Jurisdiction Act and Remaining Problems, Punitive Decrees, Joint Custody, and Excessive Modifications*, 65 CALIF. L. REV. 978, 979 [hereinafter cited as Bodenheimer]. Professor Bodenheimer notes at p. 1001 that the higher estimate of 100,000 children illegally removed includes retentions after visits, which she says is "probably the most widespread method of taking children from their custodial parents."

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⁸ DOCUMENT PRELIMINAIRE No. 1, *supra* note 5, at 2.

⁹ Grant v. Corbitt, 95 So. 2d 25 (Fla. 1957); DiGiorgio v. DiGiorgio, 153 Fla. 24, 13 So. 2d 596 (1943); and Schrey v. Schrey, 354 So. 2d 405 (Fla. 4th D.C.A. 1978). See Commissioners' Prefatory Notes, 9 U.L.A. 99, 100.

¹⁰ 9 U.L.A. 113 (1979).

¹¹ Bodenheimer, *The International Kidnapping of Children: The Uniform Child Custody Jurisdiction Act*, 11 FAM. L. Q. 83 (1977).

¹² Foster and Freed, *Child Snatching and Custodial Fights: The Case for the Uniform Child Custody Jurisdiction Act*, 28 HASTINGS L. R. 1011 (1977).

¹³ 9 U.L.A. 111-114 (1979).

¹⁴ A similar development within Canada resulted in the recommendation in 1974 by the Uniform Law Conference of Canada for enactment as a uniform act of the Extra-Provincial Custody Orders Enforcement Act, which has now been adopted in eight of the provinces.

¹⁵ 9 U.L.A. 114 (1979), (emphasis supplied).

¹⁶ October 1979.

¹⁷ While Kentucky, when it first adopted the jurisdictional requirements, set forth a six-month period for "home state" jurisdiction, its assembly subsequently omitted the time period, leaving the time period in each case for the court's determination: see *Freeman v. Freeman*, 547 S.W. 2d 437 (Ky. 1977).

¹⁸ 9 U.L.A. 114 (1979).

¹⁹ Fla. STAT. §61.1328, (1977). Recognition of out-of-state custody decrees.

²⁰ Morris, *Uniform Child Custody Jurisdiction Act: An Attempt To Stop Child Rustling*, 12 WILLAMETTE L. J. 623, 630 [hereinafter cited as Morris].

²¹ *Id.* at 631.

²² Carson v. Carson, 565 P. 2d 763 (Ore. 1977); Mort v. Mort, 365 So.2d 194 (Fla. 4th DCA 1978).

²³ Fla. STAT. §61.1328 (1977).

²⁴ Fla. STAT. §61.133.

²⁵ *Id.*

²⁶ Fla. STAT. §61.1308(1)(a) 1 (1977).

²⁷ Fla. STAT. §61.1308(1)(a) 2 (1977).

²⁸ 9 U.L.A. 122 (1979).

²⁹ Fla. STAT. §61.1308(b) (1977).

³⁰ Bodenheimer, *supra* note 7, at 984.

³¹ Fla. STAT. §61.1308(d) 2 (2) (1977).

³² Fla. STAT. §61.1308(c) (1977).

³³ Fla. STAT. §61.1308(d) 2 (3) (1977).

³⁴ Fla. STAT. §61.1316 (1977).

³⁵ Fla. STAT. §61.1316 (4) (1977).

³⁶ Fla. STAT. §61.1334, 61.1336 (1977).

³⁷ Fla. STAT. §61.1338 (1977).

³⁸ Fla. STAT. §61.1334, 61.1342 (1977).

³⁹ Fla. STAT. §61.1336 through 61.1346 (1977).

⁴⁰ Fla. STAT. §61.1314 (1977).

⁴¹ Fla. STAT. §61.1318 (1977).

⁴² Fla. STAT. §61.132 (1977).

⁴³ Fla. STAT. §61.1348 (1977).

⁴⁴ Miller v. Superior Court, 138 Cal. Rptr. 123 (Calif. App. 1977); *In re: Marriage of Ben-Yehoshua*, 154 Cal. Rptr. 80 (Cal. App. 1979); *Woodhouse v. District Court*, P. 2d ____ (Colo. Dist. Ct. 1979) 5 Fam. L. Rep. 2553; *In re: Shalit*, N.Y. County Sup. Ct. 11/1/77, 4 Fam. L. Rep. 2035.

⁴⁵ Fla. STAT. §61.1340(1) (1977).

⁴⁶ Adams v. Adams, 374 So. 2d 29 (Fla. 3rd D.C.A. 1979).

⁴⁷ Fla. STAT. §61.132 (1977).

⁴⁸ Fla. STAT. §61.1306(3) (1977).

⁴⁹ Fla. STAT. §61.1306(2) (1977).

⁵⁰ 9 U.L.A. 145 (1979).

⁵¹ Paltrow v. Paltrow, 376 A. 2d 1134, 1138-39 (Md., Ct. of Sp. App. 1977).

⁵² *In re: The Marriage of Morrison*, Case #73-4955-CA, Order entered April 6, 1978.

⁵³ Moser v. Davis, 364 So.2d 521 (Fla. 2d D.C.A. 1978).

⁵⁴ Fla. STAT. §61.1328 (1977).

⁵⁵ 15 FLA. JUR. HABEAS CORPUS §60.

⁵⁶ 15 FLA. JUR. HABEAS CORPUS §14.

⁵⁷ Fla. STAT. §61.1332(1) (1977).

⁵⁸ Himelstein v. Himelstein, 49 Fla. Supp. 127 (Cir. Ct. Palm Beach County, 1978).

⁵⁹ *Id.*

⁶⁰ Baird v. Baird, 374 So.2d 60, (Fla. 3rd D.C.A. 1979).

⁶¹ 345 U.S. 528 (1953).

⁶² Morris, *supra* note 20, at 63.

⁶³ Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 VAND. L. REV. 1207, 1232 (1969).

⁶⁴ Pasquallone v. Pasquallone, ____ N.E.

2d ____ (Ohio Ct. of App. 11th Dist. 1979) Case No. 7-085, Sept. 24, 1979.

⁶⁵ Fla. STAT. §61.131 & 1312 (1977).

⁶⁶ Fla. STAT. §61.1312(1)(d) (1977).

⁶⁷ Fla. STAT. §61.1312(2) (1977).

⁶⁸ Fla. STAT. §61.131 (1977).

⁶⁹ Himelstein v. Himelstein, 49 Fla. Supp. 127 (Cir. Ct. Palm Beach County, 1978).

⁷⁰ Stephens v. Andrew, Case No. 79-16679.

Here the caring circuit judge attempted to avoid more emotional trauma to the child caught between the warring contestants by avoiding the appearance of a uniform deputy sheriff.

⁷¹ *In re: The Former Marriage of Phelps*, Case No. 78-1462.

⁷² Himelstein v. Himelstein, 49 Fla. Supp. 127 (Cir. Ct. Palm Beach County, 1978).

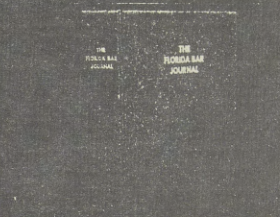
⁷³ Fla. STAT. §61.1308 (1977).

⁷⁴ Moser v. Davis, 364 So. 2d 521 (Fla. 2d D.C.A. 1978).

⁷⁵ Fla. STAT. §61.1308(c) 2 (1977).

⁷⁶ Fla. STAT. §61.1308(b) (1977).

⁷⁷ Fla. STAT. §61.1308(d) (1977).

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Uniform Child Custody Jurisdiction Act

⁷⁸ Mort v. Mort, 365 So.2d 194 (Fla. 4th D.C.A. 1978).

⁷⁹ 9 U.L.A. 124 (1979).

⁸⁰ 9 U.L.A. 168 (1979).

⁸¹ 104 FLA. JUR. Dissolution of Marriage, etc. §307.

⁸² 370 So.2d 383 (Fla. 4th D.C.A. 1979).

⁸³ 373 So.2d 48 (Fla. 1st D.C.A. 1979).

⁸⁴ O'Flarity, Detko/Roberts v. Hofer, 5 The Florida Bar, Family Law Newsletter No. 2 (1979).

⁸⁵ FLA. STAT. §61.1314 (1977).

⁸⁶ FLA. STAT. §61.1304(4) (1977).

⁸⁷ Carson v. Carson, 565 P.2d 766 (Or. Ct. of App. 1977); Smith v. Superior Court, 137 Cal. Rptr. 348 (Ct. of App. 1977) and Nelson v. Dist. Ct., 527 P.29811 (Colo. 1974).

⁸⁸ Bodenheimer, *supra* note 7, at 995.

⁸⁹ Nelson v. Dist. Ct., 527 P. 29811 (Colo. 1974).

⁹⁰ Clark v. Superior Court, 140 Cal. Rptr. 709 (Ct. of App. 1977); Honigsberg v. Good, 550 S.W. 471 (Ky. 1976); Moore v. Moore, 546 P.2d 1104 (Or. Ct. of App. 1976). For further discussion see Bodenheimer *supra* note 7, at 995-998.

⁹¹ Schlumpf v. Superior Court, 145 Cal. Rptr. 190 (Calif. Ct. of App. 3rd Dist. 1978).

⁹² FLA. STAT. §61.1308(1)(b) (1977).

⁹³ 374 So.2d 60 (Fla. 3d D.C.A. 1979).

⁹⁴ For further discussion of the "punitive decree" exception to the UCCJA mandates and the reasons therefor, see Bodenheimer, *supra* note 7, at 1003-1008.

⁹⁵ Brooks v. Brooks, 530 P.2d 547 (Or. Ct. of App. 1975).

⁹⁶ See cases cited at note 9 *supra*.

⁹⁷ 374 So.2d 64 (Fla. 3d D.C.A. 1979).

⁹⁸ On October 9, 1979, the mother filed by petition to the Florida Supreme Court for certiorari review, (Case No. 57, 870) alleging conflict certiorari jurisdiction and praying for the court to take jurisdiction because of the importance of the Act and the need for Supreme Court guidelines to achieve uniform application of the Act.

⁹⁹ Howard v. Gish, 373 A.2d 1280 (Md. Ct. of App. 1977).

¹⁰⁰ Turley v. Griffin, 508 S.W. 2d 764 (Ky. Ct. of App. 1974).

¹⁰¹ Honigsberg v. Good, 550 S.W. 471 (Ky. 1976).

¹⁰² See FLA. STAT. §61.131, .1312, .1314, .1316, .1318, .1328, .1333 & .1348 (1977).

¹⁰³ FLA. STAT. §61.1304 (1977).

¹⁰⁴ Bodenheimer, *The Rights of Children and the Crisis in Custody Litigation; Modification of Custody In and Out of State*, 46 Colo.L. Rev. 495 (1974-1975).

¹⁰⁵ Republican, Wyoming.

¹⁰⁶ For a more detailed explanation of the bill he proposed see Wallop, *Children of Divorce and Separation, Pawns in the Childsnatching Game*, *TRIAL*, May 1979 at 34 [hereinafter cited as Wallop].

¹⁰⁷ H.R. 1290, introduced by Congressman Charles Bennett of Jacksonville.

¹⁰⁸ S.B. 105, 96th Cong., 1st Sess. 1979 at 4.

¹⁰⁹ The legislation adopts the principal jurisdictional provisions of the UCCJA.

¹¹⁰ The Parent Locator Service, or PLS, is a

service of the Department of Health, Education and Welfare designed to locate parents in child support cases, and in 1978 collected more than one billion dollars from defaulting parents: Wallop, *supra* note 106.

¹¹¹ *Id.*; S.B. 105 *supra* note 108, at 10.

¹¹² S.B. 105, *supra* note 108 at 11, 12.

¹¹³ Foster, *Coordinated Efforts are Needed to Combat Hit and Run Parents*, 1978 CONSENT DEVELOPMENTS IN CHILD CUSTODY 207, 208 [hereinafter cited as Foster].

¹¹⁴ S.B. 105, *supra* note 108, at 16.

¹¹⁵ Foster, *supra* note 113.

¹¹⁶ At its 17th Annual Institute on Divorce and Marriage, held in Chicago, Ill. in 1978, the American Academy of Matrimonial Lawyers promulgated a statement of position in favor of federal legislation.



Melvyn B. Frankes maintains his law office in Miami. He graduated from the University of Florida College of Law, with honors, in 1953. He is Fellow of the American Academy of Matrimonial Lawyers and a member

of its Florida Board of Examiners. He is secretary-treasurer of The Florida Bar's Family Law Section and chairman of that section's CLE Committee.

Frankes has chaired numerous family law CLE seminars, for which he has written course materials, and has served on their faculties. He has contributed previously to *The Florida Bar Journal* and is chairman of CLE Publication Editorial Board on Family Law publications, having written chapters in several manuals. He is also a member of the Custody Committee of the ABA's Family Law Section.



Marsha B. Elser is in private practice in Miami. She is currently membership chairman of the Family Law Section of The Florida Bar. She has served as author and faculty member of several family law CLE programs, and she authored several chapters of the 1979 Supplement to Florida Dissolution of Marriage Manual. She received her J.D. from the University of Miami in 1975.

Prepared Statement of Gordon F. Winks

January 20, 1980

Senator Charles Mathias
C/O Ms. Liz McNichols
358 Russel Senate Office Bldg.
Washington, D.C. 20510

In Re: Printed Testimony supporting the hearings on the Parental Kidnap Bill, S-105, authored by Senator Malcolm Wallop.

Subject: Written testimony by the undersigned, for entry into the hearing record of January 30, 1980.

To: Senator Wallop-The Author,
All other Senators who are Co-Sponsors,
Distinguished Witnesses,
Attending Interested Citizens,
Members of the U.S. Senate,
Attending Members of House,
All other concerned parties,
Others concerned with the composition, testimony, and passage of the bill in its present or amended form,

In as much as the genuine need for this kind of legislation is as emotionally charged as the agony of the offenses that it attempts to prohibit, I pray that you will review your respective contributory positions in the light of the hope, the promise, and the opportunity, of the future, to institute a remedy suitable to the cessation of damage and endless suffering caused by the Kidnapping of dependants; whether or not they be youthful.....but most especially the little children who are without benefit of defense, etc.. To allow this situation to continue unchallenged, can only result in an immeasurable detriment to the children, their parents, their relatives, their friends, and the nation as a whole; which cannot be truly understood for generations to come! And if I might emphasize, detriment not only to the above; but to the guides and governors we have traditionally cherished from generation to generation....our sense of an equal justice applied equally to all, personal freedom and liberty, freedom from fear and harm, and eligibility for protection and security. But most of all, a detriment to those Constitutional Rights & Guarantees that we have come to preserve, protect, and respect; not to dwell on the National Statutes that support these Rights & Guarantees!

Surely you are all now well aware of the magnitude of the problems this bill attempts to terminate, by your review of the printed and oral testimony that comprise the record of these hearings. But perhaps their is one aspect of the torment that is dependant-kidnapping that you aren't familiar with! And since it is the most injurious and and damaging, I herein seek to acquaint you with it; in spite of its embarrassment to our national pride and purpose.

I am speaking of the initiatives of the Federal government as directed by the President, the Vice President, the Attorney General, and the Secretary of State; and administered by the subordinates of the Administration, to kidnap hundreds of thousands of dependants; chiefly dependant children who are the victims of divorces, handicapped adults who are dependant on court appointed guardians, and senile seniors who are under the direction and legal authority of a court appointed guardian or conservator. And not limited to the act of kidnapping, the offenses are aggravated by the foreign removal of these innocent and unsuspecting victims; where they await unbelievable fates, as the administration would deem suitable, etc.. For reasons known only to the Administration, it has directed the participation in, and the facilitation of, abduction, kidnapping, removal, transport, deportation, foreign detention and imprisonment, totalitarian imposition & subjective application of torment, and actually directs the selective deprivation of Civil & Constitutional Rights, Protections, and Guarantees; as well as freedoms, residency, communication, representation, and opportunity for legal remedy and recourse! Likewise, the administration

ion delights in delivering an alienation-of-family, and a division of family unity, family spirit, and family preservation, in a manner that rivals the portrayal of the events set forth in George Orwell's novel entitled 1984! But of most harm is the administrations preoccupation with imposing intolerable levels of jeopardy to life, limb, & personal property of each of it's victims exposed to these fates. This was evidenced, in part, by the supreme sacrifice paid by so many children in the incident known as the Guyana affair; where so many lost their lives without the benefit of the slightest opportunity to protest the issuance of passports not solicited by the victims, nor authorized by their State court jurisdictions!

Yes after untold numbers of requests to the President and his subordinates to cease the issuance of such documentation in cooperation with the efforts of those seeking to kidnap the victims, the administrations relates, through it's representatives, that it intends to escalate the number of such offenses. Surely the reward these officials must be receiving is vastly superior to the risk they undertake each time they place another citizen in the penalty box! It has been said that the monies transacted for the issuance of documentation alone must exceed \$15,000,000, and the monies transacted after the estate assets are transferred out of the country and later liquidated must exceed \$300,000, per year.

But of most concern is the number of citizens that these fates are being applied to each and every year. At present it is estimated that over 30,000 citizens are kidnapped and removed from the nation by the initial and followup efforts of the U.S. Government, as lead by the directives of the Administration. But of greater concern is the rise in the number of these cases. It is estimated that each and every year an increase of no less than 20% above the previous year is now commonplace; and it is believed that over 500,000 citizens are now dead or being held captive to this fate; never again to be returned to their homeland. Many are murdered to permit recovery of estate holdings, others are sold to servitude, and still others are held simply for ransom; while others are just subjected to inhumane imprisonment as part of the abuse that is commonplace with children and defenseless seniors, etc.. In the majority of cases the parents, family members, and relatives of these victims are never notified of the president's plans, nor the actions of the administration on behalf of the government, to assure the most subjective & secret of components of each and every kidnapping, etc.. In virtually every case the parent or other authority of the victims are never given the opportunity to prevent these crimes, nor to petition the federal judiciary for due process prior to imposition of the kidnapping mandates. Nor for that matter are the jurisdictional courts of the respective State courts/Judiciary ever given the opportunity to uphold their Constitutional duty to protect their own State citizens, and jurisdictional charges! This in spite of massive attempts of State courts to deal with the problem, and additional efforts of the Governors of the States to prevent these happenings, as well as the efforts of Commissioners on Uniform State Statutes, who feebly attempt to rectify the situation.

Measured in terms of injury equal to a domestic kidnapping, the scales are tipped roughly thirty-to-one against the foreign removal after kidnapping! For in the case of foreign imprisonment the victims are denied even exposure to the news about their homeland, much less given the opportunity of Inter-State protection, etc.. In many cases the victims are now being transported to Communist nations, in as much as they are travelling under the jurisdiction of authorities having access to such nations; where such destinations are traditionally denied to Americans by passport restrictions. As such, the President and his subordinates are transporting thousands of American dependants to Communist nations, at the very same time they are espousing the creed of human rights for subjects of such regimes and nations! But with no scrutiny or enforceability of rights in sovereign nations other than ours, the heaviest paid by the living victims is surely child and adult abuse; principally of physical nature, etc..

The point of all this scorn of humane dignity and Rights is simply to emphasize the need for legislation that is stronger than the existing Federal Kidnap Statute; which might more effectively deter the efforts of citizens, and especially the Government represent-

atives bent on these crimes...whether it be for spite, flight, or profit, etc.. It is my belief that this bill, S-105, goes further than any other legislation, planned or proposed, to end these crimes, or at least reduce them via the accountability and prosecution that accompanies the essence of the bill. My only reservation of the bill, is it's inability to be much more severe in it's classification of the crime, and it's penalty for conviction. But in general, passage can only assist the reduction of the number and degree of severity of the total overall picture.....especially in the face of such realities as high divorce rates, increasing numbers of handicapped, and ever larger numbers of elderly...all with estates that are of greater value in more uncertain economic times than ever before in the past!

I therefore pledge my support for this legislation, and urge each of you to remain steadfast in your support, and efforts to gain passage in present or amended form. For those Senators who read this record without the benefit of the hearing attendance, I urge you to support this proposed legislation, and to go one step further....that being the effort necessary to pass legislation to recover the hundreds of thousands of victims who remain under foreign captivity and imprisonment, as well as assistance for the eventual reentry of these victims into the mainstream of American mercy, and compassion, etc.. I sincerely pray that you will utilize your wisdom and representative powers to recognize that these tragedies are daily applied to ever increasing numbers of your individual constituencies. A vote for this legislation, is a vote for the promise and posterity of all that is American and righteous!

Respectfully Submitted,

Gordon F. Winks

Gordon F. Winks
3007 Kromer Ave.
Everett, Washington
98201

(Father of Kidnapped and foreign imprisoned children-Sharon & Gordon Jr., kidnapped by)
(and under the efforts of the Administration and the Government in 1975, from the State)
(of Illinois.)

QUESTIONS OF SENATOR MATHIAS AND RESPONSES OF
LAWRENCE KURLANDER
OFFICE OF THE MONROE COUNTY
DISTRICT ATTORNEY

LAWRENCE T. KURLANDER
DISTRICT ATTORNEY

SUITE 201
HALL OF JUSTICE
CIVIC CENTER PLAZA
ROCHESTER, NEW YORK 14614
428-5680

March 7, 1980

Honorable Charles McC. Mathias, Jr.
Committee on the Judiciary
United States Senate
Washington, D. C. 20510

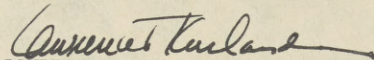
Dear Senator Mathias:

Here are my answers to the questions you sent with
your letter of February 11, 1980, concerning S. 105.

I hope that these answers will be helpful to you,
and if my office can be of any further assistance,
please do not hesitate to let me know.

Best wishes.

Sincerely,



LAWRENCE T. KURLANDER
District Attorney

LTK:SMB:ht
Enc.

Question No. 1

Last year, at a hearing in Los Angeles, Los Angeles District Attorney John Van de Kamp testified that the deterrent effect of the criminal penalty in S. 105 is undermined by the availability of a defense providing that the abducting parent can escape criminal liability if he or she returns the child unharmed within 30 days.

- (a) Would you please comment?
- (b) Should the bill be amended to provide that the returning parent must return the child voluntarily to avoid liability?

Subdivision (e) (2) of §1203, making it a defense that the person alleged to have violated the section returned the child unharmed not later than 30 days after an arrest warrant has been issued for that person, should be struck from the bill. If parental kidnapping is a crime, the criminal act is completed when the abduction takes place. Logically, there is no more reason why the statute should forgive the perpetrator if he returns the child unharmed but after an arrest warrant is issued than there would be to forgive a common robber who returns the proceeds of his crime under like circumstances. If the act is a crime when committed, it doesn't cease to be one because the criminal surrenders its fruits after an arrest warrant issues.

From a practical standpoint, the subsection as it stands is an invitation to child snatchers to commit the crime with impunity, on the chance that a timely prosecution will never take place. The subsection encourages the very evil the legislation as a

whole is designed to prevent. It also reduces our courts to private enforcement agencies for the custodial parent.

Of course, the fact of early surrender of a child after issuance of a warrant would be relevant to the questions of plea negotiations and/or punishment, but there is no need for a special provision in the statute concerning it.

Question No. 2

Mr. Van de Kamp also criticized that portion of the criminal provision in S. 105 requiring a 60 day waiting period before the FBI can become involved in a snatching case. He stated that the period is too long and it was likely to leave the FBI with a cold trail. Please comment.

In our view, one of the main benefits of the legislation is the deterrent impact it would have upon potential child snatchers. But this would only exist if these persons knew their abductions would touch off immediate and vigorous FBI response. The 60-day waiting period transmits exactly the opposite message. There should be no waiting period at all.

Not only does the provision send out the wrong signal, it also allows the child snatcher to cover his tracks, as by securing phony identification, finding a new job, establishing new living quarters, and, generally, melding into a new community. Our feeling is that the vast majority of child snatchers would be located within days if the incident were immediately reported

and acted upon. We would never mandate that the trail grow cold before investigation starts in any other crime. We should not do it here.

Finally, the provision as it now stands lengthens the period of time during which the abducted child is separated from his rightful home, compounding the psychological trauma suffered. If for no other reason than this, the subsection should be stricken.

Question No. 3

Mr. Van de Kamp questioned the portion of S. 105 providing the snatching parent with a defense to the prosecution if the other parent did not report the offense within 90 days after the beginning of the restraint. He suggests that this provision be amended to lengthen the time period to 180 days or longer. Do you agree? Please elaborate.

Our general experience has been that the longer a crime victim waits to report an incident, the less credible the victim becomes. In the area of child snatching, it is reasonable to postulate some acquiescence on the custodial parent's part when that parent waits 90 days before reporting the incident. But it is also fair to assume that some parents may be so traumatized or immobilized during the first 90 days as not to report the incident within that time. Conceding then, that a relatively short statute of limitations is appropriate in parental kidnapping situations, we believe 90 days is too brief a time. A period of 180 days would, we believe, be sufficient.

Question No. 4

Can you explain the difficulties local authorities have in dealing with interstate child snatchings?

When a local law enforcement agency undertakes an investigation within its own jurisdiction it controls how much of its resources will be committed to it and how they will be deployed. In child snatching situations, local authorities are typically hamstrung by not knowing where to look in the first place. Then, assuming the child snatcher can be found, but in another state, local authorities can do little more than request authorities in the other state to extradite the person. Where the underlying crime is only a misdemeanor, as child snatching generally is in New York (see PL 135.45), authorities in the asylum state typically assign the case a low priority. It may be some time before the person is even charged as a fugitive; and even when he is, that in itself does nothing to get the child back to its custodial parent. It doesn't even necessarily result in speedy rendition of the person sought to be extradited. The rendition process may and usually does take 90 days or more, if the subject declines to waive extradition. During that period the subject is eligible for bail, posing the risk he will jump bail and abscond to some third state with the child.

In short, the present system, if it can be called that, is terrible. Its weaknesses are the reason we have a child snatching problem in the first place.

Question No. 5

Have you ever prosecuted a child snatching case in which the FBI was involved?

If yes, please describe and evaluate the efficacy of the FBI's assistance; if not, would the FBI's involvement have made an important difference in the outcome of interstate cases? In what way?

Although of course I've never worked with the FBI on a child snatching case, I have had contact with it on a number of other matters; on each occasion finding its performance effective and professional. With its proven ability to locate fugitives and effect speedy arrests, the FBI's involvement in each of those interstate child snatching cases we've had would have made an enormous difference. This is especially true because the FBI operating under the proposed legislation would not have to follow the tortuous path upon which local officers must now tread (See answer No. 4, above).

Question No. 6

You emphasized the need to commence an investigation immediately upon the removal of the child. Can you explain why this is so imperative?

See our response to Question No. 2

Question No. 7

The criminal provision in S. 105 is applicable to relatives by blood or marriage, guardians, foster parents and agents

of such persons. Should any additions or deletions be made to this list of persons potentially subject to prosecution?

Agents of persons having the required relationship should not come under the provisions of S. 105. The rationale that when parents and relatives abduct a child it is something less than kidnapping should not apply to agents, who are at best intermeddlers, and at worst, hired thugs. Agents should know that though the principal is subject to comparatively mild punishment, they themselves run the risk their involvement could cost them dearly. This would make it more difficult for child snatchers to recruit help, and thus act as a deterrent.

Question No. 8.

Should this bill apply to child snatchings which occurred prior to enactment but which continue after the date of enactment, as it is drafted to do?

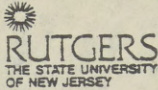
Yes.

Question No. 9.

Should frustration of visitation (refusal by the custodial parent to allow an authorized visit; refusal by noncustodial parent to return child after authorized visitation period) subject the violator to the federal criminal misdemeanor provision?

Yes, so long as the terms of the statute as drafted are met.

QUESTIONS OF SENATOR MATHIAS AND RESPONSES OF
RUSSELL M. COOMBS



SCHOOL OF LAW • CAMDEN • FIFTH AND PENN STREETS • CAMDEN • NEW JERSEY 08102 • 609/757-5182

February 27, 1980

Senator Charles McC. Mathias, Jr.
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

I am happy to respond to the request in your letter of February 11, 1980, that I reply to certain questions about S.105, the "Parental Kidnapping Prevention Act."

As was true of my prepared statement and oral testimony of January 30, 1980, this letter is offered as expressing my own views, and not as representing the views of Rutgers University or any other organization or individual.

Question.

Does Congress have the constitutional authority to enact provisions of S.105 designed to accord national recognition to custody decrees? Please elaborate.

Reply.

Congress does, in my opinion, have such power under the Constitution. A brief discussion of this question appears in my prepared statement.

The exact extent of congressional power based on the explicit grant of legislative authority in the full faith and credit clause¹ has never been authoritatively determined, precisely because Congress so far has failed to make substantial

¹ U.S. Const. art IV, § 1.

use of that authority.² While that history of congressional inaction leaves room for differences of opinion, it is clear at least that enactment of S.105 poses no serious risk that a decision adverse to the constitutionality of the act would cause substantial disruption of affairs conducted in reliance on the enactment, especially since about 40 states already apply, under the Uniform Child Custody Jurisdiction Act (UCCJA), most of the rules embodied in proposed 28 U.S.C. § 1738A.

Question.

Please define a punitive custody modification. Should such modifications be given national recognition under the act? Please elaborate.

Reply.

There is no universally accepted definition of "punitive" custody modifications, and the term itself is somewhat misleading. S.105 should not except from the duty of interstate enforcement "punitive" modifications or any other category of custody or visitation determinations defined in terms of substantive rather than jurisdictional standards. Reasons for that view, and authorities supporting it, are given in my prepared statement.

Question.

Although Professor Bodenheimer has withdrawn her request that punitive modifications be excepted from the bill, she still urges that the bill explicitly provide for a more appropriate manner of compelling a custodial parent to live up to visitation requirements. Specifically, she recommended the inclusion of the following language on p. 5, line 2 of S.105.

² See 28 U.S.C. §1738.

The visitation provisions of a custody decree of another state shall be enforced by way of contempt proceedings or other proceedings available under the law of the enforcing state providing that the enforcing state may adjust visiting schedules to fit changed geographic circumstances.

Please comment.

Reply.

S.105 already requires each state to enforce other states' visitation orders, so the first part of the proposed amendment is unnecessary. The proviso would create a loophole, and an inducement to child-snatching. The amendment should be rejected, for reasons discussed in my prepared statement.

Question.

Professor Bodenheimer also suggested a toughening of the provisions in the full faith and credit provisions of S.105 to better protect the visitation rights of non-custodial parents. She suggested that the bill be "amended so as to provide specifically that any state in which the custodial parent resides with the child shall take all measures necessary to enforce the visitation provisions of the custody decree."

Do you agree?

Reply.

As my last reply mentioned, the bill already requires interstate enforcement of visitation rights equally with custody rights. This amendment not only would be redundant, but would appear to give more emphasis to visitation than to custody. The amendment should not be adopted.

Question.

Professor Bodenheimer has indicated that the alternative to "home state jurisdiction," the "significant connection jurisdiction" test, is being used as a loophole by persons who remove a child from his or her home state prior to a custody decree and bring him or her to a state where some contacts exist. To close this loophole, she proposed amending the bill to limit the significant connection test to situations where the child has no home state or former home state.

Do you agree? Please elaborate.

Reply.

I agree with the substance of Professor Bodenheimer's suggestion, but recommend that it be implemented through the language found in footnote 16 to my prepared statement for the reasons explained there.

Question.

Childrens' Rights, Inc., has recommended amending the definition of "home state" to prevent an abductor from establishing a home state by residing there with the child for six months prior to commencing a proceeding. Do you think the bill should be so amended?

Reply.

The bill definitely should not be so amended. Under proposed 28 U.S.C. §1738A(d) and (g), the obtaining of an order or even the pendency of a proceeding in the original state prevents the second state from exercising jurisdiction. All the aggrieved parent must do, when the restraint begins, in order to prevent the

new state from exercising jurisdiction six months later as the new "home state," is to file a proceeding in the old "home state" during that six-month period.³ Such an action prevents the result feared by Children's Rights, Inc. (CRI). An attempt to prevent the undesirable result instead by making an amendment to the definition of "home state," like the amendment proposed in CRI's prepared statement, would allow a state to disregard the decree of another state depending on whether it found there had been a "child-snatching or child restraint," would be inconsistent with the UCCJA, and would seriously impair the effectiveness of the bill.

Question.

Would the criminal provisions of S.105 cover snatchings which occurred prior to the date of enactment of S.105, but which are still on-going on that date?

Should they?

Reply.

They would, and they should. Reasons why such restraint would be covered are explained in part H of my prepared statement. The reason why it should be covered is that the offense is a continuing one, the essence of which is neither "snatching" (a word wisely not used in S.105), nor "kidnapping" (a word only recently, and unwisely, added to the titles of the bill and of proposed §1203 but wisely not used in the operative provisions of the bill), but "restraint." One who begins such

³ It obviously is much better for the aggrieved parent to file his suit long before six months have elapsed, for practical reasons as well as to forestall exercise of jurisdiction by the second state on any basis other than that of "home state" and to provide a basis for application of state and federal locating and enforcement measures.

restraint when it is not prohibited by federal criminal law, but who continues it after it is outlawed and otherwise meets the criteria of the prohibition, places himself in violation of the law.

Question.

There are some organizations which have expressed concern about the applicability of the bill to pre-decree snatchings. Would you please comment on how S.105 applies to the pre-decree snatching?

Reply.

The concern of those organizations is unwarranted. An example of such concern appears in the prepared statement of CRI, where it is said that ". . . S.105 addresses only those cases . . . in which a custody order was violated," though often restraints of children begin "prior to issuance of a custody award."

Actually, the bill fully covers such cases provided only that, soon after the restraint begins, the aggrieved parent obtains a custody or visitation order.⁴ The bill, like the UCCJA,⁵ to a great extent depends for its effectiveness in such cases on the ability of a parent to obtain an order under such circumstances.

The requirement that an order be obtained is the keystone of the bill. It is this requirement that permits federal

⁴ See my Jan. 30, 1980, prepared statement; The "Snatched" Child is Halfway Home in Congress, 11 Fam. L.Q. 407, 411 (1978).

⁵ See Bodenheimer, Progress Under the Uniform Child Custody Jurisdiction Act and Remaining Problems: Punitive Decrees, Joint Custody, and Excessive Modifications, 65 Calif. L. Rev. 978, 989-90 (1977).

law to be written in terms of whether a state has acted consistently with specified jurisdictional standards, and not in terms of whether a parent has acted consistently with specified standards of substantive family law. No relaxation of this requirement is needed, and none at all should be made.

Question.

Does the criminal provision in S.105 cover only violations of custody decrees entitled to recognition under the full faith and credit provisions of the bill? If so, should the provision be expanded to cover separation agreements as well?

Reply.

The criminal provision is indeed so limited. It is essential that it remain so limited, and not be expanded to cover separation agreements or anything else short of a court order entitled under proposed § 1738A to interstate enforcement.

This limitation does not deprive an aggrieved parent of the use of the criminal provision. It merely requires him or her to use the procedure mentioned in my last reply to obtain a state civil order before seeking federal criminal investigation or proceedings.

Reasons for this requirement are stated succinctly in the Justice Department letter of September 20, 1978, which you ordered inserted in the hearing record in connection with my testimony.

One of those reasons is that federal criminal authorities should not have the function of deciding whether a separation agreement is a genuine and valid one and is sufficiently consistent with the best interests of the child to be enforceable.

The prepared statement of CRI indicates skepticism, however, as to whether limitation of the provisions of S.105 to rights established by state court orders consistent with §1738A is effective to confine federal law to questions of jurisdiction and enforcement rather than those of substantive family law. CRI states that the bill "requires a federal agency to determine whether a custody order is valid and binding," and that S.105 essentially will involve the federal government in "making or enforcing custody orders. . . ."

I disagree. The determinations made according to federal law under S.105 relate to the criteria for jurisdiction and notice, not to the substantive validity of an order. Furthermore, orders made in UCCJA states, and many of those made in non-UCCJA states after enactment of S.105, will be identifiable as having been based on findings by the courts making the orders that the relevant criteria were met and that due notice was given. In such cases, federal authorities can and should rely on the state order in the absence of a contradictory showing.

Question.

Is S.105 intended to provide criminal penalties in situations where a non-custodial parent is denied his or her lawful visitation rights by the custodial parent?

Reply.

In this respect, as in others, the bill applies equally to visitation and to custody. Testimony received during the hearing illustrated the fact that the investigative resources of the F.B.I. may be needed in locating children hidden from non-custodial parents. Such cases probably will less commonly require F.B.I. involvement than will violations of custody rights, and will less often justify exercises of discretion to commence federal investigations or prosecutions, but they should not be excluded entirely. Additional reasons for covering visitation equally with custody throughout S.105 appear in my prepared statement.

Question.

The criminal provision in S.105 defines a child who may be the subject of a snatching as someone not more than fourteen years of age. The provisions of the bill dealing with national recognition of child custody decrees define child as a person under the age of 18.

Is it appropriate for the two definitions of child to differ? Should they be made identical?

Reply.

It is not only appropriate but preferable that these different ages be used in the civil and criminal provisions of the bill. The difference in age limits is based upon differences in the purposes of the provisions and in the reasons for imposing age limitations.

The civil provisions of S.105 are designed to resolve the question of when a child custody order is entitled to interstate recognition. It is designed not only to deter and prevent what is usually thought of as "child-snatching," but also to inhibit forum-shopping and conflicts between state jurisdictions. The latter purposes apply as well to orders concerning 17-year-olds as to orders concerning seven-year-olds. No substantial countervailing interests dictate the imposition of any age limitation on the application of these civil provisions. Only the fact that many states treat 18-year-olds as being adults, and therefore as being not subject to parental custody, justifies the inclusion of that limitation in the civil provisions. Its inclusion avoids creation of a federal requirement that a state enforce an order for the custody of a person whom the state considers legally to be an adult.

The bill's criminal provisions, on the other hand, have a narrower purpose. They are intended as a predicate for the locating of children by the F.B.I., as a deterrent, and as a vehicle for possible federal prosecution. The intention to apply them only to extreme cases is reflected in various limitations placed only on the criminal provisions, such as the requirements that the accused act "intentionally" and that the restraint continue for a specified period of time. Those requirements, like the limitation to children not over age 14, make the scope of the federal criminal prohibition narrower than the scope of entitlement of a custody order to enforcement by the states. Among the reasons for so limiting the criminal prohibition are concerns for proper limitations

of the roles of federal and criminal instrumentalities as distinguished from state and civil ones.

The age limitation is based in addition on the fact that teenage children are more likely than younger ones to display independent and forceful opinions concerning their own custody, and to act on the basis of those opinions in instigating, cooperating with, or resisting parental violations of court-ordered custody or visitation rights. It is relatively common for a teenage child to refuse to remain in the custody of the court-ordered parent, or to refuse to make scheduled visits, even though both parents may be urging the child to do as the court ordered at least until a modification can be obtained. It likewise is common, when such a case comes before a court, for the judge to modify his prior order to conform to the preference of the teenage child despite the child's and a parent's disobedience to the court's previous decree.

There is no reason for the Congress to close its eyes to the prevalence of such conduct by teenagers and by courts. Federal criminal prosecution of parents would normally be inappropriate in a class of cases where the teenage children are likely to have cooperated in the "restraints," and where the state civil courts may well be about to change custody or visitation. Even federal criminal investigation is less likely to be necessary in such cases, since most determined 14-year-olds could find ways to inform the aggrieved parents of their whereabouts.

Existing state⁶ and federal⁷ law gives recognition to the general principle that the power to give consent to conduct affecting the person of a minor may, where the minor is a teenager, belong at least in part to the minor himself and not to the custodial parent. Application of proposed §1203 to minors between 14 and 18 would, for purposes of this federal criminal law, give custodial parents all the power to give or withhold consent to "restraints" of the teenagers by the other parents, and thereby criminalize the parents' conduct even where every state touched by the case might recognize power on the part of the teenagers to give effective consent.⁸

It is not necessary or appropriate for Congress to decide to what extent a teenager's custody should depend on his own wishes. That is why the civil provisions of S.105 make orders for custody and visitation of teenagers entitled to enforcement by other states equally with orders relating to infants; the effect is to leave it to the state having jurisdiction to resolve such family law issues. It is perfectly appropriate, however, for Congress to limit application of federal criminal law to the kinds of cases in

⁶ See, e.g., In re Roger S., 19 Cal. 3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977).

⁷ See, e.g., Parham v. J.R., _____ U.S. _____, 99 S.Ct. _____, 61 L.Ed. 2d 101 (1979).

⁸ Cf. 18 Pa. Stat. Ann. §2904 (limiting offense of interference with custody to children under age 14).

which federal criminal investigation or prosecution is especially needed and appropriate. The limitation to age 14, like the other restrictions on the scope of proposed §1203, is such a wise provision.

Question.

Last year, in hearings in Los Angeles, Los Angeles District Attorney Van de Kamp testified that the deterrent effect of the criminal penalty in S.105 is undermined by the availability of a defense providing that the abducting parent can escape criminal liability if he or she returns the child unharmed within 30 days.

(A) Would you please comment?

(B) Should the bill be amended to provide that the returning parent must return the child voluntarily to avoid liability?

Reply.

(A) I assume that the existence of such a defense reduces somewhat deterrence of the initial wrong, but it encourages termination of the wrongful conduct and protection of the safety of the child. There is room for difference of opinion in balancing the benefits and costs of such predicted results, but in my opinion the benefits of the provision outweigh the slight reduction in deterrence.

The defense serves also as a bar to involvement of federal prosecutors and courts in relatively minor cases that ordinarily should be prosecuted in state courts or not at all. Federal

investigative and prosecutive discretion typically should be exercised to leave such cases to the states. Excluding such cases from federal criminal coverage by statute rather than merely by discretion seems appropriate, since by hypothesis the child would have been returned safely before any exercise of federal prosecutive discretion could occur, and since state and civil and criminal remedies would be available.

Those seem to me the factors that should be considered on this issue. One that should not be given serious consideration was raised during the hearing. In criticizing the provision making safe return of a child within 30 days a defense, the Justice Department asserted that it knew of no other instance in which "... conduct made criminal by the Congress can be totally excused by after-the-fact actions of the defendant." In fact, presently 18 U.S.C. §1623 bars prosecution for making a false statement in a federal judicial proceeding where the guilty party thereafter makes a prompt and effective retraction. The Criminal Code bills in the 95th and 96th Congress have proposed that that principle be extended so that such redemptive conduct would be treated as an affirmative defense whether the false statement was made in a judicial proceeding or merely in a matter within the jurisdiction of a government agency.⁹ Those bills also would create an affirmative defense to prosecution for attempt, conspiracy or

⁹ S. 1722, 96th Cong., 1st Sess., proposed 18 U.S.C. §1346 (c) (Jan. 17, 1980); S. 1437, 95th Cong., 2d Sess., proposed 18 U.S.C. §1345(c) (Jan. 30, 1978).

solicitation where the offender prevented commission of the substantive offense toward which his inchoate crime was directed.¹⁰ Both bills have had the vigorous support of the Justice Department.

The principle that supports creation of the defense in S.105 is the very one on which rest those other provisions of present and proposed law. Under some circumstances society stands to gain more, by offering an inducement to an offender to cease his improper conduct and to prevent some of the harm that might result from it, than it stands to lose by a slight reduction in initial deterrence of the wrongful conduct. There is, therefore, precedent as well as ample justification for the kind of defense S.105 contains. The defense should be retained in the bill.

(B) The defense already requires that the return of the child be an act of the defendant and not merely a result of his arrest. That is consistent with the rationale and purpose of the defense, which exists as an incentive to such an act of the defendant. Since the return of the child already must be an act of the defendant, to add a requirement that the defendant's act be "voluntary" would seem to require that his redemptive act have been done with a particular state of mind. For example, the defense might then be considered inapplicable to one who returns the child only because he learns that he and the child are about to be discovered.

¹⁰ S.1722, 96th Cong., 1st Sess., proposed 18 U.S.C. §1001-03 (Jan. 17, 1980); S.1437, 95th Cong., 2d Sess., proposed 18 U.S.C. §§1001-03 (Jan. 30, 1978).

Such a limitation would, in my view, unwisely place more emphasis on the culpability of the defendant than on the protective purpose for which the defense is created. Though a defendant who returns his child only out of fear of discovery is less deserving of a defense than one who does so for nobler motives, the defense does not exist primarily to reward repentance. It exists to discourage further concealment or endangering of a child, and to encourage the child's safe return. The child needs the benefit of this incentive as much as ever when the hounds are on the offender's heels.

Again, the ultimate resolution of the issue is subject to difference of opinion. It may be argued that a defense not limited to "voluntary" acts would reduce deterrence of initial restraint slightly more than would a defense so limited. If that argument is accepted, the further reduction of deterrence must be weighed against the value of giving to a parent desperate over imminent discovery this incentive to return the child. In my opinion, it would be wiser to leave the defense as it is.

Question.

Mr. Van de Kamp also questioned the portion of S.105 providing the snatching parent with a defense to the prosecution if the other parent did not report the offense within 90 days after the beginning of the restraint. He suggested that this provision be amended to lengthen the time period to 180 days or longer.

Do you agree? Please elaborate.

Reply.

I disagree. The failure of a parent to act within 90 days would be a strong indication that the parent's later effort to bring federal criminal charges was not an appropriate one. Three months is more than ample time for compliance with such a simple reporting requirement.

Question.

Would the criminal provision in S.105 cover instances where a parent snatched a child who was being abused by the other parent?

Would the good cause provision in S.105 cover such a case?

Is "good cause" defined in S.105. Should it be?

Reply.

Such a case would not come within proposed §1203 unless several elements were present. Among other things, the parent would have to restrain the child for more than 30 days or conceal him for more than seven. A parent who took a child, in violation of a court order, because of real child abuse should get the case before a state civil court immediately. If the parent did so, and the court made the appropriate order, §1203 would not be violated even apart from the "good cause" provision.

Only if the circumstances prevented such prompt court action would resort to the "good cause" provision be necessary. I believe that child abuse, coupled with the lack of any available remedy short of self-help, would constitute "good cause."

The phrase is not defined, however. A good definition would improve the bill. A further improvement would be to provide that "good cause" is an affirmative defense, on which the defendant has the burden of persuasion by a preponderance of the evidence. This amendment would eliminate the need to establish the negative fact of lack of good cause, and would place the burden of persuasion on a party who asserts and identifies the cause and who should have access to evidence to establish it.

Question.

Mr. Van de Kamp also criticized that portion of the criminal provision in S.105 requiring a 60 day waiting period before the FBI can become involved in a snatching case. He stated that the period is too long and it was likely to leave the FBI with a cold trail. Please comment.

Reply.

The problem of a "cold trail" is a real one, but must be evaluated in the light of the desirability, discussed in my prepared statement and in my testimony, of limiting the federal criminal role to the area in which the new federal civil provisions and revitalized state mechanisms may prove inadequate. The 60-day waiting period is, in my view, an appropriate one.

Additional comments.

At the conclusion of my testimony you were kind enough to invite me to submit any further comments I might choose to make.

One general comment concerns the various recommendations of others that you expand and strengthen the criminal provisions. Some supporters of this legislation almost ignore the civil provisions of S.105, which solve the fundamental problems of federalism that until now have impeded state efforts to deal with child-snatching. They focus instead on the criminal provisions, and propose making the crime a felony, applying it to restraint of older minors, applying it to custody claims never considered by a civil court, eliminating or curtailing defenses, and involving federal agents as soon as restraint begins. Those proposals, and the approach they reflect, are unsound. The American Bar Association displayed a much more discriminating perception of the role of federal criminal law in control of child-snatching. On a single day in August of 1978, the A.B.A. defeated one proposal to make child-snatching a federal misdemeanor and endorsed another. Those actions were entirely consistent, and were taken after considerable debate. The federal misdemeanor the Association endorsed was in substance the one in S.105, hedged about with provisions designed to confine federal criminal law to a limited sphere in this aspect of domestic relations. The federal misdemeanor the A.B.A. rejected lacked those restrictions. The Congress would do well, in my opinion, to follow that example and confine the federal

criminal provisions to those cases in which no other civil or state criminal solution appears promising.

I have also some comments on certain criticisms of the language of proposed §1203. The prepared statement of the Justice Department complained that the definition of "restrain" is "not very clear," that a definition of "conceal" needs to be added to the bill, and that failure more precisely to define both terms will be troublesome in investigative and prosecutive activity. In my view, further definitions are unnecessary. Current federal criminal statutes contain many important terms the meanings of which were, at the time of their enactment, no more specific or precise than these two.¹¹ The pending bill to reform the federal criminal code, S.1722, which has the strong support of the Justice Department, uses in its provisions on kidnapping and related crimes a definition of "restrain" very similar to that found in S.105.¹² In place of the word "conceal," the code bill uses the undefined term "secreting."¹³ Webster defines the verb to "secrete" as "to deposit or conceal in a hiding place,"¹⁴ so it seems

¹¹ See, e.g., 18 U.S.C. §1071 (providing for punishment of one who "conceals" a fugitive from justice); 18 U.S.C. §1201 (applying kidnapping statute, *inter alia*, to one who "inveigles" or "decoys" another); 18 U.S.C. §1341 (covering use of mails to execute any "scheme or artifice" to defraud).

¹² S.1722, 96th Cong., 1st Sess., proposed §§1624(a), 1625(a) (2) (Jan. 17, 1980).

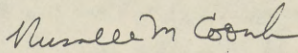
¹³ Id. §§1622(a) (2), 1624(a) (2).

¹⁴ Webster's New Collegiate Dictionary 1044 (1975).

doubtful that in a kidnapping law "secrete" is a more precise and less troublesome term than "conceal." It should be concluded that the term "conceal" and the definition of "restrain" are more than sufficiently clear and specific for use in these penal provisions.

If there is anything further I can do to help you or your staff, please feel free to call on me.

Sincerely yours,

A handwritten signature in cursive script, reading "Russell M. Coombs".

Russell M. Coombs
Associate Professor of Law

RMC/rar

L E T T E R S

Post Office Box 1215
Travis Air Force Base, California 94535

31 January 1980

The Honorable Charles Mathias
UNITED STATES SENATOR
358 Russell Senate Office Building
Washington, D. C. 20510

Re: Hearing Record--S 105; Parental Kidnaping, 1979

Dear Senator Mathias:

Would you be good enough to include my statement into the Hearing Record on the above Senate Bill, S 105. I regret that I am just now sending this to your committee; however, I have only learned of it:

S T A T E M E N T

"Mister Chairman and Honorable Members of the Committee, the undersigned has a long-standing involvement with the legislative efforts to outlaw Parental Kidnapping.¹ This effort began in California, in 1972, when I was a part-time volunteer assistant for the Police Officers Association of California's lobbyist. At that time I was a veteran police officer of Sacramento who was learning how to lobby for police benefits.

"At the same time I had a personal legal problem for which I--even a police officer--could get neither help nor sympathy. The problem was that my ex-wife had left the state, and subsequently the country, with my only child (Denise Jacqueline Brill, dob: 29 Dec '65) and concealed her whereabouts. Concurrent with my problem, however, I began to realize that many of my police calls had to do with family fights, particularly over child custody and visitation. Sometimes there were arguments I could defuse; sometimes there were murders no one could resolve. Later, as an English teacher, I witnessed the effects on students these fights and murders have.

"In any event I tried to do something about these problems. At first I simply collected newspaper pictures and reports of the cut, maimed, or murdered children and parents as an aid to defusing "family fights." Then I tried to get some new laws which I believed would reduce the problems. California's Penal Code 278.5 and Civil Code 4600.5 are the results.² These, however, were not passed for several years. Meanwhile parental child kidnappings went on, and family blood continued to flow.

"Meanwhile, I could not find my daughter, her new step-father (Air Force Major Kenneth Bernard Schroeder), nor my ex-wife, Mary Jane. The Secretary of the Air Force said he sympathized with my problem, but could do nothing to the Major: not even tell me where he was.³ The reason he gave was the existence of the Federal Privacy Act of 1974. I didn't believe him. I contacted the Bill's author, Congressman John Moss, and he told me the law was not intended to conceal such people as the Major and my ex-wife.

As a consequence, Congressman Moss introduced another bill (H R 10977) but he was forced to retire before, I believe, the bill passed. Before the Congressman retired, however, I was encouraged by his interest. I told some of my police buddies about the bill, and they responded that it was a shame it didn't come sooner as one of our fellow officers who was having visitation problems blew his brains out with a twelve gauge shotgun. Still another shot his wife's guts out with his service revolver.

"But no suicides nor murders for me! I continued working on the problems: hiring attorneys, writing and talking to Representatives, etc. One thing I did was get an order from the court awarding me custody of my daughter which effectively terminated my child-support payments, and gave me a little more money with which to pursue the problem. So armed, I was told to go get my daughter. Great! But I didn't know where she was, which caused me no end of emotional hardship. One attorney told me to hire someone in the German Mafia to find and kill my wife. But I didn't. I took out my frustrations on suspects I arrested in my work, and also on my fellow officers. Months later I was finally fired from my job. The Chief of Police, William J. Kinney, did know where my daughter and ex-wife were as he called her from time to time, and sent them copies of the news clippings which detailed my termination. My ex-wife was pleased; my daughter, thus shamed by her father, would later refuse to talk to me.

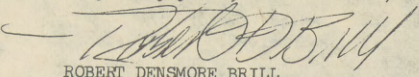
"Nevertheless, without a job I was free to spend time in search of my daughter. Consequently, when I finished my graduate work and teaching credentials, I purchased two, round-trip tickets from Los Angeles to Frankfurt, and flew to Germany expecting to find her and return her home. I did find my daughter; however, she was at Bentwaters RAF Station, in Suffolk, England. That, unfortunately, is not the happy ending (see clipping).⁴ Since then I have returned to America in a virtual stupor over my dilemma, scarcely able to talk about it anymore. I did manage to have at least one more conversation with someone who cares about the problem (cassette attached).⁵ Since then I've lost the ego strength and resources to continue.

"I'm sure that the Committee sees the need for S 105, but I should like to offer two additions to the bill, having read the full printed text of the Los Angeles hearings. Aside from the criticisms of witnesses, such as Professor Bodenheimer who mentions my organization in her statements,⁶ and who has no contact with the realities of the Parental Kidnaping problem as it relates to police work and human suffering, I should like to offer the following: First, the Uniform Code of Military Justice (UCMJ) should be changed to reflect any new Federal Child Kidnaping codes, so that Parental Kidnapping by a military member is a crime.

"Second, there is a need for an Anglo-American Treaty of Extradition. Why? So that should S 105 become law my ex-wife and her husband can be made to stand trial, and my daughter returned to America. In this regard I have some help. The Honorable Keith Stainton, Member of Parliament, Sudbury and Woodbridge Constituency has said he will do whatever is necessary at his end, in the House of Commons. Also, the Honorable Vic Fazio, Member of Congress, California-Third District, in the House of Representatives said he would do the same.⁷ Notwithstanding these additions to Senator Cranston's bill, it is nothing but "a pile of silly paper," to quote my ex-wife. That is, it is for those of us who have children in foreign countries!"

Senator Mathias, I trust my statement has not bored you, and that you and the Committee will consider it in the gravest terms. In this regard, then, I thank you and your colleagues for your time and willingness to help the children of divorce and their victimized parents.

Very truly yours,



ROBERT DENSMORE BRILL

cc: The Honorable Alan Cranston, UNITED STATES SENATE
 The Honorable Vic Fazio, UNITED STATES REPRESENTATIVE
 The Honorable Keith Stainton, MEMBER OF PARLIAMENT

- encs: 1. Letter, Mike D. Antonovich, California Legislature, October 8, 1976
 2. Assembly Bill No. 1480
 3. Letter, Thomas S. Collins, Lt. Col., Office of the Secretary
 4. East Anglian Daily Times, Ipswich, February 23, 1978
 5. Cassette recording, Association of California Public Radio Stations
 6. Hearing Record, Parental Kidnaping, 1979, p. 208, footnote 10
 7. Letters from Keith Stainton, MP, and Vic Fazio, MC
 8. Letter, Josselyn Y Sons, 1st March, 1978 (not footnoted)
 9. Letter, Philip C. Mills, Lt. Col, USAF, 1 March 1978 (not footnoted)
 (enclosures arranged according to date)

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Assembly California Legislature

MIKE D. ANTONOVICH
 ASSEMBLYMAN, FORTY-FIRST DISTRICT
 MINORITY WHIP

October 8, 1976

Mr. Bob Brill
 447 Rimmer Avenue
 Sacramento, California 95834

Dear Mr. Brill:

I would like to take this opportunity to thank you for your support and assistance in the passage of my AB 2549. As you know, Governor Brown signed this measure (copy of which is enclosed for your perusal) on September 30th, and it will become effective on January 1, 1977.

Your unrelenting efforts in the passage of this legislation is greatly appreciated.

Sincerely,

Mike D. Antonovich
 MIKE D. ANTONOVICH

Assembly Bill No. 1480

CHAPTER 915

An act to amend Section 4600 of, and to add Section 4600.5 to, the Civil Code, relating to child custody.

[Approved by Governor September 21, 1979. Filed with
Secretary of State September 22, 1979.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1480, Imbrecht. Child custody.

Existing law specifies certain preferences in making an award of child custody. In making such an award the overriding concern, however, is the best interests of the child. There is no specific authorization for an award of joint custody and there is no presumption that joint custody is in the best interests of the child.

This bill would specify the circumstances in which a presumption favoring an award of joint custody shall operate, as well as specifically authorizing such an award in other cases, as designated. It would also specify that access to records and information pertaining to a minor child shall not be denied to a parent because such person is not a child's custodial parent.

It would also incorporate further changes that would be made in Sec. 4600, Civ.C. by AB 167, contingent upon the enactment and prior chaptering of AB 167.

The people of the State of California do enact as follows:

SECTION 1. Section 4600 of the Civil Code is amended to read:

4600. The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and in order to effect such policy, it is necessary to encourage parents to share the rights and responsibilities of child rearing.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. Custody should be awarded in the following order of preference, according to the best interests of the child:

(a) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an award of custody to either parent, the court shall consider which parent is more likely to allow the child or

children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(b) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(c) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

SEC. 2. Section 4600.5 is added to the Civil Code, to read:

4600.5. (a) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage.

If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(b) Upon the application of either parent, joint custody may be awarded in the discretion of the court in other cases. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate under this subdivision, the court may direct that an investigation be conducted pursuant to the provisions of Section 4602. If the court declines to enter an order awarding joint custody pursuant to this subdivision, the court shall state in its decision the reasons for denial of an award of joint custody.

(c) For the purposes of this section, "joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents; provided, however, that such order may award joint legal custody without awarding joint physical custody.

(d) Any order for joint custody may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the order. The court shall state in its decision the reasons for modification or termination of the joint custody order if either parent opposes the modification or termination order.

(e) Any order for the custody of the minor child or children of a marriage entered by a court in this state or any other state may, subject to the jurisdictional requirements set forth in Sections 5152 and 5163, be modified at any time to an order of joint custody in accordance with the provisions of this section.

(f) In counties having a conciliation court, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation court for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody.

(g) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, and school records, shall not be denied to a parent because such parent is not the child's custodial parent.

SEC. 3. Section 4600 of the Civil Code is amended to read:

4600. (a) The Legislature finds and declares that it is the public policy of this state to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of the child during minority as may seem necessary or proper. If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to the wishes of the child in making an award of custody or modification thereof. In determining the person or persons to whom custody should be awarded under paragraph (2) or (3) of subdivision (b), the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

(b) Custody should be awarded in the following order of preference according to the best interests of the child:

(1) To both parents jointly pursuant to Section 4600.5 or to either parent. In making an order for custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's sex.

The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be

suitable and able to provide adequate and proper care and guidance for the child.

(c) Before the court makes any order awarding custody to a person or persons other than a parent, without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a nonparent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill 167 are both chaptered and become effective January 1, 1980, both bills amend Section 4600 of the Civil Code, and this bill is chaptered after Assembly Bill 167, that the amendments to Section 4600 proposed by both bills be given effect and incorporated in Section 4600 in the form set forth in Section 3 of this act. Therefore, Section 3 of this act shall become operative only if this bill and Assembly Bill 167 are both chaptered and become effective January 1, 1980, both amend Section 4600, and this bill is chaptered after Assembly Bill 167, in which case Section 1 of this act shall not become operative.

ROBERT L. LEGGETT, M.C.
4TH DISTRICT, CALIFORNIA

MEMBER OF
COMMITTEES ON:
ARMED SERVICES
MERCHANT MARINE AND
FISHERIES

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Congress of the United States
House of Representatives
Washington, D.C. 20515

March 8, 1976

Department of the Air Force
Office of Congressional Liaison
The Pentagon
Washington, D.C.

Gentlemen:

I enclose for your review copies of correspondence received from my constituent, Mr. Robert Brill of Citrus, California, which concern his efforts to locate his daughter.

As I understand the situation, Denise was illegally taken to Germany by Mr. Brill's ex-wife and her new husband, Captain Kenneth B. Schroeder. Letters and presents sent to Denise by Captain Schroeder have been returned.

I would appreciate very much your providing me with information to enable me to assist Mr. Brill in locating his daughter.

Very sincerely,

ROBERT L. LEGGETT
Member of Congress

RLL:omt
Enclosures

cc: Mr. Robert D. Brill

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D.C. 20330

OFFICE OF THE SECRETARY

MAR 16 1976

Dear Mr. Leggett:

This is in reply to your recent inquiry in behalf of Mr. Robert D. Brill concerning the whereabouts of Captain Kenneth B. Schroeder.

As you are aware, in accordance with the Privacy Act of 1974, we are prohibited from releasing any personal information about a member without his written consent. We are, however, able to provide Captain Schroeder's current unit of assignment: Detachment #1, Headquarters Air Reserve and Recovery Service, APO New York 09012.

Given the circumstances we trust you understand our inability to respond further. We hope this limited information is of assistance.

Sincerely,

A handwritten signature in cursive script, reading "Thomas S. Collins", is written over the typed name.

Honorable Robert L. Leggett
House of Representatives

THOMAS S. COLLINS, Lt Colonel, USAF
Congressional Inquiry Division
Office of Legislative Liaison

EAST ANGLIAN DAILY TIMES

No. 34,037

Ipswich, Thursday, February 23, 1978

Price 8p

I'm beaten, says man after six-year quest

A FATHER'S search to find his 12-year-old daughter, which took him six years and half-way across the world, has ended at Woodbridge.

But Mr. Robert Brill, an ex-policeman from California, who had been trying to get custody of his daughter since he and his wife divorced in 1972, said, "It is all over. I'm beaten."

Mr. Brill, who claimed he has

custody over his daughter by an American court order, eventually caught up with his daughter, her mother and step-father this week after following them from America to Germany and finally to Woodbridge.

A shattered Mr. Brill said, "I had been so busy trying to get her back through the courts that I broke the psychological link with her and now she says she does not want to come with me."

Producing inches-thick folders of documents, he told how he had joined various American and international organisations and had written to American senators and officials to try to get laws changed and orders made so he could reclaim his daughter.

"I spent three years training to be a teacher, so when she came back with me we could be together almost all of the time."

"I never thought of the obvious, that she might not want me. I thought it was so important for a girl to have a father. Now she seems embarrassed to know me and even uses her stepfather's name."

The six-year quest ended after Mr. Brill saw his daughter for ten minutes at her school.

Now he says he is going back to his home in Sacramento and try to pick up the pieces.

"I am going to try to get the law changed in the future so other fathers don't have to suffer as I have done."

He also plans to write a book on his fight and its outcome.

"I feel so disillusioned about the whole thing. When I arrived in England I thought it was only a matter of time."

He added, "I will never marry again. It can cause the worst type of hell."



HOUSE OF COMMONS

LONDON SW1A 0AA

17th July 1978 *

Dear Mr. Brill,

I am sorry about the apparent delay in replying to your letter of July 11 and enclosures, but I am anxious to pursue the principles raised in the case of your daughter, Denise Jacqueline, and regret to say that, to date, I have had no communication from Senator Cranston. May be he expects me to take the initiative.

It must be quite a setback for you that due to the recent elections, you do not now anticipate being appointed either to the Sheriff's Department or as a teacher. However, the longer one lives the greater the truth of certain old saws. In your case I would instance the one to you about another door opening as one closes and wish you all the very best of good fortune, after your tragic experience.

Kind regards,
Yours sincerely,

Kim S. Smith

Robert Densmore Brill, Esq.,
P.O. Box 15511A,
Sacramento,
California 95815,
U.S.A.

** Secretary of ill!*

From KEITH STAINTON MP



HOUSE OF COMMONS
LONDON SW1A 0AA

30 August 1978

Dear Congressman Moss,

I write in connection with the paternal affairs of your constituent, Mr. Robert Densmore Brill of Sacramento, who has sent me a copy of his letter to you of August 16th, headed International Treaty Regarding the Abduction of Children.

Whilst there are doubtless good grounds for looking at the international treaty situation my concern is that Mr Brill's daughter Denise is resident in my United Kingdom Parliamentary constituency; and when Mr Brill arrived here earlier this year armed with papers from the Supreme Court of California he was rebuffed by the U.S. Air Force legal branch without satisfactory explanation so far as I can see.

Without entering into the merits of whether or not Mr Brill should have care and custody of Denise it does strike me most forcibly that his attempts to secure a fair hearing and resolution of his problem have been thwarted and I would be most grateful to have your observations thereon.

Yours sincerely,



The Honorable John E. Moss,
Representative - 3rd District California,
Congress of the United States.

JOSSELYN & SONS

SOLICITORS
COMMISSIONERS FOR OATHS
AND NOTARIES PUBLIC

A. E. L. SLADEN
A. G. DUNFORD
C. J. BIRD

TELEPHONE NO. 213434 (4 LINES)
(STD CODE 0473)
TELEX 98645

7 LOWER BROOK STREET,
IPSWICH,

IP4 1AF

(AND AT WOODBRIDGE - TEL. 4133/4)

Our ref. RBH/VY

1st March, 1978.

Dear Sir,

We refer to our recent discussion with you when you advised us that in 1970 you and your wife divorced under the laws of the State of California. In the divorce proceedings your wife was given custody of your daughter and you were given reasonable visitation rights (access).

Your wife remarried shortly after the divorce.

The visitation rights worked successfully until 1972, when your ex wife started to frustrate your attempts to see Denise. You then applied to a Californian Court to commit her for contempt of court but your ex wife was living in Texas at the time so the Order could not be enforced.

You next applied in California for a custody Order for Denise, which was granted. Your ex wife did not attend the hearing and the Order was made with a view to your obtaining physical custody of Denise and then bring the whole matter before a Californian court.

Since that Order was made in 1974 your ex wife has lived either in Germany or England and has not returned to the State of California.

With that background you wish to know what steps you could take in this country to enforce the Californian custody Order.

We approached the matter on the basis that you did not wish to stoop to the same level of your ex wife, and seize Denise and disappear. You wish to enforce your rights responsibly and have the matter properly determined, which involved having it dealt with before a Court in this country.

We explained that the two principal remedies were an application for custody or an application to make Denise a ward of court. The latter is the approach usually adopted in this

type of case but whichever approach you adopted you would then need to apply to the court for leave to remove Denise from the jurisdiction.

The courts in this country have jurisdiction to deal with the custody of any child, whatever its nationality, who is physically present in this country. There is a dual approach to cases where a child is removed from the jurisdiction of any court against the wishes of the parent with custody. Although this case is not strictly comparable with that type of case, we think that there are sufficient similarities for the court to consider it as a type of kidnapping case.

The first approach is when the case is brought before the court almost immediately after the child has been removed from the original jurisdiction and arrived in the court's jurisdiction. In that type of case the court is occasionally prepared to order the child to be returned to the original jurisdiction without considering the merits of the case.

The second approach is when the court decides it cannot make such a summary Order and looks at the merits of the case. When this latter approach is adopted then, as in all custody matters, the first and most important consideration is the welfare of the particular child, and the Order of the foreign court and the conduct of the guilty party are only secondary considerations, *re L. (Minors)* 1974).

If this case is brought before a Court it would have to consider it on its merits in view of the particular circumstances.

On such a consideration you would be placed in an impossible situation since you have not seen Denise for six years because of your ex wife's attitude and behaviour, and as a result of that the court could not conceivably order Denise, a young girl, to leave her mother and live with you, a man who would be a complete stranger to her. The court will also refuse to order Denise to return to America.

Your ex wife's wrongful actions have therefore deprived you of your right to the custody of Denise.

In our discussion we dealt with custody rather than access since access was of no use to you as you were shortly due to go back to America and your interest was to take your daughter back.

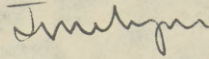
If it had been possible to pursue the question of access you would almost certainly have obtained an Order for visiting access, although you would then have been back on the treadmill

trying to enforce it. In this country a refusal to comply with an access order is a contempt of court which is punishable by imprisonment or an order transferring the custody of the child from the guilty to the innocent parent.

The courts are extremely reluctant to take either of these steps because of the effect that such an order may have on the welfare of the child which the court is trying to protect.

We are afraid therefore that in the particular circumstances of your case there is nothing that we can do to enforce the custody Order which you were granted.

Yours faithfully,

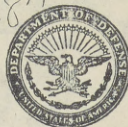


Mr. R.D. Brill,
c/o Deben Tea Rooms,
3 Church Street,
Woodbridge.
Suffolk.

c.c. Keith Stainton, M.P.
U.S. Senator Alan Cranston

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 81ST TACTICAL FIGHTER WING (USAF)
RAF BENTWATERS, NR WOODBRIDGE, SUFFOLK IP12 RQ

1 March 1978



Mr. Robert D. Brill
Deben Tea Rooms
3 Church St.
Woodbridge, Suffolk

Dear Mr. Brill

I am writing this letter at the request of yourself and Mr. Keith Stainton, a Member of Parliament, based on the telephone conversation I had with both of you on 28 February 1978. I have been requested to confirm in writing the advice I gave to you while you were in my office on 27 February 1978.

When you came to my office on 27 February you provided me with several documents. Among these documents was a 1969 California divorce decree which gave custody of your daughter to your former wife, a contempt of court order issued by a California Superior Court in 1974 against your former wife, and a California Superior Court order issued in 1974 changing the custody rights of your daughter from your former wife to yourself. It was my understanding that your former wife and your daughter were not present in California when these 1974 court orders were issued. These California Court orders named only yourself and your former wife as parties to the action. You advised me that you had spoken with your daughter, who is 12 years old, and that she did not desire to go with you. You also advised me that you had consulted with an English solicitor regarding what would be required to enforce these court orders through an English Court. You basically asked me what the Air Force was going to do to award you the physical custody of your daughter based on the California Court order.

I basically advised you that the Air Force did not have the authority to adjudicate a child custody dispute of this nature. I further advised you that such a dispute, including the enforcement of any court orders from another jurisdiction, would have to be resolved in a civilian court of competent jurisdiction. I further advised you of our very limited authority over civilian dependents and that the Air Force did not have the authority to hand over physical custody of your daughter to you.

Sincerely

Phil C Mills

PHILLIP C. MILLS, Lt Colonel, USAF
Staff Judge Advocate

VIC FAZIO
4TH DISTRICT, CALIFORNIA

MEMBER OF
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CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

June 4, 1979

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Robert Densmore Brill
Staff Sergeant, USAFR
708 Military Airlift Squadron
Flight Engineers
Travis Air Force Base, California 94535

Bob
Dear Sgt. Brill:

Thank you for your recent correspondence bringing me up to date on your efforts for legislation and treaties outlawing child snatching.

I am supportive of these efforts and will assist them in anyway I can. If you can provide the necessary information I need for writing Keith Stainton, I would be glad to do so. I do not understand what I should request of Mr. Stainton, nor why he needs my permission for action.

I have enclosed an article from CHILDREN TODAY, November-December 1978, entitled "On Reducing the Child Snatching Syndrome." The article includes a list of other organizations concerned with the protection of children.

Thank you for your comments, and I look forward to being of further assistance to you.

Best regards,

Sincerely,

Vic

VIC FAZIO
Member of Congress

John H. Everhart
3805 Cameron Circle
Chattanooga, TN 37403
September 22, 1993

Dear Senator;

Concerning Senate Bill #105, Parental Child Kidnapping Act:

I am a father and former husband.

After the divorce my former wife took the children and moved to Maryland.

Because of the expense and my limited vacation time, I can only visit the children 5 or 6 times a year.

My daughter at age 12 terminated our relationship because to see me would be disloyal to her mother.

I feel her mother contributed to this decision, however because of my daughter's age, there is nothing I can do.

My son is 5 years old. He is torn between wanting to be with me and siding with his sister and mother.

He does not have a male role in the family other than me.

He probably will not have a male teacher until high school.

I feel it is very important for his development to have me as a male role with which to form his own identity.

Our legal system will not give me custody of my son because I am of the wrong sex.

Should I kidnap my son and live the life of a fugitive?

Or should I allow my children to be turned against me as "punishment" for a failed marriage, in spite of their need for both parents?

I suggest the Congress should address itself to the whole issue of child custody laws including sex discrimination against the father in custody decisions and the custodial parent's offense of using the children to punish the non-custodial parent.

Sincerely,

John Everhart

"Testimony" on SB105
 JUDICIARY COMMITTEE
 U.S. SENATE

JAN. 28, 1980

HONORABLE CHARLES MATHIAS, U.S. SENATOR
 MR. CHAIRMAN—

My overall objection to SB105,
 THE PARTENTAL KIDNAPING LAW is
 that unless there is Physical harm,
 Not Forgetting Possible Mental harm
 to a child in the taking of said
 child AND/OR children by the non-
 custodial parent across state lines
 that the full legal course of our laws
 should be used and enforced before
 the involvement of our F.B.I.
 and than if the F.B.I. must be so
 used to track down
 and find these
 types who steal (kid-nap)
 their own children from
 the parent who has
 legal custody, they



PAGE 2- "Testimony"

SB105
1-28-'80

Should be MADE TO PAY ALL COSTS OF ALL FINDING FEE'S, i.e.: TIME AND EXPENSES BY ALL CONCERNED; LAWYERS FOR CUSTODIAL PARENT, F.B.I. AND COURTS, ETC. PLUS THE FINE CALLED FOR IN THE BILL (SB105).

I TRUST YOU FOLLOW MY POINT ON THIS MATTER? ALSO ANYONE WHO HELPS THE NON-CUSTODIAL PARENT TO KID-NAP THE CHILD AND/OR CHILDREN SHOULD ALSO BE FOUND OUT AND FINED AND TAILED, OR BOTH.

I DID NOT KNOW WHERE MY DAUGHTER VICTORIA MARIAN MOTT WAS FOR 2 YRS. AND DID NOT SEE HER UNTIL JUNE 1979 AFTER 6 YRS., BUT I'D NEVER KID-NAP HER OR WANT ANY HARM TO COME TO HER OR HER MOTHER. THANK YOU, Roger A. Mott
425 So. ALEXANDRIA AVE., LOS ANGELES, CALIF. 90020.



18 Bay 34 Street
Brooklyn, New York, 11214

January 19, 1980

Ms. Elizabeth Nichols
358 Russell Senate Office Building
Office of Senator Mathias
Washington, D.C., 20510

Dear Ms. Nichols:

My ex-husband has robbed me of God's most precious gift -- motherhood. I am a mother but I have been denied the right to even see my son. I am divorced and have legal custody of my five-year old son, Kevin -- but it is three years since I have seen him. Kevin was violently snatched from my arms and kidnapped. My father was beaten to the ground as was my mother and myself and maced. Neither the police nor the Federal Bureau of Investigation will look for Kevin. The reason is that the kidnapping was done by my ex-husband, and therefore is not considered a crime. Kevin is constantly on my mind -- where is he? Is he well? Is he being cared for properly? Does he remember me.

In Kevin's room his photographs smile at me from the walls. Boxes of wrapped presents, wait for him -- presents I sent in care of my ex-husband's brothers which were refused and returned without a word.

Child snatching is the ultimate hurt one spouse can inflict upon

the other, but it is the innocent child who is hurt too, by being denied the love of the missing parent. Thus Kevin is being punished by his father's frustrations and angers. Kevin is denied the right to know that I am his mother and that I love him. He is denied the right to know loving grandparents, and relatives.

Laws must be enacted to protect the rights of children such as Kevin to enjoy the devotion and loving care and concern of a loving parent. A child is not a chattel to be owned solely by one parent. Laws must be passed to deter snatching and to enforce custody decisions.

I had looked forward to a happy marriage and motherhood, but my ex-husband was upset by my pregnancy and insisted upon an abortion. When I refused, life became unbearable as his behavior became erratic to the point of his hitting me. He began being fired from his jobs. Due to lack of care I became ill in the final months of my pregnancy, and Kevin was born prematurely on October 21, 1974, in Indianapolis. He was tiny -- 4 pounds, 1 ounce -- but beautiful. Because he was in an isolette, he remained in the hospital a month, during which time I visited him daily. Gerald my ex-husband, never visited him. We moved to a suburb of Chicago, but Gerald refused to accept the fact of a baby. Breast feeding and soiled diapers nauseated him.

When he in a rage, because the infant was crying, he hurled a fold-

ing gate at him. Since he was endangering the life of the infant I decided to go to my parent's home in New York City for a few days. I called Gerald at work to inform him of this and also left him a note. He joined me there and I told him I would like to stay in New York a few more days -- where upon he left in anger. A few days later (March 1976) a man struggled with me, snatched Kevin from his stroller, and sped off in a car. Relatives of his informed me that Gerald had had Kevin snatched and brought back to Chicago.

I flew to Chicago, hired a lawyer and was granted temporary custody and permission to return to New York with the child. Divorce proceedings were filed in Illinois.

Gerald refused to visit us in my apartment atop my parents house and he made no inquiries as to Kevin's health or welfare.

On April 19, 1977, walking from a restaurant to our car, four men ran toward my parents, Kevin and myself, wrenched Kevin from my arms, sprayed us with what we learned later from the police was mace, and ran toward a car. My father, attempting to recover Kevin was beaten so badly that he was taken by ambulance to a hospital and an electrocardiogram was administered. My mother was pushed down and maced. I tried to appeal to my ex-husband. His response was to mace me, knock me to the ground and pull down my pants so I couldn't arise quickly. Through it all two-year old Kevin screamed hysterically. Witnesses called the police, who, discovering that it was my ex-hus-

band, refused to take any action.

Then began the trips to the Chicago courts. Gerald refused to appear in court and refused to produce the child or reveal his whereabouts and I was given permanent custody.

Yes, I have a custody paper-but no child.

At the suggestion of Arnold Miller, President of Children's Rights, Inc. I have become New York City Co-ordinator. I try to help and comfort other victim parents. I try to educate the public about the danger of child-snatching. My activities include soliciting over 600 signatures on a petition to abolish child-snatching. I have spoken on radio and television, at churches, divorced groups and single parent clubs, all on a voluntary basis. I also work full time.

I am trying to cope -- but Kevin is only a child. He needs love and guidance. I can care for and guide him, but my attempts to locate him have proved fruitless.

The laws must be changed in the name of all that is humane for the sake of both children and parents. I will not stop trying until they are.

Very truly yours,

Page Fourteen Monday, March 27, 1978 KINGS COURIER

Parents Snatch Offspring-

Kidnapping Is Sometimes Perfectly Legal

By JOE GIUFFRE

"With the divorce rate so high," said 26-year-old Robin Reiss, "every child is a potential victim." Robin Reiss knows, for her three-and-a-half-year-old Kevin is a victim. He was snatched from her arms on Mar. 19th, 1977 on the corner of East 27th Street and Avenue U. Reiss has not seen or heard from her son since. She believes

the child is living with his father — her ex-husband — somewhere in the state of Illinois.

Kevin and Robin are victims of what is commonly referred to as a "child snatching." And there is no law in the state of New York or Chicago — where the Reiss's divorce took place in December of '76 and the question of the child's custody is still pending — to prevent a parent from legally kidnapping his or her own child; or having an agent act in his or her own behalf. There are some 20-odd states that legally prohibit snatching, but in the Reiss case and many others, a federal statute has not been passed to prevent legal kidnapping from continuing.

"In certain states," added Reiss, "what has happened is not considered kidnapping. In some states it's a misdemeanor, like stealing a hub cap.

"In my case, the custody of the child is being determined in the courts. Right now, it's a moot question. But the big question is one of rights. There are men's rights, women's rights, and now there's a child's rights question: A child shouldn't be taken from his or her parent.

"Personally, I feel that I should have my child. I believe my husband did this for spite. Look, if he wanted to be a good parent, he would let me see my child. He would let Kevin see his mother. I've sent birthday presents, and they've been returned from his brother in Chicago."

At the moment, there are two bills pending to alter what for a child and a parent is a painful situation. Congressmen Bob Kasten (Wis.) and Hamilton Fish (N.Y.) are working on separate pieces of legislation to make snatching illegal on both the state and federal levels.

"Even if I had my child back again," Reiss added, "there would be nothing to prevent him (her husband) from snatching the child again, taking him to Florida or wherever," Reiss said.

"Some people go into hiding when they get their child back — which is just as bad as snatching. The child is then being taken away from the other parent. It's wrong that a person has to resort to that.

"People hire investigators to relocate their children. But investigators are high priced. Women who are mothers and housewives are at a disadvantage; they don't have the financial means to hire investigators and attorneys. Besides the stress of a divorce, you also have the stress of a snatching to deal with.

"The only salvation," continued Reiss, "for all chil-



ROBIN & KEVIN REISS

dren, is for a law to be passed stopping this."

Snatching Site

Last Sunday — the anniversary of her son's legal kidnapping — Reiss set up a stand at the site of the snatching. Her aim was to inform the public of the legal loophole and illicit signatures for petitions seeking a change of law. Reiss is also interested in starting a New York City chapter of Children's Rights Incorporated (CRI, pronounced "cry") for men and women who have "experienced the same experience." Currently, the national headquarters of CRI are located in

Washington, D.C. There is also a chapter in Stony Brook, Long Island.

"I would like to start a local chapter, so people in the same situation can ban together. It would not only be a self-help group, and a clearing house for information, but hopefully a group with clout for the children."

"When I set up the stand on the anniversary date," continued Reiss, "there were people who didn't know what 'child snatching' was. They were sympathetic, but they didn't know that such things happened. They thought there were laws to prevent that."

"I want people to be aware that it could happen to anyone. Any parent, any grandparent could lose their child. Simply, every child is a possible victim as the law stands now."

"I have to work for the law — there is nothing else. A child can't be the pawn or barter in a marriage; he or she is not a car or a piece of furniture. The child is a person."

People seeking more information about starting a local chapter of CRI may write to Robin Reiss at 1714 East 33rd St. 11234.

KIDNAP!

When a parent snatches his own child,
it's a crime with different rules

by SALLY ABRAHMS

The air was nippy on March 19, 1977 when Robin Reiss, her 2½-year-old son Kevin, and her parents strolled out of a Chinese restaurant in the Sheepshead Bay section of Brooklyn. Suddenly, two cars pulled in front and behind the family. Six burly thugs jumped out, spraying their victims with mace, and beating Robin's father so badly he was later admitted to Coney Island Hospital. But the real aim of their mission was little Kevin, who, amid the commotion, had been yanked from his mother and deposited in one of the getaway cars. The perpetrators sped away as dramatically, as efficiently, as in a James Bond thriller.

Robin has not seen her son since. But her ex-husband has. In fact, when Kevin entered the car the night of the kidnaping, he found his father inside. Gerald Reiss, frustrated by the painful courtroom custody battle, had masterminded and participated in the scheme — his second successful one — to snatch his son. Though the plot was as carefully calculated as any criminal kidnaping, law enforcement officials refused to prosecute Gerald or his hired muscle. "Be thankful they didn't have knives or guns," one unsympathetic detective told Robin.

Although the incident occurred in New York, police felt they had no jurisdiction over the childnaping because custody had been decided by the courts of another state, Illinois. The only censure came from a judge in that state who scolded one of Gerald's cronies for his violent behavior. Robin, a \$180-a-week clerk for the Internal Revenue Service, has spent more than \$40,000 on attorneys' and detectives' fees over the past two years searching for Kevin. Her father, a plumber for the city, and her mother, an elementary school teacher, have also used up their savings to locate their grandson. Still, Robin is optimistic that she will find Kevin, but concedes he could be anywhere. "With a math background" she says, "my ex-husband might be a clerk in

Sally Abrahms writes frequently on legal matters.

KIDNAP

a five-and-ten cent store or an executive in a bank." Robin is frustrated by her plight, but not despairing. "I can't be sad forever," says the brown-eyed 28-year-old. "I can't get into a depression because that's what my ex-husband wants. But," she adds softly, "sometimes I get upset when I see children. Kevin turned 7 on Oct. 21st."

Robin's story is more dramatic than most, but it typifies the anguish of many parents deprived of their children by their ex-mates. Unhappy with a custody award or a sluggish legal system, a father will abduct his child from his ex-wife's home, or a mother will "forget" to return the children to her former spouse after a weekend visit. Many don't even wait for a custody decision—in 70% of the cases, a parent swipes the child before there is any legal separation or divorce paper. Rarely prosecuted, child-snatching has so far been the perfect crime, carried out by desperate, sometimes vindictive parents, at a rate of 25,000 a year na-

Child-snatching has so far been the perfect crime, carried out at a rate of 25,000 a year.

tionwide, with several hundred annually in New York alone. In some states, childnaping is not illegal, or often only a misdemeanor, casually enforced. Police and the FBI maintain a hands-off policy, not wanting to get dragged into domestic disputes. To justify their non-action, they cite the Lindbergh Act, which specifically excludes parents from the kidnapping statute.

In New York, once custody is granted to one parent, the parent who steals a child is guilty of "custodial interference," merely a misdemeanor, and not an extraditable offense. It becomes a felony only when a child is harmed during the abduction. This rarely happens. If the kidnapping is committed outside New York, no law has been violated, even if the child is stowed away in New York. Often a parent dissatisfied with a custody decision in one state will whisk away his offspring to another state in the hopes of finding a more sympathetic judge.

At times, "custody shopping" can be confusing, even ludicrous. Take the case of Susanne and Rudolf Uhlar, who were divorced after two children and eight years of marriage. On March 3, 1972, the Michigan courts awarded the kids to Rudolf; a year later, shortly after her second marriage, Susanne absconded to New England with her children. It took Rudolf nine months to track them down, only to discover that his ex-wife had filed for custody in New York, even though he was told he could keep the kids by the Michigan court. Susanne won this round of the custody fight, but two years ago the New York courts reversed their decision in favor of Rudolf. In the meantime, Susanne, her snatched kids, and her new husband had moved from New York to New Jersey. The New Jersey courts agreed to defer to the New York court, and for the time being at least, the kids have been reunited with their father in Michigan. Often, when more than one state hands down a custody decision, judges will abide by the original ruling.

Child-snatching has turned into a lucrative racket, with distraught parents sometimes resorting to professional child-stealers or detectives to do their dirty work. These self-proclaimed "custodial vigilantes" command anywhere from \$1,000 to \$12,000 per snatch. In New York, most detectives get \$200-250 a day plus expenses, and \$2000 for the actual steal. One expert, who boasts 30 snatchings across the country and in Canada, is Bill Ralston of Cuba, N.Y. Ralston, who helped steal Robin Reiss' baby, got into the snatching business when his wife took their children for an ice cream cone and never returned. He got even, after a five

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KIDNAP

year search, by retrieving Marc, then 9, and Shari, 8, from a Colorado playground while his ex-wife was out on her truck driving route. Ralston's partner that day was his brother, a Buffalo, N.Y., policeman. Ralston claims he has since quit the snatching circuit, but still coaches other unhappy parents through United Parents for Absconded Children, a group he formed in 1974. While it does not shy away from the use of violence, the organization also advocated reforming the laws, and worked for passage of the Uniform Child Custody Jurisdiction Act (UCCJA).

Since some states have adopted the UCCJA, it has become more difficult to hop from state to state searching for a favorable custody ruling. While not a federal law, the UCCJA requires states that sign the agreement to honor one another's custody awards, to defer to the original custody decision, and to refuse to consider any case settled in another's state. It also assures that a case is tried in the state to which the child and family have closest ties. The UCCJA is gaining popularity: As of September, 1979, 39 states, including New York, have gotten into the act. That still leaves 11 states where snatchers are free to flee without being prosecuted.

Nevertheless, the situation is improving rapidly. Within the last six months, 15-20 child-snatching bills have been introduced in Congress. Children's advocacy groups are pushing passage of the Kidnap Prevention Act of 1979, presently under consideration in both Houses. The two bills under consideration, the Wallop and Bennett bills, are similar: Like the UCCJA, they require states to give "full faith and credit" to custody decrees in other jurisdictions. They would make it a federal misdemeanor for parents, their friends, or detectives to abduct children across state lines in violation of a custody order. And they would increase the responsibilities of the Federal Parent Locator Service, now used to track down parents who snatch and conceal their kids. These bills also propose fines of up to \$10,000 and jail sentences for parents taking and hiding a child under 14. Opponents of both bills argue this legislation would make extra work for already overburdened FBI, state, and local law officials. "The FBI is much more concerned about the inter-state transportation of an automobile than they are a living, breathing child," says attorney Henry Foster Jr., Professor of Law Emeritus at New York University School of Law, and a supporter of the bills. "But the real problem is one of attitude, that one shouldn't regard child-snatching as criminal because parents are prompted by the love for

the child. What snatchers are really doing is upsetting a stable, secure environment for a child, and that is thoughtless and selfish."

Apparently, some New York judges agree. In a landmark decision last year, a New York federal judge fined Queens jeweler Fabian Kajtazi \$181,340 for child abduction and false imprisonment of his then 3-year-old son, Biter. His ex-wife Olyvia, a TWA flight attendant, also filed suit against Fabian's brother and father, who lied about Biter and Fabian's whereabouts, giving them time to flee to Yugoslavia. Besides awarding \$100,000 in punitive damages to Biter and Olyvia, the judge also charged \$20 a day for false imprisonment and \$50 a day for child abduction for each additional day the child was hidden from his mother. Since the August 1978 decree, no money was paid, and the case was eventually settled. But on Sept. 28, 1979 — nearly two years after the abduction — Olyvia was reunited with her son in Rome. There was no question that the judge's no-nonsense sentence put pressure on Fabian to return Biter to Olyvia.

While some judges may be getting tough with kid-snatchers, the New York State Assembly is reluctant to follow suit. In May 1979, the Assembly Codes Committee voted down two child-snatching bills, which would have raised the penalty for seizing, hiding, and transporting a child from a misdemeanor to a felony. "Do you want to treat a parent the way you would a robber or a rapist?" asks Melvin Miller, chairman of the Codes Committee.

Advocates of the bills, which are expected to be reconsidered next session, contend that if the penalty was raised, law enforcement officials would take the matter more seriously. Pressure is on from parents, attorneys and children's rights groups to stiffen the penalty and inform the public about this phenomenon. "Eventually legislators will realize that child-snatching is a form of child abuse and they will bow to the pressure," says John Gill, head of the New York chapter of Children's Rights, Inc.

Until the laws change however, children will continue to be an easy mark for disgruntled mothers and fathers. Last Christmas, Jim N. was reunited with his son Jason after two and a half years. "It was very emotional," recalls the 32-year-old Brooklyn fireman. "Both of us were crying, and everyone in the airport seemed to be crying, too." Jim was allowed to see his son only after he agreed to turn over custody to his wife Linda, who vanished one blustery November evening in 1976. "I

KIDNAP

tried to track them down," remembers Jim, "but for a year I heard nothing. Then one night Linda called, refusing to tell me where she and Jason were, demanding money, and custody of Jason, which I had just been awarded. She'd call every two or three months making demands, and I would write her through her mother. I finally gave up custody of Jason in order to see him. There was no way I could have found them, since my ex-wife kept moving back and forth from California to Louisiana to Texas. At least this way I have contact with my son and get to see him twice a year."

Arnold Miller has also had to compromise. In 1972, his wife Toby absconded with their son Mason and

went underground, hiding in Orthodox Jewish communities in Worcester, Mass., St. Paul, Minn., Boston, Atlanta and Munsey, N.Y. She changed her name from Toby Miller to Deborah Solomon, and Mason's to Moishe Solomon. Last April, Arnold received a tip that Toby and Mason were in New York from a woman who recognized their picture in a magazine. Since his son had vanished, Arnold, a postal office analyst, has founded Children's Rights, Inc., a clearing house for parental child-snatching, headquartered in Washington, D.C. He recently sued for custody of Mason, but settled for visitation rights when he realized his 9-year-old son's ultra Orthodox Jewish life style would make it difficult

to leave his mother. "Mason is a completely different person than he was five years ago. It's sad," says Rae Gummel, Miller's second wife. "If we had won custody, I don't think Mason would be happy." Toby was able to get away with her crime and still collect child support from her ex as well. Miller, like the firefighter from Brooklyn, must be content with the satisfaction of knowing where his youngster is — and with regular visitations.

Why is child-snatching so prevalent? Part of the problem is that the laws are usually only casually followed, viewed as a nuisance by already over-

worked prosecutors and police. Lack of federal and state legislation continues to reinforce the spathy toward kid-snatchers. And so do attorneys, who often encourage their clients to swipe their offspring, knowing that a simple wrist-slapping is the worst sentence many judges will dole out.

But not for long. The flood of new bills, an increase in snatchings, and the growing public awareness of the problem attest to a rapidly changing legal and social attitude. In the meantime, however, children like Kevin Reiss are clearly the victims because, as one exasperated parent points out: "There seems no alternative except for mothers and fathers to take the law into their own hands." □

Gerald F. Klejnot, Sr.
10100 Allentown Road
Friendly, Maryland 20022
January 30, 1980

Senate Committee on Criminal Justice and,
Senate Committee on Children and Human Development
Dirksen Senate Office Building, Room 6226
Washington, D. C. 20510

Honorable Sirs:

I am in favor of S 105, the Parental Kidnaping Prevention Act of 1979. My reasons are many, but the strongest is because of my experiences with my ex-wife thwarting visitation. Last year and at Christmastime in 1978, she chose to prevent me from seeing either of my children because of a letter that I had written to my son telling him that I wanted him to come to live with me.

As a result of her interference with the visitation, I paid out about \$1500.00 in legal fees, expended hundreds of hours of my time and energy to rectify the situation. The problem has finally been resolved, but damage to the children has been the result. My son is under probation in the State of Tennessee, which I attribute to his mothers attitude. I believe that, had visitation been unencumbered over the years since we separated, my son would be unscathed by the emotional conflicts that are causing him problems now. I believe that S 105 will go a long way toward preventing such problems, especially after a few cases are initially prosecuted and publicized.

Yours very truly,

Gerald F. Klejnot, Sr.

Dear Sen Mathias,

Thank you for taking time to notify me of the hearing on S 105. I would also like to express my gratitude to Liz McNickels for the help she afforded me upon my follow-up. I have had a deep personal interest in this bill for well over a year. I had formerly sent in a rather detailed document of my experiences and recommendations thru Sen Biden's office. I had hoped that that document would be given consideration by your subcommittee when hearings were held. I had also requested the opportunity to testify in person. I do realize that a number of qualified witnesses have testified and am certainly grateful. However, I would like to address a very specific problem facing deserted parents who have already suffered unbearable injustice without any hope until this type of bill. I would appreciate it if you could add the following suggestion to the

record of the joint hearing on S 105 which you held on January 30, 1980.

Namely, that an amendment be added to S 105 which states that regional boards be established which would allow parents who have already been victims of partners who flee the home state, as defined in the bill, to appeal for immediate extradition to the home state and that such regional boards be empowered to grant immediate visitation to the offended partners until such time that court proceedings can be held in the home state, defined as state where child lived with both parents as a matter of common knowledge. This boards powers would supercede any conflicting custody orders involving (2) sovereign states and establish once and for all the home state. Both parents would then be afforded due process in a new custody hearing.

To fail and provide an appeal process for the thousands of parents who have been deserted and deprived access to a child or children, which at one time were a very important or vital part of their lives, would be the greatest social injustice of modern times. No parent, no matter what the circumstances, has the right to deprive a child access to the other parent, without proper due process. No parent should ever be allowed to be both judge and jury.

Sincerely,

Nicholas D. Trisone
 Trumbull Fathers for Equal Rights

Senator Charles Mathias
 358 Russell
 U.S. Senate Office Bldg
 Washington, D.C. 20510

Ref. S105 - The Parental Kidnapping Prevention Act

I request to go on record as being in support of S105 for the following reasons:

Child-Snatching is an act against innocent children that must stop. Most people possess the capability of becoming a biological parent. This should not give a biological parent the right to snatch his or her child and proceed to strip this child of his name, family, friends, security, heritage, and teach this child that his custodial parent and grandparents are dead. This procedure most certainly sets the stage for psychological damage and emotional problems that will last a life time.

After the child is snatched, in this case by 3 hired men with a gun, accompanied by the Mother, by a parent there is no place to go for help. The local, county and state law enforcement can't help. This leaves the victimized family in a state of shock, mental anguish, and frustration. The expense becomes great. People who could help are not willing to help. Their reaction is- if your child is missing why aren't the police looking for him? You have to hire private investigators in order to get any information. You chase every lead in hopes of gaining the knowledge of knowing if the child is dead or alive. It is absolutely traumatic. Your need to know the fate of the child over powers all else. All of a family's resources are committed to continue the search.

After twenty-two months of living hell, our prayers were answered. The child was found and returned. The legal events that followed reinforced my firm conviction that Federal legislation that makes child-snatching

illegal was necessary. The circuit courts will not find a parent(at least a mother) guilty of snatching their own child. The courts did not hesitate to add to the emotional problems of this child. This particular child had been living and running with 2 fugitives from justice, his Mother and her boy friend. He knew how to get groceries without paying and would automatically hide from a policeman. He had been told we were dead and he did not know his last name, when found. He had been baptized several times to change his name in order for his Mother to collect welfare. The court system use a "truth stick" on him. He was kept very busy with health department personnel, The State Attorney, attorneys, psychiatrists, judges, court appointed counselors, two of his own court appointed attorneys. He was ordered to supervised visitation with his Mother, and while under supervision was allowed to accept a telephone call from his maternal grandmother saying they would take him again. Everyone took a piece out of this child because there are no guidelines. A small child should never be put through this. Court ordered activities ranged from 3 a week to 3 a day. This child needed stability! The courts seemed determined to ignore the fact that he had been snatched by his Mother. The child was old enough to be aware that he had been lied to. He now knew we were alive and liked his new found identity. HE WILL HAVE EMOTIONAL SCARS ALWAYS.

No person should be allowed to steal another persons identity and heritage. A child is a person and should have the right to know who he is. With no laws to make Snatching illegal not guidelines for the courts, the child will continue to be the big loser.

The passage of S105 will be a sure deterrent to Child-Snatching.

CC;
Sen. Wallop
Rep. Bennett
Sen. Stone, Fla.
Sen. Chiles, Fla.
Rep. Nelson, Fla.

Thank you,

Margaret Strickland
Margaret Strickland
441 Milford
Merritt Island, Fla. 32952
Phone-305-452-8707

As a parent of a snatched child I can attest to the horror that goes with being the parent who did not know where to turn for help. I can also tell you that the child who is snatched will be forever scared. This crime against children should be stopped. I know I cannot afford in any way for this to happen to my child again - and yet the courts have me in a situation that it would be very easy for my ex-wife to do a repeat snatching.

MY SON COULD NEVER BE A STABLE PERSON IF THIS HAPPENS AGAIN.

Please pass legislation to protect these children. The Parental Kidnapping Prevention Act will help.

Thank you,

David Strickland

David Strickland

460 Norwood

Merritt Island, Fla. 32952



DEPARTMENT OF STATE

Washington, D.C. 20520

FEB 11 1980

Dear Senator Mathias:

This is in response to your letter of January 17, 1980. At the present time, the State Department becomes involved in international child abduction cases primarily in two respects:

- (1) Passport procedures are available in appropriate circumstances in order to assist parents who are trying to locate or prevent travel of minors in child custody disputes, and
- (2) Consular service officers abroad will, on appropriate request, provide a "welfare/whereabouts search" to determine the location and condition of a child.

Fuller descriptions of these two functions are provided in Enclosures A and B.

In addition, there are international efforts presently proceeding which seek to address the problem of international child abduction. In particular, the Hague Conference on Private International Law has prepared a preliminary draft Convention on the Civil Aspects of International Child Abduction which will

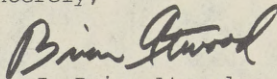
The Honorable
Charles McC. Mathias, Jr.,
United States Senate.

form the basic document for intergovernmental negotiations in the course of the 14th Quadrennial Session of the Hague Conference in October 1980. The United States, as a member of the Hague Conference, has actively participated in the work of its Commission which produced the preliminary draft Convention. The policy and provisions of S. 105 are relevant in this connection, especially as regards parent locator services. A fuller description of this activity forms Enclosure C.

Finally, the Department of State would like to comment on subparagraph (c)(1)(E) of proposed new 18 U.S.C. 1023, as a matter within its special interest. This subparagraph is a jurisdictional one, which makes the section applicable if the child is "a foreign official, internationally protected person, or an official guest as those terms are defined in 18 U.S.C. 1116(b)". Many of the persons, both victims and accused, who meet this description are foreign diplomats who have full immunity from United States criminal jurisdiction. Persons with this status are not amenable to the law unless their embassy executes a written waiver of immunity. Those described in the subparagraph who do not have this immunity would be subject to Federal jurisdiction on one or more of the bases set forth in subparagraphs (A) through (D). Consequently, we see no need for subparagraph (E), and it may unnecessarily complicate the task of Federal courts asked to give it effect against persons not subject to United States jurisdiction.

If you have further questions which we can assist you with, please let me know.

Sincerely,



J. Brian Atwood
Assistant Secretary for
Congressional Relations

Enclosures

February 7, 1980

ENCLOSURE A

PASSPORT PROCEDURES IN CHILD CUSTODY DISPUTES

The Department makes every effort to assist parents who are trying to locate or prevent the travel of minors in custody disputes. Normally when issuing passports for minor children, the Department presumes that both parents have equal custody and will give effect to each parent's right to act on behalf of the child unless otherwise informed. The Department will issue a passport for a minor child to either parent if the requirements with regard to citizenship, identity, fees and photos are fulfilled.

If the Department is informed that one of the parents has sole custody of the child, and a copy of the custody order is provided along with a request that a passport only be issued for the child with the consent of the custodial parent, issuance will then be denied to the non-custodial parent under Section 51.27 of Title 22 of the Code of Federal Regulations.

It is the policy of the Department that no extraterritorial validity will be given to child custody orders. Applications executed abroad will be denied only upon presentation of an order issued by a court of the country in which the application is made. The order must either award custody to the parent who objects to issuance of the passport or restrain removal of the child from the

jurisdiction. Once a passport has been issued, the existence of a court order establishing child custody will not provide the basis for revocation of that passport.

The Department will provide information about a minor child to either parent unless it appears that imminent harm would result, or unless one of the party's parental rights have been irrevocably severed by a competent court.

Under Section 1203(a) of the proposed amendment to Title 18 of the United States Code, the penalties proposed for interfering with custodial rights entitled to enforcement under proposed Section 1738A of Title 28 of the U.S. Code are \$10,000 or six months imprisonment or both, and \$10,000 or 30 days or both. These penalties fall within the criminal definition of misdemeanor and not felony under 28 U.S. Code, Section 1. It should be pointed out that under present 18 U.S.C. 1073 and 22 Code of Federal Regulation 51.70(a)(1), if a person is subject to an outstanding Federal warrant of arrest for a felony, including a Federal Fugitive Felon Act warrant, a passport could be denied or revoked. This would not apply to adults wanted under the proposed Section 1203(a).

February 7, 1980

ENCLOSURE B

CONSULAR SERVICES ABROAD: WELFARE AND WHEREABOUTS SEARCH

When the Department receives a request for assistance in a transnational child abduction case, it notifies the appropriate foreign service post. On the other hand, foreign service posts are often directly approached by the American citizen parent. In either case a foreign service post will act within the guidelines set forth by the Department at Volume 7 of the Foreign Affairs Manual, Section 140 and following.

Upon receipt of a request for assistance in a child custody case the post's responsibility is to provide a welfare/whereabouts search. The post attempts to locate the child and determine the child's state of health and present circumstances. In locating the child, the post has the obligation to use any and all of the tools available in any search for a missing American unless directed otherwise.

In many instances the parent in the United States will ask that an investigation be low-key or as discreet as possible to avoid frightening or alerting the person with the child.

When the child is located, the consul makes every effort either to interview the child personally or to have an appropriate local official residing near the child make

a personal visit. In making such a request, the post points out to the local authorities that the interest of the United States Government is not necessarily in the return of the child but in the health and welfare of a minor United States citizen which is an internationally recognized function of a nation's diplomatic and consular service.

However accomplished, the post must satisfy itself as to the health and well-being of the child as part of its responsibility to the inquirer and the child. Should there be allegations of child abuse or potential danger or harm to the child, the post will make strong representations to the local authorities for a thorough investigation and, if necessary, removal of the child into the protective custody of the local courts or child welfare service. This situation is especially important when the person with the children is known to be dangerous or mentally ill.

In addition, the post should be able to describe the general nature of the legal process which the inquirer must pursue to recover the child.

The consular officer can provide an attorney's list and assist the American citizen parent to maintain contact with the attorney and keep informed on the status of the

case. The consular officer may follow up with representations to local government officials if necessary to ensure that the rights of the U.S. parent and child under local law and generally accepted international standards of justice are respected.

The consular officer should also refer the parent to a pastor, rabbi, physician, social worker or psychiatrist if counseling is needed, or to organizations or individuals within the local American community if moral support is needed.

The consular officer has no legal authority or duty to obtain custody of the child and return him or her to the requesting parent. A United States court decree granting custody frequently has no effect in a foreign country unless accepted or adopted by a court in that country in a separate civil action. Courts in many countries, if not most, are not likely to accept and enforce a U.S. court decree without hearing the case on its merits. In many countries a non-citizen (i.e. the American citizen parent) has little chance of being awarded sole custody of a child when the other parent is a national of that country.

The consular officer may not assist the American citizen parent to regain physical custody of the child illegally or by force or trick. The consular officer

should inform the parent of the dangers involved in such action, including the possibility of criminal prosecution if local laws are violated.

The consular officer may not assist the American citizen parent to leave the country with or without the child if such departure violates a court order or the laws in effect in the country.

The embassy may not offer refuge to the parent and child in the embassy or the residence of any member of the official staff. The terms under which refuge may be extended to American citizens or others in imminent danger to their lives are spelled out in existing instructions (2 FAM Sec. 227 through 229). Under these terms, for example, a consular officer could appropriately allow an American citizen fleeing attempted violence or a credible threat of violence from a spouse to enter the embassy until steps were taken to arrange police protection. Refuge under these terms could not extend to allowing the American citizen parent to remain in the Embassy solely to avoid the enforcement of a court order returning the child to the other parent or to prevent the other parent from taking the child.

February 7, 1980

ENCLOSURE C

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
PRELIMINARY DRAFT CONVENTION ON THE CIVIL
ASPECTS OF INTERNATIONAL CHILD ABDUCTION

The Hague Conference on Private International Law has prepared a preliminary draft Convention on the Civil Aspects of International Child Abduction which will form the basic document for intergovernmental negotiations in the course of the 14th Quadrennial Session of the Hague Conference in October 1980. The United States, as a member of the Hague Conference, has actively participated in the work of its Commission which produced the preliminary draft Convention.

The primary purpose of the draft Convention is to deter international child abduction, providing for the rapid return of a child abducted across an international boundary to the country and to the adult care from which it was abducted. The Convention would serve to remove the incentive for such abductions to occur in the first place by depriving the abducting person of the potential legal benefits of having taken the law into his hands. It further provides for the cooperation of the governmental authorities in the involved Contracting States to locate and achieve such a return of the child.

It is not possible at this time to know with any certainty whether the United States would eventually wish to sign the Convention text resulting from the session of the Hague Conference in October. Moreover, only once the final text of the Convention is known will it become clear whether Federal implementing legislation would be necessary to enable the United States effectively to meet its obligations under the Convention and to ratify it or whether ratification will be possible on the basis of the consent of the United States Senate. Should implementing legislation be required, S. 105 might well represent an appropriate vehicle for enactment of the necessary legislative provisions. Effective parent locating services, for example, would be an important component of successful operation of the Convention.

The Department would be grateful if the subcommittees would bear in mind the involvement of the United States Government in the efforts of the Hague Conference to achieve an acceptable and useful Convention to deal with the difficult problem of international child abduction in a mutually agreed manner. A copy of the text of the preliminary draft Convention is enclosed for the information of the subcommittees. In addition, there is enclosed an explanatory memorandum prepared by Professor Brigitte M. Bodenheimer of the University of California Law School at Davis, who has been the legal expert responsible for advising the Secretary of State's Advisory Committee on Private International Law on this topic. Also enclosed is a report prepared by Professor Bodenheimer reporting to that Advisory Committee on the meeting of the Hague Conference's Special Commission on International Child Abduction in November 1979 at which the preliminary draft Convention was prepared and its purpose and operation were discussed.

Enclosures:

- Draft Convention
- Explanatory Memorandum
- Report on Second Meeting

Conférence de La Haye de droit international privé
Hague Conference on Private International Law

LEGAL KIDNAPPING
Doc. prélim. No 6
Prel. Doc. No 6
Nov. 1979

AC 33/1

AVANT-PROJET DE CONVENTION SUR LES ASPECTS CIVILS
DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS

adopté par la Commission spéciale
le 16 novembre 1979

• • •

PRELIMINARY DRAFT CONVENTION ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION

adopted by the Special Commission
on November 16th, 1979

Bureau Permanent de la Conférence
20, Javastreat, La Haye

PRELIMINARY DRAFT CONVENTION ON THE CIVIL ASPECTS OF
INTERNATIONAL CHILD ABDUCTION

adopted by the Special Commission
on November 16th, 1979

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

The objects of this Convention are -

- a* to secure the prompt return of children wrongfully removed to or retained in any Contracting State, and
- b* to secure in all Contracting States the effective enjoyment of the rights of custody and of access.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. They shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful when it is in breach of rights of custody actually exercised by a person / or institution /, either jointly or alone, based upon the law of the State in which the child was habitually resident immediately before the removal or retention, whether through operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having the force of law in that State.

Article 4

The Convention shall apply to any child under the age of 16 7 years who was habitually resident in a Contracting State immediately before any breach of custody or access rights.

Article 5

For the purposes of this Convention -

- a "rights of custody" are rights relating to the care of the person of the child, and in particular the right to determine the child's place of residence;
- b "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States and States with more than one system of law shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the relevant Central Authority in that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through other competent authorities in their States, they shall -

- a take steps to discover the whereabouts of wrongfully removed or retained children;

- b* take or promote the taking of such provisional measures as may be necessary to prevent further harm to the child or further prejudice to interested parties;
- c* exchange, where appropriate, information relating to the social background of the child;
- d* take or cause to be taken all steps appropriate either to ensure the voluntary return of the child or to bring about an amicable resolution of the issues;
- e* provide information of a general character as to the law of their State relating to the application of the Convention;
- f* initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, where appropriate, the determination of issues relating to rights of custody and access;
- g* where appropriate, provide or facilitate the provision of legal aid and advice, including the services of legal counsel;
- h* provide such administrative arrangements as may be necessary and appropriate to achieve the safe return of the child.

CHAPTER III - RETURN OF CHILDREN

Article 8

Any person who claims that there has been a breach of his custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -

- a* details concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- b* the date of birth of the child;
- c* the grounds on which the applicant's claim for return of the child is based;

- d* all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -

- e* a certified copy of any relevant decision or any agreement having the force of law;
- f* a certificate or a sworn declaration emanating from a competent authority of the State of the child's habitual residence, or from a qualified person, concerning the contents of the law of that State with respect to custody rights;
- g* any other relevant document.

Article 9

Prior to the institution of legal proceedings, the Central Authority of the State where the child is to be found shall take or cause to be taken all appropriate measures in order to obtain the return of the child by consent.

Article 10

The judicial or administrative authorities of Contracting States shall act expeditiously on applications for the return of children.

If these judicial or administrative authorities have not reached a decision within six weeks after their receipt of the application, the Central Authority of the requested State shall so inform the applicant and the Central Authority of the requesting State, stating the reasons. The requirements imposed upon the Central Authority by this paragraph apply only where the Central Authority has been informed of the application.

Article 11

Where there has been a breach of custody rights in terms of article 3 and, at the date of the application to the judicial or administrative authority of the State where the child is located, a period of less than six months has elapsed from the date of the breach of custody rights, the authority shall order the return of the child forthwith.

However, where the residence of the child was unknown, the period of six months referred to in the previous paragraph shall run from the date of the discovery of the child, subject to the proviso that the total period shall not exceed one year from the date of the breach.

Article 12

Notwithstanding the provisions of the preceding article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person who has removed or retained the child establishes that -

- a at the time of the alleged breach the applicant was not actually exercising the custody rights or acting in good faith; or
- b there is a substantial risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authorities may also refuse the return of the child if they find that 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.

In evaluating the circumstances referred to in this article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority of the child's habitual residence.

Article 13

In determining whether or not the child should be returned, the judicial or administrative authority shall have regard to the law of the State of the habitual residence of the child before the removal, as that law is specified in article 3.

Article 14

The Central, judicial or administrative authorities of a Contracting State may request the authorities of the State of the habitual residence of the child to take all practicable steps to obtain a decision or other determination relating to the fact that the child has been removed or retained and that the child's removal or retention was wrongful within the meaning of article 3 of the Convention.

Article 15

The provisions of this Chapter do not limit the power of judicial or administrative authorities to order the return of the child after the expiration of the time limits set out in article 11.

Article 16

A decision concerning the return of the child shall not be construed as one relating to the merits of custody rights.

CHAPTER IV - RIGHTS OF ACCESS

Article 17

An application for fixing or protecting the exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through their competent authorities, may initiate or assist in the institution of proceedings with a view to fixing or to protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS

Article 18

No security, bond or deposit, however described, shall be required of a person habitually resident in a Contracting State as a condition of the initiation of judicial proceedings falling within the scope of this Convention.

Article 19

No legalisation or similar formality may be required in the context of the Convention.

Article 20

Any application, communication or other document addressed to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may object to the use of either French or English, but not both, by making the reservation provided in article X.

Article 21

Nationals of the Contracting States and persons who are habitually resident in the territory of those States shall be entitled in matters concerned with the application of the Convention to legal aid and advice in any other Contracting State as if they themselves were nationals of and habitually resident in that State.

Article 22

Each Central Authority shall bear its own costs in applying the Convention.

Central Authorities and other administrative authorities of Contracting States shall not impose any charges in relation to applications submitted under this Convention but may -

- a require the payment of any charges which are not met through the legal aid system and which arise from the employment of legal counsel;
- b require the payment of the expenses incurred or to be incurred in repatriating the child.

Article 23

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well-founded, the Central Authority is not obliged to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted of its objections.

Article 24

A Central Authority may require that any application be accompanied by an authorization empowering it to act on behalf of the applicant, or to designate a person or institution so to act.

Article 25

This Convention shall not prevent any person whose custody or access rights have been breached applying directly to the judicial or administrative authorities of a Contracting State.

Article 26

Any application submitted to the Central Authorities of the Contracting States in accordance with the terms of this Convention, together with documents and other information appended thereto or provided by a Central Authority, shall be admissible in the courts of the Contracting States. I

Article 27

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

- a any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 28

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 29

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article V

(Relations with other Conventions: to be decided by the Fourteenth Session.)

Article W

(Temporal application of the Convention: to be decided by the Fourteenth Session.)

Article X

(Reservation accepted.)

Article Y (to be included among the final clauses)

If a Contracting State has two or more territorial units which have their own rules of law in respect of custody of children, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention shall extend to all its territorial units or to one or more of them, and may modify its declaration by submitting another declaration at any time.

These declarations shall be notified to the Ministry for Foreign Affairs of the Kingdom of the Netherlands, and shall state expressly the territorial units to which this Convention applies.

EXPLANATORY COMMENTS
ON THE
PRELIMINARY DRAFT CONVENTION ON THE CIVIL ASPECTS
OF INTERNATIONAL CHILD ABDUCTION

Prepared By
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The Special Commission on Child Abduction of the Hague Conference on Private International Law held its second meeting in November, 1979. Delegates from 23 nations participated in the two-week working session at the Academy of International Law at the Peace Palace in The Hague, Netherlands. The United States was represented by B. Bodenheimer, University of California Law School at Davis, J. Hergen, Office of Foreign Litigation, Department of Justice, and L. Stotter, past Chairman of the Family Law Section, American Bar Association. The participation of the United States is under the auspices of the Department of State and in consultation with the Office of the Legal Adviser of the Department of State and the Secretary of State's Advisory Committee on Private International Law. Other countries represented were Argentina, Australia, Belgium, Canada, Czechoslovakia, Denmark, Finland, France, West Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, and Yugoslavia.

The delegates completed work on a preliminary draft of an international agreement on child abduction. This Draft will now be studied by the various governments and by interested groups and individuals in the different countries. The Department of State will submit its comments and proposals on the text of the Draft, including possible suggestions for revisions, to The Hague Conference Permanent Bureau by June 1, 1980, for publication along with the similar observations of other member states of the Hague Conference.

Subsequently, there will be governmental-level negotiations on this Draft Convention, in the course of the 14th quadrennial session of the Hague Conference in Fall, 1980. It is anticipated that an agreed version of the Convention open for signature will emerge from the Conference session. The Convention would go into effect upon the expiration of a certain period of time (probably 60 days) after ratification by at least three participating states and would then become binding between all states that have ratified it. In the United States ratification will require prior United States Senate advice and consent to ratification.

Objectives of the Convention

The proposed Convention is intended to prevent child abductions by putting would-be abductors on notice that their removal of a child to a foreign country, or their wrongful retention of a child abroad, will result in the prompt return of the child by the country of refuge, so as to restore the legal and factual situation that existed before the removal or retention.

In addition, the Convention seeks to protect visitation rights (referred to as "rights of access") between parents and children living in different countries. Further, it seeks to assist aggrieved persons by designating a governmental office, i.e. "central authority", in each country which will be in communication with central authorities in other countries to facilitate and expedite the process of locating and returning kidnapped children.

As the title of the Draft indicates, the Convention will deal exclusively with the civil aspects of child abduction. It will not cover child stealing under the criminal law or extradition from and to foreign countries. The jurisdiction of the Hague Conference is limited to international private law matters.

Major Provisions of Draft ConventionApplicability
of
Convention

The Convention would apply to abductions prior to a judicial custody determination as well as post-decree abductions; it would cover child removals or retentions by joint custodians; it would apply to abductions by a parent as well as a parent's agent, a relative, a foster parent, a prospective adoptive parent, or by any other person who removes or retains a child in order to assume the child's care and control.

The aggrieved person who seeks return of the child would usually be a parent, but might also be a relative, guardian, or other person with custody rights from whom the child was removed or withheld. An institution, such as a child care agency, may be added to the group of possible applicants for the return of a child. (See Article 3. Language in brackets indicates that the Special Commission has postponed its decision as to the inclusion or exclusion of bracketed words.)

Abductions of minors 16 years of age or older would not be covered by the Convention. It is possible that the age limit will be lowered further to age 14 or 15 at the session of the Hague Conference (See Article 4).

Central
Authorities

The Convention would require each contracting country to designate a central authority (or several central authorities) to serve as a clearing-house for incoming and outgoing applications for the return of children. Aggrieved persons would normally make their application on a model form which will be attached to the Convention. Central authorities would have responsibility to cooperate and exchange information with central authorities of other countries; they would take steps to locate children through their own efforts or with the assistance of other agencies, such as governmental locating services; they would aid in bringing about the voluntary return of a child or an amicable resolution of the custody or visitation dispute; they would facilitate the institution of legal proceedings when necessary, including assisting in

obtaining legal representation; finally, the central authorities would help arrange for the actual return of the child (See Article 7). Article 9 reiterates and gives special emphasis to efforts by central authorities to obtain the voluntary return of a child before legal proceedings are institute.

If the Convention is concluded and ratified by the United States, a Central Authority would be established in one of the departments of the Federal Government; state offices might also be involved. The Office of Foreign Litigation in the Department of Justice currently serves as the Central Authority under two other international conventions. At the present time it cannot be predicted, however, how the Convention will be implemented in this regard.

Court Order
for
Child's Return

Articles 10-16 of the Draft contain the major provisions applicable to legal proceedings for the return of an abducted child. In most countries legal proceedings are conducted by the courts; but in some countries, such as Denmark, Norway, and Switzerland, legal proceedings involving child custody can also take place before administrative bodies. For this reason the Draft refers to "judicial or administrative authorities" in the Articles dealing with legal proceedings. For simplicity's sake these Explanatory Comments will use the term "courts" rather than "judicial or administrative authorities".

Court proceedings are expected to be completed within a short time, lasting no longer than six weeks, if possible (See Article 10). Such expeditious action is thought feasible because the court would not consider or reconsider the merits of the custody question (see Article 16); under the Convention the court would simply determine whether there had been a "breach of custody rights," that is, a wrongful removal or retention of a child. Once that fact has been established, the court would be required to "order the return of the child forthwith" (Article 11).

As has been mentioned, the Convention seeks to restore the situation as it existed before the abduction by returning the child to the country of origin. If the abductor claims to have a better right to custody or to be the more suitable custodian, he or she must address a court in the country of origin after the child's return. That court will consider the merits of the case: where there was no prior custody decision, the court in the country of origin may award custody, considering the entire family situation, including the relationship of the child to either party, possible explanations for the child's removal or retention, and the child's wishes, if the child has attained a sufficient age and degree of maturity. The Court may also refer the parties to custody counseling to reach agreement, if possible, as is the practice in some parts of the United States. In addition, the court may order a custody investigation and report by a social service agency regarding the conditions in the child's potential homes, including information to be obtained from abroad. If there was a pre-existing custody decree, the court in the home country may have a full hearing on the question of changed circumstances, including the evidence referred to above, which may lead to a modification of the custody decree.

Again, the court in the country to which or in which the child has been abducted has a different function under the Draft Convention. It does not consider or reconsider the merits of who should have custody of the child. It has the limited function of determining whether there has been an improper removal or retention of a child. If that fact has been found, it orders the prompt return of the child.

Time Limits
on
Prompt Return

The Convention's "prompt return" requirements would be subject to the applicant's ability to comply with rather tight time schedules. Commencement of court proceedings would normally have to take place within six months from the date of the wrongful removal or retention. If the child was concealed, up to six additional months would be allowed for locating the child, but one year from the abduction would be the absolute deadline for the commencement of proceedings for prompt return

of the child. After the expiration of the six-month (or one-year) period some courts may return a child, but at that point courts would no longer be obligated under the Convention to order the immediate return of an abducted child (see Articles 11 and 15).

The reasons for the strict time limits are twofold. In the first place, it was thought that a parent or other aggrieved person who is seriously concerned about a child would take immediate action to set the return process in motion. Failure to take such action may be evidence of ambivalence about, or acquiescence in, the assumption of custody and custodial responsibilities by the person who removed or retained the child. Secondly, the delegates of many countries made the assumption, based apparently on opinions expressed by some social service or mental health professionals, that children will generally be integrated into a new cultural environment within a period of six months to a year, and that it may be harmful to them to be uprooted from this environment at a later date.

If time is running out, or in any other case, the aggrieved person may apply directly to a central authority in the country where the child is presumed to be (See Article 8). Further, the applicant may bypass central authorities altogether and immediately petition a court for the return of the child (See Article 25). If such shortcuts are employed, the applicant would not lose the opportunity to approach the central authority in the home country or another central authority simultaneously or at a later time to take advantage of the assistance that authority can offer.

Exceptions to Child's Return

According to Article 12, a court would not be bound to order the return of a child in three specific situations.

(1) The court may refuse to return the child if the applicant was not actually exercising custody rights at the time of the alleged wrongful removal or retention, or if he was not acting in good faith.

Failure actually to exercise custody rights would be deemed to mean, for example, that the applicant, although he or she had legal custody under a court decree, had relinquished physical care and control of the child to the person who removed the child. Lack of good faith would exist, for example, if it was the applicant who had abducted the child in the first place contrary to the parties' agreement and had perhaps hidden the child before a "counter-abduction".

(2) Under a second exception a court is not bound to order a child's return if there is a substantial risk of exposing the child to physical or psychological harm or of placing the child in an intolerable situation.

This is an emergency clause which calls for the exercise of the inherent power which courts in many countries already possess to protect children from danger.

Both exceptions place the burden of proof upon the alleged abductor. In other words, the person who removed or retained the child must convince the court that clear facts exist which bring one of the exceptions into play. The court must also consider any information obtained from the country of origin relating to the social background of the child.

(3) A court may also refuse the return of the 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 his or her views. Again, the court must consider any relevant evidence from the home country before it makes its decision under this exception.

In countries where courts may be somewhat reluctant to return a child who has been brought there by one of their nationals, this exception may well make the child the ultimate judge of whether the abductor succeeds in retaining the child. Some delegations, including that of the United States, expressed the view that this exception

places an inordinately heavy burden of responsibility on young children which they are not psychologically equipped to handle, not to speak of the pressures that may be brought to bear upon them by the person with whom they live at the time and on whom they are fully dependent. Moreover, consideration of the child's views would lead to a determination of the merits of the custody question, a question which is intended to be reserved for the courts of the country of origin, as has been explained above.

A compromise solution which would have limited this exception to children 12 years of age or older won the support of many delegates, but was ultimately dropped.

Visitation Rights

Article 17 of the Convention deals with rights of access or visitation. While this Article does not specify exactly how visits of children with parents in another country are to be secured and how the children's return is to be safeguarded, it does express the intent that central authorities and the courts are to promote the peaceful enjoyment of international visitation rights.

Costs

According to Article 22, the central authorities in each country would assume their own administrative costs. There would be no application fee. Attorneys' fees, travel and other expenses incurred by the applicant, including the cost of the child's return, would be borne by the applicant. In some countries, however, the abductor may be required to reimburse the applicant for such expenditures.

Other International Efforts to Curb Abductions: The Strasbourg Convention

Long before the Hague Conference began to address the problem of international child abduction, the Council of Europe had attempted to devise a European agreement on the subject. Various draft proposals were prepared at meetings held at Strasbourg, France, over a period of more than six years. Just before the Hague Special Commission assembled for its

first meeting in March of 1979, the Council of Europe completed a draft convention which has since been put in final form, but has not yet gone into effect. The Strasbourg Convention is much more complex than the Hague Draft. Unlike the Hague Draft, the Strasbourg Convention does concern recognition and enforcement of custody decisions generally, not merely the restoration of custody following an abduction.

Many of the European countries which participated in the work at Strasbourg have also been very active in promoting the project of the Hague Conference. At this time it is impossible to predict whether European countries will choose one of the two conventions over the other or will adopt both. In any event, there is a distinct likelihood that agreement will be reached on a Hague Convention in Fall 1980 and that it will be ratified by some European countries and by some non-European countries, such as Canada and Australia.

Davis, California, December 1979

REPORT
on the
SECOND MEETING OF THE SPECIAL COMMISSION
on
INTERNATIONAL CHILD ABDUCTION

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

The Hague, Netherlands

November 5-16, 1979

Submitted to the SECRETARY OF STATE
by
BRIGITTE M. BODENHEIMER
United States Delegate

January 10, 1980

I. BACKGROUND

The first meeting of the Special Commission in March, 1979, had been somewhat overshadowed by the sudden emergence on the eve of the Hague meeting of a Draft Convention of the Council of Europe on the same subject. The great majority of countries represented at the Hague had participated in the deliberations at Strasbourg which had extended over six years. Nevertheless, the delegations assembled at the Hague in March were ready to take a fresh look at the international abduction problem.

Whereas the Council of Europe had drafted three elaborate sets of provisions regulating the recognition and enforcement of foreign custody decisions with varying exceptions, the Hague Commission attempted to devise one single rule of recognition and enforcement with limited exceptions. While the Strasbourg Draft had addressed itself primarily to abductions in violation of custody decisions, the Special Commission sought to deal more effectively with the increasing phenomenon of pre-decree abductions. The Special Commission agreed with the Strasbourg Draft's emphasis on administrative cooperation, but sought to draft the relevant provisions so as to also accommodate the needs of non-European countries. In addition, it considered the inclusion of limited jurisdictional rules.

Toward the end of the March meeting, however, serious differences of opinion developed concerning permissible exceptions to the recognition principle. An influential minority of delegations sought farreaching discretion of their courts to reopen and reconsider the merits of

foreign custody decisions. This approach would practically have preserved judicial attitudes as they now exist in some countries in the absence of a convention. It seemed that it would be necessary to permit reservations which could affect the very core of the convention.

Following the March 1979 meeting, the future of the Hague convention became further clouded due to new developments at Strasbourg. In the summer and fall of 1979 the Council of Europe forged ahead with its own work and adopted the final text of a convention, entitled "European Convention on Recognition and Enforcement of Decisions Concerning Custody and on Restoration of Custody of Children." There were even some rumors that a non-European country may have indicated some possible interest in acceding to the Strasbourg Convention. Under these circumstances, there was some apprehension that the Hague project may ultimately fail.

II. THE FIRST DAY'S SURPRISES

As the delegates assembled for the second meeting of the Special Commission on November 5, 1979, it became apparent that the European delegations not only had returned despite the completion of the Strasbourg Convention, but had also maintained a serious interest in developing a Hague draft during the November session. This was the day's first pleasant surprise.

A second surprise awaited the delegates at their desks:

Realizing that this particular convention presented unusual difficulties and complex issues of law and policy, the Permanent Bureau had decided to break with tradition. The Bureau had proceeded to prepare the basic outlines of a convention draft rather than leave the entire task to be accomplished by the Commission within the 2-week

meeting. The Bureau had conferred with the Commission Chairman and the Rapporteur prior to the meeting and had won their approval of the "skeleton draft."

This draft abandoned the idea of laying down hard and fast rules of recognition and enforcement of custody decrees and exceptions thereto. It abandoned jurisdictional restrictions. It simply called for prompt restoration of the custody situation as it had existed before the abduction of the child. The delegates quickly agreed to adopt this draft as the basis for their discussions.

III. ORGANIZATION OF THE MEETING

As in March, 1979, twenty-three member states of the Conference were represented. This time Turkey sent no delegate, but Argentina was represented. Other non-European delegations came from Australia, Canada, Japan, and the United States. The delegation of the United States was made up of Brigitte Bodenheimer of the University of California Law School at Davis, James Hergen of the Office of Foreign Litigation, Department of Justice, and Lawrence Stotter, a Family Law practitioner and past Chairman of the A.B.A. Family Law Section, who represented the American Bar Association. A list of the participants is attached to this Report.

The Special Commission was convened by Georges A.L. Droz, Secretary General of the Hague Conference. Mr. A.E. Anton of the Scottish Law Commission continued as Chairman; Mr. H. A. Leal of the Ontario Ministry of the Attorney General again served as Vice-Chairman; and Ms. E. Perez Vera, Professor of International Law at Madrid, again was Rapporteur of the Commission.

During the first week the delegates undertook a paragraph-by-paragraph discussion of the skeleton draft, resolved issues by vote, and gave instructions to the Drafting Committee which began its work the third day of the session.

The Drafting Committee was chaired by Vice-Chairman Leal (Canada), and further consisted of the Rapporteur (Spain), Mr. L. Chatin (France), Mr. R. L. Jones (United Kingdom), and M. Savolainen (Finland).

The second draft--the first proposal of the Drafting Committee--became available at the beginning of the second week. This Draft again was read and debated section-by-section and revisions were made. Finally, on the last day--November 16--there was a "third reading," that is, the third draft was read in an abbreviated session. Under the rules governing this reading, corrections regarding draftsmanship and discrepancies between the French and English texts were made. Debate on substantive revisions required prior permission by majority vote. A number of delegates would have wished to air certain issues on that day. These issues remain to be resolved at the quadrennial session of the Conference in October 1980.

IV. THE NEW APPROACH: LIMITED OBJECTIVE OF PROMPT RESTORATION OF CUSTODY

At the 1976 Plenary Session of the Hague Conference, when the subject of child abductions was first considered as a possible item of the agenda of the Conference, the Swiss delegate declared that conventional approaches in his opinion do not suffice to deter kidnapping by parents. He proposed a novel approach, requiring the instant return

of an abducted child to the country of origin to restore the status quo ante without any other consideration. Only after the return of the child should it be permissible for a court to determine or redetermine the merits of the custody question.

This idea found its way into the Strasbourg Convention, but was there merely added to an existing draft on recognition and enforcement and was never fully developed.

At the March meeting the Hague Special Commission considered the idea, but at that time also tended toward an amalgamation of traditional recognition and enforcement rules with the prompt-return requirement. However, in the back of the minds of many delegates the impression was growing that in its attempt to devise strict rules of recognition and exceptions the Special Commission may have reached an impasse.

It was probably for this reason that the delegates welcomed the bold new approach incorporated in the "skeleton draft" and accepted its underlying premises with a minimum of discussion.

The words "recognition" and "enforcement" do not appear in the Preliminary Draft Convention that was adopted by the Special Commission. Neither is there mention of jurisdiction. Instead, the Draft requires that abducted children be returned "forthwith" (with some exceptions discussed below). It obligates the courts to "have regard to" the law and decisions of the State of the habitual residence of the child (Articles 11 and 13). In addition, the State of habitual residence may be requested to furnish a decision regarding the fact that the child has been wrongfully removed or retained (Article 14). The latter provision is of particular importance in cases of pre-decree abductions.

The vagueness of the terms used is intentional. The provisions must be read in light of the strong policy expressed in Article 1 "to secure the prompt return of children wrongfully removed to or retained in any Contracting State." The meaning of the Draft then is that foreign custody decisions are to be looked to, to be given great weight, that they are to be respected, if not "recognized." However, a residual discretion would remain to deviate from the foreign decision, or from the custody status existing by virtue of the law of the state of habitual residence.

The advantages of this approach, which were never directly articulated in the discussions, are twofold:

1. The Hague efforts can no longer be regarded as a near-duplication of the work at Strasbourg. The Hague Draft is different. It represents a novel approach. It is short, simple, and relatively easy to comprehend. It avoids legalistic distinctions to a large extent. It may avoid broad reservations which plague the Strasbourg plan. As a result, it may have considerable appeal.

2. The Draft represents a compromise between the differing viewpoints of those delegations which favored definite rules of recognition with few exceptions, and others which wished to leave the door wide open to the exercise of a judge's discretion regardless of an abduction.

V. EXPLANATION OF TERMS

The Hague Conference traditionally avoids definitions of terms to the largest extent possible. In the Draft under discussion there

are a few terms which, due to the absence of definitions, require an explanation.

1. Central Authorities, Competent Authorities, and Judicial or Administrative Authorities.

"Central Authorities" are the administrative bodies or offices of the government designed to carry out special functions regarding child abductions enumerated in the Draft Convention.

"Competent Authorities" are any governmental agencies, Federal, State, or local, such as law enforcement agencies, welfare departments, locator services, or child protection agencies.

The term "Judicial or Administrative Authorities" in most countries refers to courts; but in some Scandinavian countries and Switzerland legal proceedings involving child custody also take place before administrative bodies. For this reason Article 3 refers to a "judicial or administrative decision" and Articles 10-16, which deal with legal proceedings, use the term "judicial or administrative authorities" rather than "courts."

2. The term "abduction" appears only in the title of the Draft Convention and is there qualified by the addition of the words "civil aspects"; some members of the Special Commission felt that the word "abduction" standing alone may have a criminal law connotation. Accordingly, the body of the Draft uses the phrase "wrongful removal or retention" rather than "abduction." During the discussions, however, the briefer term "abduction" was frequently employed.

3. The term "abductor" has been avoided for the reasons just mentioned. Article 12, for example, speaks of "the person who has

removed or retained the child."

At the March meeting it had been assumed that the Convention would deal with international abductions "by one parent." On further thought, it became clear that this would narrow the scope of the Convention unnecessarily. A child may be abducted by a relative who is not a parent, by a friend, a parent's agent, a foster parent, a prospective adoptive parent, or anyone else who wishes to assume the child's care and control. Kidnapping for ransom and similar criminal activities would be excluded from the Convention.

4. "Applicant" means the aggrieved person who claims interference with, or breach of, his or her custody rights. This person is usually a parent, but may also be a guardian, a relative, or any other person who has obtained custody rights, as a rule by court order. However, a de facto custodian who has had the care of the child for a long period of time may qualify as an applicant under the law of some countries, if another person, including a parent, suddenly removes the child from the de facto home. See Article 3. The applicant may also be an institution, such as a child care agency, if it is decided at the October 1980 session to remove the brackets from Article 3.

5. "Rights of Access" is the British term for rights of visitation.

VI. BASIC PROVISIONS OF DRAFT CONVENTION

1. Objectives. Contracting States would be obligated to use the most expeditious procedures available to secure the prompt return of children wrongfully removed to or retained in their territories, and to secure the effective enjoyment of rights of custody and of access (Articles 1 and 2).

2. Scope of Convention. The Convention would apply to all child removals or retentions which are "wrongful." This includes removals or retentions which 1) violate a judicial decision, or 2) interfere with rights of custody existing by operation of law in the absence of a decision, or 3) violate an agreement having the force of law. This also includes removals or retentions of children by a joint custodian, whether before or after a custody decision or in violation of the type of agreement mentioned. Wrongfulness is determined by the law of the country in which the child was habitually resident immediately before the removal or retention (Article 3).

The Convention would apply only if the child involved was under the age of 16 and habitually resident in one of the Contracting States. It is possible that the age limit will be lowered to 14 or 15 years at the next Hague meeting (Article 4).

3. Central Authorities. Each Contracting State would be required to designate a Central Authority which would be in communication with Central Authorities in other Contracting States in order to facilitate and expedite the process of locating and returning abducted children. Federal States would be free to appoint more than one Central Authority; if they do so, they would have to designate one principal Central Authority to which applications may be addressed (Articles 6 and 7). Among other things, Central Authorities would take steps, or cause steps to be taken by other agencies, to bring about the voluntary return of the child or an amicable settlement of custody or visitation disputes before there is resort to legal proceedings (Articles 7(d) and 9).

4. Return of Children.

a) Applications to Central Authorities--Model Form. An aggrieved person may request assistance from the Central Authority of the child's habitual residence or from the Central Authority of any other country. The Special Commission agreed, upon the initiative of the United States and Swiss delegations, to add a Model Form of Request for Return of Children to the Convention which would simplify the collection of relevant information from applicants and speed up the processing of applications between Central Authorities. The Form, which would be recommended rather than mandatory, would be annexed to the Convention, probably by way of Joint Declaration, and would not become part of the Convention itself so that it can be readily revised from time to time. The final text of the Model Request Form is not yet available. It will in all likelihood solicit more information from applicants than the minimum requirements listed in Article 8.

Application forms and other documents transmitted to the Central Authority of a requested State are to be accompanied by appropriate translations. For particulars, see Article 20.

Central Authorities would not be obliged to accept an application for assistance if the request is clearly unfounded, for example, if it is vexatious or frivolous. This does not prevent the applicant from attempting to seek redress in court (see Articles 23 and 25).

Aggrieved persons may bypass Central Authorities in any event and may directly institute judicial proceedings (Article 25). They may wish to do so particularly when this is necessary to meet the time limits

of Article 10. This does not prevent them from seeking simultaneous or subsequent assistance from a Central Authority.

b) Court Orders for Prompt Return of Child. Articles 10 through 16 and Articles 25 and 26 deal with court proceedings. Since the Convention seeks to restore the status quo that existed before the abduction, the court's function would be a limited one. The court would not determine or redetermine who should have custody of the child. It would make no decision on the merits (Article 16). The court would simply determine whether there has been "a breach of custody rights," that is, a wrongful removal or retention. If that fact has been established, the court would be obliged "to order the return of the child forthwith" (Article 11).

Court action is to be expeditious and is expected to be completed within six weeks (Article 10). However, the Commission was somewhat at a loss as to an appropriate sanction in case of non-compliance. The French delegation proposed that upon the expiration of six weeks an order for the return of the child be entered automatically. Since this sanction was unacceptable to other delegations, a mere reporting requirement was added.

Article 26, if finally adopted, would assure the admissibility in court of documents provided by a Central Authority. This Article would aid considerably in speeding up the proceedings.

c) Time Limits on Prompt Return by Court Order. If six months or more have elapsed from the date of wrongful removal or retention to the date of commencement of court proceedings, a court would be under no

obligation to order the prompt return of the child. If the child was concealed, the absolute deadline would be one year from the date of the breach of custody rights (Article 11), whether the child has been found or not. After the expiration of the time periods mentioned, a court would have power, but would no longer be required, to return a child (Article 15).

d) Exceptions to Prompt Return by Court Order. A court would not be bound to order the child's return if the abductor proves

i. that the applicant was not actually exercising custody rights at the time of the alleged breach or was not acting in good faith; or

ii. there is a substantial risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; or

iii. 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.

The abductor's evidence would have to be backed up by information on the child's social background obtained from the state of origin, if provided by that state's Central Authority (Article 12).

The time limits and exceptions to the return of abducted children will be further discussed in the next Part of this Report.

5. Visitation Rights. The Convention is less specific regarding the legal protection of rights of visitation. The Special Commission recognized that frustration of visits between children and noncustodial parents frequently causes abductions; and that on the other hand visits

of the child in another country may cause wrongful retentions. The Commission had difficulty in resolving the problems involved. As a result, Article 17 principally expresses a general policy favoring international visits, especially for the benefit of bi-cultural children and parents. The Article leaves major responsibilities in this area to the Central Authorities in the hope of achieving settlements acceptable to the parties. Ultimately, court proceedings are envisaged. The delegates were aware of the fact that some of the language in this Article is vague, if not obscure, but were unable to reach agreement on more specific or more lucid provisions.

VII. MAJOR ISSUES DISCUSSED

1. Time Limits on Return of Child. The question of time limits generated extensive debate. It was agreed that the deprived person could be expected to take immediate action to set the return process in motion. Failure to act may be evidence of ambivalence about or acquiescence in the assumption of care and control by the person who removed or retained the child.

Beyond that point, there was a wide divergence of opinion. Some delegates assumed, apparently on the basis of opinions expressed by certain mental health professionals, that children will be integrated into a new cultural environment within six months to a year, and that it would be contrary to a child's interest to be uprooted and returned thereafter. Others stated that it is impossible to say in the abstract at what point in time a child's interest may be adversely affected by a return, and that the question of social integration and the harm of

uprooting depends entirely on the particular child and the specific circumstances. Again others questioned how one could speak of the child's integration when the abductor moves from place to place in a nomadic fashion in order to avoid detection. Some delegates saw the time limits as a bonus to a clever kidnapper, placing a premium on concealment. One delegate remarked that it would be against the interest of the child to punish the kidnapper by sending back the child, but another one countered that parents have certain rights, too.

Despite this division of opinion, the idea of social integration of a child within rather brief periods of time gained the upper hand over the views of those delegations, including that of the United States, that the 6-month period to commencement of court proceedings (or 1 year in case of concealment) is too short to serve as an effective deterrent to abductions. A proposal of the United States to adopt an overall 1-year limit at the very least to allow the aggrieved person sufficient time was defeated. However, Article 15, also proposed by the United States delegation, which reaffirms the existence of a court's power to order the return of the child at a later time, was accepted.

2. Exceptions to Return of Child

a) Failure of Applicant Actually to Exercise Custody Rights, or Lack of Good Faith. This exception was proposed by the French delegation. As for the first clause of this exception, a French delegate explained that a father, for example, may have been awarded legal custody, but may have allowed the mother to take care of the child. Assuming that five years later the father demanded return of the child, his claim should be rejected.

As to the meaning of lack of good faith, it was explained that the applicant may have been the person who abducted the child in the first place and perhaps concealed the child before a counter-abduction occurred.

While this exception seemed to have a clear and perhaps narrow meaning under French law and practice, there were indications from the discussions that courts in other countries might give the exception an excessively broad interpretation. Because of this risk, the United States delegation did not vote for the exception.

b) Risk of Harm to Child. This exception is similar to the emergency exception under the Uniform Child Custody Jurisdiction Act (UCCJA) which has frequently been invoked but has rarely been allowed by American courts.

The language originally adopted by the Commission provided that a court is not bound to order the return of a child if "there is a grave risk that the return would expose the child to physical or psychological danger or otherwise place the child in an intolerable situation." Subsequently a proposal by the Australian, Danish, and United Kingdom delegations proposed that the language be revised so as to substitute "substantial risk" for "grave risk", "harm" for "danger", and "unacceptable situation" for "intolerable situation." Opposition to this change concentrated on the last item which would have introduced a more subjective element and would, according to the delegate of the United Kingdom, have given the judge more discretion to refuse the child's return. The term "intolerable situation" was retained while the other changes were accepted.

In connection with this exception, the delegates voted overwhelmingly for the proposition that a child should be returned even though the return would result in economic or educational disadvantages for the child. This vote will be recorded in the Rapporteur's Report.

c) Child's Objection to Return. On the first day of the meeting when the overall age limit for children was under discussion, several delegates remarked that children 14 or 15 years old, or even children 12 years old, should perhaps not be returned against their wishes. The delegations of West Germany and the United States thereupon expressed the opinion that the best solution would be to lower the age limit so that the Convention does not apply to abductions of teenagers who may well have their own views in the matter. The German delegate warned that once a court is given discretion to ask for the child's views, we run into the problem of opening up the merits of the case. Most delegates, however, preferred to postpone the question and leave the age limit at 16 years for the time being.

The skeleton draft did not contain an exception to the child's return upon the child's objection. Subsequently, language similar to Article 12, not specifying a minimum age for hearing a child's objection, appeared in an Inventory of Possible Grounds Qualifying the Obligation to Return, presented by the Chairman. The United States delegation opposed the exception, for the following reasons:

1. The exception places an inordinately heavy burden of responsibility to make vital decisions on young children which they are not psychologically equipped to handle;
2. At the time in question the children live with and are fully

dependent upon the person who has abducted them, and cannot help being influenced, if not pressured, by the abductor and perhaps other family members who live in the country of refuge;

3. In countries in which courts may be reluctant to return a child who has been brought there by one of its nationals, permitting the child's objection to block the return will make the child the ultimate judge of the abduction's success or failure;

4. Hearing the child's views would automatically lead to a consideration of the merits of the custody question contrary to the basic objectives and Article 16 of the Draft Convention.

The vote was 10:9 in favor of the exception. Because of the closeness of the vote, the question came up again on one of the final days of the meeting. The Finnish delegation proposed a compromise which included the acceptance of a 12-year old's objection. Votes were taken on different versions of this proposal. The delegates voted 12:3 in favor of the proposition that a judge may refuse to return a child if the child is 12 years old or older, is of sufficient age and maturity to take account of his views, and the child objects to the return. The United States delegation voted for this compromise.

For some inexplicable reason the issue was again considered and the present language of the exception was adopted. In the confusion of that day only a handful of delegates voted in favor of retaining the above-reported version of the Finnish proposal in brackets as a possible alternative for future reference. Judging from private conversations with delegates, however, the issue will undoubtedly be debated again at the next Hague meeting.

3. Legal Aid. Members of the Special Commission expressed concern about high attorneys' fees payable by their citizens seeking the return of children in other countries. They felt that relief might be provided through legal aid systems operated in various countries. Accordingly, Article 21 requires Contracting States to accord non-resident nationals of other Contracting States the same legal aid benefits in matters concerning the Convention that they provide for their own resident nationals. The United States delegation abstained from voting on this Article, explaining its inability to take a position without consultations within the United States. The Chairman requested the Rapporteur to include the declaration of the United States delegation in the Commission Report.

Information is now being sought from the Federal Legal Services Corporation and legal aid organizations concerning their financial eligibility standards and possible services to non-resident aliens in the limited area under consideration. In all likelihood, however, few, if any, foreign citizens whose children are abducted to the United States from potential Contracting States would be able to qualify under the financial means tests prevailing for legal aid in the United States.

In Europe many child abductions are carried out by guestworker-fathers when returning to their home countries, leaving indigent mothers of different nationality behind. Article 21 would presumably aid such mothers. Some delegations hoped, however, that some of their moderate-income citizens could also be relieved of at least a portion of what they consider exorbitant payments for legal services.

4. Submission of Certified Copy of Custody Decree. There was a great deal of discussion on the question whether an applicant to a

Central Authority or to a court must supply a certified copy of any existing custody judgment at the time of or subsequent to the filing of a request for return of a child. Several delegations, notably those of Norway and Finland, declared that their authorities would probably require receipt of such a document before ordering the return of a child. Practicing lawyers among the delegates cautioned, however, that it is difficult to obtain the necessary documents from some countries in time to satisfy the speed requirements of the Convention. The Commission declined to impose a mandatory requirement for the submission of custody decrees (see Article 8(e)), but the question will probably come up again at the next meeting.

5. Expert Opinions. After some discussion the Commission agreed that in cases where there has been no custody decision it would be acceptable to submit an affidavit of a private or public family law specialist explaining the custody status existing by operation of law in the State of the child's habitual residence. This would, as a rule, involve no complex legal questions. The expert would state, for example, that under the law of State X husband and wife have equal or joint custody rights during the marriage; or that under the law of State X unmarried mothers have the right to sole custody of the child. Again, no mandatory requirement for such a declaration was imposed (see Article 8(f)).

VIII. COSTS AND BENEFITS OF CONVENTION

1. Private and Public Costs. It is possible that in some countries practically the entire cost of returning a child, including the expense of litigation, will be borne by the government. Articles 7 and 22 authorize, but do not require, Central Authorities to bear these expenses. Central Authorities would only be obligated to assume their own

administrative expenses and refrain from charging an application fee. Attorneys' fees, travel expenses, translation fees, and the cost of the child's return would generally be borne by the applicant.

In some States, however, a court may require the abductor to pay travel and other expenses, including attorneys' fees, incurred by the applicant. See e.g., section 15 of the UCCJA. The United States delegation proposed the inclusion of a similar provision in the Convention. The vote was 10:8 against the proposal. However, at least one delegation subsequently indicated that it would change its vote to a "yes" vote, if the proposal is again submitted at the next meeting.

2. Duties of Central Authorities. In connection with the question of cost, it must be noted that the Convention imposes few mandatory functions upon Central Authorities. Article 7 is designed to leave a great deal of latitude to each individual Contracting State to determine how much aid Central Authorities will provide, apart from serving as a clearing house for incoming and outgoing requests. As the wording of Article 7 suggests, many Central Authorities would to a considerable extent operate "through other competent authorities", such as law enforcement agencies, child protective services, in some countries Interpol and the International Social Service, that is, agencies which would be involved in abduction cases in any event in the absence of Central Authorities. However, the Central Authorities, by virtue of their contacts with their counterparts in other countries and the expertise they develop, would be in a position to give essential advice and direction to these efforts. Needless to say, private attorneys would play an important role in operations under the Convention.

2. Locating Services. There is one mandatory requirement. Central authorities shall "either directly or through other competent authorities

in their States. . . take steps to discover the whereabouts of wrongfully removed or retained children" (Article 7(a)). Contracting States are not obligated to find all concealed children, but they must make a substantial effort to detect absconding abductors and children. The time limits of the Draft Convention make speedy action essential.

It is well known that the disappearance of children through parental abduction and the subjection of children to the life of fugitives has become a national problem, whether the children are moved interstate or internationally. Legislation is pending in Congress to make the existing Federal Parent Locator Service of the Department of Health and Welfare available for locating kidnapped children throughout the United States. S.105, introduced by Senator Wallop (with 21 co-sponsors) includes such a provision, as well as H.R. 1290, introduced by Congressman Bennett (with 54 co-sponsors).

Although statistics are not available, it can be stated that the number of children abducted to the United States from potential Contracting States is probably minimal compared with the number of abductions between the states of the Union. In many cases there is no concealment. The extension of the Locator Service to international cases would in all likelihood create few additional problems or costs, especially in view of the benefits United States citizens would derive from similar services offered by other countries.

3. Benefits of Convention. Most Americans who experience the loss of a child through abduction across international frontiers are at a complete loss of what to do and where to turn. If they travel to the country where they presume the child to be, seeking help from the

authorities, they often find themselves shunted from one person or agency to another with no office or person charged with responsibility for the type of aid they need. Attorneys in both countries are often unable to give them much aid, especially as long as the whereabouts of the child are unknown.

Members of the United States Delegation and of the State Department Study Group can attest to the enormous expenditures for travel, detective services, attorneys' fees, mailings, and other costs incurred by their clients or persons who contacted them, not to speak of the emotional strain and stress involved. Members of the United States delegation have been contacted by a number of persons who had hoped that the Convention would be completed and effective to aid their cases. Testimony heard by Senator Cranston on S.105 at Los Angeles last year contains grueling accounts of personal and financial sacrifices made by parents over protracted periods of time to regain an abducted child, with little or no assistance from authorities at home or abroad. See Hearing before the Subcommittee on Child and Human Development on "Examination of the Problem of 'Child Snatching'" (Government Printing Office, 1979). There will be a hearing before the Senate Subcommittee on Criminal Justice on January 30, 1980, on the same Bill in Washington, D.C.

Not that the Convention would solve all these problems. In the first place, only a limited number of countries would be involved to begin with, and secondly, not every abduction would lead to the return of the child, considering the time limits, exceptions, and uncertainties of interpretation of the Convention. However, Central Authorities in

this country and abroad would be able to direct an aggrieved person's efforts into the appropriate channels; the Draft Convention for the first time expresses a strong international policy to return kidnapped children; and courts as well as other authorities in each Contracting State would be under obligation to carry out that policy to the fullest extent possible.

Some countries in Europe have established central governmental services which are equipped to offer foreign nationals extensive services under the Convention. Other countries, including the United States, may not be able to reciprocate on the same scale. The delegations assembled at the Hague were aware of that fact, but felt that even in the absence of full reciprocity the Convention represents an important step forward for the benefit of their citizens. As far as aid in the United States is concerned, these delegations are aware of the added advantages offered by the Uniform Child Custody Jurisdiction Act. They know that American courts operating under the Act have recently returned abducted children to several foreign countries without considering the merits of the case or holding a hearing at which evidence of the child's views would be received. They have been pleased to hear that since the Hague deliberations began, the number of American states that have adopted the UCCJA has risen from 28 to 39.

It is obvious that on balance the benefits of the Convention outweigh its costs.

