

**A PARENT'S WORST NIGHTMARE: THE
HEARTBREAK OF INTERNATIONAL CHILD
ABDUCTIONS**

HEARING
BEFORE THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

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A PARENT'S WORST NIGHTMARE: THE HEARTBREAK OF INTERNATIONAL CHILD ABDUCTIONS

TUESDAY, JUNE 22, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Committee met, pursuant to call, at 3:01 p.m. in room 2172, Rayburn House Office Building, Hon. Henry J. Hyde, (Chairman of the Committee) presiding.

Chairman HYDE. Well, I would like to apologize for the worst of all circumstances. We have a hearing set for 2 o'clock and they called for votes at 2:00, all of which were prolonged, so I apologize for trespassing on your time.

I understand that Assistant Secretary Harty must leave at 3:20 for the White House, and we sure do not want to keep them waiting, so we will proceed with both your statement and Attorney General Bryant's statement before we make opening statements. So Assistant Secretary Harty will—first let me introduce you. Do we have an introduction?

We open today's hearing with the distinguished panel of witnesses from the Administration. First, let me welcome a frequent visitor to our Committee, Assistant Secretary Maura Harty of the State Department's Bureau of Consular Affairs.

Ambassador Harty has held numerous key assignments since joining the Foreign Service in 1981, among which was the Managing Director of the Directorate of Overseas Citizens Service, where she created the Office of Children's Issues. This office, for the first time, focused the Department's attention and resources on the tragic problems of international parental child abduction. So we are greatly looking forward to hearing your comments on this subject at today's hearing, and we, of course, thank you for coming.

Next, it is my distinct honor to introduce and welcome back our next witness, Dan Bryant. Not only do I know firsthand his exemplary service to the House Judiciary Committee, but I believe that our country is even better served with Dan in his position at Justice, where he was confirmed as Assistant Attorney General in 2001.

Since moving to Justice, Dan has been responsible for devising and implementing departmental legislative strategy, which includes counsel on congressional initiatives and coordinating congressional oversight. His many other responsibilities have included drafting Federal crime legislation and developing strategies in con-

nection with the national crime agenda. So we are especially looking forward to hearing your views today on the problem of international child abductions, and again we welcome you, Dan.

We will ask you to begin, Ambassador Harty, with a summary of your statement. Your written statement, as well as that of all our witnesses, will be made a part of the record. Ambassador Harty.

[The prepared statement of Chairman Hyde follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

Today, we are gathered to talk about one of the most heartwrenching issues we will ever consider: international child abductions. As a parent of four children and four grandchildren, I cannot think of a more terrifying nightmare than one in which one of my children or grandchildren were abducted or killed. The sheer panic, fear, and sickness one must feel has to be paralyzing. I believe in a government that stands up for the rights of all of our citizens. Today, I ask that we remember our most helpless citizens: our children.

While far too many crimes are committed against children by strangers, amazingly enough, some of the perpetrators of the worst types of crimes against children are parents. According to the State Department, more than 16,000 cases of international child abductions were reported in the past two decades.

Although there are diplomatic agreements in place which serve as important tools in the return of abducted children, many countries have failed to take their obligations seriously in making certain that these children are sent home. It is imperative that our government continues to press foreign governments to take seriously their obligations under The Hague Convention, and that we further expose their failures to adhere to international obligations.

For complicated reasons, this is not an easy task. While many countries are parties to international conventions, even more countries do not have any obligation to return abducted children. Still with these seemingly insurmountable obstacles, many have been working tirelessly to make it a top foreign policy objective to bring our kids home. I would like to commend the efforts of Representatives Nick Lampson and my colleagues on the Committee, Tom Lantos and Steve Chabot, for their endless work on these issues and for co-sponsoring H.R. 4347, the International Assistance to Missing and Exploited Children Act of 2004. I look forward to working with the Administration and look for its support of this legislation to gain the additional tools to identify and locate missing children.

The purpose of today's hearing is to raise awareness of the issue of international child abductions with the public, determine the level of pressure that the United States places upon The Hague and non-Hague countries in seeking the return of abducted children, and solicit the recommendations from experts in the field. It is my sincere hope that by raising these issues once again, we are able to come to workable solutions to bring our kids home—where they belong.

STATEMENT OF THE HONORABLE MAURA HARTY, ASSISTANT SECRETARY, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. HARTY. Thank you so much, Mr. Chairman, Members of the Committee. I do apologize for the need to leave precipitously. I am, however, very grateful for the opportunity to speak today about an issue that is very close to my heart, that of international parental child abduction. You have noted that the Office of Children's Issues was started in 1994. I am extremely proud of what they have accomplished since then and the things that we are continuing to try and accomplish.

Sir, during my tenure as Assistant Secretary of the last 20 months, I have traveled to South Asia, Europe, Latin America, and repeatedly to the Middle East, to discuss consular issues with a special focus on international child abduction.

In 2003, we effected the return of 188 abducted or wrongfully retained children to the United States from 61 Hague and non-Hague countries. Since November 2002, 14 abducted or wrongfully retained children have been returned from Saudi Arabia alone, that over and above the additional 32 non-abducted children whom we helped to depart from Saudi Arabia when they were otherwise impeded from doing so.

In my written testimony, sir, I highlight some of the kinds of abduction cases we deal with to give you a sense of the compelling nature of the work which I know this Committee is already well familiar with. In fact, what I would like to assure you is that we never lose sight of the fact that these are real live people. These are not cases and numbers. This is not clinical. It is our duty, our responsibility, and our privilege to help real live people solve some of the most harrowing circumstances that they may in fact experience in their lives.

We also work to prevent and disrupt abductions as well, and we maintain a child passport information alert program to let parents know if someone applies for a U.S. passport on behalf of their child without the parent's consent.

We do not always achieve success in our work, sir, as Mr. Tom Sylvester and his daughter Carina illustrate. Despite Mr. Sylvester's and our best efforts, we still have not brought Carina home. His commitment to his daughter's welfare and her right to have a meaningful relationship with both parents is inspirational.

At the highest levels of the U.S. Government we made contact with the Austrian Government to seek Carina's return. We have also contacted the European Committee on Human Rights, which ruled that Austria's actions violated Mr. Sylvester's right to a family life. It is to his credit that despite his anguish, Mr. Sylvester serves as a mentor and as a resource to other left-behind parents, and participated as such in our most recent town hall meeting with left-behind parents.

I am grateful, sir, for the interest and support for children's issues that we have received from the Congress, which has an abiding interest in this subject. I have never failed, sir, to receive support from an individual Member of Congress on those occasions when I have needed assistance.

Since 1995, the National Center for Missing & Exploited Children (NCMEC) has played a vital role in helping the United States to meet our obligations under The Hague Convention by assisting us to perform our central authority responsibilities for children abducted to the United States from other convention countries.

The NCMEC's expertise in national networks make it uniquely effective in helping us give force to The Hague Convention in the United States, and to meet our obligations under the International Child Abduction Remedies Act, known as ICARA. NCMEC assists parents whose children have been abducted to the United States through the courts as provided under the ICARA. NCMEC's role parallels closely that of the Department of State which works to assist parents to return U.S. citizen children abducted or wrongfully kept abroad to the United States.

The Department's ability to perform its statutory and treaty obligations would be seriously impaired if we could no longer count on

NCMEC's assistance. The Code of Federal Regulations, the cooperative agreement between NCMEC and the Departments of State and Justice, as well as clear standard operating procedures specifically articulate NCMEC's vital role in Hague abduction cases.

The NCMEC has expressed concern that litigation risks could jeopardize its ability to perform these functions. We look forward to working with Congress to examine these issues of concern to NCMEC, and to find appropriate solutions.

Mr. Chairman, in closing, we take our responsibilities for American children extremely seriously. Our responsibilities for these children are all the greater for their innate vulnerability and need for protection. I would like to assure you today that we will not rest until all of our children are home with their custodial parents. And I thank you for the chance to testify today, sir.

[The prepared statement of Ms. Harty follows:]

PREPARED STATEMENT OF THE HONORABLE MAURA HARTY, ASSISTANT SECRETARY,
BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. Chairman, Members of the Committee,

I am grateful for the opportunity to speak to you today about an issue very close to my heart: International Parental Child Abduction. You may know that I started the Office of Children's Issues, back in 1994, when I was Managing Director for Overseas Citizen Services and I am extremely proud of what they have accomplished in the ten years since its creation. I have continued to take a personal interest in Children's Issues, which is why I have traveled to Jordan, Lebanon, Syria, Egypt, the UAE, Austria, Germany, Sweden, Spain, Costa Rica, Guatemala, Australia, the Philippines, Pakistan, India, Mexico and three times to Saudi Arabia to discuss consular issues with a special focus on international child abduction since I became Assistant Secretary in November 2002. Working closely with our embassies and consulates abroad, our partners in the National Center for Missing & Exploited Children (NCMEC), and with both state and federal law enforcement officials we have been successful in returning children from many countries back to their families in the United States. To help prevent abductions, we also maintain a Child Passport Information Alert Program to let parents know if someone applies for a U.S. passport on behalf of the their child without the parent's consent. In 2003, we returned 188 abducted or wrongfully retained children to their American homes from 61 countries both within the Hague Abduction Convention community and from non-Hague States. Since November of 2002, 14 abducted or wrongfully retained children have been returned from Saudi Arabia

Let me try to give you a sense for the diverse and compelling nature of some of these cases. In one return from South Africa, the child had been abducted by her mother and remained abroad for 20 months. The courts ordered the child's return pursuant to the Hague Abduction Convention. With the cooperation of DHS, we were able to reunite the child with her father. In Turkey, we succeeded in returning a child who was at serious risk. Her father had hidden the child from Turkish authorities. The court was finally able to locate the child after 13 months in an air duct at the father's residence. Because of the work of our embassy in Ankara, the court acted swiftly to remove the child from her father, who had threatened to harm her and had made death threats against the left behind parent and her other children. In an Irish case, two children were sent to visit their father in Ireland. He returned only one of them. Through the Hague process, the wrongfully retained child was returned to his mother in the United States in less than four months from the onset of the case. In Iraq, we assisted a young woman who had been wrongfully retained by her father there for 14 years to return to her mother in the United States. She was set to return just when the war in Iraq began, and finally last month we were able to assist her to depart Iraq. In Mexico, the destination country for the largest number of children abducted from the U.S., but from which only 25 children returned in 2003, we worked with our Embassy, NCMEC and Mexican law enforcement and social welfare authorities to return a child to her mother. This story is particularly compelling, since the mother had given up hope of ever finding the child. A relative, sickened by the father's treatment of the child, contacted NCMEC and we worked cooperatively and quickly to locate the mother and reunite her with her child within a month.

Pursuant to the provisions of the International Child Abduction Remedies Act (ICARA), the President designated the Department of State as the U.S. Central Authority for the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Department sets policy and provides direction for its partner, the National Center for Missing and Exploited Children (NCMEC), as it handles case-work seeking the return of or access to children brought to the United States from Hague partner countries. When a child is abducted from the United States to a foreign country, the Office of Children's Issues works with NCMEC and United States embassies and consulates abroad to assist the child and left-behind parent in a number of ways.

Regardless of whether or not the Hague Abduction Convention applies to a given case, the Office of Children's Issues works closely with parents whose children have been taken from the U.S. to a foreign country to determine the welfare of the children, provide information about the foreign legal system and work with local authorities to attempt to facilitate recovery of and access to the children.

On average, each year caseworkers are engaged with 1100 families seeking the return to the United States of children abducted or wrongfully retained abroad. The countries with the largest number of cases include Mexico, Germany, the United Kingdom, Egypt, Canada, Jordan, France, Japan, India, Lebanon, Australia, Spain, and Pakistan.

In their work with left-behind parents, abduction case officers in the Office of Children's Issues provide informational tools parents can then use to determine their own best course of action according to the unique circumstances involved in their family's case. We held three Town Hall meetings for left-behind parents in order to share information and elicit parents' views on how we can better support them. Responding to a parent's suggestion, we publish a newsletter called "For the Parents," to provide useful information to left-behind parents.

As the law now requires, this year's Hague Compliance Report includes a new section on access. We use the reporting cycle to actively engage our diplomatic missions in raising compliance issues with their host governments, making the report a more useful tool in our diplomatic efforts.

Our Victims' Assistance Specialists, part of the Bureau of Consular Affairs' Office of Overseas Citizens Services, work with the Office of Children's Issues to identify local, state, and federal benefits available to left-behind parents and their children. As a result, we have made it possible for left-behind parents to travel overseas to recover their children through lawful means. We have ensured that parents and children receive the counseling and support they need upon the child's return. We believe this is a crucial service that we can provide on behalf of parents and children.

On the multilateral level, the Department's Office of Children's Issues continues to work, in collaboration with the National Center for Missing and Exploited Children, with the Permanent Bureau of the Hague Conference on Private International Law on "Good Practices" guides that will help both new and established Central Authorities develop effective common procedures and practices when handling Hague abduction and access cases. The good practices guides will, we hope, foster greater consistency as Central Authorities handle cases and prevent some of the start-up problems we have seen with new parties to the Convention. Department officers regularly attend Hague Special Commission meetings to communicate U.S. concerns about the Convention's operation and the U.S. maintains an active role in developing standards for Hague Abduction Convention implementation.

Around the globe, we actively engage foreign governments on the issue of international parental child abduction and on individual cases. As I noted at the beginning of my remarks, during the past year alone, I have traveled to countries in the Middle East, Europe, Latin America, and South Asia on trips focused on international parental child abduction. I have also met with foreign officials in Washington from Brazil, Poland, Turkey, Syria, Austria, Germany, Sweden, Saudi Arabia, Mexico, Lebanon, Morocco, and other countries on numerous occasions, often to seek help in resolving individual cases.

We have signed Memoranda of Understanding with Egypt and Lebanon that set forth shared principles of parental and consular access to children, and provide the basis for further communications. These MOUs explicitly state that access is no substitute for the return of an abducted or wrongfully retained child, but is crucial for helping a left-behind parent maintain a meaningful relationship with his or her child. We have initiated discussions and provided draft language for similar MOUs with a number of other countries in the region, including Syria, Jordan, Saudi Arabia, the UAE, Pakistan, and India.

In our view, countries that accede to the Hague Convention should be prepared to meet the obligations they undertake when they become parties. As countries ac-

cede, we review the state of their administrative and judicial infrastructure to determine whether they will be able to work effectively with us under the Convention. We recently accepted the accession of Uruguay, the 54th country that we will work with in the Hague Abduction Convention framework.

We are grateful for the interest and support for children's issues that we have received from Congress. Let me now, if I may, address some of the ways in which Congress, and specifically this committee, can continue to help us fulfill this important mission.

Since 1995, the National Center for Missing and Exploited Children has played a vital role in assisting us to perform our Central Authority responsibilities for children abducted to the United States from other Convention countries. We value our partnership with NCMEC and are committed to continue working closely together to prevent and combat international parental child abduction. NCMEC's expertise and national networks make NCMEC uniquely effective in helping us give force to the Hague Abduction Convention in the United States.

NCMEC helps the U.S. Government meet its obligations under the Hague Abduction Convention and the ICARA. NCMEC assists parents whose children have been abducted to the U.S. to locate and seek their children's return abroad through the courts, as provided under ICARA. Its role parallels closely that of the Department of State, which works with foreign governments to assist parents to obtain return to the United States of U.S.-citizen children abducted or wrongfully kept abroad.

We believe it is important that other governments understand the priority the U.S. government—both the Administration and the Congress—places on resolving and preventing the tragedy of international parental child abduction. The State Department strives to persuade other countries to live up to their Hague Abduction Convention treaty obligations and return children abducted to their countries back to the child's habitual residence in the United States, where custody issues can be resolved. NCMEC's effectiveness in performing this treaty function for children abducted to the United States puts us in a very strong position to persuade foreign governments to do likewise and return children who have been abducted or wrongfully retained abroad. NCMEC's expertise in locating children and its domestic network of law enforcement contacts are immensely important to the Department's ability to apply the Hague Abduction Convention and ICARA effectively in the United States and to insist on its effective application in our partner countries.

The Department's ability to perform its statutory and treaty obligations would be seriously impaired if we could no longer count on NCMEC's assistance. The Code of Federal Regulations, the Cooperative Agreement between NCMEC and the Departments of State and Justice, as well as clear standard operating procedures articulate clearly NCMEC's vital role in Hague abduction cases. NCMEC has expressed concern that litigation risks could jeopardize its ability to perform these functions. The Administration looks forward to working with Congress to examine these issues and find appropriate solutions.

We agree with the drafters of HR4347 that it is vitally important that U.S. and foreign judges understand the law of the Hague Abduction Convention and how it operates. In some countries, judges order the return of a child consistent with the Convention but lack the mechanisms to enforce their orders. In some other countries, judges either are not aware of their responsibilities under the Convention, or simply disregard them.

We already dedicate significant resources to providing effective judicial training for U.S. and foreign judges, but believe more can be done. We regularly participate in judicial training programs held by organizations in the U.S. We applaud all efforts to expand and institutionalize such training opportunities. The Department, working in coordination with the National Center for Missing and Exploited Children, has also hosted groups of judges and other officials responsible for implementing the Hague Abduction Convention in their countries on visits that allow them to meet and talk to their counterparts about how the Convention is implemented in the U.S. We also contribute to training programs on the Hague Abduction Convention for U.S. and foreign judges. In October 2003, we co-sponsored an international judicial seminar with Germany that involved several European countries and Israel, held under the auspices of the Hague Permanent Bureau. This coming fall, we will co-host a judicial seminar for judges from the U.S., Mexico, and a number of Latin American countries.

We actively promote interagency cooperation on behalf of left-behind parents and their children. We could not operate effectively without close coordination by the many agencies—state and local law enforcement, and U.S. federal agencies—who are also involved in these cases. We meet regularly with other federal agencies to discuss our mutual efforts to assist left-behind parents and prevent new abductions. This dialogue has helped identify new areas for cooperation and action.

The Office of Children's Issues and the National Center for Missing and Exploited Children's International Division share information about abduction cases that come to their attention and provide joint training on parental child abduction to law enforcement officials both in the United States and abroad. Through participation in the Federal Task Force for Missing and Exploited Children and our active leadership role in the Senior Policy Group and Interagency Working Group meetings that focus on international parental child abduction, the Department of State promotes better communication and cooperative efforts between agencies that respond to international parental child abduction and work to prevent international abductions. A recent example of successful interagency cooperation is worth mentioning. By acting quickly to involve U.S. and foreign authorities in two countries, we successfully thwarted an abduction in progress. This effort—which began one evening and lasted over a tense weekend—involved the Department, the FBI, local airport law enforcement, consular officers and foreign government officials in two foreign countries. The effort succeeded because all involved recognized the importance of stopping an abduction.

The role of consular officers in protecting children is recognized in the 1963 Vienna Convention on Consular Relations, which now has over 160 countries as parties. We take our responsibility for our children extremely seriously. And I take it personally. Our responsibilities for American citizen children are all the greater for their innate vulnerability and need for protection. We will not rest until all our children are home with their custodial parents. Thank you.

Chairman HYDE. Thank you very much.
Assistant Attorney General Bryant.

STATEMENT OF THE HONORABLE DANIEL J. BRYANT, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL POLICY, U.S. DEPARTMENT OF JUSTICE

Mr. BRYANT. Thank you, Mr. Chairman, Members of the Committee. Thank you for holding this important hearing today and for the invitation to be with you. I will summarize the written testimony presented to the Committee.

We commend your ongoing leadership in the area of international child abduction, but of course, if I might on a personal note indicate that the leadership you bring, Mr. Chairman, to this issue is no surprise to those who know of your work through the years. On a personal note, I would like to indicate my enormous respect and admiration for the Chairman of this Committee. I know of no finer, kinder, more generous Member of Congress than the gentleman who chairs this Committee.

Over the years——

Chairman HYDE. Mr. Bryant, if I had known you were going to go off like that, I would have surely gotten here earlier. [Laughter.]

Thank you.

Mr. BRYANT. Your decades of public service have brought great credit to this institution and to the United States Government as a whole.

While our review of the bill is ongoing, I can preliminarily indicate that the Department believes the bill represents a significant effort to improve on what is currently being done with regard to international child abductions. We support the goal of additional tools and improving old ones to help combat international child abduction.

In recent days, the Justice Department has begun working with your staff on a variety of provisions in your bill and will continue to do so. The Department currently does much to address the problem, but we must do more.

Now, the problem of international child abductions is one of great complexity and profound trauma. It is also an issue that poses very real challenges to law enforcement. The Department of Justice has a number of tools and services available to address the issue of international child abductions, and the focal point for much of that work is the National Center for Missing & Exploited Children, known to this Committee as NCMEC.

Ernie Allen, the President of NCMEC is here. I have pages of laudatory discussion of his great work and the great work of NCMEC, but in the interest of time I will just allow the written testimony to speak to that.

At this point, Mr. Chairman, I would like to echo the comments of my fellow witness: The Justice Department is aware of NCMEC's concerns regarding litigation risks as it performs its role in connection with The Hague Convention. We share the concern of this Committee, the State Department, and NCMEC that the ability to perform U.S. statutory and treaty obligations would be seriously impaired if we could no longer count on NCMEC's assistance.

The Administration looks forward to working with the Congress, with this Committee, to examine these issues and find appropriate solutions.

In closing, Mr. Chairman, I would like just to comment on the difficulties of abduction cases and the difficulties that they present to law enforcement. Those difficulties are nowhere more apparent than in connection with the question of whether to file criminal charges.

Given that the most important goal is the return of the child, criminal charges may be ill-advised, even counterproductive, especially when the child remains in a foreign country. Criminal charges do not necessarily provide an incentive for return of the child. Parents are often willing to serve prison time if they can return to the foreign country and the children they abducted, having completed their sentence, which is statutorily set at a maximum of only 3 years.

Furthermore, foreign authorities are often reluctant to cooperate with U.S. authorities to resolve child abduction cases if their nationals are liable to criminal prosecution. The likelihood of an extradition request being granted depends on a variety of factors, including whether the United States has a bilateral extradition treaty with the country and whether the treaty partner can or is willing to extradite for the offense of parental kidnapping. Even so, the United States Department of Justice is committed to bringing appropriate prosecutions wherever we can.

Mr. Chairman, the Department is committed to the vital goal of finding and protecting missing and abducted children. We are actively using a variety of tools that the Congress has provided us with over the years, and we look forward to working with you to identify additional useful tools.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bryant follows.]



Department of Justice

STATEMENT
OF
DANIEL J. BRYANT
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY
BEFORE THE
COMMITTEE ON THE INTERNATIONAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
INTERNATIONAL CHILD ABDUCTION
PRESENTED ON
JUNE 22, 2004

**Testimony of
Assistant Attorney General Daniel J. Bryant
Office of Legal Policy
Department of Justice**

before the

**House International Relations Committee
Hearing on International Child Abduction
June 22, 2004**

Mr. Chairman, and members of the Committee, thank you very much for the opportunity to testify today about the Department of Justice's efforts to combat international child abduction. The Department of Justice appreciates and commends your leadership regarding the problem of international child abduction.

The Department of Justice is committed to the goal of finding and protecting missing and exploited children. The Department of Justice particularly commends the efforts of the National Center for Missing and Exploited Children (NCMEC) and its employees in furthering this mission. Furthermore, the Department of Justice supports enhancing and improving the tools and resources available to addressing the problem of international child abduction.

Let me briefly describe some of the Department of Justice's efforts.

First, the Department of Justice provides significant financial and technical support to efforts to locate and return abducted children. The Missing Children's Assistance Act (42 U.S.C. 5771 et seq.) directs the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) to address the problem of missing and exploited children by establishing a toll-free telephone number, establishing and operating a national clearinghouse of information about missing and exploited children,

and providing technical assistance to law enforcement agencies, nonprofit agencies, and families to help locate and recover missing children. OJJDP awards funding to NCMEC, an independent nonprofit organization and not a Federal agency or instrumentality, to perform these functions. Pursuant to a grant and corresponding Cooperative Agreement between the Department of Justice, NCMEC, and the Department of State, NCMEC is also designated to help the United States fulfill its obligations under the Hague Convention on Civil Aspects of International Child Abduction, and its implementing legislation, the International Child Abduction Remedies Act (42 U.S.C. 11601 et seq.). These duties include locating children, assuring their health and safety, and assisting parents in having children returned, either voluntarily or through litigation. In Fiscal Year 2004, the Department of Justice has provided more than \$17 million to NCMEC perform all of its functions, with \$750,000 specifically for activities related to international abductions. In addition, OJJDP funds Team H.O.P.E. (Help Offering Parents Empowerment), a peer support network for families with missing children.

The Department of Justice also publishes guides for parents and others on how to deal with abductions, which are available on the Department of Justice's website. For example, parents can obtain the *Family Resource Guide on International Parental Kidnapping* (2002), which presents practical and detailed advice about preventing international abductions, describes how to increase the chances that children will be returned, assesses civil and criminal remedies available in these cases, explains applicable laws, identifies public and private resources available to parents, and prepares parents for legal and emotional issues that are likely to arise. Law enforcement officials can obtain the *Law Enforcement Guide on International Parental Kidnapping* (2002),

which provides guidance for local, state, and Federal law enforcement authorities who are called upon to respond to these cases, including available resources and suggested strategies. These are in addition to other OJJDP publications on child abduction in general, such as *When Your Child Is Missing: A Family Survival Guide*, *Federal Resources for Missing and Exploited Children: A Directory for Law Enforcement and other Public and Private Agencies*, and the *Investigative Checklist for First Responders*, all three of which were recently updated for National Missing Children's Day 2004.

Next, OJJDP provides grants to various entities to perform studies on international child abduction that are useful to policymakers, parents, and law enforcement. For example, OJJDP has funded and makes available on its website the following publications: *Children Abducted by Family Members: National Estimates and Characteristics* (2002), *Issues in Resolving Cases of International Child Abduction by Parents* (2001), *The Criminal Justice System's Response to Parental Abduction* (2001), *Parental Abduction: A Review of the Literature* (2001), *Early Identification of Risk Factors for Parental Abduction* (2001), and *Family Abductors: Descriptive Profiles and Preventive Interventions* (1996).

In addition, the Department of Justice and its law enforcement agencies provide a range of resources available to locate children and/or abductors. The Federal Bureau of Investigation (FBI) maintains the National Crime Information Center (NCIC) database that local, state, and federal criminal justice agencies throughout the United States may consult. The Missing Children Act and the National Child Search Assistance Act together require federal, state, and local law enforcement agencies to enter descriptions of missing children into the NCIC Missing Person File without any waiting period and

without regard to whether a crime has been committed. Law enforcement can and should also enter an abductor in the NCIC Wanted Person File if that person has been charged with parental abduction under state or federal law. Furthermore, the U.S. National Central Bureau (NCB) of INTERPOL, the 178 nation police communications network, can transmit messages (called "diffusions") to foreign country police forces to locate children or abductors whom prosecutors wish to extradite.

The FBI also conducts its own investigations of international child abductions, and FBI legal attaches at U.S. embassies in foreign countries as a general matter request assistance from local law enforcement in those countries either to locate or to confirm a location as to the abductor and child. In addition to investigation, the FBI also creatively uses other tools to locate abducted children, such as posting their photos on the FBI website and publicizing their cases in foreign media.

The FBI also assists in obtaining and serving Unlawful Flight to Avoid Prosecution (UFAP) warrants. Under the Fugitive Felon Act (18 USC 1073), state and local prosecutors can apply to a U.S. Attorney or directly to the FBI to file a request for a warrant with a U.S. district court. If the FBI discovers that the abductor has left the country with the child, the FBI may be able to continue its investigation by requesting the assistance of foreign law enforcement authorities. If the FBI discovers the child's whereabouts during the course of efforts to locate and apprehend the abductor, they can alert local child welfare services and the remaining parents so that they can pursue recovery of the child.

The Department of Justice also provides assistance to parents through the Office for Victims of Crime (OVC). OVC transfers funds to OJJDP for NCMEC to direct a

victim service program entitled the Victim Reunification Travel program (VRT). This program serves crime victims by working to return American children from overseas who are victims of international parental abduction, providing funding assistance to eligible parents who are in financial need. This funding provides support for such services as transportation expenses to attend a court proceeding, translation services of necessary documents related to the court hearing and reunification process, and counseling support to prepare the parent(s) and child(ren) for reunification and to minimize trauma to the child. OVC has provided funding for this project since FY 1997. Since that time, this funding has assisted in the recovery of approximately 200 children. One example is the case of three children taken to Mexico 1999, when they were five, seven, and eight years old, by their non-custodial father and were kept from their mother for four years. Once confirmation was received that the children were in Mexico, custody orders and warrants were provided to Mexican authorities. Victim Reunification Travel funds were provided for the mother's travel to Mexico and the family's return to the United States.

Finally, the Department of Justice and the U.S. Attorneys' Offices prosecute abductors under the International Parental Kidnapping Crime Act (18 U.S.C. 1204), which makes it a federal felony to remove a child under 16 from the United States or to retain a child outside the United States with the intent to obstruct the lawful exercise of parental rights. The PROTECT Act, enacted on April 30, 2004, also made it a crime to attempt international parental kidnapping. This new attempt provision provides a critical tool in those few, lucky cases in which a parental kidnapping can be anticipated and thwarted before a child is wrongfully removed from the United States.

The FBI investigates parental kidnapping cases (as noted above), usually following a complaint by the U.S. parent. The U.S. Attorney, usually in the district from which the child was taken, may bring federal charges when circumstances warrant, often in consultation with the Department of Justice's Child Exploitation and Obscenity Section. As you are aware, however, filing criminal charges in abduction cases is a very sensitive matter. Criminal charges may be ill-advised, especially when the children remain in a foreign country. Parents are often willing to serve prison time if they can return to the foreign country—and the children they abducted—following their sentence, which is statutorily set at a maximum of only three years. Charges may even be counterproductive, since they do not necessarily provide an incentive for return of the child. Furthermore, foreign authorities are often reluctant to cooperate with U.S. authorities on resolving child abduction cases if their nationals are liable to criminal prosecution. If extradition is requested, the Department of Justice's Office of International Affairs files a request with the foreign country's authorities, but the likelihood of success depends on, first whether the United States has a bilateral extradition treaty with the country, and, second, whether the treaty partner can or is willing to extradite for the offense of parental kidnapping.

For those reasons, prosecutions are relatively few. From Fiscal Year 1999 through Fiscal Year 2003, U.S. Attorneys' Offices have filed charges against 96 defendants for violation of 18 U.S.C. 1204, International Parental Kidnapping. Through May 2004, in this fiscal year, U.S. Attorneys' Offices have filed such charges against 16 defendants. One example of a recent prosecution was that of Fazal Raheman for kidnapping his two young children from Cambridge, Massachusetts, to India. Raheman

kidnapped the children, who were then only 1 and 5 years old, in November 1997, was arrested in July 2001, and was convicted after a jury trial in March 2002 of one count of violating 18 U.S.C. § 1204 and one count of wiretapping. He received the statutory maximum penalty on the international parental kidnapping count—three years' incarceration—followed by three years' supervised release as a result of the wire-tapping conviction (in the absence of which, his supervised release sentence on the kidnapping count would have been only one year). Raheman was incarcerated from his arrest in July 2001 to February 2004. Not only did Raheman refuse to assist the government in any way while he was incarcerated, he also actively and successfully opposed his former wife's attempts to obtain her children in the Indian courts through his attorney and relatives in India. Thus, seven years after Raheman kidnapped the children, and even after he was incarcerated, Raheman's former wife has still not been reunited with her children, who remain in India.

In sum, the Department of Justice is as actively engaged as current law permits, with sensitivity to the complexities present in such cases. We are committed to further enhancing our capabilities to address international parental kidnapping with sensible and practicable legislative initiatives, and we are pleased to work with the committee in doing so.

Chairman HYDE. Thank you, Mr. Bryant.

If I can ask you a question. Apparently the penalty for child abduction is just 3 years. It seems that we should increase that to provide a better disincentive. What is your opinion?

Mr. BRYANT. The Chairman is correct. The maximum statutory sentence permitted for international parental abduction is 3 years.

We think that in this area we have to ensure tough sentences, and we think it is fair for the Committee to ask the question of whether or not 3 years is sufficiently tough, and we would be prepared to work with you to ensure it is as the Committee moves forward.

Chairman HYDE. Thank you. We are going to have one question for Secretary Harty, so you can make your 3:20.

What does the National Center do for the State Department that makes the relationship so important? And what would State have to do if the center did not exist?

Ms. HARTY. Thank you for that question, sir. I could probably go on longer than my allotted time, but fundamentally, sir, when the United States entered and became a signatory to The Hague Convention, we took a reservation to article 26 of the convention, which essentially would have encouraged us as a nation to help foreign parents when they come to this country and work through our legal system and pursue their cases.

When we realized that we did not have the resources to address that element of The Hague Convention, we entered into, with the Department of Justice, an incredibly prolific and important relationship with NCMEC by using NCMEC's extraordinary contacts, by using NCMEC's extraordinary name recognition, to provide the kind of access to foreign parents as they come here and work incoming cases, cases where a foreign child has been brought to this country, provide the same kind of access that we would like to see American parents have overseas when they, in fact, attempt to, and we work with them to get their children home.

The NCMEC is our complete partner in how we do this function, meeting a treaty obligation to ensure, I believe, that we are leaders, sir, in this field. If we, with NCMEC's help, as we do together, ensure that foreign parents coming here to attempt to exercise their Hague Treaty rights, treat them as well as we do, we believe that the very same thing will happen overseas, and it does again and again and again. We are complete partners in what NCMEC does domestically so very, very well what we try and do overseas. NCMEC is extraordinarily able and well positioned to do this, since they not only do it for foreign children, but obviously for American children. They are the platform upon which we stand to fulfill a major treaty obligation.

Chairman HYDE. Well, thank you very much.

Because of the encroachment of time, we will not ask either of you any more questions, and I also understand that there is ongoing difficult work ahead to work the language out of this legislation, and that is all to the good, because we will have a better product.

So rather than commit you now, we will ask you to take written questions—

Ms. HARTY. Yes, sir.

Chairman HYDE [continuing]. Which we will submit at the appropriate time, and appreciate an answer.

Yes. Congressman Burton from Indiana.

Mr. BURTON. There is some very involved and far-reaching questions that may not be able to be answered in writing, and I would ask if Ms. Harty at some point in the future might be able to return so we can go into more detail in the questions.

Chairman HYDE. I think she will, and not only that, she will take your call anytime you want.

Mr. BURTON. Oh, I know she will. She has been very helpful. But I think in a public forum it would be good to get some of these things out, so I would like to urge the Committee, maybe, to have her come back at some point in the future.

Chairman HYDE. Fine, we will try that some time when we do not have votes pending.

Ms. HARTY. Happy to do it in any format you require.

Mr. BURTON. Thank you.

Ms. HARTY. Happy to.

Chairman HYDE. Thank you. You are both excused with our thanks.

Ms. HARTY. Thank you so much, sir.

Mr. BRYANT. Thank you, sir.

Chairman HYDE. I will make an opening statement now before we introduce the next panel, and Ms. Watson, who is sitting in for Tom Lantos as the Ranking Democrat, will also make a statement, and then we will proceed with testimony from the remaining witnesses.

Mr. BURTON. Mr. Chairman.

Chairman HYDE. Yes, sir.

Mr. BURTON. I love you dearly, you know that. But Mr. Chairman, my Committee, I went to Saudi Arabia with a whole host of Congressmen a year before last, and I think there is a couple of things that I would like to say in an opening statement after Ms. Watson, if you do not mind.

Chairman HYDE. Absolutely not.

Mr. BURTON. What do you mean "absolutely not"? You mean I can or I cannot? [Laughter.]

Chairman HYDE. I mean absolutely I would not stop you.

Mr. BURTON. Thank you, sir.

Chairman HYDE. Okay. Today we are gathered to talk about one of the most heartwrenching issues we will ever consider: International child abductions. As a parent of four children and four grandchildren, I cannot think of a more terrifying nightmare than one in which one of my children or grandchildren were abducted or killed. The sheer panic, fear, and sickness one must feel has to be paralyzing. I believe in a government that stands up for the rights of all our citizens, and today, I ask that we remember our most helpless citizens: Our children.

While far too many crimes are committed against children by strangers, amazingly enough, some of the perpetrators of the worst types of crimes against children are parents. According to the State Department, more than 16,000 cases of international child abduction were reported in the past 2 decades.

Although there are diplomatic agreements in place which serve as important tools in the return of abducted children, many countries have failed to take their obligation seriously in making certain that these children get sent home. It is imperative that our Government continue to press foreign governments to take seriously their obligations under The Hague Convention, and that we further expose their failures to adhere to international obligations.

For complicated reasons, this is not an easy task. While many countries are parties to international conventions, even more countries do not have any obligation to return abducted children. Still, with these seemingly insurmountable obstacles, many have been working tirelessly to make it a top foreign policy objective to bring our kids home.

I would like to commend the effort of Representative Nick Lampson and my colleagues on the Committee, Tom Lantos and Steve Chabot, for their endless work on these issues and for co-sponsoring H.R. 4347, the International Assistance to Missing & Exploited Children Act of 2004. I also would like to commend Congressman Dan Burton of Indiana, who has made this a cause of his and is very diligent in pursuing it. I look forward to working with the Administration, and look for its support of this legislation to gain the additional tools to identify and locate missing children.

The purpose of today's hearing is to raise awareness of the issue of international child abductions with the public, determine the level of pressure that the United States places upon The Hague and non-Hague countries in seeking the return of abducted children, and solicit recommendations from experts in the field. It is my sincere hope that by raising these issues once again, we are able to come to workable solutions to bring our children home, where they belong.

Now I am honored to yield to Ambassador Watson who will make an opening statement.

Ms. WATSON. Thank you so much, Mr. Chairman, and I make this statement on behalf of Congressman Lantos who has a conflict.

He is a father of two, and a grandfather of 17, and he cannot begin to fathom how excruciating it is for a parent or a grandparent to have a child ripped from their lives and taken to a foreign land, sometimes never to be seen or heard from again. But for many parents this nightmare is an every day reality.

Mr. Chairman, sadly, this is not a new problem. Almost 15 years ago he held one of the first hearings examining the magnitude of the crime, and what we could do about it. At that hearing, the gut-wrenching horror stories of left-behind parents came into the public spotlight for the very first time.

Fifteen years ago, Congress began a long and grueling battle to get our Government to tackle this problem. The State Department and law enforcement officials in the United States viewed parental kidnapping as a private family matter that did not require outside involvement, and should not be treated as a foreign policy concern.

But since that time, the U.S. Government, prodded by Congress, has taken some important steps to establish an effective nationwide support system to provide law enforcement agencies and parents with the proper tools to find missing children and to press for-

eign governments to return them. Our hearing will show that much remains to be done.

Despite our efforts thus far, over 16,000 children have been abducted to foreign countries in the last 20 years, and alarmingly, the State Department reports that there are still approximately 1,100 unresolved cases of international child abduction at any given time.

Last year we had cases unresolved for over a year and a half with 14 countries, including Colombia, France, Spain, and Zimbabwe.

Mr. Chairman, given the terrible pain of each and every American parent in these cases, the current state of affairs is absolutely unacceptable. We must do more to resolve cases, and to end the pain of families whose dear children have disappeared. Congressman Lantos and all of us are very pleased that we have the opportunity to work with you and your colleagues, and Congressman Lampson of Texas, in crafting the bill H.R. 4347, the International Assistance to Missing & Exploited Children Act, which contains a number of measures to enhance international cooperation and boost the capacity of U.S. Government agencies to help parents with abducted children.

The bill will build the capacity of our Federal agencies and their critical NGO partner, the National Center for Missing & Exploited Children, to assist parents here in the United States as they seek to locate and return abducted children.

It will also enhance enforcement of the international treaty, The Hague Convention, which requires member countries to return abducted children, by strengthening its monitoring body, The Hague Conference on Private International Law.

The legislation also recognizes that the State Department must do more to accelerate efforts to negotiate bilateral treaties with more than 100 countries which are not parties to The Hague Convention.

It is all of our hopes that we can move this bill through the House in an expedited manner, and send it quickly to the Senate so it can be signed by the President and acted into law this year.

Mr. Chairman, we hope that our State Department, which has taken a long time to overcome its aversion to raising individual cases forcefully, will do whatever it takes to make sure to devote each and every adequate resource to aid parents to press cases with foreign governments.

So we look forward to learning the views of our panelists, and thank you so much, Mr. Chairman.

Chairman HYDE. Thank you, Ms. Watson.

And now Mr. Dan Burton of Indiana.

Mr. BURTON. Thank you, Mr. Chairman. I thought you forgot who I was for a minute.

Chairman HYDE. That would be impossible.

Mr. BURTON. Thank you. Thank you.

Mr. Chairman, I took a trip to Saudi Arabia about 18 months ago because we had a number of women who had been held against their will as well as children that had been abducted. We went over there to try to get our Ambassador and our State Department and the Saudi Government to be cooperative in bringing some of these people home.

I have to tell you that the Saudi Government has been very recalcitrant, and for those of you who do not know what recalcitrant mean, Mr. Chairman, it means they have been a pain in the rear in trying to help get these people back.

We had a case in Terre Haute, Indiana, where a woman, Ms. Tonetti, was married to a Saudi. They were divorced and he went back to Saudi Arabia, and he came back and said he wanted to take the children for 2 weeks for the summer. She told the judge that if he took the children she would not see them ever again, and the judge says, well, we will not let that happen.

So he wrote a letter to the Saudi Ambassador, Ambassador Bandar, here in Washington, DC, saying that these children were not to be taken out of the country. But in addition to that, he took the man's passport so that the children would be safe. So the children were safe. They went with the father. He went directly to the Saudi Embassy, got a passport for himself and the children, and she has not seen them since.

The Saudi Government has been complacent time and again in helping kidnap these children, taking them away from the rightful parent that has been given to them by a court of law, and our Government has had a terrible time in dealing with that. And I think it is extremely important that we not only pass legislation, but send a signal to our State Department, to Ms. Harty who is doing her best, and the Saudi Government that we are going to take whatever measures are necessary to protect American citizens, bring them home if they want to come home, and bring these children home who have been kidnapped against their will, and never to see their mother or their father again.

It is something that we just cannot turn our back on, and the Saudi Government just completely shuts us off. They are supposed to be our friends, our business partners. They have given \$4 billion to terrorist organizations over the last 15 years, which is not the purpose of this hearing, but they have been very complacent in keeping children there and parents and women against their will.

I talked to one woman when I was over there with our delegation, and she said, "Please put me and my kids in a box, put us the belly of a plane, do anything you can, but get us out of here." She was there by herself without her children so she could not take off with us right then, otherwise I would have tried to put her on the plane. She said, "If my husband knew that I was even talking to you, he would kill me." That is the kind of problem that American women are facing over there.

They are not wives, they are property. The children are not children, they are property. They are owned by the Saudi father, and I know that is the law and they have their religious law, but these are American citizens, and we have to do everything that we possibly can and apply every bit of pressure that we possibly can on the Saudi Government to bring these kids home.

And if for long term it means that we have to become energy independent and let those Saudis pound sand, then so be it. These Americans are American citizens held against their will and being mistreated. The woman told me she has to eat on the kitchen floor with her kids because he has other Saudi wives. They are beaten on a regular basis. And if they say anything, there is a threat to

life and limb, and this is not just an isolated case. I have a whole host of these cases.

We seem to talk and say, oh, we are making progress, we pussy-foot around the issue, and we are doing more and more, and we are talking about The Hague Convention. Saudi Arabia is not even a signatory to The Hague Convention.

American citizens should be protected by the American Government, and we should do whatever is necessary to bring these people home. That means imposing severe pressure on those governments that try to block us, in particular the Saudis.

I would like to publicly thank one of our guests here today for working so hard on this, Mr. Walsh, who is the head of *America's Most Wanted*. He has done yeoman's service in trying to focus attention on this issue for the American people, and I appreciate what you are doing, Mr. Walsh, and I only wish that our Government would focus as much attention on it as you have.

And so, Mr. Chairman, I will do everything I can to help you with legislative action to help with this problem, but we need to put more pressure, in particular, on the Saudis to bring American citizens home.

Chairman HYDE. I thank you.

Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I appreciate you holding this hearing this afternoon.

I first became familiar with the issue of international parental child abduction about 9 years ago when I met a gentleman from my home town of Cincinnati, Tom Sylvester, who will be testifying later this afternoon. His daughter, Carina, an American citizen, then barely a year old, was kidnapped by her mother and taken to Austria where she remains today.

During the last 8 years her American father has seen his daughter only occasionally and under strict supervision. This is a case that really rips your heart out. Every time I think about this case, every time we talk about this case in the office, it is the most frustrating situation that I have been involved in since I have been in Congress, because this is clearly an issue of what is right and what is wrong. Thus far what is wrong has prevailed, and my heart goes out to this gentleman and his daughter. It is just inexcusable that this has dragged on as long as it has.

During that period, the child's mother has refused to comply with both American and Austrian court orders. She has ignored appellate decisions, and has lived in continual violation of The Hague Convention. All the while the Austrian Government has arrogantly failed to enforce The Hague Convention return order.

This is a man who spent literally his life, for the last 9 years, trying to get his daughter back. He spent tens of thousand of dollars, and many sleepless nights. He is somebody who has done what you are supposed to do. He has followed the rules. He has lived within the law, has not taken the law into his own hands and done anything illegal, although I am sure it has probably been tempting at times when you look at the way the justice system has treated him internationally, but he has always followed the rules.

He won all the way up to the Supreme Court of Austria. This case has been discussed at the highest levels in both the United

States and the Austrian Government. Tom Sylvester and I have met with both Secretary Albright down at the State Department, and with Secretary Colin Powell. We brought this case, and they brought the case to their counterparts in the Austrian Foreign Minister and all the way up to the Austrian Chancellor. Attorney General Ashcroft has addressed the issue in Vienna. Ambassador Harty, who was here earlier and unfortunately had to leave, I know has had numerous contacts with Austrian Government officials. I have traveled all the way to The Hague and met with the Austrian Central Authority about this case specifically, and the overall issue of international child abduction. The President of the United States himself, I am told, has expressed his strong sentiments to the Austrian Ambassador. Yet here we are.

Carina Sylvester remains in Austria, and Tom Sylvester lives each day without his daughter. Frankly, our efforts, however sincere, have failed Tom and Carina Sylvester. And I think it is time for our Government to reassess how it does business with some of these offending countries like Austria. I would like to be able to come back here next year and see the fruits of a bolder diplomatic and judicial approach to this heartbreaking issue.

I want to thank Tom Sylvester personally for not giving up and continuing to fight for what is a civil right, and that is the right of this father and his daughter to be together. And I want to thank the officials that have been involved in this because I know people within the State Department and the other departments within the Government, the Justice Department, many have worked hard.

I do not think we have done everything we could do at every point in time. You know, I want to be open about this. But for the most part I think many are very sincere, but this is a case where justice has not prevailed, and I believe, I am optimist, I think ultimately it will. Nine years is far too long, and I hope next year that Tom has an opportunity to be with his daughter.

Yield back the rest of my time, Mr. Chairman.

Chairman HYDE. Thank you, Mr. Chabot.

It is apparent that affairs of state trump individual human rights on occasion, and that is a serious problem in the realm of justice, so we are going to pursue these some more, not that we have the magic formula, but we can be a grand irritant and will exercise that leverage.

Mr. Chandler.

Mr. CHANDLER. Mr. Chairman, thank you very much, and I will be very brief.

Everyone who has spoken so far has been very eloquent on this subject. This is clearly a tragic problem, a problem that our Government must do its utmost to deal with. Obviously, we have difficulties with international law that have to be dealt with, but being an irritant, I think, is a very good approach, a very, very big irritant is what we need to be.

Very briefly I want to say hello to Mr. Walsh. He was kind enough, when I served as Attorney General of Kentucky, to come to our State and spread this message, a message of victims' rights, a message of what happens to innocent people in cases like this throughout our country, and it is a message that more of us need to hear and see and be aware of.

I have three children. They are 10, 9, and our youngest, Mr. Walsh, is 6 years old. He is a boy, same age as your Adam was when you lost him. I cannot imagine, cannot imagine the pain that so many families in this country have to go through, and I want you to know, I want all the people here to know, everybody on this Committee to know, that I am committed in every way that I possibly can be to contributing a great deal of irritation for these people who are not doing what they ought to do.

Thank you, sir.

Chairman HYDE. Thank you.

Mr. Flake? No statement. I have a memo for you, however.

Mr. McCotter.

Mr. McCOTTER. Thank you, Mr. Chair, but there is really nothing I can add that would speak more eloquently or more urgently than the victims suffering.

Chairman HYDE. Thank you. Mr. Chris Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman.

First of all, I want to thank you for introducing H.R. 4347, the International Assistance to Missing & Exploited Children Act of 2004. It is a very much needed piece of legislation, and I commend you for your leadership on that.

Mr. Chairman, as you probably know, one complex child custody case which has made a significant number of headlines lately has been the abduction of two New Jersey citizens by the President of Uzbekistan's daughter, Ms. Gulnora Karimova.

Mr. Masqudi, who is her husband as well as a New Jersey resident and an American citizen, has been trying without success to visit with his two children, his son, Islam, and his daughter, Iman, for several years. It needs to be pointed out that a New Jersey court awarded custody of the two children to their father, and has fined Ms. Karimova for violating the court order and issued a warrant for her arrest.

In retaliation, she has used her family connections to have Uzbekistan issue an Interpol red notice throughout many of the countries in which Interpol operates to have Mr. Maqsudi arrested when he travels overseas.

Mr. Maqsudi has told me on many occasions that he desperately wishes to see his children in Uzbekistan, but if he went back there he would undoubtedly be arrested and quite possibly tortured by the repressive Karimov regime.

He even offered to meet her in a neutral country, or a setting that would guarantee that neither of them would be arrested. I know the State Department has tried to work on this, I think they can do more. I have raised it as Chairman of the Helsinki Commission on a number of occasions, and have gotten nowhere.

So I just want to raise this issue again today, Mr. Chairman, because it underscores that obviously there are many people, husbands and wives, who love their children just as much as Mr. Maqsudi. They would love to see their children, but because of an abduction have been precluded that opportunity.

So again, your bill, I think, is a very, very important step. I would especially like to say how great it is to see Dennis DeConcini, a good friend and a very fine Senator, who headed the Hel-

sinki Commission for a number of years. I served under him, and greatly cherish those times together during the worst days of the Soviet Union. He did a marvelous job, and Dennis, nice to see you again.

Chairman HYDE. Thank you, Mr. Smith.

Our second panel today is led by John Walsh, host of *America's Most Wanted* and *America Fights Back*. It was over 20 years ago that our Nation learned about the sad details of 6-year-old Adam Walsh's life ending. Since that tragedy, Mr. Walsh has championed his son's life and has worked tirelessly in assisting and recovering missing children, and bringing perpetrators to justice. I am convinced that many other children have been saved due to the diligent efforts of people like yourself, Mr. Walsh, and we surely look forward to hearing your statement.

Among the thousands of other parents who have spent years of sleepless nights in the effort to have their children returned home, we also have Mr. Tom Sylvester here with us today. He has been a victim of a heartbreaking case of international child abduction of his daughter Carina. She is living and growing up in Austria, and only knows her father as a visitor who is limited to seeing her for a few days several times a year.

Mr. Sylvester's former wife lives permanently overseas and has been completely successful in derailing the courts' and his efforts at claiming his rights as a father. We look forward to hearing your story, Mr. Sylvester.

And finally, our panel will conclude with our good friend, retired Senator Dennis DeConcini, whose life's work has moved in new directions. After his retirement from the Senate, he chose to continue public service by joining the Board of Directors of the National Center for Missing & Exploited Children, where he is now Chairman of the Board.

In addition, Senator DeConcini serves as a member of the board of the new International Center for Missing & Exploited Children. It cannot go without mention that the National Center for Missing & Exploited Children is the world's leader in returning missing children to their parents, and we look forward to hearing Senator DeConcini's thoughts on this growing crisis.

I also want to mention that we have been joined by Mr. Erie Allen, President of the National Center for Missing & Exploited Children, who will be available for any questions that someone might choose to ask.

So we ask you begin the panel with your statement, Mr. Walsh.

STATEMENT OF JOHN WALSH, TELEVISION HOST OF "AMERICA'S MOST WANTED" AND CO-FOUNDER, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Mr. WALSH. Thank you, Chairman Hyde. I would like to thank Congressman Chandler for his kind comments; Congressman McCotter for being here; Congressman Flake, I have worked with before; Mr. Chabot for your leadership and all your help for Tom Sylvester, you are a ray of hope for Tom, and that is greatly appreciated; Congressman Lantos who is not here; and Congresswoman Watson, thank you for taking the time here today.

The people I have mentioned, I feel that they have their priorities in order, that they are here and listening to us because they care about America's silent citizens, our children. These are American kids we are talking about today, American citizens.

I have worked with Dan Burton on this issue before. He has been a loud voice. He put his money where his mouth is. He went to Saudi Arabia and tried to help these people, and ran into a brick wall, and I feel exactly the same way you do. I have had many, many dealings in Saudi Arabia looking for terrorists there. I have had many, many opportunities to try to convince the Saudis to do something as it relates to these non-custodial parental abductions, and it is a brick wall, and it really is time.

If they are our business partners, if they are our partners in fighting terrorism and trying to put down the horrible butchers who cut off the heads of innocent citizens, al-Qaeda, then they ought to step up to the plate and prove to us that they are our partners, absolutely, and that is what this legislation is about today. H.R. 4347 is so important.

Everybody here, almost every member of this panel has had an experience with a constituent who has had a non-custodial parental abduction. Mr. Smith mentioned it. I think every Congressman I have run up to has said, I have a member of my constituency who cannot get their kid back from a foreign country.

You also know firsthand from Congressman Lampson, who is a great friend of ours too and Chairman of the Missing & Exploited Children's Caucus, and has worked with Congressman Burton on this. Most of the legislation up to now, and most of what has been done has been lip service, that is all it is, lip service.

You know, I appreciate what Maura Harty does, but she is a one-woman band, she really is. She goes to these countries by herself, and Secretary Powell is the first member of the State Department that has really listened to us.

I have been working with Congressman Hyde for 20 years. He was the original sponsor of the Missing Children's Bill back in 1982, dragging the FBI into the search for missing children. He was there when we got the Missing Children Assistance Bill passed in 1984, when late President Reagan had us speak in the East Room of the White House. I will never forget that. That was the creation of the National Center that Ernie heads.

We have had great success in every area except international abductions. We have run up against brick wall after brick wall. We cannot seem to make any headway. We finally have a Secretary of State that will listen to us. We have a woman that works for him that actually gets on a plane and goes and tries to bring these people back.

But you know what? You are the court of last resort. We are here today, Tom is here because he has done every damn thing he could. He has talked to every cop. He has talked to every judge. He has talked to every FBI agent. He has talked to every prosecutor. He has talked to U.S. attorneys. He has gone everywhere and got nothing.

He has got all the paperwork, just like you said, Mr. Chabot. He has got mounds of paperwork, and huge amounts of bills. And you know what? His daughter has been in Austria for 8 years.

Is Austria not a partner of ours? Did they not sign onto The Hague Treaty? Are they not in this war on terrorism and afraid that they are going to be the next 9/11 like every other country in Europe? So why can they not comply to our laws?

Because you know what the Austrian Government says? That you are full of B.S.; that all the laws you passed here do not mean anything; that you are a paper tiger. Absolutely, that is what I hear when I go to these countries and try to get these kids back. The United States Congress is a paper tiger. There is no guts behind that legislation.

I want to tell you what this legislation would do. It would do three very important things. It will provide the tools to quickly resolve domestic parental abductions, tools like Federal court jurisdiction to resolve disputes between conflicting custody orders; enhance capability for the National Center for Missing & Exploited Children to search databases to track down abductors quickly. Most of these people get on the planes and are gone for months before anybody really starts to look at the case.

It will give the National Center the ability to better prevent these incidents from occurring by giving authorities the ability to detain at the border. Why can we not stop these people at the border? They know the person left behind. You mentioned a couple cases where that parent got visitation. The Saudi Ambassador was even notified, was he not? The Saudi Embassy was notified here. Do not let these people go out of the country.

How much damn notice do you have to give them? How much notice do you have to give them? They can go get a passport and buy an airplane ticket, and that left-behind wife or husband knows they are going to the airport. If we cannot stop them at the border, then why do we have anybody at the border?

We need to create a national registry of child custody orders. There would be some uniformity. I said this about the NCIC in 1981. The FBI had a damn computer that stored information on stolen boats, planes and cars, and stolen guns, but we do not have a national registry on child custody orders. So this is a nightmare and everybody falls through the cracks.

My God, we put a man on the moon, did we not? I keep saying to these Committees we have spent billions of dollars to put that stupid little module on Mars, and send us back those pictures, and we do not have a national registry. I do not give a damn about what the other side of Mars looks like.

Ask Tom Sylvester what it looks like when he does not see his daughter for her birthdays, and she has been gone for 8 years. Do you think he gives a damn about what is on the other side of Mars? I do not think so.

It will also enhance the international system for addressing this problem; strengthening the mechanisms in place at The Hague; reaching out to parts of the world that are not a part of The Hague Convention; and thorough aggressive judicial training.

You know what The Hague is asking with this legislation? How much this legislation appropriates to The Hague to do this judicial training and try to bring some of these countries in order? Take a guess—\$150,000. One hundred and fifty thousand dollars is all The Hague and we are asking in this legislation.

I mean, God, look at the pieces of legislation you pass every day. One hundred and fifty thousand dollars is tip money. It is nothing to get The Hague in line here.

I have a basic belief, because most of you know me as a manhunter but I also hunt for missing children. Those who break the law should pay the consequences. Too often, however, that does not happen in cases of non-custodial family abduction. Too often family abduction cases do not receive the attention or priority they deserve. This bill will change that.

I mentioned that Maura Harty has worked long and hard, but she is a one-woman show. She is a one-woman SWAT team that gets on these planes and looks for these kids.

And I mentioned Secretary Powell. He would love to have the ability to do what he wants to do. We have met with him numerous, numerous times. He is a loud, loud advocate for children and very involved with the National Center. He cut the ribbon at the dedication of our building. He works closely with the boys and girls clubs. He says, give me the wherewithal, give me the horses, give me the ability and I will go do it. I will make it a priority. I will make it a priority.

I want you to take a look at this video if you would, please. Congressman Burton is involved in one of these cases. He is involved in lots of these cases. I just want you to take a look at the pain of these mothers and what they went through, and do not forget, their children are American citizens.

[Video tape played.]

[Technical difficulty.]

Mr. WALSH. You know what, in the interest of time let me just read a couple facts that I have gleaned out of articles that we prepared for today.

Although the United States and more than 70 other countries signed The Hague Convention on International Child Abduction, many of world's largest nations refuse to do so, including India, Russia, most Islamic countries in the Middle East, China, and much of Africa. Each year at least 400 American children are taken illegally to such countries, according to State Department records. Four hundred American kids every year are taken out of this country.

I will tell you what, if it were 400 anchormen like Dan Rather, 400 athletes that went to other countries and did not come back, or 400 Members of Congress, it would be a damn big deal, would it not? It is just 400 kids, that is all, 400 kids every year.

In the year 2000 alone, U.S. taxpayers paid hundreds of millions of dollars of grants, loans, and aid to many nations that refuse to return kidnapped American children, according to this *News Day* article. Among nations refusing to sign The Hague Treaty, the top five aid recipients received \$476 million from the United States despite at least 293 cases of abducted children taken to these countries. One of the United States' major allies in the Middle East, Egypt, gets \$2 billion each year in military and economic aid without any requirements to return dozens of children who have been taken there.

Egypt, where The Hague Convention does not apply, only returned 121 children out of 959 cases; a rate of 12 percent according to Government records of cases handled during a 3-year period.

For our great friend Egypt, you signed those pieces of legislation that give them that \$2 billion, but yet they laugh in your faces and at the legislation. I was here and worked really, really hard for the parental kidnapping bill that was passed in 1993. Here is what the FBI says about that bill: The FBI officials in charge of investigating these cases say they are often hamstrung by lack of international cooperation, even when alleged abductors are indicted by U.S. courts and when children's whereabouts are known. So the FBI and everybody that Tom Sylvester has run into says the same thing. Where is the guts of this legislation that passed in 1993? Where is our message to our partners in the world that we lend and give and give and give with no strings attached, billions and billions of dollars?

I was here once before when we bailed out Mexico with the NAFTA treaty. The peso was falling apart. I was down in Mexico doing shows, drug dealers and cartels everywhere, and we were going to lend them billions of dollars.

And I went to President Clinton myself and then Attorney General Janet Reno, and I said we need one thing. If we are going to bail Mexico out, let us make them sign an extradition treaty of fugitives, murders, criminals and get our kids back from Mexico. Right? Did not happen. What a perfect time for us to say we are going to save your entire country, we are going to lend you billions of dollars and shore up your economy, but you know what, since that meeting with President Clinton we now have on record over 3,000 murders and fugitives down there and we do not know how many kids.

I say it is a perfect example. When somebody comes begging to us or they want the money, it is so simple for this Committee, for this Congress and for the Senate across the hall over there, to say: We are your partners, sign The Hague Treaty, we will do business with you, we will lend you money, we will support you, we will battle terrorism with you, but you know what, these kids are American citizens. They need to come home. We need to end this rhetoric.

I could go on forever, but I want to thank Senator DeConcini for being here. He is on our board. He is a very loud voice. And you know what, I hope that I get to see this Committee in the Rose Garden, that is your intention with this piece of legislation. There are not billions of dollars attached to this, this is a simple piece of legislation with 150 grand attached to it, that is nothing. I hope to see you there.

Because you know what, then I can look at this man, Tom Sylvester. I mean, I searched for my son and could not get him back. Those 2 weeks were the worst weeks of my life. I cannot imagine what he has been doing for 8 years wondering what his daughter is doing, missing those birthdays, missing Christmas, wondering what kind of care she is getting from the psycho mother who abducted her.

A missing non-custodial parental-abducted child can be in great trouble. I have done many cases on *America's Most Wanted* where

the non-custodial parent killed the children to get even. It is not an act of love. It is an act of revenge. I did a guy that was living out of dumpsters. I did a guy that we caught in France who had never taken his child to school or for dental care. It is not an act of love. It is an act of revenge. It is a way to get even with your ex-spouse when you did not get custody.

So you know what, there are so many advocates here on this Committee, I really think you are going to do it this time. You are going to pull the trigger. You are going to pull the plug and you are going to get this legislation passed. And believe me, I think we can saddle up and get it passed on the Senate side, and I want to be in that Rose Garden because you know what, I can turn around and say to this guy, Tom Sylvester, you have listened to nothing but B.S. for 8 years. You have listened to nothing but lip service. Your heart is broken, and you know what, Tom, we are here today in the Rose Garden because you never gave up, and because you listened to us. You listened to this panel and you listened to him, and maybe that day he will get his daughter back instead of all the lip service he has listened to.

Thank you for your attention, and thank you for the Members who are sitting here today listening to this. God bless you. Thank you.

[The prepared statement of Mr. Walsh follows:]

PREPARED STATEMENT OF JOHN WALSH, TELEVISION HOST OF "AMERICA'S MOST WANTED" AND CO-FOUNDER, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

I am very pleased to be here to talk about H.R. 4347 and why it is critical to the situation regarding family abductions that we face in America today. As you know, I have an abiding interest in making sure that those who break the law pay the consequences. Too often, however, cases of family abduction are not given the attention they deserve. Thank you, Chairman Hyde and Congressman Lantos, for holding this hearing. It's because of your leadership and determination to move this legislation that we're going to see some action on international and domestic family abductions soon. I also want to recognize Congressman Lampson who introduced the bill with Chairman Hyde and has been pushing to bring internationally abducted children home for years. He has worked tirelessly for the past 3 Congresses introducing the Bring Our Children Home Act that has been included in this bill.

When children are abducted by family members, the abductors are not only breaking the law, they are breaking a child's bonds with left-behind family members and, possible more critically, a child's spirit. In many cases, the results are much worse—children taken by despondent or angry parents have been killed because of the anger and hurt between the parents. Murder-suicide cases are not uncommon. In 1995, after the National Center for Missing and Exploited Children entered into a cooperative agreement with the Departments of State and Justice on the handling of international cases, the Center received a request for the return of two children to Canada. The children had been with their father who was supposed to return them in the evening. When they didn't return, the mother called police and expressed her belief that they might be heading across the border to the U.S. It wasn't long, however, before police in Canada discovered that the father had driven the two children to a rented storage locker and ran a hose from the tailpipe through the driver's side window killing himself, his daughter and his son by carbon monoxide poisoning.

Even when children are not physically harmed, they can suffer severe psychological effects as a result of being abducted. The children often exhibit a fear of authority, inability to bond, they wet the bed and experience nightmares. This isn't surprising considering the lengths that the abductors will go to in order to succeed in keeping the child away from the other parent and family. Abductors tell children that the left-behind parent is dead, a drug addict or that they didn't want the children anymore. They change the child's name and force them to keep secrets, deny their past and avoid the police. In some cases, a child is forced to pretend that he

or she is a son instead of a daughter to make sure they aren't caught. When the abductor does fear that they are on the brink of getting caught, they snatch the child from school, from the new friends they've made, from any sense of normalcy they may have achieved, and run again. When the children are taken internationally, they are not only ripped away from one parent, but they are dropped into a foreign land with a foreign language and customs, all of which forces them into even greater physical, psychological and emotional reliance on the parent who kidnapped them.

When people come to the U.S., we expect them to abide by our laws. In too many instances, people come to the U.S., don't abide by our laws, and take their children back to their countries of origin. Let me show you a short video that illustrates the problem. [Show Video.]

The situations experienced by the parents on that show are repeated across the country. The agony that the parents feel having their children taken suddenly and being kept out of reach is palpable and real. Parental kidnapping is a crime in the United States and it's a federal felony to take the child across state lines or across international borders. I worked to have that law passed. Even so, parents whose children are parentally kidnapped feel that the system failed them, that the courts failed them and they are frustrated when the U.S. government, with all its power and influence, doesn't bring their children back from foreign countries.

The bill before you today is focused on preventing parents from illegally removing their children from the United States and, if it does happen, creating a system that works to bring them home.

The bill will help prevent international child abductions in a number of ways. It authorizes law enforcement to take a child into protective custody to prevent them from being abducted out of the U.S. and creates a national registry of custody orders so law enforcement and the courts know which parent is the lawful custodian. The bill also authorizes the use of supervised visitation centers in cases in which abduction is threatened. In all of the cases I profiled on my show, the children were internationally abducted during a visitation period—one mother had actually asked the court to order supervised visitation because of her ex-husband's threats of abduction but was refused. Her children remain in Saudi Arabia today.

When abductions are not prevented, we must do more to resolve them quickly—each day that goes by further harms the child and further alienates them from the left-behind parent. The bill contains a provision to encourage and support states to enact the Uniform Child Custody Jurisdiction and Enforcement Act, a piece of uniform legislation that is specifically designed to streamline the resolution of state-to-state abductions.

In addition, the bill will provide the National Center for Missing and Exploited Children with access to information from the Internal Revenue Service that can help locate thousands of child-victims of family abduction. The sooner these kids can be located, the sooner the disputes can be resolved for the benefit of the children involved. Judges, lawyers, law enforcement and other professionals need to understand the legal tools that exist to combat family abduction, they need to understand the tremendous risks suffered by children who are abducted by a family member and they need to understand the unbearable pain experienced by the left-behind parent. This bill provides for critically-needed training so that parents can start to experience the legal system helping them.

Another critical element of the bill is the sense of Congress that funding to the Hague Conference on Private International Law should be increased. The U.S. is a member of this entity, along with dozens of other countries that are trying to improve their responses to international family abduction. The Hague Conference needs additional resources to continue to monitor how countries are doing and provide them with services to help return children quickly and legally.

So many of the parents I've spoken to about family abduction have lost faith in the system and in the international cases in particular, they feel abandoned by their government. We've got to change that, we've got to build a better system so kids are not stolen by one parent and hidden away from the left-behind parent. It's hard enough to solve these cases when everyone stays in the U.S., but resolving them is much more complex when the child is taken to a foreign country. This bill will help us provide better ways to stop family abductions from occurring and provides us with better tools for getting the kids who are stolen, back to their homes.

The John Walsh Show
“International Parental Abductions”
Two Victim Parents Share Their Stories
6/21/04

Segment 1

John Walsh: On August 15, 2000, Joanna Tonetti discovered in one dreadful moment, that her three children had been abducted by their father and taken to Saudi Arabia. You got the divorce. You got full custody didn't you? But as a father he had some rights, so he had visitation rights. Okay. Did you ever think your husband would kidnap these children?

Joanna Tonetti: He had threatened before to do it, and so we tried to protect the children, you know. We went to the court and I went through the court system. I trusted in the court system. I really honestly believed that the courts would protect the children, I thought that was what they were there for, but unfortunately I was forced to hand the children over to their kidnapper. We had begged for supervised visitation. We even brought in expert witnesses. He even said he was going to do this, but the court wouldn't listen. They said they couldn't convict somebody of a crime before they committed it.

John: But didn't this judge know that this was a possibility?

(Text on screen: According to Saudi law, children of Saudi fathers are Saudi citizens)

Joanna: I think he knew it was a possibility. I don't believe he realized the threat was as eminent as it was.

Segment 2

(Text on screen: Sam Seramur - Helped one of her three children escape from Saudi Arabia)

Sam Seramur: I got sole custody of all three children.

John: Sole custody?

Sam: Yeah. Plus a permanent restraining order against my ex-husband.

John: How did he get the kids? What happened that day?

(Text on screen: Sam and Joanna - Mothers who are fighting to change laws on international abductions)

Sam: He said I'm a changed man. I just want to be a normal divorced couple, and we'll do visitation, and I'll start paying up everything so that you can, you know, give your children the life they deserve. So I sent them to visit. Well, the minute that my children arrived in Saudi Arabia I tried to call and I wasn't able to speak to them.

John: How in the world did you get Maha out?

Sam: Well, her friends were very, very concerned about her. And they looked for my address, e-mail address, and they found my brothers address and e-mailed him, 'please help us get your daughter out'. So then she told me they were going on vacation to Malaysia.

John: So you went to Malaysia?

Sam: Yes.

John: Which is a Muslim country?

Sam: Yes.

John: By yourself?

Sam: Yes. When they arrived on the 8th of August, my driver, I sent him up to the 10th floor, he said your mom is downstairs. And she came down after him. And she had tried to wake my other two children up. But, she couldn't, she couldn't.

John: With her mothers help, Maha escaped from Saudi Arabia only six months ago. She's seventeen years old now.

Maha - voice-over segment:

Sophie, Faisal, and I learned not to trust anybody in Saudi Arabia but ourselves. We were held hostages for over eight years in Saudi Arabia, and struggled to survive every day under the harsh and cruel rules enforced by our father and Saudi society. I escaped but I want my brother and sister to know that although I am here in the United States, we will be reunited someday. I don't understand. We are all American citizens with American passports. We should have been able to walk out of Saudi Arabia with our heads held high. Please help us bring Sophie and Faisal home.

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Chairman HYDE. Thank you.
Mr. Sylvester.

**STATEMENT OF TOM SYLVESTER, PARENT OF ABDUCTED
CHILD, CARINA SYLVESTER**

Mr. SYLVESTER. Thank you, Mr. Chairman, for inviting me to testify today, and I would also like to especially express my heartfelt gratitude to Congressman Chabot for his unwavering support for all these years in my case.

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child who was taken by her Austrian mother from the United States to Austria on October 30, 1995. That was her last day on American soil. She was then just 13 months old. She is now 9 years old, and remains in Austria.

In the intervening 8 years I have worked unceasingly to be a substantial part of Carina's life, but without success. From the moment I came home from work to discover my baby daughter gone, my life has never been the same. I took immediate action. My initial calls were to the police and a lawyer. Through my lawyer I learned of The Hague Convention and its civil remedy for the return of a parentally-abducted child.

Being a law abiding citizen, I chose the legal system to bring my daughter home. The Austrian trial court, which heard my Hague

Convention case, issued a prompt and favorable order that Carina be returned to her home in the United States, and this decision was affirmed by the Austrian Supreme Court.

However, the abductor refused to comply with the court order and the Austrian legal system provided no effective mechanism, such as contempt of court, to compel her compliance. The one and only attempt at enforcement failed. In the end it was merely a knock on the door and a request for compliance.

Time passed. The delay itself created a fatal change in circumstances; namely, that my daughter was settled in the local environment now, and that it would be too traumatic to send her back to the United States. The Austrian court decided not to enforce their own valid and final order.

The situation is best described with circular logic. The child was not returned because the order was not enforced. Now the order will not be enforced because the child was not returned. The system failed us completely.

Once The Hague Convention proceedings were completed, I obtained an arrest warrant under the International Parental Kidnapping Act with help from the FBI. In an ironic twist, the existence of the warrant is regularly raised against me by the Austrian Government officials and the Austrian court as an obstacle for Carina's return to the United States even for a visit.

A U.S. court gave me custody of Carina. The Austrian courts refused to acknowledge that order, and instead awarded the abductor custody and required me to pay child support retroactive to the date of the abduction.

I remain prohibited by the Austrian courts from seeing Carina outside of Austria. I make voluntary payments to the abductor for Carina's benefit. And I am one of the lucky ones. I am allowed to spend a few days several times a year with Carina, but always under the supervision of the abductor.

My daughter does not speak English. She is being raised without any parenting by her American father who loves her, and without any knowledge of her extended family in the United States who also love and miss her very much.

There has been considerable diplomatic intervention in my case but without effective follow-up action and results, despite the efforts of Ambassador Harty, prior Ambassadors to Austria, Secretaries of State Albright and Powell, and even the President of the United States. No one yet has been able to make a difference.

As to Carina's ability even to visit the United States, no matter what safeguards we agree to and whatever form demanded, diplomacy has failed. In the end, unless the abductor agrees to allow Carina to return to the United States or allow me unsupervised access in Austria, it cannot happen. She remains in complete control, and no Austrian authority will contest her wishes.

My last recourse was the European Court of Human Rights known as the ECHR. It is an independent international tribunal which sits in Strasbourg, France. Complaints I have filed there in the late 1990s against Austria on behalf of my daughter and myself were determined by the court last year to be meritorious.

In April 2003, the ECHR entered its decision finding that Austria had violated our human right to respect for family life by fail-

ing to take all reasonable measures to enforce the order entered under The Hague Convention for Carina's return to the United States. A modest money judgment was awarded to me for Austria's human rights violation. However, there has been no change in access to my daughter as a result of that decision.

As you can see from my situation, an international parental child abduction is multi-faceted. Although it may begin with the abduction, it really does not end until the child is safely returned home. My attempts to maintain a life with my daughter began in 1995, and I will continue until she has returned home. In the process, I have spent nearly a half a million dollars for Austrian and American attorney fees, travel costs, payments to the abductor and related expenses.

Any legislation enacted that can help similarly situated parents, both American and foreign national, to promptly recover their abducted children has my support. However, there are many American parents like me who seek assistance in areas of concern relative to other matters that have not yet been addressed to date.

I want to thank the House Committee on International Relations for holding a hearing on this very important subject, and for listening to my story.

[The prepared statement of Mr. Sylvester follows:]

**Open Hearing of the
United States House of Representatives
Committee on International Relations
June 22, 2004**

**International Assistance for
Missing and Exploited Children Act of 2004**



September 1995



April 2004

Carina Sylvester

Abducted from the United States to Austria
October 30, 1995

Testimony of
Thomas R. Sylvester
4389 Woodlands Place
Cincinnati, Ohio 45241

**OPEN HEARING OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS
INTERNATIONAL ASSISTANCE FOR
MISSING AND EXPLOITED CHILDREN ACT OF 2004
June 22, 2004**

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Biography

Thomas R. Sylvester was born in Covington, Kentucky on September 14, 1953 and is currently 50 years of age. He was raised in Cincinnati, Ohio and graduated from Ohio State University with a BSBA in 1975. He earned his MBA from the University of Cincinnati in 1976.

Mr. Sylvester is a business executive with extensive domestic and international experience in the automotive industry. He has achieved successful results in start-up activities in Asia, South America and Europe. He lived and worked in four countries over a 10-year period while an executive with Chrysler Corporation. He currently resides in Cincinnati, Ohio.

Mr. Sylvester married the former Monika Rossmann in Cincinnati, Ohio on April 4, 1994. His only child Carina Sylvester was born in Royal Oak, Michigan on September 11, 1994. Mr. Sylvester divorced Ms. Sylvester on April 16, 1996.

Mr. Sylvester has testified before the U.S. Senate Committee on Foreign Relations and the U.S. House of Representatives Committee on International Relations regarding international parental child abduction. He addressed the White House Conference on Missing Children on the topic of international parental child abduction. His case has appeared in *Reader's Digest*, on the front page of local newspapers and has been covered in other publications throughout the country. He has been on ABC Nightline and CNN. Since 1999, he has been a volunteer with Team H.O.P.E. (Help Offering Parents Empowerment) to assist families on matters relating to international parental child abduction.

Carina M. Sylvester was born in Royal Oak, Michigan on September 11, 1994. She is now nine years old. Carina had not yet begun to speak at the time of her abduction to Austria by her mother on October 30, 1995. She speaks only German and has lived in Austria with her mother and maternal grandparents since the abduction. Carina has been permitted to spend a few days several times a year with her father in a supervised setting since she was taken from the United States in 1995. She has come to know her father only as an infrequent visitor whose spoken German has declined since his last assignment to a German-speaking country in the early 90s.

Monika M. Sylvester was born in Graz, Austria, as Monika Rossmann on April 29, 1962 and is currently 42 years old. Ms. Sylvester met her husband in 1990 when she was employed as a secretary in Graz, Austria. She married Mr. Sylvester on April 4, 1994 in Ohio. Her only child, Carina, was born in Royal Oak, Michigan on September 11, 1994. On October 30, 1995, Ms. Sylvester abducted Carina from her home in Michigan, taking her to Austria without Mr. Sylvester's knowledge and consent.

Since the abduction, Ms. Sylvester has lived with Carina in Austria. She has been completely successful in derailing the workings of the Hague Convention in Austria. She wields absolute power over the Austrian and American courts, and Carina's life.

CASE SUMMARY
ABDUCTION OF CARINA M. SYLVESTER

Thomas Sylvester married Austrian native Monika Rossmann in Cincinnati, Ohio in 1994. In that year, their only child, Carina, was born in Royal Oak, Michigan. When Carina was just 13 months old, Monika Sylvester abducted Carina from Michigan to Austria. On December 20, 1995, an Austrian trial court found Monika Sylvester to have violated the Hague Convention on the Civil Aspects of International Child Abduction, ordering her to immediately return Carina to Thomas Sylvester in Michigan as follows:

The child's mother, Monika Sylvester, is ordered by otherwise forced action, to return Carina immediately to her father, Thomas Sylvester, in Michigan.... It should be expected from the child's mother, if she puts the well-being of the child higher than her own, that she returns with the child to the United States.

Monika Sylvester refused to comply with the court order and did not voluntarily return Carina. She also ignored an Austrian court order requiring her to provide Thomas Sylvester with visitation with Carina on two occasions at Christmas that year. The Austrian Court of Appeals affirmed the order for Carina's immediate return. The Austrian Supreme Court likewise affirmed the return order stating:

a return of the child to her father would not pose an immediate physical or psychological danger for the child... the goal is to restore the original conditions, until a decision about custody is made by the U.S. courts.

Monika Sylvester ignored the appellate decisions and continued to refuse to comply with the return order. On May 10, 1996, Austrian judicial authorities made their sole attempt to enforce the return order by appearing at Monika Sylvester's house to ask for the child. They were unsuccessful when she denied that Carina was at home at the time.

In Michigan, Thomas Sylvester obtained a Judgment of Divorce on April 16, 1996 granting him sole physical custody of Carina in the U. S. Following the failure of the enforcement attempt in Austria, authorities in Michigan issued an indictment and warrant for Monika Sylvester's arrest for international parental kidnapping on May 29, 1996. Thereafter INTERPOL issued red and yellow notices.

In September 1996, at Monika Sylvester's request, the Austrian trial court agreed to reopen the Hague Convention case due to the passage of time. Although not permitted under the terms of the Hague Convention, an order was entered that the earlier return order would not be enforced and Carina would not be returned to the U.S. This order was based on the best interest of the child standard, stating that the child's best interests superseded the policies of the Hague Convention. That decision was affirmed by the Austrian Supreme Court stating that "*the concrete welfare of the child precedes over the aspired goal of the Hague Convention treaty.*" The Austrian trial court shortly thereafter awarded custody of Carina to the abductor and entered a child support order payable by Thomas Sylvester back to the date of the abduction. The Austrian courts insist that visitation with Carina be in Austria only and supervised by the child's mother for fear that Thomas Sylvester will abduct Carina to the U.S.

The European Court of Human Rights released its decision in the case of *Sylvester v. Republic of Austria* on April 24, 2003. The European Court determined that the Republic of Austria violated the human rights of both the father and daughter when it failed to enforce an order entered by the Austrian courts that Carina be returned to the United States under the Hague Convention on the Civil Aspects of International Child Abduction in December 1995. The European Court of Human Rights, the enforcement arm for the Convention for the Protection of Human Rights and Fundamental Freedoms in Europe, held that Austria had violated Mr. Sylvester's and Carina's fundamental right to a private family life by its failure to enforce the final Hague Convention return order. The decision of the seven-judge panel was unanimous.

Carina is now nine years old. She has lived in Graz, Austria for eight of those nine years, despite orders from both the U.S. and Austria that she be returned here. Monika Sylvester has been completely successful in derailing the workings of the Hague Convention in Austria. She wields absolute power over the Austrian and American courts, and Carina's life. Thomas Sylvester has seen Carina only occasionally under strict supervision since 1995.

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS

OPEN HEARING ON THE INTERNATIONAL ASSISTANCE
FOR MISSING AND EXPLOITED CHILDREN ACT OF 2004

Testimony of Thomas R. Sylvester

June 22, 2004

INTRODUCTION

I am Tom Sylvester, father of Carina Sylvester, my American-born daughter and only child, who was abducted by her Austrian mother from Michigan to Austria on October 30, 1995. That was her last day on American soil. She was then just 13 months old. She will soon celebrate her tenth birthday in Austria. In the intervening nine years, I have worked unceasingly to obtain the enforcement of the various U.S. and Austrian court orders granted in favor of Carina's return to the U.S. in 1995 and 1996. Unfortunately not one of the hundreds of people I have contacted and nothing they or I have done has made a difference. I spoke similar words to this Committee five years ago and the situation today is the same.

As requested by the Committee, my testimony describes the international child abduction of my daughter Carina, from the United States, and her wrongful retention in Austria to this day. My story also illustrates the unending misconduct of the Republic of Austria as well as the inadequate and often ineffective performance of the Department of State experienced by many left-behind American parents. I urge you to take an institutional, remedial, big picture approach that uses my particular case as an example of much larger problems with other countries and within our own government. In that regard, I request that you review the Recommendations section at the end of my full written testimony. While my specific suggestions for amendments to this bill and subsequent legislation in the Recommendations section of my testimony are not complete or guaranteed solutions to every current or future international child abduction or wrongful retention case, they are remedial measures that will make an immediate difference in many cases. They are the right thing to do in the memory of the thousands of abducted American children who never have come home. If just one American child is saved, the legislative measures I propose will be worth it.

For me, the Hague Convention has failed in both of its objects set out in Article 1: to obtain the prompt return of abducted children to their countries of habitual residence and to obtain access to abducted children when access is otherwise being denied. I placed my trust in the Hague Convention and the judicial system that implements it. I relied on the Hague Convention and the workings of the courts both here and in Austria to achieve these objects to both Carina's and my detriment. That was a mistake.

I sit here before you nearly nine years after my daughter's abduction, a person who did everything right under the Hague Convention, including getting all the right orders both here and in Austria, a person who nonetheless has lost his daughter. As to the prompt return of abducted children, the facts are that despite Austria's valid and final order in 1995 for the return of Carina to Michigan for a custody determination there, affirmed through the Austrian Supreme Court, Carina was never returned. The Austrian legal system provides no mechanism for civil enforcement of their orders rendering this and all of their orders useless pieces of paper. Carina's mother was never compelled to

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

After more than eight years of continual activity to rectify this situation through legal channels, working exclusively through the system devised under the Hague Convention, I can say today that there has been absolutely nothing that has been done that has made any difference whatsoever to correct this situation. Unbelievably, it is not the law, the Austrian government and their courts, or the U.S. government and our courts who is in control of the situation. It is the abductor who is in complete control. This is a case of the Hague Convention at its absolute worst.

I greatly appreciate the invitation to address you today. I hope that hearing my story will help you understand the need for continual improvement in our work as a treaty partner to the Hague Convention. Despite our excellent return rate under the terms of the Hague Convention, there is always room for improvement.

It is the notion of reciprocity which forms the foundation upon which the Convention is built. If we expect to receive the benefit of the return of American children by other countries, we must strive to reciprocate. In turn, when those countries benefit from the excellent system in operation here under the Hague Convention, we must hold them to a high standard as well.

I pray that in working to perfect our system, we may inspire those like Austria to do the same.

My Experience

There are no words to adequately describe my feelings of loss and pain. I wish that I could convey the daily anguish and the deeper feelings of sorrow, sadness, anger, despair and hurt. These feelings are always present for me. The moment I became aware that my daughter was taken from me, I felt like someone had reached inside my chest and ripped my heart out of my body. Since then, I think about her always. Every child I see reminds me of her. There is not a day that goes by that she is not paramount on my mind. Through Carina, I felt the joy and wonder of being a father. Then, after only 13 months, I felt the sorrow of her being taken away from me. If you are a parent yourself, perhaps you can imagine the heartbreak of being without your child.

I believe that I am doing all that I can and feel that some days I devote most of my time to obtaining some assistance in having a life with my daughter. I have sought this assistance from only those persons I believe to be holding themselves out in the United States government as those who can help--the Department of State and the Department of Justice and even the President of the United States.

Despite my unceasing efforts to be a substantial part of Carina's life, I play only a small role in her life. We speak on the phone once a week for about 10 or 15 minutes. These calls are monitored by speaker-phone by Carina's Austrian family. Our conversations are also limited by the fact that Carina speaks only German. Under these conditions, it is often difficult for us to express our feelings adequately. I send her a card with a small gift every week so she has something tangible to show that I love her. I am not permitted to know where she goes to school, or see her report cards. She is very active in school activities, plays, music, and sports, however, I have never been able to attend any of these events and cheer for her. I have just spent my ninth Father's Day apart from my daughter.

Carina and I do not have the opportunity to relate to each other as father and daughter on the most fundamental human levels. I cannot support and mentor Carina in her day to day life. Since Carina was taken, I have never had the opportunity to read her a bedtime story, kiss her goodnight,

help her with her homework, or teach her to play baseball. I have not been permitted to take her to church, or share family values with her. On all of the holidays that most families take "togetherness" for granted, I am never able to be with my daughter. Aside from all of the legal and political issues surrounding my situation, these are the most important.

The financial reality of the situation is that I have paid legal fees, travel and related expenses both here and in Austria of nearly \$500,000. There is no end in sight to these expenses. This is money that I pay for Austria's non-compliance with the Hague Convention, their adjudicated violation of my and my daughter's human rights, and their inability to enforce their own orders. It saddens me that these funds could otherwise have been used for Carina's future.

I love Carina, my precious nine year old daughter, with all of my heart and soul. Carina is my only child. I will continue my efforts on all levels; practical, emotional, and spiritual, to provide her the opportunity to feel love and be loved by both of her parents. I am committed to a loving relationship with my daughter.

Procedural Background

The Hague Convention Case, Article 3:

On October 31, 1995 I filed an Application for Assistance with the State Department under the Hague Convention, to which both the U.S. and Austria are party. I also filed a Complaint for Divorce in Oakland County Michigan Circuit Court. The Application for Assistance made its way through the Austrian Ministry of Justice to the court of the first instance in Graz, Austria where hearings were conducted by Judge Christine Katter. Both Carina's mother and I appeared at the hearings, and her mother raised defenses to Carina's return under the terms of the Hague Convention. On December 20, 1995, Judge Katter entered an order for the immediate return of Carina to me in Michigan. In that order Judge Katter stated:

"The child's mother Monika Maria Sylvester is ordered by otherwise forced action to return the minor Carina Maria Sylvester, D.O.B. 09/11/94, immediately to the father Thomas Sylvester to the previous residence in 5851 Cheerywood Drive, Apt. 1912, West Bloomfield, 48322 Michigan USA."

* * *

"Here must be considered, that in the process the custody is not to be decided, but that the condition prior to the kidnapping restored, and that the State of the prior residency can resolve the custody decision."

* * *

"It should also be expected from the child's mother, if she puts the well-being of the child higher than her own, that she returns with the child to the United States."

Carina's mother, however, did not comply with the return order.

Judge Katter also ordered specific supervised visitation for me at the Institute of Family Learning in Graz, Austria on Christmas Eve and December 27, 1995. Carina's mother did not bring Carina to the appointed place for visitation on either date denying Carina the opportunity to share the fun of opening Christmas presents with her father. That was the first of many Christmases we have now spent apart.

Instead, Carina's mother took an appeal to the return to the Austrian Court of Appeals. This initiated an automatic stay of enforcement of the return order which ultimately continued through May 7, 1996. The Austrian Court of Appeals affirmed the return order and again directed Carina's mother to return her to me for a custody determination here in the United States stating:

"It is the mother's freedom and is also expected of her as a responsible custody provider, that she put the welfare of the child before her interest to stay in Austria and returns together with the daughter to the United States. It is then the responsibility of the appropriate American court to decide final custody."

Rather than returning Carina at that point, Carina's mother instead took an Extraordinary Writ to the Austrian Supreme Court. That court, although rendering its decision on February 27, 1996 in favor of the return of the child, did not "deliver" its order until May 7, 1996. The Supreme Court order stated:

"According to the findings of the lower courts, which are binding for the Supreme Court, a return of the child to her father would not pose an immediate physical or psychological danger for the child. Furthermore, the appeal emphasizes problems for the child due to a separation from her mother, the main provider, if she complies with the order, is not given. The goal is to restore the original conditions until a decision about custody is made in the United States."

Once the decision of the Austrian Supreme Court was delivered, all stays were then lifted in the case and the return order of December 20, 1995 became valid and final. On May 10, 1996, my local attorney assembled a group in Graz, Austria at the direction of Judge Katter to assist in effectuating the one and only opportunity for court enforcement of the return order. That group included local police, Judge Katter herself, an enforcer from the Court and others, including my Michigan counsel and me. Unfortunately, the attempt failed when Carina's mother stated that Carina was not at home and that she was with her grandmother somewhere "in the mountains." I believe that Carina's grandmother escaped from the house with Carina out a back window.

There was much drama in the attempted enforcement in that a gun was drawn by the child's Austrian grandfather on the court officials. However, the local police on the scene made no arrests. To date, despite efforts by my Austrian counsel, there has been no criminal matter against Carina's mother lodged by Austrian officials.

In response to this exclusive chance for court enforcement, Carina's mother admitted herself into a hospital for "injuries" allegedly sustained from her contact with court-appointed officials. She then retaliated with a barrage of actions against the trial court, including a motion for disqualification of the judge alleging an amorous connection between the judge and my Austrian counsel, and a motion to change venue based on a false change in her address, both of which were denied. She then lodged criminal charges and grievances against my attorney.

The most damaging of all, however, was her petition not to enforce the Hague Convention return order due to change of circumstances resulting from the passage of time. This motion was denied by the trial court, but was reversed and remanded on appeal. The Supreme Court of Austria determined that the order to return, entered more than a year earlier, could not itself be changed since it was both valid and final. However, with the services of an "expert" in child psychology, the trial court was to determine if circumstances had changed sufficiently due to the passage of time to warrant that

the child not now be separated from her mother under the "grave risk of harm" analysis under Article 13(b). The trial court was further to consider if the child were to be returned, the proper mode for enforcement of the order.

On remand, the trial court held that the order for return would not be enforced and the child would stay in Austria. This decision was allegedly based on the report of the Austrian "expert" child psychologist on a best interests of the child standard "*since the specific welfare of the child takes precedence over the purposes of the Hague Convention.*"

I myself was never interviewed by the child psychologist prior to this determination and it was therefore made without benefit of any information or experience other than that provided by the abductor herself. I did however at that time provide the Austrian court with a copy of a "Safe Harbor" order from the Michigan court, the scheme of which the Austrian court dismissed as not in the Carina's best interest since it would remove her from Austria and could allow for the possibility my retaining custody of her in Michigan. Both situations, the court concluded, would be detrimental to the child. With this analysis, the court effectively determined custody in clear violation of Article 16 of the Convention. This decision was subsequently affirmed by the Austrian Supreme Court. The Central Authority in Austria notified us shortly thereafter that it had closed their file on the abduction.

The Michigan Divorce Case

In Michigan, the divorce case proceeded to a Default Judgment of Divorce granting me sole physical and legal custody of Carina. Carina's mother appeared in and participated in the case to the extent of requesting that the default entered be set aside. Following an extensive hearing, the Michigan court determined that it would set aside the default on the condition that Carina's mother return her to Michigan by a date and time certain. Carina was not returned. The Judgment of Divorce was entered on April 16, 1996. One week later, the court entered an order sealing the court records.

My attempts to obtain acknowledgment by Austria of the Michigan Judgment of Divorce have been unsuccessful to date. In fact, after three years in the various stages of appeal, the matter has not been finally determined. Initially, the Austrian Ministry of Justice denied my request for acknowledgment of the Michigan Judgment of Divorce. This decision was affirmed on appeal. While my further appeal was pending before the Supreme Administrative Court, the issue of the proper Austrian body to determine the recognition of foreign judgments was presented to Austria's Constitutional Court. This Constitutional review has stayed consideration of my appeal to the Supreme Administrative Court. It is unknown when the Constitutional Court will decide the question. Irrespective of that decision, it will be years before a final determination of Austria's recognition of the Michigan Judgment of Divorce from April 1996 will be made..

This delay in recognition of the Michigan judgment combined with the Austrian Supreme Court's order not to enforce the valid and final return order justified the Austrian trial court to determine itself vested with jurisdiction to award custody of Carina to her mother and to order me to pay child support retroactive to the day of the abduction. My appeals on both issues were denied. With the implementation of the Uniform Interstate Family Support Act here in the States, I could expect that the Austrian support order, when presented to the appropriate state agency, would be honored automatically and my income withheld, thereby violating the Michigan Judgment of Divorce and subsidizing the abductor in the process. Fortunately, HUD recently issued a statement giving local agencies discretion on the mandates of automatic enforcement of foreign support orders in international parental child abduction cases. It has become necessary for me to notify my local support enforcement agency, provide it with a copy of the HUD statement and copies of both the 1996 Michigan Judgment of Divorce granting me custody and the 1999 Austrian support order which conflicts with it. With this, I have had some measure of success in confirming that automatic enforcement of the Austrian support order will not take place.

The Hague Case, Article 21

In March 1998 when Austria closed its file on my Article 3 case, I petitioned under Article 21 for access to my daughter for visits in July, September and December of that year. The petition was presented to the trial court, by that time presided over by the new judge.

Unbelievably, the petition under Article 21 was denied in April 1998 on the grounds that the Hague Convention did not apply. In May, the Austrian Court of Appeals reversed and remanded the decision, directing the trial judge to enter an order for access as "guaranteed under Article 21." At the end of July, the new trial judge did just that, ordering visitation in Austria at the home of Carina's grandparents where she and her mother lived. Since the July dates had already passed, the order granted the request for only the September and December dates. Carina's mother appealed that decision based on the fact that the court had not secured approval for the visit from the grandparents and therefore, had no authority to order the visit in their home. It was also based on Carina's mother's articulated fear that I would still snatch Carina back, even after four years of not having done so. In addition, she claimed that seeing me would traumatize Carina and believed that I should have no visiting rights because a warrant existed in the States for her arrest. I appealed supervision of the visits. By the time the first appeal was heard, the September dates had passed and the issue was moot as to that visit. Because of the passage of time, the court also recommended that I give a new schedule of dates. The opinion of the child psychologist would be required to determine how I have accepted the current situation and how I see Carina's future in order to determine whether it would be in Carina's best interest to have access to her father. I took a further appeal to the matter, particularly related to the use of the "expert" evaluation for the propriety of the visit. The Supreme Court affirmed.

I consequently was required to travel to Austria to meet with the "expert" child psychologist. My requests of the court to see my daughter at that time while I was in Austria were denied. I therefore took it upon myself to stand outside of her house with arm loads of presents, begging to see her. Carina's mother responded and I spent the entire day with Carina, her mother and grandparents at their home. This contact resulted in what might be called a discussion but which is more appropriately called an ultimatum. Carina's mother, understanding her absolute power in this matter has outlined her demands for allowing me to have a life with my daughter:

1. Written acceptance of Austrian custody court order;
2. Written acceptance of Austrian child support order;
3. Payment of remainder of the arrearage owed on the Austrian child support order retroactive to November 1995;
4. Withdrawal of American warrant of arrest; and
5. Agreement to the entry of an Austrian judgment of divorce.

Should I do all five of the above, Carina's mother will then consider allowing me some periodic visitation, decided one visit at a time and always to be had in her presence in Austria. Under no circumstances will she allow Carina to return to the U.S.

She is right to know that she is in control because there can be no question that she is. Even if I could obtain an access order from the Austrian court, without enforcement mechanisms, Carina's mother may comply or not as she chooses. The history is that she will not comply. Under Austrian law, there will be no sanctions for her doing so.

As a result, although Article 21 was clearly designed to protect me from these situations – I am left with the reality that I must engage in self-help if I am ever to know my daughter. Self-help however, was the device that the Convention was designed to remedy so as to afford parents like me

the weight of the law and the support of the local courts in seeking the return of abducted children. In the end, the Convention and its implementation by Austria combined with a lackluster showing of support from the U.S., has led me inexorably to self-help on access. Had I known all of this at the start, I would have engaged in self-help in 1995 when the abduction occurred and avoided the legal, emotional and financial disaster this matter has become. Had I done that Carina would now know both her mother and her father.

In the nearly nine years since Carina's abduction from the United States to Austria on October 30, 1995 at age 13 months, I have been permitted to see her on only 57 days, only at times approved by the abductor, and always supervised by the abductor and others. The chart below summarizes the amount of access time by year:

Dates	Number of Days
October 30, 1995 – December 31, 1995	0
Year 1996	0
Year 1997	6 days (one hour each day)
Year 1998	0
Year 1999	4 days (10 hours each)
Year 2000	11 days (10 hours each)
Year 2001	6 days (1 day, for 3 hours, 5 days, 9 hours each)
Year 2002	15 days (5 days, 6 hours each, 10 days, 9 hours each)
Year 2003	12 days (4 days, 6 hours each, 8 days, 9 hours each)
Year 2004 to date	3 days (1 day, for 6 hours, 2 days, 9 hours each)

The Criminal Case

In addition to my efforts under the Hague Convention, I sought a criminal warrant against the abductor under the International Parental Kidnapping Act. Special Agent Scott Wilson of the FBI took the information and obtained the warrant on May 29, 1996. Interpol issued red and yellow notices. The case was assigned to Assistant U.S. Attorney Jennifer Gorland. To my knowledge, no action was taken on the warrant or the complaint for the first two years. My request to Jennifer Gorland that an extradition request be made to Austria for Carina's mother was denied by Ms. Gorland on the grounds that Austria does not extradite its own nationals. Just recently I learned a provisional arrest request was presented to Italy a short time ago. The request was denied by Italy.

Sylvester v. Austria: The European Court of Human Rights

First and Second Complaints

In the late 1990s, I filed a total of three Complaints against Austria on behalf of my daughter and myself with the European Court of Human Rights (ECHR) in Strasbourg, France. The ECHR is the enforcement arm within the Council of Europe for the European Convention of Human Rights. Austria, a Council of Europe nation, is a party to both the European Convention of Human Rights and the Hague Convention. In 2002, I received news that our first two Complaints had been consolidated and admitted for consideration by the court. Those Complaints alleged a violation of Article 8 of the European Convention of Human Rights by Austria for its unreasonable interference with my daughter's and my right to a family life together by its failure to enforce the order of its own courts for Carina's return to the United States.

On April 24, 2003, a seven judge panel by unanimous decision found Austria in violation of Article 8, awarding me EUR 42,682 in money damages, fees and costs payable by the Republic of Austria. No damages were awarded to Carina.

In reaching its decision, the ECHR applied the all reasonable measures standard, concluding at paragraph 72 of the opinion "that the Austrian authorities failed to take, without delay, all measures that could reasonably be expected to enforce the return order, and thereby breached the applicant's right to respect for their family life as, guaranteed by Article 8."

Although the decision itself was unanimous, the award of damages was the result of a 4-3 split, with two spirited dissents as to damages. The first was a joint dissent as to damages amount, generally declaiming the amount awarded "reparation at its most frugal." The opinion further objected that no award was made to Carina, whom they claimed, should have received "compensation reflecting the level of damage she sustained." The second dissent as to damages was written separately by Judge Bonello to voice his "radical disagreement" with the damages award which he called "mean and beggarly," "paltry and uncaring," and "an offensive trifle." He concluded "if neutralizing the Convention comes so cheap, states may well find it foolish not to brave a try."

The case, styled *Sylvester v. Austria*, has now moved into the execution phase supervised by a Committee of Ministers of the Council of Europe. Austria has met its first burden in that arena with the payment to me of the modest money damages. It must now take both individual and general remedial measures to assure the Committee that the violation of our human rights does not continue and that as a general matter, such human rights violation will not happen again. The Committee meets regularly, approximately every two months, to discuss my matter and many others. It has been reviewing my case for satisfaction since the fall of 2003. Once the Committee is satisfied that both remedies are satisfied by Austria, the case is officially closed.

Unfortunately, the Committee of Ministers has been informed by Austria that since I do not now have a petition under Article 21 of the Hague Convention for access to my daughter pending in the Austrian courts, I therefore have an "agreement" with the abductor as to access to Carina. The Austrians and Committee now take the position that as a result, the violation of my and my daughter's human rights does not continue because I purportedly choose to see my daughter only three times a year, only in Austria, and only under the strict supervision and control of her mother. Further, as to general measures to assure that the violation under Article 8 will not occur again due to their failure to take all reasonable measures to promptly enforce return orders entered under the Hague Convention, the Austrians have submitted new legislation reducing the number of judges competent in the country to hear Hague Convention cases. Effectively, the reduction of the number of courts competent to hear Hague Convention cases bears no direct relationship to whether return orders, once entered under the Hague Convention, can or will be enforced.

It now falls upon me to convince the Committee both that I do not have an "agreement" with the abductor to supervise the limited moments she permits me to have with my daughter and that since Austrian courts are not vested with contempt of court powers to compel compliance with a return orders entered under the Hague Convention, it cannot ever compel compliance with a Hague Convention return order and therefore may indeed again fail to take all reasonable measures as now required under *Sylvester v Austria*.

It is here at which I am at a distinct disadvantage. Austria sends a delegate to the Committee of Ministers at the Council of Europe on a regular basis concerning this and the many other Austrian cases the Committee reviews during their execution phase. As an individual American citizen, I have no delegate and no reasonable means to travel to France every other month to discuss these matters directly with the Committee. As a result, at the beginning of 2004, I sought the assistance of the U.S. government which holds observer status with the Council of Europe. I asked the State Department first to confirm directly to the Committee its long-term and continuing diplomatic efforts to improve my access to my daughter, and second to support my position as U.S. Central Authority under the Hague Convention that reducing the number of courts competent to hear Hague Convention cases bears no direct or even indirect relationship to the ability of those courts to compel compliance with a return order.

Since January 2004, the Committee of Ministers has conducted three meetings with the Austrian delegate concerning my matter. Since January 2004, I have requested the Department of State to assist by doing as the Committee itself suggested, by presenting any information it may have to them directly. Nevertheless, as of the writing of this testimony, I have not been given assurances from the State Department that this will be done. However, just days before this hearing, I learned that the State Department had received clearance for some undisclosed level of participation within the Committee of Ministers. It is my sincere hope that this timing is coincidental and not related to the possibility of my complaint to this Committee concerning the difficulties I have faced in this regard.

Third Complaint

The Third Complaint I filed with the ECHR against Austria was on my own behalf alone for Austria's violation of Article 6 of the European Convention on Human Rights for taking more than six years' time to determine whether they would recognize the custody provisions of the Michigan Judgment of Divorce entered in April 1996. The Complaint was admitted for consideration and all submissions have now been made to the court. A decision is expected before the end of the year.

Diplomatic And Political Pursuits

There has been considerable diplomatic intervention in my case, but without effective follow up actions and results. Despite the efforts of senior level government officials including Ambassador Harty, U.S. Ambassadors to Austria, Secretaries of State Albright and Powell, and even the President of the United States, George W. Bush; no one yet has been able to make a difference.

In an attempt to move the Austrian authorities to assist in either the civil or criminal enforcement of the return order, I sought the assistance of the American Consulate in Vienna. The U.S. Ambassador personally delivered a U.S. government demarche to the Austrian Ministry of Foreign Affairs in June, 1997. I asked the State Department, Bureau of Consular Affairs to correspond with the Ministry of Justice, the Central Authority in Austria. In response, the Austrian Minister of Justice has consistently and stubbornly declined to assist in the enforcement of the Hague Convention or cooperate to facilitate any solution.

Additionally, I requested the involvement of literally hundreds of people including: former President Clinton, former First Lady, Hillary Clinton, Former Attorney General Janet Reno, Former Secretary of State Madeleine Albright; Senators Abraham, Levin, DeWine and Voinovich; Representatives Chabot, Knollenberg and Portman; several representatives within the International Division, National Center for Missing and Exploited Children; the Deputy Assistant Secretary of State for Overseas Citizens Services, U.S. Department of State; a number of individuals within the Office of International Affairs, U.S. Department of Justice, Assistant U.S. Attorney for the Eastern District of Michigan, U.S. Department of Justice; Special Agents, at the Federal Bureau of Investigation, in the U.S. Department of Justice; many individuals at the Bureau of Consular Affairs, Office of Children's Issues, U.S. Department of State; Interpol agents; Consul Generals U.S. Embassy in Vienna; and two former as well as the incumbent U.S. Ambassador to Austria in Vienna.

In addition, I had regular correspondence with various members of Congress. Several of the Congressmen showed their support and wrote letters on my behalf. On October 15, 1998 Congressman Gillman, Chairman of the Committee on International Relations wrote to the Austrian Ambassador to the U.S., Helmut Tuerk:

"Now, Mr. Sylvester is attempting to exercise his rights under the Hague Convention to be able to visit his daughter who just celebrated her fourth birthday last week. (Mr. Sylvester has been able to see the child during her entire life for a total of only six hours.) Again he is encountering delays and obstructions in his legitimate right to visit his daughter instituted by the mother, but aided and abetted by a macabre

procedure in the Austrian judicial system that allows the mother to institute an unending series of appeals in simply establishing a visitation schedule for Mr. Sylvester to see his daughter."

"You know that I am a good friend of the people and the government of Austria, and I write this appeal to you in that spirit. I urge you to do everything possible to end this miscarriage and travesty of justice so that Mr. Sylvester and his daughter can enjoy the normal relationship that a child is entitled to have her father."

Diplomatic efforts regarding access have been continuing since 1999. A summary of the activity follows:

- 3/02/99 Department of State Office of Children's Issues Director and other representatives from the Bureau of Consular Affairs and Office of the Legal Advisor met with officials of Austrian Ministries of Foreign Affairs and Justice in Vienna to discuss the case.
- 9/13/00 U.S. Ambassador to Austria Hall, the U.S. Consul General in Vienna, Thomas Sylvester and his U.S. attorney met in Vienna with the Austrian Minister of Justice Boerndorfer, Ministry of Justice official Schuetz, and counsel for Monika Sylvester in an attempt to mediate access issues.
- 9/21/00 Secretary of State Madeleine Albright meets with Tom Sylvester to discuss current problems with access in her Washington D.C. offices accompanied by Rep. Steve Chabot and Mr. Sylvester's U.S. attorney.
- 9/25/00 Secretary of State Albright discussed the Sylvester matter by telephone with Austrian Chancellor Schuessel.
- 11/08/00 Secretary Albright and U.S. Ambassador to Austria Hall meet with Austrian Foreign Minister Ferrero-Waldner in Washington D.C. and raise the Sylvester case.
- 11/26/00 Secretary Albright met with Austrian Foreign Minister Ferrero-Waldner and Austrian Chancellor Schuessel in Vienna and again raised the Sylvester case.
- 3/22-28/01 Department of State sent a delegation to participate in the Fourth Special Commission to review the operation of The Hague Convention on the Civil Aspects of International Child Abduction at The Hague and raised the case with the Austrian delegation.
- 6/27/02 Secretary of State Powell meets with Tom Sylvester and Rep. Steve Chabot in his offices in Washington, D.C. to discuss difficulties associated with Mr. Sylvester's access to Carina.
- 6/28/02 Secretary Powell contacted Austrian Foreign Minister Ferrero-Waldner, expressing his dissatisfaction with the status quo in the Sylvester case and asking her to help find a solution.
- 7/01/02 U.S. Ambassador to Austria Brown met with Austrian Minister of Justice Boehndorfer to discuss the Sylvester case. Ambassador Brown wrote and hand delivered a letter dated June 10, 2002 noting that the Sylvester case was creating an irritant to otherwise

outstanding bilateral relations and asking for assistance in reaching a humane and just resolution.

- 1/14/03 Assistant Secretary of State for Consular Affairs Harty met with Austrian Ambassador Moser and discussed the Sylvester case, urging the Austrian government to develop proposals to expand and normalize Tom Sylvester's access to his daughter. Ambassador Moser agreed to ask authorities in Vienna to help develop a workable access plan.
- 3/21/03 Personnel in U.S. Embassy Vienna met with officials of the Austrian Foreign Ministry to discuss the case per instructions from the Department of State to follow up on the meeting in Washington D.C. between Assistant Secretary Harty and Austrian Ambassador Moser. U.S. Consul General in Vienna reviewed all of the efforts made to date to obtain broader effective access rights, especially the right to unsupervised visitation both in Austria and the U.S. and requested concrete suggestions from the Austrian side on how to achieve these goals. Austrian officials promised to look into the case further and provide a response to the U.S. Embassy and Washington.
- 5/02/03 Assistant Secretary Harty approved a diplomatic note to the Austrian Embassy in Washington D.C. forwarding a copy of The European Court of Human Rights' unanimous decision in the case of Sylvester v. Austria, insisting that Austria urgently take steps to expand Thomas Sylvester's access to Carina Sylvester.
- 7/14/03 Assistant Secretary Harty met with Austrian authorities in Vienna to discuss the matter of Carina Sylvester and urged the Austrian government to develop proposals to expand and normalize Thomas Sylvester's access to his daughter.
- 7/16/03 Assistant Secretary of State for European and Eurasian Affairs Jones discussed the Sylvester matter with Austrian Foreign Minister Ferrero-Waldner in Vienna and urged the Austrian government to develop proposals to expand and normalize Thomas Sylvester's access to his daughter.
- 8/20/03 Assistant Secretary Jones raised the case in a meeting with Austrian Ambassador Moser.
- 8/25/03 Under Secretary of State for Political Affairs Grossman raised the Sylvester case in a meeting with Ambassador Moser.
- 9/18/03 Secretary of State Powell raised the case in a meeting with new Austrian Ambassador to the U.S. Nowotny.
- 10/14/03 State Department Legal Advisor Taft raised the case in a meeting with Ambassador Nowotny.
- 10/29/03 Assistant Secretary Jones raised the case in a meeting with Ambassador Nowotny.
- 11/13/03 Under Secretary Grossman raised the case in a meeting with Austrian Foreign Ministry Secretary General Kyrle.

- 12/04/03 President of the United States George W. Bush raised the Sylvester case with new Austrian Ambassador to the United States Nowotny as she presented her credentials.
- 01/16/04 Assistant Secretary Hardy met with Ambassador Nowotny to discuss the case of Carina Sylvester and ways for Thomas Sylvester to expand access to his daughter.
- 01/26/04 U.S. Attorney General Ashcroft raised the Sylvester matter with the Austrian Minister of Justice while in Vienna.

Given all that has taken place with all of the people involved both in Austria and the United States, it is amazing to me that nothing to date has made a difference.

The Media

I have turned to the media for assistance after failing on the legal, diplomatic and political fronts. I would prefer not to pursue this forum. I do not seek or enjoy the personal attention. I do not typically make my private life public. However, I have come to realize that my case is a tragedy that has resulted in spite of the purported safeguards put into place by the Hague Convention and the International Parental Kidnapping Act. Nothing can give me back these nine years without my daughter and no one can give my daughter a childhood filled with memories of her father. However, this situation cannot be allowed to continue and this situation must not happen again. The problems encountered under the Hague Convention by an individual parent are not just private matters.

I believe my case serves as an excellent example of how the system does not work and has failed miserably. I believe that it is important to tell my story so that the American people can have a better understanding of what can happen in these cases, and to caution those who may follow. I was told early on by a representative of the U.S. Embassy in Vienna that it is clear that the Austrians are protecting Carina's Austrian citizenship. In response, I have asked for years who in the States is protecting Carina's American citizenship. I am given no response.

I have attempted to publicly embarrass the Austrians for their handling of this case and validation of the abductor's illegal, deviant behavior. I am outraged by Austria's behavior and my government's ineffective response in this case. My rights as a parent are being denied and the Austrians are denying Carina's rights. Although Austria is our ally and claims to be a civilized society, I am getting the level of cooperation from the Austrians as one might expect to receive from our enemies. I will continue to do all I can to highlight Austria's performance in the media in the hopes that they will cooperate to ensure the objects of the Hague Convention are upheld, end this travesty of justice and continuing violation of human rights.

My efforts on this front have included articles appearing in a number of newspapers and magazines throughout the country including: *The Washington Post*, *The Washington Times*, *International Herald Tribune*, *Chicago Tribune*, *The Cincinnati Enquirer*, *The Cincinnati Post*, *Foreign Service Journal*, and a special feature in the *Reader's Digest*, entitled, "America's Stolen Children." I have also appeared on various radio and television broadcasts including: *Voice of America*, *ABC Nightline* and *CNN*.

I am concerned that Austria will not unilaterally and voluntarily reform their system. I believe they will do so only when forced to do so out of self-interest (if their children are not being returned by foreign judges in retaliation) or embarrassment (from massive publicity and adverse human rights reports).

I contacted the media in an effort to raise awareness of my situation and the problem of international child abduction at large. I believe that international child abduction is child abuse. I also believe it is a human rights issue. I need media support. All parents in my situation need media

support. I continue to request assistance and support from the media in order to educate the American public and improve the situation for American left-behind parents and their children.

Networking/Advisory Panels

I have networked extensively with other similarly-situated parents. Networking among left-behind parents and their attorneys is in fact a valuable resource because of the immediacy and wealth of information exchanged. Our federal government should propose ways to facilitate such networking, including requests for Privacy Act waivers from the outset, so that the Department of State and the Department of Justice can give a left-behind parent names and phone numbers of other parents in the same situation with the country in question.

I have attended workshops on the issue of international parental child abduction and participated in rallies in support of active government participation in the return of parentally abducted children. During the past nine years I have actively participated in Parent Focus Groups and have been in contact with a large number of left-behind parents and hundreds of people involved in addressing child abduction. I am a member of many organizations, including: Parent & Abducted Children Together (PACT), Children's Rights Council, Parents and Children for Equality, and the National Fatherhood Initiative.

On October 1, 1998, I testified before the United States Senate Committee on Foreign Relations to examine the U.S. Government's response to international parental child abduction. On October 14, 1999, I testified before the United States House Committee on International Relations to review the implementation of The Hague Convention on the Civil Aspects of International Child Abduction. On February 9, 2002, I participated in meetings with the Congressional Missing and Exploited Children's Caucus on "Bringing Our Children Home," to discuss the plight of internationally abducted children. On October 2, 2002, I addressed the White House Conference on Missing Children on the topic of international parental child abduction.

Since 1999, I have served as an active volunteer for Team H.O.P.E. (Help Offering Parents Empowerment). As a Team H.O.P.E. volunteer, I have assisted 60 parents whose children were internationally abducted or threatened to be internationally abducted.

The United States Central Authority: The Department of State

I have had a direct relationship with the Office of Children's Issues, Bureau of Consular Affairs since 1995. I believe this long-term relationship to be unusual and the result of the fairly unique nature of my personal case. Unlike many other cases, the job wasn't done in six to 18 months. My eight-year relationship with Children's Issues has therefore given me adequate opportunity to form judgments as to the value received by American parents from the Office of Children's Issues when things don't go as expected following the entry of an order by another country that a minor American child be returned to the United States.

I was surprised initially by the vast number of telephone calls and faxes that it took in order to get even a letter sent from Children's Issues to the Austrian Central Authority. As a result, during the late 1990s, a significant amount of my work day, every day, was devoted to follow up phone calls, voice messages and faxes, all at significant expense and all for very minor matters. The sheer volume of the time required for the absolutely necessary repeated and persistent follow-up in the end consumed all the time I had available and meant the loss of my job and concomitant income.

As time passed, I learned that the caseworkers in Children's Issues, their superiors and embassy/consulate staff rotated assignments every two years. As a result, I have had to work with no fewer than six successive caseworkers alone including Charisse Philips, Ellen Conway, Steve Senna, Bill Fleming, Nadine Wick and now Georgiana DeBoer, each for varying degrees of time. The

institutional memory was lost with each departure and I felt that I had to begin the re-education process every year or so, leading to a complete stoppage of forward advancement of my matter.

There was indeed a window period of time throughout most of 1996, after the return order was affirmed by the Austrian Supreme Court in the spring but before the Austrian courts determined that they would not enforce the order in December. It was then that I also looked most hopefully to the Department of Justice to work diligently in pursuing the international warrant for the abductor's arrest. During that period, with tremendous persistence on my part, several written exchanges took place between Children's Issues and the Austrian Central Authority concerning the failure of the Austrian authorities to enforce the return order. The Austrian reply was always that it could do nothing, specifically stating that it could do nothing to locate my daughter, to help in any way because I was represented by an attorney there, or to "interfere" with the "independent judiciary" by way of education or briefing the issue of the necessity of enforcement. For these letters written by Children's Issues, I am grateful, for they have laid the foundation for my moral victory in the ECHR. However, it is impossible for me to enumerate the number of hours logged on the telephone to Children's Issues, my Austrian and American attorneys and others during just that critical period. In the end, however, just writing letters was of course grossly inadequate to get the very difficult job done. In the end, they had no effect whatsoever on my having a life with my daughter and she with me.

These inadequate and difficult to obtain measures taken by Children's Issues are mirrored by the surprising difficulties I had contended with from American Embassy/consulate staff (with the exception of the wonderful services provided by Ambassador Hall and Consulate General Jim Pettit.) In 1996, I had been informed in Austrian court papers that my daughter had been moved from her grandmother's house to a neighboring town. This was done by the abductor to effectuate a procedural change in venue in the case with the hopes of obtaining a new judge on my case in Austria. Troubled as to whether my daughter had actually been moved to somewhere new, I began a quest to obtain a consular visit in the form of a welfare and whereabouts check. This was first requested in June of 1996, and after being rebuffed by the abductor's attorney, could not be obtained from the staff at the American Embassy for a full two and one-half years. Even then, my request that a photo be taken of my daughter, whom I had not seen since October 29, 1995, was denied for fear that I would use the photograph somehow to steal my daughter back to the U.S.

This has for me been an extremely difficult pill to swallow because the failure of the Department of State to provide my daughter and me her right to a consular visit as guaranteed under the Vienna Convention appeared to be the result of strong-arm and intimidation tactics by my ex-wife's new attorney. Her threats to the consulate and steadfast refusals to allow them access to Carina resulted in my own countries' denial of two American citizen's rights to these visits for two and one-half years.

In the intervening five and one-half years, the Office of Children's Issues and their superiors have for the most part written letters and conducted meetings with Austrian government officials who remain unfazed by the gravity and incongruous result of the legal case there. Meeting after meeting has occurred at a rate of approximately three per year. In no such meeting other than one in Vienna in 2000 including Ambassador Hall and Jim Pettit, was I permitted to attend. Moreover, my requests to help prepare the group of new-comers unfamiliar with the case, in advanced of the meeting, has been almost uniformly rejected. My complaints on this front have been met in recent years with some allowance for Children's Issues listening to what information I give them. In all honesty however, I must report that I seldom see any use of that material from meeting to meeting. This I can attribute to the lack of continuity resulting from the frequent turnover in the Department.

For example, beginning in the late 1990s, I became aware that The Austrian Central Authority representative, Dr. Werner Schutz and others in the Austrian government, including Justice Minister Diter Boermdorfer and Foreign Minister Benita Ferrero-Waldner were using four regular "excuses" to justify why discussions cannot go forward for an out-of-court settlement of access. These are, the giving of safeguards and guarantees that if Carina were brought to the United States that she would be

returned, that the existence of the un-pursued warrant for the abductor's arrest must be lifted so that the abductor could accompany Carina to the United States and finally that I must relinquish my Michigan custody order in favor of the orders of the Austrian courts concerning custody, access and support.

Years ago, seeing this pattern develop, I began a campaign to educate Children's Issues and consulate staff of these excuses being given to newcomers, who would not be sufficiently educated to rebut them. The failure to rebut the excuses acted to delay any forward progress in any increased access to my daughter and instead rendered each meeting between an Austrian and U.S. government official not only useless but actually detrimental. This is because rather than being able to advance the discussions toward resolution, the newcomer in effect lost face with the Austrian official, who knew full well the true status of the rebuttals to the excuses.

As a result, my campaign with Children's Issues was the presentation of a "cheat-sheet" of the excuses and the historical facts to rebut them. Nonetheless, the effort has failed completely, because even in the most recent meeting between Attorney General Ashcroft and Minister Boehmdorfer, the guarantees excuse was again raised by the Minister, knowing full well of the guarantees already given him in writing years before.

The "cheat-sheet" provided the following detail of fact.

1) GUARANTEES AND SAFEGUARDS

Austrian Excuse #1: The main obstacle concerning visitation by Carina in the U.S. with her father is the lack of safeguards and guarantees that the child will be returned to her mother in Austria at the end of the access period. (Werner Schuetz, June 19, 2002)

Response to Excuse #1: Guarantees and safeguards ensuring Carina's return from the U.S. after a visit here were provided to the Austrians in 1997, 1999, 2000, and 2002 and were ignored.

A. GUARANTEES:

On July 1, 2002, the Austrian Minister of Justice Boehmdorfer himself wrote of the specific guarantees given by the U.S. government in a letter to Dr. Brinbaum, Monika Sylvester's attorney as follows: *"In case of missing the envisaged and supervised visitation rights (kidnapping) – especially if the child visits the U.S. - the U.S. authorities would agree to guarantee your client the return of her child after the end of the visiting period."*

After receiving a response from Monika Sylvester's attorney, Dr. Boehmdorfer reported on August 21, 2002 to the U.S. Ambassador that "Dr. Brinbaum has now responded [to the above letter] by stating that unsupervised access, whether in Austria, or even worse, in the U.S., would be extremely harmful to the child's welfare and would be completely irresponsible. I regret that this attempt at an out of court resolution has not been successful and hope you understand that I will not be in a position to undertake any further steps in this matter."

B. SAFEGUARDS:

These concerns that Carina would not be returned after a U.S. visit were addressed first in 1997 when the Michigan court entered a "Safe Harbor Order" calling, among other things, for the reconsideration of the issue of the custody of the child and the lifting of the warrant for the mother's arrest when she and the child boarded a flight.

This Safe Harbor Order was obtained in the Michigan case on April 23, 1997 and submitted to the Austrian Court which dismissed it in its entirety as being of no consequence.

Nonetheless, when the U.S. Central Authority (USCA) sent a special delegation on March 2, 1999 to Vienna to discuss continuing problems with the Sylvester case, the Austrian Central Authority (ACA) informed them that Safe Harbor Orders should be attempted and obtained "since such orders might give the Austrian judiciary more confidence in returning the abductor and the child to the place of habitual residence." The USCA did not challenge this position based on the obvious falsehood of the ACA's statement in light of the clear facts of the Sylvester case.

Further, following a meeting in Vienna on September 13, 2000 attended by Ambassador Hall, Mr. Sylvester, the Austrian Minister of Justice and others, and specifically in response to requests of the Minister of Justice made at that meeting, Thomas Sylvester submitted a draft motion requesting that the Michigan Court enter a second, more stringent Safe Harbor Order. The submission made was then completely ignored by the Ministry of Justice yielding no result whatsoever. When this was attempted to be presented to the Austrian Court at a hearing in Graz on December 28, 2000, the judge tossed it aside refusing to look at it.

2) WARRANT AND CRIMINAL PROCEEDINGS

Austrian Excuse #2: "There is still a warrant for arrest against the child's mother in the USA." (Werner Schuetz, June 19, 2002)

Response to Excuse #2: This concern was addressed in 1997, 1999, 2000 and 2002.

A. BACKGROUND:

International parental child abduction from the United States is a felony offense. There are two victims: the left-behind parent, and more important, the child. The Congress of the United States indicated its dedication to the eradication of international parental child abduction and its expectation to deter such behavior in passing the International Parental Kidnapping Crime Act ("Crime Act"). The Crime Act was not intended specifically to return an abducted child to the United States. Instead, it is intended to deter international parental child abductions and to punish abductors for such behavior.

B. WARRANT FOR ARREST OF MONIKA SYLVESTER:

The warrant for the arrest of Monika Sylvester was sought and obtained on May 29, 1996 only after the failure of the enforcement proceedings in Austria.

C. AUSTRIA'S RESPONSE TO THE WARRANT:

In the Sylvester case in Austria, the court concluded as a matter of policy that so long as a warrant is active against the abductor as to her criminal activity in the U.S., it would not permit the only child of the left-behind parent, that child being a United States citizen, to return to her homeland for any reason whatsoever, since the abductor could be jailed upon her arrival in the States. This policy is universal and complete and extends even so far as refusing to believe the U.S. courts when a Safe Harbor Order is entered mandating a lifting of the warrant pending civil proceedings regarding custody. Because Monika Sylvester has falsely stated to the Austrian court that Tom Sylvester had long ago promised to have the warrant for her arrest lifted and, because he has not done so, he is believed untrustworthy. Thomas Sylvester never made such a promise; nonetheless, this falsehood has been memorialized as fact in the rulings of the Austrian Court.

On July 1, 2002, the Austrian Minister of Justice wrote to Monika Sylvester's attorney, Dr. Birnbaum, "**The U.S. would be willing to withdraw the warrant for your client's arrest.**" Her reply on August 21, 2002 stated that "unsupervised access, whether in Austria, or even worse, in the U.S., would be extremely harmful to the child's welfare and would be completely irresponsible". The attorney went on to express her surprise that - "in spite of the universally accepted principle of the separation of powers and the principle of the independent judiciary - the political representative of the governments of the U.S. and Austria would continue to intervene on behalf of the child's father with no regard for the welfare of the child".

The alleged concern in lifting the warrant before Carina's return to the United States is that there is no guarantee from the Austrians that the child will be returned to the United States after the warrant is lifted. All proposals made to lift the warrant immediately upon the return of Carina to the United States have been rejected by the Austrians.

3) CHILD CUSTODY

Austrian Excuse #3: "There is still an order by a United States court granting sole custody to the child's father while in Austria the child's mother has sole custody." (Werner Schuetz, 19 June 2002)

Response to Excuse #3: This concern has been addressed in 2002, 2000 and since 1997.

Both the Austrian court and the Ministry of Justice have demanded that the independent judiciary in Michigan modify its custody to award custody to the mother in

Austria before sufficient trust of the father can be gained to allow consideration of Carina to visit her homeland.

4) ACCESS REQUESTS/ MEASURES TO SECURE ACCESS ARRANGEMENTS

Austrian Excuse #4: "At present no application for access is pending in the competent Austria court. The child's parents have agreed on two dates in August 2002 and in September 2002 for access." (Werner Schuetz, 19 June 2002)

Response to Excuse #4: This concern has been addressed repeatedly since 1998.

The Austrian court orders for access are timely, costly, ineffective and not enforceable. The futility of the process of obtaining realistic access to Carina via court orders has been realized for years. The frightful truth is that it took nearly two years to finally obtain a court order under Article 21, from first application. The Austrian Court's initial response was to dismiss the petition under the inexplicable reasoning that the Hague Convention did not apply in the case. On appeal, that unfortunate determination was reversed, however, each time an order for limited and supervised access was entered, Monika Sylvester would appeal, such appeal extending beyond the ordered access dates, rendering the matter moot. In the instances where access was actually ordered, the judge always deferred to the mother's wishes, ordering access according to her desires rather than considering my request. As a result, the meager access ordered was always just whatever the mother wanted to allow. In every instance also, Mr. Sylvester's requests that Carina return to the United States for a visit have been denied as was his request that a long-term plan be developed to assimilate Carina to having unsupervised time with him in Austria leading to her eventual visits to the United States on a regular basis.

The latest of the meetings to take place was that between Attorney General Ashcroft and Minister Boehmdorfer as referenced above which took place in January 2004. The State Department summary of that meeting demonstrates that Minister Boehmdorfer lied to the Attorney General about safeguards. Since that time, I have been persistent in requesting a written rebuttal from the Department of State, but six months later, I am told by my caseworker that the letter is still in process. The text of the State Department report on the meeting, including the provably false statement that he had received no guarantees, reads as follows:

The Attorney General expressed our great interest in the Sylvester child custody case. [Justice Minister] Boehmdorfer said he understood the U.S. sensitivity. He said there were problems on both sides: the Austrian courts had been slow, and then had used that slowness to keep the child in Austria. This was not acceptable, Boehmdorfer said. The Ministry of Justice was committed to reaching a solution, in coordination with the Foreign Ministry. The Justice Ministry had sent the Foreign Ministry a draft bilateral protocol to the Hague Convention on International Child Abduction to guarantee the return of a child in such a case visiting from another country.

Boehmdorfer said there were also problems on the U.S. side in the Sylvester case: if the child went to the U.S. with the mother, the mother would be arrested and the child would possibly not be returned. *Boehmdorfer said he had asked for guarantees*

that this would not happen, but had received none. Boehmdorfer said it was the Foreign Ministry which had to negotiate the protocol to the Hague Convention, but reiterated that the Justice Ministry would do all it could to reach a solution. In Austria, he noted, it was judicial practice that the mother would normally get custody of a child. However, Boehmdorfer said, there would be a meeting on January 29 between members of the Foreign Ministry, the U.S. Embassy, the mother and the mother's lawyer. He said he was optimistic that this meeting would result in a "silver lining" to the case, and said he would welcome a way to guarantee return of the child after a visit.

With the exception of a meeting between the American consulate staff, Austrian Ministers, the abductor and her attorney, at which I was specifically restrained from participating, there has been no other activity in my case in all of 2004. That meeting however, inexplicably resulted only in the arrangement of a "play date" between the child(ren) of current Consul General and my daughter. Believing this to be inappropriate fraternization between my government and a wanted criminal, I expressed quite vocally my disapproval. The result was the explanation that the "play date" was in the nature of a consular visit, causing even further wounds, due to the difficulties I myself had experienced obtaining a welfare and whereabouts check for my daughter in the 1990s, as set forth above. I could see no purpose for or benefit to be gained by such a visit in light of the fact that I had seen my daughter under supervision in Austria just a few months before.

As a result of my eight years of heart-breaking experience with the Department of State, I have grave concern as to their ability to serve effectively as Central Authority under Article 7.

First, there appears to be no established protocol for the handling of outgoing cases by DOS. I can report in all honesty that my attorney and I have had dozens of conversations with personnel at the DOS that resulted in their saying something like "My hands are tied"; "What do you want me to do?"; or "Why are you calling me?" The procedures there seem irregular and haphazard and with the passage of time, the case workers change and the institutional memory of the case is lost.

Second, although time and effort has been expended by the DOS on my case in that ultimately after repeated requests by me, demarches have been issued, letters written to the Austrian Central Authority, and personal visits and contacts arranged between the Central Authorities, I must ask toward what end this work was done, with what level of preparedness, with what commitment? For example, at a particularly crucial time in my case when our sole attempt at court enforcement failed, my appeals to the DOS were met with the inexplicable "strategy" of waiting six months until the Hague Conference to "embarrass the Austrians." To me this "strategy" seemed outrageous in the context of the Convention's directive for "prompt return" of abducted children. However, this was the best I could get. In fact, the six months did indeed pass with little or nothing done on the matter. Upon return from the Hague Conference six months later, I was told that Dr. Werner Schutz, the Austrian Minister of Justice, was a very arrogant and intimidating man. There was no further information or result provided. This is the end for which Carina and I were to wait half of a year.

In March of 1999, a group from the DOS comprised of two newcomers to the Department of State, Mary Marshall and Ellen O'Connor, neither fully familiar with my case, traveled to Austria to meet with authorities there, including Dr. Werner Schutz, to discuss my case. Following the meeting, I received only an oral report from Ms. Marshall that I needed to submit yet another schedule request for access under Article 21 if I wanted the court in Austria to proceed with my petition for access. Based on my experience in the case, my expectations of the visit had been low. However, I found this outcome abominable. A report to me on the visit took months.

This report reveals a number of missed opportunities to challenge the Austrians on false representations made by them in those discussions. First, the Department of State notes that the issue of the Austrian court's knowledge of the Convention was addressed and they were told:

"Austrian judges were not unfamiliar with the Hague Process. Moreover, *[the Austrians] specifically called our attention to the fact that the Central Authority directly provides information, including prior decisions that might apply, to the courts of the first instance.* The [Austrian] Central Authority underscores in this information the duties of Austria under the Hague Convention."

Unfortunately, Ms. Marshall and Ms. O'Connor were apparently unaware of communication between Ray Clore, Director, Office of Children's Issues, U.S. Central Authority, and Dr. Werner Schutz exchanged in December 1996 and attached in full to this submission. Mr. Clore on behalf of the Department had written in part to Dr. Schutz as follows:

"Is it possible for the Austrian Central Authority to file a legal brief with the courts in Austria in a pending Hague Convention Case? If so, under what circumstances will the Central Authority take this step? What can the Austrian Central Authority do to facilitate access of the father to the abducted child while this matter drags on? Can you confirm the child's location and condition? Please inform me of what specific actions the Austrian Central Authority is taking to fulfill its obligations pursuant to Article 7 section (h) and (e) of the Convention."

In response, the Austrian Central Authority through Dr. Schutz stated:

"2. *The Ministry of Justice has no possibility at all to interfere with the independent judiciary. It is a basic principle that the administration and the judiciary are separated and no interference whatsoever is possible. All States based on the rule of law have to respect court orders. I cannot imagine that the U.S. Central Authority is entitled to give instructions to the courts, in particular to the Supreme Court relating the handling of the Convention.*

Having said this I have to reject very strongly – with all due respect – your allegations that the Austrian Central Authority does not comply with its obligations under the Convention. Such allegations are unfounded and in the field of international co-operation unusual, too. Acting in such a way does not promote international co-operation at all.

For these reasons I abstain to comment on your remarks relating the proceedings in the Austrian courts.

Of course it is up to the USA to make proposals for creating more appropriate legal mechanisms within the framework of the Convention in the proper international forum."

Similarly, on August 28, 1996, Dr. Schutz wrote: *"And it is quite obvious that the Ministry of Justice cannot give any instructions to a court because courts are truly independent."*

Later, on February 5, 1997 Dr. Schutz wrote to the DOS on the issue of a legal brief as follows:

"Relating to your fax-letters of 2 January 1997 and 4 February 1997, I do not want to comment on issues that have been dealt with and decided by the

independent courts. *The only issue that I want to touch is the question of legal briefs from a third person. The submitting of legal briefs by (third) interested parties is not possible under Austrian law. It is the task of the courts, in particular the Supreme Court to interpret international conventions; theoretically a court might ask an expert-opinion on questions of private international law but the initiative must be taken by the court.*"

If in fact the delegation from DOS was aware of these communications, there is no evidence in the report to suggest that the comments made by Dr. Schutz were challenged on the basis of Dr. Schutz's own correspondence.

Similarly, the written report from the DOS's March 1999 meeting with the Austrians revealed that the subject of "Safe Harbor" orders was discussed generally and again our representatives were apparently unaware that a "Safe Harbor" order had been presented to the Austrian Court from the Michigan Court providing for the following safeguards for Carina's return to the U.S. The terms of the "Safe Harbor" order were:

- a. That the Father, although recognizing that under Michigan law he has right to sole custody of Carina, shall not exercise that right of sole custody upon the return of the Mother and Carina to Michigan
- b. That instead, the Mother shall live with the minor child separate and apart from the Father. The Father shall provide the Mother and Carina with a suitable furnished apartment for this purpose pending the outcome of an expedited custody hearing in Michigan.
- c. The Father shall provide airline tickets for the return of the Mother and the minor child at his cost.
- d. That upon their return, the Father shall pay all reasonable and necessary living expenses incurred by the Mother including rent, utilities, insurance, groceries, clothing, and medical expenses for Carina and incidentals for Carina, pending the outcome of an expedited custody hearing in Michigan.
- e. That this Court shall conduct an expedited evidentiary hearing on the custody of Carina pursuant to her best interests as defined by the Michigan Child Custody Act.
- f. That until such time as a determination is made by this Court regarding custody, the Father shall exercise visitation with the minor child supervised by a person other than the Mother, appointed by the Court, recognizing that this is neither an admission of a need for such supervised visitation nor an acknowledgement that he is not the legal custodial parent of the minor child.
- g. That upon confirmation that the Mother and the minor child have boarded a direct flight to Michigan, assistant U.S. Attorney Jennifer Gorland shall be instructed to dismiss the federal criminal warrant now outstanding, against the Mother in the case styled *The United States of*

America vs. Monika M. Sylvester. This would assure the Mother that she would not be arrested upon landing in Detroit for the crime of parental kidnapping.

The Austrian court rejected the "Safe Harbor" order out of hand. The trial court in Austria stated:

"Nor can the approach proposed by the father in his statement of April 28, 1997 within the meaning of the "Safe Harbor" judicature change anything in the evaluation of the case by this Court pursuant to the instructions of the Supreme Court, since on the one hand, a move to the United States by Carina's mother along with the child would mean a change in the environment the child has been used to for about a year and a half, and on the other hand, there would be no guarantee that Monika Sylvester would remain the child's main caregiver, which, in view of the above-mentioned facts, is indispensable for Carina's well-being."

Again, if the delegation from DOS were aware of the presentation of the "Safe Harbor" order, there is no evidence of it in the report. Obviously, tremendous opportunities by DOS to challenge the Austrians were missed at that meeting. It is questionable as to whether expensive meetings of this sort are of any benefit to American parents without adequate preparation, commitment and purpose.

Third, there appears to be no serious commitment in DOS to assure welfare and whereabouts checks under Article 7(a) and the Vienna Convention. There also appears to be no protocol established either relating to the form of the request to the authority in the country to which a child has been abducted or to the process for the welfare check itself. The DOS publication *International Parental Child Abduction*, eleventh edition, describes the possibilities for a welfare and whereabouts check as follows:

"If your child has been found you can request that a U.S. counselor officer visit the child. If the consul succeeds in seeing your child, he or she will send you a report on your child's health, living conditions, schooling, and other information. Sometimes consular officers are also able to send you letters or photos from your child. If the abducting parent will not permit the consular officer to see your child, the U.S. embassy or consulate will request the assistance of local authorities, either to arrange for such a visit or to have the appropriate local official make a visit and provide a report on your child's health and welfare. Contact the Office of Children's Issues to request such a visit."

I consider myself fortunate to have obtained one welfare and whereabouts check in the four years Carina has been gone. This check occurred only after my repeated requests to DOS over the years. Interestingly, DOS did instruct the Embassy to conduct a check at the place where Carina was understood to be living. Representatives from the U.S. Embassy traveled from Vienna to Graz, knocked on the door of the home where Carina was living and was told that no information about the child would be provided to the U.S. officials. Subsequently, the U.S. Embassy received a harassment complaint for their actions. Later requests by me for a welfare and whereabouts check resulted in the U.S. Embassy in Vienna first contacting opposing legal counsel only to be told that no welfare and whereabouts check would be allowed and that the child was fine. This stopped all activity on the matter.

When a welfare and whereabouts check was finally arranged, it was done so in the presence of the trial judge at the Graz courthouse. My request that the American Embassy workers take a photo of Carina for me was denied.

Fourth, there is no procedure or protocol for handling the long-term or complex cases such as mine. For years, I have attempted to remedy this situation by calling for a team approach, so that my contacts with personnel could be coordinated and so that a plan could be devised for maximizing the aftermath of the valuable ECHR decision against Austria. After more than a year of badgering the Department to assemble a "Washington Workgroup" including representatives for the Departments of State and Justice, members of Congress and Consulate staff, I was told that there was "no value" in the idea. Instead, I must drift, with no particular point of contact other than the primary level caseworker at the Department.

The Department of Justice

My experiences with the Justice Department ("DOJ") began well with the entry of an international warrant in May of 1996 under the International Parental Kidnapping Crime Act. This led to the red and yellow notices by Interpol. However, that is essentially where the participation of DOJ ended. Even my inquiries into the matter were surprisingly met with contention and hostility. The sole exception was Mary Jo Grotenrath at the Office of International Affairs who was uniformly pleasant and informative. Initially however, I was told that the criminal approach would be put on hold to see how the civil proceedings under the Hague Convention would unfold. I was told that Austria does not extradite its citizens but the U.S. does. So that if I were to go over to Austria to retrieve Carina myself, that I would run the risk of being extradited to Austria to face criminal charges there. The excuse of Austria's refusal to extradite its own nationals was used to explain away any further work on the warrant. After three years we had well seen how the civil proceedings have unfolded and still nothing was forthcoming from DOS on the warrant. In fact, after a very short period of time it became clear that the official position of the Department of Justice was to "remain neutral" on the warrant.

Neither understanding this position nor being satisfied with this situation, I continued to press for information and answers or even some interest in the warrant of any kind. For example, last year I made a request to the Assistant U.S. Attorney on the case that an extradition request be issued to Austria— even if impossible to achieve. I was denied that request. Just recently I have learned that a provisional arrest request was presented a short while ago to Italy. Italy denied the request.

I believe the United States is not responding adequately through law enforcement tools to assist American parents and internationally abducted U.S. children. Such legal action by the DOJ would serve to apply pressure on the Austrians to comply with its international treaty obligations, and perhaps the abductor to take accountability for the wrongful, illegal behavior. With the current situation of lack of support on international parental kidnapping warrants from DOJ, Carina's abductor continues to get away with complete impunity.

Ironically, the existence of the international parental kidnapping warrant, as useless as it is as a law enforcement tool, is however used as a weapon by the abductor and the Austrian courts to justify their not returning Carina to the U.S. In theory, the Austrians believe the abductor must accompany the child here upon her return or on a visit. At that time, theoretically, the abductor would be arrested and jailed and I would have free reign to enforce my valid Judgment of Divorce giving me custody of Carina. The "Safe Harbor" order to the contrary has been completely ignored by the Austrians, despite the recent statements to the U.S. Central Authority at their meeting in March.

As a result, the warrant on which very little has been attempted and nothing accomplished is in fact a detriment to Carina's return. Swift action on the warrant on the part of DOJ could have restored the balance of power in the case early and would also have been perfectly in keeping with DOJ's role as our federal law enforcement agency.

Senator Mike DeWine has stated:

"I am concerned that a small child would be taken from a parent in violation of the law without any law enforcement intervention." . . . "We go after countries that steal our products or violate patent and copyright laws, but not when they are supporting the theft of American children. What does that say about us as a country?"

The report to the Attorney General from the joint task force on the DOJ's response to international parental kidnapping cases was a disappointment to me and other similarly situated parents. It lacks backbone, relying essentially on fact that the International Parental Kidnapping Act was meant as a last resort after civil recourse under the Hague Convention failed. I perceive at least two problems with this approach.

First, a prompt criminal response allowing for the arrest of the abductor, even though theoretically leaving the child behind, is essential for re-establishing the balance of power. As time drags on, the American laissez-faire policy on these warrants looks weak and insincere. The warrant is also used as a weapon in the argument against return. Therefore, if it is to be available and of any benefit whatsoever to left behind parents, it must be utilized swiftly to its maximum effect.

Second, the proposals for law enforcement response to international parental kidnapping under the International Parental Kidnapping Act are weak and will result in no further assistance to parents of America's stolen children. For example:

- a. The report does not adequately reflect existing difficulties that reduce the efficacy of these arrest warrants when abductors flee to countries such as Austria from which nationals are not extradited;
- b. The report focuses on the fact that the arrest and extradition of the abductor does not return the abducted child. This reads as justification for not vigorously pursuing the warrant, since it is assumed that the primary purpose of the warrant and the criminal act on which it is based is the return of the child. Naturally, left-behind parents are desperate for the return of their lost children. In many cases however, the civil remedy under the Hague Convention has been so abominable an arrest and incarceration under the act may provide the only means by which to resolve the balance of power between the parents to allow for a negotiation as to how the child will be cared for.

It appears never to have been the intention of the legislature to seek the return of the child with the implementation of the International Parental Kidnapping Act. The perpetrator under the act is the abductor. The International Parental Kidnapping Act criminalized the abduction itself and seeks redress for the criminal behavior. There should be no concern by DOJ in pursuing criminals under the International Parental Kidnapping Crime Act as to whether or not the child is returned. This simply isn't relevant to the performance of the job of our federal law enforcement agency;

- c. The emphasis by DOJ in the report on the fact that a conviction under the crime act does not return the child reinforces the same institutional misunderstanding held by DOS – that being that the remedy sought by

the Hague Convention and the International Parental Kidnapping Act is a private custody matter; and

- d. The report fails in providing a swift and defined protocol for prosecuting cases and pursuing warrants under the International Parental Kidnapping Act.

The Problem of Austria

Austria plays a significant role in the bizarre result of my case that looked so hopeful from the start. As a treaty partner to the Hague Convention, Austria has committed to complying with the terms of the Convention and its implementation there. Nonetheless, its legal system works in direct opposition to the two objects of the Convention – the prompt return of the parentally abducted child into its environment of habitual residence and the provision of access by left-behind parents to parentally abducted children. The problems that arose in my case are of such a voluminous nature that they are addressed below in turn.

1. **ENFORCEMENT.** The most pronounced problem and that which was fatal to the return of Carina to the U.S. is the Austrian legal system's failure to provide for any significant and hard-hitting enforcement procedures for its own orders, relying instead on the polite knock on the door and a request for voluntary compliance. This means that it is absolutely impossible for Austria to consistently comply with the Convention since Austria cannot control the conduct of its citizens or protect the parental rights of foreign parents through their own court orders. This fact is well understood by Carina's mother who recently said to me: "Even if the courts here [in Austria] tell me what to do . . . I don't have to do it." She learned this from the successful results of her direct disregard of the initial set of orders of the Austrian courts which stated:

- "The child's mother Monika Maria Sylvester is ordered by otherwise forced action to return the minor Carina Maria Sylvester immediately to the father, Thomas Sylvester to the previous residence in Michigan, USA" (December 20, 1995, Trial Court)
- "It should also be expected from the child's mother, if she puts the well-being of the child higher than her own, that she returns with the child to the United States." (December 20, 1995, Trial Court)
- "It is the mother's freedom and is also expected of her as a responsible custody provider, that she put the welfare of the child before her interests to stay in Austria and return together with the daughter to the United States. It is then the responsibility of the appropriate American court to decide final custody." (February 19, 1996, Austrian Court of Appeals).

Despite the strong language of these orders, Carina's mother felt completely comfortable not complying with their directives. Lack of enforcement of the early Austrian orders meant that Carina would be returned only if her mother chose to do so. This fatal shortcoming puts the effectiveness of any Austrian return or access order in the hands of the abductor, who obviously chose to take the child impermissibly in the first place.

For recipients of return orders under the Hague Convention, this defect in the Austrian system means that Austria gives the abductor complete control over the situation including, every aspect of the

child's relationship with the left-behind parent. This is the antithesis of what the Hague Convention is all about. This not only limits the value of Austria as a partner to the Convention, but renders Austria a very dangerous treaty partner when American parents rely upon Austria's participation in the Convention to their detriment.

Austria is not alone in this regard. Germany and other civil law countries are treaty partners with no means to enforce court orders rendered under the Convention or otherwise.

2. RE-OPENING OF CONCLUDED HAGUE CASES. The defect of non-enforceability of return orders allows for the "re-opening" of Hague Convention cases in Austria years after a valid and final return order is entered. The "re-opening" of a Hague Convention case is not only unprecedented, but also runs counter to the inherent philosophy of the Hague Convention that a child's best interests are served when it is immediately returned to its country of habitual residence following an international parental child abduction.

The Austrian court's determination in my case to devalue the original valid and final order for return of Carina metamorphosing it into an order that Carina will not be returned is an amazing feat of legal logic. On the one hand, the order for Carina's immediate return to Michigan for a custody determination there is valid and final, but on the other hand, since the order hasn't been complied with voluntarily, the return of the child is no longer necessary. The child was not returned because the order was not enforced. Therefore, the order will not be enforced because the child was not returned. In the end, the custody determination was said to take precedence over the Hague Convention.

3. ENDLESS APPEALS ON ANY ISSUE. The Austrian legal system seemingly provides no end to any issue before it, allowing for unlimited appeals and motions until an original decision is bent so far out of shape that it is no longer the same decision. An end can be achieved as in my case, when the Austrian national finally obtains an order legally sanctioning the abduction. This creates the serious problem of extensive delay, i.e., when the file is in a higher court, no proceedings can be had on even interim matters requiring resolution such as access not related to the issue on appeal.

4. THE AUSTRIAN CENTRAL AUTHORITY DOES NOT MEET ARTICLE 7 OBLIGATIONS. The Austrian Central Authority is intractable. There is no real evidence of any interest or dedication to compliance with its duties under Article 7 despite the Austrian delegation's attempt to have the situation appear otherwise in its meeting with the U.S. Central Authority in March of this year, as referenced above.

5. GENDER AND NATIONAL BIAS IN HAGUE CASES. There exists extreme gender and national bias in favor of mothers and Austrian nationals in the Austrian courts. This is evident even in Hague Convention cases. According to the U.S. Embassy report on the March 2, 1999 meeting: "This potential scenario [custody to the father] was most culturally abhorrent when it seemed likely that the mother (rather than the father) would be separated from her child." In my access case under Article 21, the court-appointed child "expert" submitted a report to the court stating that any child between the age of six months and six years would be psychologically harmed if separated from the mother even temporarily. This opinion is maintained and advocated irrespective of Austria's participation in the Hague Convention.

The social worker who supervised my first meetings with Carina following the abduction stated the situation quite plainly—I give the mother whatever it is she wants legally, including custody under an Austrian order, and then everyone else in Austria will be in a position to consider my having access to Carina. Based on my experience, it is impossible to conceive of circumstances under which an Austrian court would award custody of a small child to an American father in the United States over an Austrian mother in Austria.

This national bias is also exemplified by the undignified but not uncommon practice of Austrian judges granting non-Austrian fathers visitation of their children only in small bits, only in Austria, and often only under supervision of the mother or a third person authorized by the mother. This bias is most startling in light of the recent European trend toward mandating family courts to preserve joint physical custody of a child.

6. ABSENCE OF COMITY FOR FOREIGN ORDERS. Austria is disrespectful of the principle of comity. In its initial determinations, Austria was quick not to acknowledge my Michigan Judgment of Divorce stating that the judicial process in the United States was lacking in even the most basic Constitutional safeguards, despite the abductor's active participation in the case through counsel. It is now three years later and the matter of Austria's acknowledgement of the Michigan Judgment of Divorce is still not resolved. Instead, the issue of the proper authority to determine Austria's recognition of foreign orders has moved to its Constitutional Court. It is difficult for me as a layman to understand this lack of respect for and consideration of court orders of other nations, particularly when the principle of comity is a well-established element of American law.

Particularly offensive is the Austrian court's assumption of jurisdiction over matters such as custody and child support in advance of an official determination as to Austria's recognition of the Michigan Judgment entered in 1996 resolving those same issues. This exercise of jurisdiction is without question premature, contradictory to established legal procedure, aggressively arrogant and revealing of the compelling drive to favor their own nationals in court proceedings.

7. FAILURE TO EXTRADITE ITS NATIONALS UNDER AMERICAN ARREST WARRANTS. Austria provides a sanctuary for child abductors wanted under internal parental kidnapping warrants. In international child abduction and wrongful retention cases, Austria refuses to extradite or prosecute Austrian nationals. This combined with the complete inability to enforce their civil orders means that an abductor can flee to Austria with complete impunity both civilly and criminally.

8. LINKING OF ARTICLE 21 HAGUE CONSIDERATION WITH ISSUES IN OTHER PENDING CASES OR LIFTING OF U.S. ARREST WARRANT. Austrian courts link the granting of access under Article 21 with other non-related issues. Carina's rights are completely independent of any other proceedings in which her parents are involved. The trial court judge in my case has told me if I accept an Austrian divorce, I will get more access to Carina. He calls it a "factual relationship." I call it "blackmail." At a recent access hearing under Article 21, the Austrian judge discussed such matters as my lifting the international warrant for the abductor's arrest and my modification of the terms of the Michigan Judgment of Divorce to comport with what is happening in the Austrian courts.

9. DISCOURAGEMENT OF SETTLEMENTS. The Austrian system discourages amicable settlements by not providing for the possibility for joint custody, contrary to the trend of most of its other European neighbors. Therefore, it eliminates the possibility of the use of "mirror orders," those being the same orders entered in the courts of both countries incorporating terms that might reflect a compromise position of both parties.

10. NO SANCTION FOR FAILURE TO COMPLY WITH HAGUE CONVENTION. Austria has been able to benefit from the Hague Convention while systematically failing to comply with its terms and thus failing to reciprocate. According to statistics from the National Center for Missing and Exploited Children, Austria has realized the return of four children from the United States to Austria under the Hague Convention since September 1995. This covers the time that the Austrian courts had ordered Carina's return to the United States. To date, Carina still has not been returned. Why is her heart considered any different than those of the Austrian children? It is a sad fact that some

countries have been able to benefit from the Convention while systematically failing to comply with its terms and thus failing to reciprocate.

11. VIOLATES U.N. CONVENTION ON RIGHTS OF THE CHILD. Austria is systematically violating its obligations of the Convention on the Rights of the Child. Austria ratified this Convention in 1992. The United States has signed, but not ratified the Convention. Specifically, the denial of Carina's right to know her father and her extended family here in the States contravenes Article 9 of the Convention on the Rights of the Child. In addition Austria violates Article 10, Carina's right to contact with parents who live in different countries; Article 18, the right of both parents to have common responsibilities for the upbringing and development of the child; and Articles 2, 5, 8, 11, 16 and 29 which also impose pertinent obligations. These obligations are systematically violated by Austria, a loud proponent of the Convention on the Rights of the Child. Austria is a country with legal systems that do not provide effective enforcement mechanisms for access/visitation and therefore, cannot comply with their obligations under either the Hague or Rights of the Child Conventions.

Recommendations

The proposed legislation under consideration by this Committee today largely inures to the benefit of foreign national parents seeking the return of their minor children under ICARA. In that respect, the essence of those sections of this legislation deals with the treaty obligations of the United States under the Hague Convention. But, with an approximately 90 percent return rate from the United States, the compliance of the United States with its Hague Convention obligations has not been the problem. Rather, a very low return rate from other Hague Parties to the US has been the problem. To the extent that the United States is interested in improving its already immensely successful work in obtaining returns under the Hague Convention, I believe such legislation is important. It is necessary that all Parties to the Hague Convention continue to improve their participation in the treaty by adjusting their implementing legislation to make the treaty work effectively. The key to such efforts is of course reciprocity. Along with providing excellent service to the citizens of other party nations, our government must expect and in certain circumstances demand excellent participation in the treaty by those countries in exchange. Taken as a whole, therefore, with the possible exception of Section 11, the proposed legislation will not necessarily assist parents similarly situated to me.

Hence, just as I myself would expect the Republic of Austria to continually enact legislation to improve its participation in the Hague Convention, I would also expect the United States to do the same. Although not the subject of today's hearing specifically, I submit my particular case to request support for amendments to this legislation which would specifically benefit American left-behind parents similarly situated to myself. It is eminently clear that my situation will unquestionably happen again in Austria and other civil law countries without any legal enforcement mechanism like contempt of court in our legal system, i.e., there will be and are now situations where return, access, or visitation orders are not being enforced in foreign countries. In these situations, American parents have a great deal of difficulty seeking assistance over the long term morally, diplomatically and financially. As such, I address my comments below to incorporate my proposals and thoughts for such additional legislation.

SECTION 2: APPLICABILITY OF FEDERAL TORT CLAIMS PROVISIONS TO NCMEC AND ITS EMPLOYEES

- This section highlights the fact that NCMEC works in this context almost exclusively for foreign parents seeking the return of their children from the United States to another country. At the same time, NCMEC is prevented by the State Department from providing

similar, meaningful assistance to left-behind American parents. Before blanket immunity is granted, Congress should consider that such immunity could also apply when American children are seized by U.S. law enforcement and turned over to foreign parents without due process of law (e.g., the Hague Convention process). In that situation, the American parents involved may be denied recourse.

SECTION 3: JURISDICTION OVER COMPETING STATE CUSTODY ORDERS

- Some clarification of the language of this section is needed to ensure that this provision cannot be used to benefit foreign child abductors (and their governments that pay legal fees in U.S. courts and at home). Some foreign governments and abductors have attempted to use U.S. courts to extinguish U.S. court orders and defer to foreign custody jurisdiction. For example, the Swedish government has financed such litigation to the Supreme Courts of Utah and Virginia against left-behind American parents with valid U.S. custody orders at terrible financial hardship to those parents. It is not clear what value this provision would have for left-behind American parents dealing with countries that ignore Article 1 of the Hague Convention and do not respect U.S. custody orders.

SECTION 4: NATIONAL REGISTRY OF CUSTODY ORDERS

- This section is helpful domestically and could be of assistance on an intra-state basis if it could be procedurally implemented. As to left-behind American parents, it appears to have limited benefit.

SECTION 5: DETENTION OF CHILDREN IN CERTAIN CIRCUMSTANCES

- This provision might be useful in preventing attempted outgoing cases, however it does not help American parents already left behind and it does not help to get American children back once abducted.
- Could be difficult to implement uniformly.

SECTION 6: INTERNATIONAL CHILD ABDUCTION REMEDIES

- This provision as drafted will assist primarily foreign parents in incoming cases with little or no benefit for left-behind American parents in outgoing cases.
- Its benefits for foreign parents should be based on reciprocity, and safeguards should be added so that it cannot be used to challenge U.S. custody orders.
- It would greatly assist judges if their training would include a review of the custody laws and enforcement capabilities of each country, so that U.S. judges are fully aware of the consequences of subjecting American children to foreign custody jurisdiction.
- The section provides no U.S. financial assistance for American left-behind parents.

SECTION 7: REPORTS RELATING TO INTERNATIONAL CHILD ABDUCTION

- This provision should be amended to require the State Department to negotiate bilateral access and visitation agreements with Hague countries, since very few have enforceable access or visitation for left-behind American parents.
- Subsection (a) is flawed because it applies only to non-Hague countries. Like certain other provisions of existing law (e.g., a provision of immigration law that prohibits U.S. visas for child abductors only if they are from non-Hague countries), it is based on the premise that

all is well so long as a country is a party to the Hague Convention. We have found this not to be true.

- This provision is an opportunity for badly-needed remedial measures and the fine-tuning concerning the annual State Department report on compliance with the Hague Convention.
- Reporting on warrants should apply for all warrants, not just those issued during the preceding year, and should relate how the warrant is received by the courts and authorities of each country.

SECTION 8: SUPPORT FOR UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- Inherent in support for this provision is the ironic circumstance that some foreign countries have sought to persuade U.S. courts to defer to their custody jurisdiction and to extinguish U.S. custody orders even though the parents had stipulated to continuing exclusive jurisdiction in the U.S. prior to a wrongful retention or removal. The UCCJEA therefore allows for this anomaly without a thorough examination of the foreign country's legal and social welfare system, especially with regard to the consequences of child custody jurisdiction over American children (i.e., frequency of American and other foreign parents being granted custody, enforceability of access/visitation/return orders, financing and other support for child abduction/retention activities).

SECTION 11: SUPPORT FOR INCREASED U.S. CONTRIBUTION TO HAGUE PERMANENT BUREAU

- There is no specific identification for how the money will be used by the Hague Permanent Bureau or assurances that the system will improve.
- Increased U.S. contribution should be made contingent on at least 6 conditions being met by the Permanent Bureau:
 - 1) Guidance to States Parties of the Hague Convention that they cannot fully comply with their obligation unless and until they adopt enforcement legislation comparable to our contempt of court that permits swift and sure enforcement of access, visitation, and return orders.
 - 2) Guidance to States Parties reminding them that the object and purpose of the Convention in Article 1 includes respect for foreign custody laws and court orders (i.e., comity).
 - 3) A report to States Parties and the public on compliance with the Convention including country-by-country statistics.
 - 4) A report to States Parties and the public on the access/visitation situation in each country, especially with regard to enforceability and compliance with Article 21 of the Convention.
 - 5) Public and strong support for the position that any multilateral treaty on child support enforcement must include safeguards to exclude cases of attempted enforcement against the parents of left-behind children where there has been a violation of civil or criminal law, a violation of court orders, a violation of the Hague Convention, or the absence of substantial, enforceable access/visitation with the child in the left-behind parent's country.
 - 6) Public and strong support for inclusion of left-behind parents in the delegations of States Parties to the periodic Hague Convention review conferences

In addition, in order to assist left-behind American parents, I submit the following proposals for legislation.

1. Shift the lead responsibility for “outgoing” U.S. cases from the State Department to NCMEC, with NCMEC to hold the case files and report directly to Congress and parents.

- This would give American children and their left-behind parents an effective advocate for the first time by shifting the lead responsibility for handling cases of internationally abducted American children wrongfully retrained abroad from the Department of State to NCMEC (which already performs this function for “incoming” cases), with NCMEC to hold the case files and to report directly to Congress and left-behind parents on the efforts of the Department of State and the foreign governments concerned to bring these children home.

- NCMEC should be given comparable responsibility for all outgoing cases and perhaps be relieved of handling incoming cases. The State Department should be required to inform all U.S. courts of the consequences of American children being subjected to foreign custody jurisdiction, and the Central Authority function should be shifted out of the State Department (to NCMEC or the Civil Division of the Justice Department).

In the interim, require the Department of State to share all information in “outgoing” cases with NCMEC and left-behind parents.

It is recommended that the proposed provision would read as follows:

Section _____. Coordination with the National Center for Missing and Exploited Children

In cases involving parental abduction or wrongful retention of American children abroad, the Department of State shall cooperate and coordinate fully with the National Center for Missing and Exploited Children and, not later than 24 hours after the Department of State learns of a possible such abduction or retention, the Secretary of State shall submit to the National Center a request for assistance and a report including at least the following information:

- (a) The name of the abducted or wrongfully retained child.
 - (b) The name and contact information of the left-behind parent(s) or legal guardian seeking the return of the child.
 - (c) The name and contact information for the law enforcement officials and courts assisting in the effort to return the child, including the agencies that employ them.
 - (d) The country to which the child is believed to have been abducted or in which the child is wrongfully retained.
 - (e) The name of the person believed to have abducted or wrongfully retained the child.
2. In accordance with both the letter and spirit of the Congressional reporting requirements, add a provision to this legislation which passes remedial legislation to require the Department of State to submit a complete and accurate annual report to Congress (cleared by NCMEC) on

foreign government compliance with the Hague child abduction convention, on the number of abducted American children who actually return home, and on foreign government child abduction support systems, such as Austria, Germany and Sweden, with dissemination by the State and Justice Departments to all U.S. courts and family law attorneys.

It is recommended that the proposed provision would read as follows:

Section _____. Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction

Section 2803(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (as contained in division G or Public Law 105-277), as amended by the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act for Fiscal Years 2000 and 2001, is further amended

- (a) In paragraph (1), by inserting "unsuccessful" before the word "applications," and by striking "that remain unresolved more than 18 months after the date of filing" and substituting "or of which the Central Authority of the United States is aware, where the children concerned remain abroad and have not been returned to the United States more than 6 months after the date of filing."
 - (b) By inserting after paragraph (7) the following new paragraph:
 "(8) A description of the efforts of the Secretary of State to disseminate this Report to all foreign governments, all federal and state courts, federal and state law enforcement authorities, family law attorneys, parents, and other interested parties."
3. Prohibit the Department of State from negotiating reciprocal child support agreements (under P.L. 104-193), Section 459A) with the worst offending countries, and ensure that such agreements with any country exclude all cases where there has been a violation of U.S. law or court orders, a violation of the Hague Convention, or denial of substantial access/visitation in the U.S. for the American parent. the child support enforcement activities of the Department of State.

It is recommended that the proposed provision would read as follows:

Section _____. Foreign Child Support Orders

- (a) A foreign child support order shall not be enforced in any U.S. federal or state court or by other means in the United States against any U.S. citizen or lawful permanent resident parent in any case in any case involving:
 - (1) a violation of United States federal or state civil or criminal law;
 - (2) a violation of court orders issued by any U.S. federal or state court;
 - (3) a violation of the Hague Convention on the Civil Aspects of International Child Abduction;
 - (4) a lack of substantial and swiftly enforceable access to and visitation with the child(ren) concerned in the United States; OR
 - (5) such order was granted in an ex parte manner.
- (b) The Department of State is prohibited from concluding any bilateral or multilateral agreements with foreign governments that fail to include the safeguards listed in sub-section (a) above.

4. Require the Department of State to include information on each country's child custody and visitation system, including enforcement measures, if any, in the children's rights section of the annual human rights reports.

It is recommended that the proposed provision would read as follows:

Section _____. Annual Human Rights Country Reports

Commencing with the 2004 Report, the Department of State shall include in each annual human rights country report under the existing heading of "Child Abuse" or under a new heading of "Parental Care" or "Family Law" detailed information on the following:

- (1) a description of the manner in which the legal and social welfare systems respect and enforce (e.g., by means of a mechanism comparable to contempt of court in the U.S.) the right of a child to have substantial, frequent, and swiftly enforceable access and visitation with both parents in situations where the parents reside separately, including the right of a child whose parents reside in different countries to maintain regular personal relations and direct contacts with both parents by means of access and visitation in both countries;
 - (2) a description of the extent to which the legal and social welfare systems of the country respect foreign child custody order through the principle of comity or otherwise; and
 - (3) a description of the extent to which the legal and social welfare systems of the country respect and enforce the principle that both parents have a common, shared responsibility for the upbringing and development of their children.
5. Require the Department of State to include information on each country's child custody and visitation system, including enforcement measures, if any, and recognition of U.S. court order in the country-by-country international parental child abduction Flyers which are posted on its website.
 6. Direct the Department of State to issue a definitive treaty interpretation to all U.S. courts that the "grave risk" exception in Article 13 of the Hague Convention (as grounds for not returning a child to the place of habitual residence) exists in any case where the other country cannot guarantee the American parent enforceable visitation in the United States.
 7. Prohibit the use by NCMEC of U.S. Government funds solely to assist foreign governments and parents, adding the funding to assist left-behind American parents.
 8. Require the Department of State to negotiate bilateral child access and visitation agreements with the worst offending countries, starting with Austria, Honduras, Mauritius, Mexico, Columbia, Ecuador, Turkey, Switzerland, Romania, Panama, Poland, Bahamas, Greece, Hungary, Sweden, Germany, Spain, Israel and Saudi Arabia.
 9. Publicize on the Department of State website the very low return rate of abducted children to the United States, compared to the 90 percent return rate from the U.S. in Hague cases, and identify the countries concerned.
 10. Publicize on the Department of State website the countries that have nothing like our contempt of court mechanism to enforce civil court orders for access, visitation, or return of children to the U.S. under the Hague Convention.

11. Provide left-behind parents with complete information on everything the U.S. Government has done, or failed to do, to bring their children home.
12. Prohibit the extradition of U.S. citizens for parental child abduction to countries that will not extradite their nationals for that offense or will not consistently return American children under the Hague Convention.
13. Prohibit new law enforcement treaties or agreements with governments that support abduction and retention of American children.
14. Revise Section 212(a) of the Immigration and Nationality Act to delete the provision making foreign child abductors admissible to the United States so long as the abducted child is located in a country that is party to the Hague Convention.
15. Create an exception to the Foreign Sovereign Immunities Act permitting American parents to sue any foreign government for damages in U.S. District Courts, if that government is directly supporting or otherwise participating in criminal activity against them (i.e. abduction and retention of their American children).

Carina...

Children

Abducted

and/or

Retained

Internationally

Need

Assistance

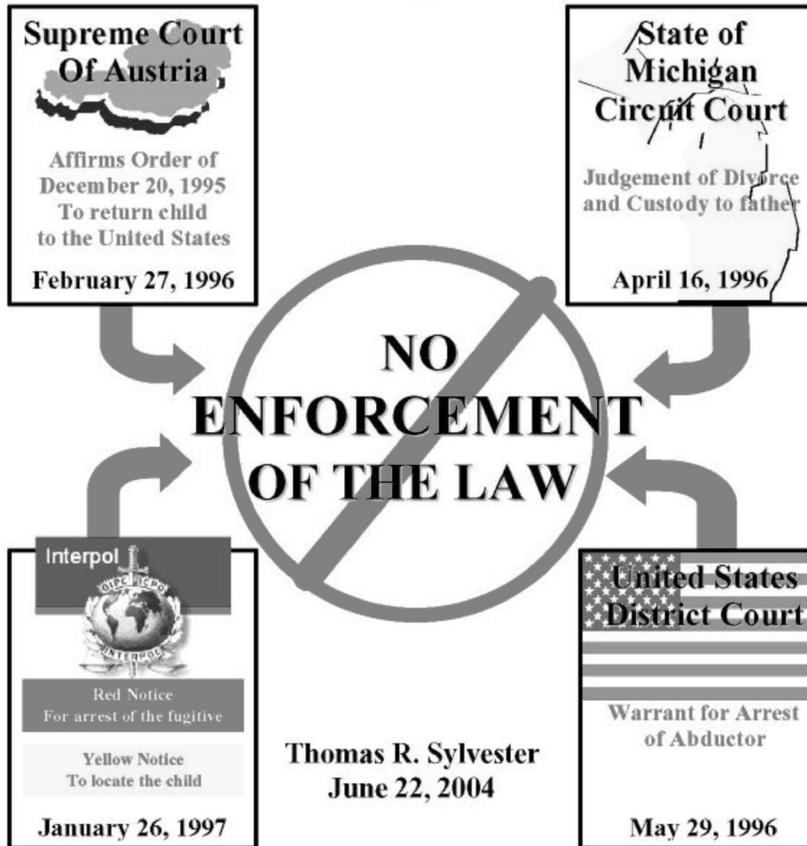


International Child Abduction

Case of Carina Sylvester

Abducted from the United States to Austria

October 30, 1995



Summary Chart on the United States Department of State
 Reports on Compliance with The Hague Convention on the Civil Aspects of International Child Abduction

Country	1999	2000	2001	2002	2004
Austria	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Honduras	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Mauritius	Noncompliant	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Mexico	Noncompliant	Not Fully Compliant	Not Fully Compliant	Noncompliant	Noncompliant
Colombia		Country of Concern	Country of Concern	Country of Concern	Noncompliant
Ecuador					Noncompliant
Turkey					Noncompliant
Switzerland		Country of Concern	Country of Concern	Not Fully Compliant	Not Fully Compliant
Romania					Not Fully Compliant
Panama		Noncompliant	Noncompliant	Noncompliant	Country of Concern
Poland		Country of Concern	Country of Concern	Country of Concern	Country of Concern
Bahamas			Country of Concern	Country of Concern	Country of Concern
Greece					Country of Concern
Hungary					Country of Concern
Sweden	Noncompliant	Not Fully Compliant	Country of Concern		Enforcement Problems
Germany		Not Fully Compliant	Country of Concern	Country of Concern	Enforcement Problems
Spain			Country of Concern	Country of Concern	Enforcement Problems
Israel					Enforcement Problems

United States District Court
 Eastern DISTRICT OF Michigan

UNITED STATES OF AMERICA
 v.
 Monika Maria Sylvester

WARRANT FOR ARREST
 CASE NUMBER **96-80432**
~~86708-96~~

To: The United States Marshal
 and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest Monika Maria Sylvester
 and bring him or her forthwith to the nearest magistrate to answer to (a)
 Indictment Information Complaint Order of court Violation Notice Probation Violation Petition

charging him or her with International Parental Kidnapping

A TRUE COPY
 CLERK U.S. DISTRICT COURT
 EASTERN DISTRICT OF MICHIGAN
 BY: *[Signature]*
 DEPUTY CLERK

In violation of Title 18 United States Code, Section(s) 1204

VIRGINIA M. MORGAN MAGISTRATE JUDGE VIRGINIA MORGAN
 Name of Issuing Officer Title of Issuing Officer
VIRGINIA M. MORGAN May 20, 1996 Detroit, Michigan
 Signature of Issuing Officer Date and Location

Bail fixed at \$ _____ by _____
 Name of Judicial Officer

RETURN		
This warrant was received and executed with the arrest of the above-named defendant at _____		
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

SYLVESTER Carina Maria
F-3/1-1997



PRESENT FAMILY NAME: SYLVESTER FORENAMES: Carina Maria SEX: F

DATE AND PLACE OF BIRTH: 11th September 1994 - Royal Oak, Michigan, United States

FATHER'S FAMILY NAME AND FORENAMES: SYLVESTER Thomas R.

MOTHER'S MAIDEN NAME AND FORENAMES: ROSSMANN Monika Maria

IDENTITY CONFIRMED - DUAL NATIONALITY: UNITED STATES CITIZEN AND AUSTRIAN (CONFIRMED)

DESCRIPTION: Height 74 cm, weight 11 kg, brown hair, brown eyes.

TEETH: Good condition.

IDENTITY DOCUMENT: United States Social Security No. 375-17-6986.

AREAS/PLACES FREQUENTED OR COUNTRIES LIKELY TO BE VISITED: Austria (Neuseiersberg, Graz), United States.

LANGUAGE SPOKEN: German.

CIRCUMSTANCES OF DISAPPEARANCE: On 30th October 1995, SYLVESTER Monika Maria took her daughter SYLVESTER Carina Maria and left the United States for Graz, Austria. On 20th December 1995, the court in Graz ordered that SYLVESTER Carina Maria be returned to her father, SYLVESTER Thomas R.; SYLVESTER Monika Maria appealed against this order and the child was not returned. Visits by the father on 24th and 27th December were also ordered but the child was not brought to the location agreed upon on either date. On 16th April 1996, the court in the County of Oakland, Michigan, United States, granted default judgement of divorce and ordered sole legal and physical custody of SYLVESTER Carina Maria to SYLVESTER Thomas R.. SYLVESTER Monika Maria refuses to return the child.

ADDITIONAL INFORMATION: Her mother, SYLVESTER Monika Maria, born on 29th April 1962, is the subject of red notice File No. 20077/96, Control No. A-26/1-1997 (see photograph).

PURPOSE OF NOTICE: Issued at the request of the United States authorities in order to locate this person. If traced, please place her in the care of a child welfare organization and contact her country's nearest diplomatic representative. Please send any information available to INTERPOL WASHINGTON (Reference 96-05-05496/JRP of 17th January 1997) and the ICPO-Interpol General Secretariat.

File No. 20080/96

Control No. F-3/1-1997

CONFIDENTIAL INTENDED ONLY FOR POLICE AND JUDICIAL AUTHORITIES

SYLVESTER Monika Maria
A-26/1-1997



PRESENT FAMILY NAME: SYLVESTER FAMILY NAME AT BIRTH: ROSSMANN

FORENAMES: Monika Maria SEX: F
DATE AND PLACE OF BIRTH: 29th April 1962 - Graz, Austria

FATHER'S FAMILY NAME AND FORENAME: ROSSMANN Werner
MOTHER'S FORENAME: Gertraud

IDENTITY CONFIRMED - NATIONALITY: AUSTRIAN (CONFIRMED)

DESCRIPTION: Height 173 cm, weight 70 kg, dark brown hair, brown eyes.

DISTINGUISHING MARKS AND CHARACTERISTICS: Mole on left side of chin.

IDENTITY DOCUMENTS: United States Social Security No. 375-17-6462; Austrian passport No. W-0282151.

OCCUPATION: Secretary.

COUNTRIES LIKELY TO BE VISITED: United States, Austria (Neuseiersberg, Graz).

LANGUAGES SPOKEN: German, English.

ADDITIONAL INFORMATION: Her daughter, SYLVESTER Carina Maria, born on 11th September 1994, is the subject of yellow notice File No. 20080/96, Control No. F-3/1-1997 (see photograph).

SUMMARY OF FACTS OF THE CASE: On 30th October 1995, SYLVESTER Monika Maria took her daughter SYLVESTER Carina Maria and left the United States for Graz, Austria. On 20th December 1995, the court in Graz ordered that SYLVESTER Carina Maria be returned to her father, SYLVESTER Thomas R.; SYLVESTER Monika Maria appealed against this order and the child was not returned. Visits by the father on 24th and 27th December were also ordered but the child was not brought to the location agreed upon on either date. On 16th April 1996, the court in the County of Oakland, Michigan, United States, granted default judgement of divorce and ordered sole legal and physical custody of SYLVESTER Carina Maria to SYLVESTER Thomas R.. SYLVESTER Monika Maria refuses to return the child.

REASON FOR NOTICE: Wanted on arrest warrant No. 96-80432, issued on 29th May 1996 by the judicial authorities in Detroit, Michigan, United States, for international parental kidnapping. EXTRADITION WILL BE REQUESTED FROM ALL COUNTRIES WITH WHICH THE UNITED STATES HAS AN EXTRADITION TREATY CURRENTLY IN FORCE WHICH PERMITS EXTRADITION FOR THE OFFENCE CHARGED. If found in a country from which extradition will be requested, please detain; if found elsewhere, please keep a watch on her movements and activities. In either case, immediately inform INTERPOL WASHINGTON (Reference 96-05-05496/JRP of 17th January 1997) and the ICPO-Interpol General Secretariat.

File No. 20077/96

Control No. A-26/1-1997

CONFIDENTIAL INTENDED ONLY FOR POLICE AND JUDICIAL AUTHORITIES



**WANTED BY
THE FEDERAL BUREAU OF INVESTIGATION**



MONIKA SYLVESTER

On October 30th, 1995, Carina Sylvester, then thirteen months old, was taken to Graz, Austria, by her mother, Monika Sylvester. On December 20th of that year, a court in Graz ordered Carina's return to her father, Thomas Sylvester. Monika Sylvester refused. She has also refused to comply with an Austrian court order to permit the father to see the child. On January 19th, 1996, the Court of Appeals in Graz ordered Carina's return to her father. This ruling was confirmed by the Austrian Supreme Court on February 27th of that year. Monika Sylvester again refused. On May 10th, 1996, Austrian judicial authorities attempted to enforce the return orders but failed to locate the child. Nineteen days later, authorities in Detroit, Michigan, issued a warrant for Monika Sylvester's arrest for international parental kidnapping. An arrest notice has been issued by INTERPOL.

Monika Sylvester was born Monika Maria Rossmann in Graz, Austria, on April

29th, 1962. She is one-meter seventy three centimeters tall, and weighs seventy kilograms. She has dark brown hair, brown eyes, and a mole on the left side of her chin. She speaks German and English, and travels on an Austrian passport.



Carina Sylvester

The abducted child, Carina Maria Sylvester, was born in Royal Oak, Michigan, on September 11th, 1994. She has brown hair and brown eyes. She speaks German.

If you have any information concerning Monika Sylvester, or the abducted child, Carina Sylvester, you should contact the nearest U.S. embassy or consulate. Or call the National Center for Missing and Exploited Children at 00-8000-843-5678. The identities of all informants will be kept confidential.



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF SYLVESTER v. AUSTRIA

(Applications nos. 36812/97 and 40104/98)

JUDGMENT

STRASBOURG

24 April 2003

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sylvester v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mrs F. TULKENS,

Mr G. BONELLO

Mr P. LORENZEN,

Mrs N. VAJIC,

Mrs S. BOTOCHAROVA,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 3 April 2003,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 36812/97 and 40104/98) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Mr Thomas Richard Sylvester, a national of the United States of America, and Ms Carina Maria Sylvester, a national of Austria and of the United States of America (“the applicants”), on 26 May 1997 and 26 February 1998 respectively.

2. The applicants were represented by Mr S. Moser, a lawyer practising in Graz. The Austrian Government (“the Government”) were represented by their Agent, Ambassador H. Winkler, Head of the International Law Department at the Federal Ministry of Foreign Affairs.

3. The applicants alleged that the non-enforcement of the final return order under the 1980 Hague Convention on the Civil Aspects of International Child Abduction had violated their rights under Articles 6 and 8 of the Convention.

4. The applications were transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The applications were allocated to the former Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 24 October 2000 the Court decided to join the applications and to communicate them to the respondent Government.

7. The applicant and the Government each filed written observations on the admissibility and merits. In addition, third-party comments were received from Mrs Monika Sylvester, the second applicant's mother, Mrs Jan Rewers McMillan, attorney at law, and the National Center for Missing and Exploited Children and the International Center for Missing and Exploited Children, non-governmental organisations concerned with the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which had each been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 61 § 3).

8. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

9. By a decision of 26 September 2002 the Court declared the applications admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicants were born in 1953 and 1994 respectively. The first applicant lives in West Bloomfield (Michigan) and the second applicant lives in Graz.

11. The first applicant married an Austrian citizen in April 1994. The marriage was concluded in the United States of America, where the couple set up their common residence. On 11 September 1994 their daughter, the second applicant, was born. The family's last common residence was in Michigan. Under the law of the State of Michigan the parents had joint custody over the second applicant.

12. On 30 October 1995 the first applicant's wife, without obtaining his consent, left the United States with the second applicant and took her to Austria.

13. On 31 October 1995 the first applicant, relying on the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the Hague Convention"), requested the Austrian courts to order the second applicant's return. In these and the subsequent proceedings the first applicant was represented by counsel.

14. On 3 November 1995 the second applicant's mother filed an application with the Graz District Civil Court (*Bezirksgericht für Zivilrechtssachen*) for the award of sole custody over the second applicant.

15. On 20 December 1995 the Graz District Civil Court, after having heard evidence from the first applicant and his wife and the oral statement of an expert in child psychology, Dr. K., ordered that the second applicant be returned to the first applicant at her former place of residence in Michigan.

16. The court, noting that under Michigan law the first applicant and his wife had joint custody of their daughter, found that the first applicant's wife had wrongfully removed the child within the meaning of Article 3 of the Hague Convention. Moreover, it dismissed the mother's claim that the child's return would entail a grave risk of physical or psychological harm within the meaning of Article 13 (b) of the Hague Convention. It considered that the second applicant's return could not be hindered by the fact that the mother was her main person of reference and that returning could cause a massive trauma affecting her development. Otherwise, mothers of small children could easily circumvent the aim of the Hague Convention. As to the mother's allegation that the first applicant regularly masturbated in the presence of the child, the court referred to the expert's statement that such conduct would, in view of the child's tender age, not cause immediate harm. The fact that such conduct, if proved, could in the long run be harmful to the child would have to be assessed in the custody proceedings. Finally, it held that the mother could be expected to return with the second applicant to the United States.

17. On 19 January 1996 the Graz Regional Civil Court (*Landesgericht für Zivilrechtssachen*) dismissed an appeal by the second applicant's mother.

18. The Regional Court confirmed the District Court's assessment as regards the question whether the second applicant's return would entail a grave risk of physical or psychological harm within the meaning of Article 13 (b) of the Hague Convention. It noted that the onus of proof was on the person opposing the return, i.e. the second applicant's mother. Further, it noted that the statement of the expert in child psychology had denied that there was any such risk. That statement had been made on the assumption that the mother's allegations were true. However, the Regional Court emphasised that the truth of these allegations had not been proved and that the District Court had had the benefit of hearing the first applicant and, thus, of forming a personal impression of him.

19. On 27 February 1996 the Supreme Court (*Oberster Gerichtshof*) dismissed a further appeal by the second applicant's mother.

20. On 27 February 1996 the first applicant filed an application for enforcement of the return order of 20 December 1995.

21. Meanwhile, the first applicant had started divorce proceedings before the Oakland Circuit Court (Michigan). By a decision of 16 April 1996, the court pronounced a default judgment of divorce. Further, it awarded the first applicant sole custody of the second applicant and

ordered that the second applicant should reside with the first applicant in the event of her return.

22. On 7 May 1996 the file arrived again at the Graz District Civil Court.

23. On 8 May 1996 the Graz District Civil Court ordered the enforcement of the return order under section 19 (1) of the Non-Contentious Proceedings Act (*Ausserstreitgesetz*). It noted that it was necessary to order coercive measures as there were indications that the mother was obstructing the child's return. She had given an interview to a local newspaper according to which she frequently changed her whereabouts and was determined not to let the child be taken away from her.

24. In the early hours of 10 May 1996, an attempt to enforce the return order was made in accordance with the terms set out in the order of 8 May. A bailiff, assisted by a police officer, a locksmith and a representative of the Youth Welfare Office, appeared at the house where the second applicant and her mother were living. The first applicant was also present. A search carried out in the house, necessitating the use of force against the second applicant's mother and the forceful opening of several doors, remained unsuccessful. On the occasion of the enforcement attempt the Supreme Court's decision of 27 February 1996 and the enforcement order of 8 May 1996 were served on the second applicant's mother.

25. On 15 May 1996 the second applicant's mother appealed against the decision of 8 May 1996 and again filed an application for the award of sole custody of the second applicant.

26. On 29 May 1996 the United States District Court, Eastern District of Michigan, issued an arrest warrant against the second applicant's mother on suspicion of international parental kidnapping.

27. On 18 June 1996 the first applicant made a further application for enforcement of the return order.

28. By a decision of 25 June 1996 the Graz District Civil Court, at the request of the second applicant's mother, transferred jurisdiction to the Leibnitz District Court, in the judicial district of which the second applicant had purportedly established her residence.

29. On 29 August 1996 the Graz Regional Civil Court granted an appeal by the first applicant against the transfer of jurisdiction and, on the mother's appeal, quashed the Graz District Civil Court's enforcement order of 8 May 1996 and referred the case back to it.

30. Referring to section 19 (1) of the Non-Contentious Proceedings Act, the court found that, in the enforcement proceedings, the child's well-being had to be taken into account in so far as a change in the situation had occurred since the issue of the return order and the taking of coercive measures. However, under Article 13 of the Hague Convention, this question was not to be examined by the court of its own motion but only upon an application by the person opposing the return. Following the

service of the enforcement order of 8 May 1996 the mother had submitted, in particular, that she was the second applicant's main person of reference. Because of the lapse of time, the second applicant no longer recognised her father when she was shown his picture. By being taken away from her mother the child would suffer irreparable harm. The court therefore ordered the District Court to examine whether the situation had changed since the return order of 20 December 1995. It also ordered the District Court to obtain the opinion of an expert child psychologist on the question whether the child's return would entail a grave risk of physical or psychological harm and whether coercive measures were compatible with the interests of the child's well-being.

31. Between May and December 1996 numerous letters were exchanged between the United States Department of State and the Austrian Ministry of Justice, acting as their respective States' Central Authorities under the Hague Convention. The United States Department of State repeatedly requested information as to which steps had been taken to locate the second applicant and to enforce the return order of 20 December 1995. The Austrian Ministry of Justice replied that the first applicant was represented by counsel in the Austrian proceedings and that it was up to him to take all necessary steps to obtain the enforcement of the return order. It also pointed out that there were only rather limited possibilities to locate a child who had disappeared after a return order had been made.

32. On 15 October 1996 the Supreme Court dismissed an appeal by the first applicant and set aside the enforcement order of 8 May 1996. It noted in particular that the notion of the child's well-being was central to the entire proceedings. When ordering coercive measures under section 19 (1) of the Non-Contentious Proceedings Act, the court had to take the interests of the child's well-being into account, despite the fact that the return order was final, if the relevant situation had changed in the meantime. Having regard to the aims of the Hague Convention, a refusal of coercive measures was only justified if the child's return would entail a grave risk of physical or psychological harm for the child within the meaning of Article 13 (b) of the Hague Convention.

33. The Supreme Court acknowledged that particularly difficult problems arose in cases in which the abductor had created the situation in which the return represented a serious danger to the child's well-being. Where the abductor of a small child was the latter's main person of reference and refused to return with the child, a serious threat to the child's well-being might arise. Nevertheless, Article 13 (b) of the Hague Convention made clear that the child's well-being took priority over the Convention's general aim of preventing child abduction. Reasons of general deterrence or, in other words, the aim of showing that child abduction was not worthwhile could not justify exposing a child to a grave risk of physical or psychological harm.

34. In the present case, the mother had claimed that the child, who was now more than two years old, had become alienated from the father. The child's abrupt removal from her main person of reference and her return to the United States would cause her irreparable harm. The Supreme Court emphasised that the particularity of the case lay in the fact that, in the main proceedings, the courts had denied that there was any risk of psychological harm (as a result of the alleged sexual behaviour of the first applicant) exclusively on account of the child's tender age. In these circumstances, it could not be excluded that the child, who was now more than two years old and had been living solely with her mother for more than a year, would suffer grave psychological harm in the event of a return to her father. Thus, the Regional Court had rightly found that the question whether the return order could be enforced by coercive measures needed further examination, including an opinion by an expert in child psychology. It might also prove necessary to assess whether or not the mother's allegations were at all true.

35. In accordance with the Supreme Court's decision, the case was referred back to the Graz District Civil Court.

36. On 23 April 1997 the Oakland Circuit Court issued a "safe harbour" order, valid until 21 October 1997, which provided, *inter alia*, that pending determination of custody in expedited proceedings, the first applicant would not exercise his right to sole custody of the child; the second applicant would live with her mother away from the first applicant, who would undertake to cover their living expenses; and the arrest warrant against the mother would be set aside as soon as she and the second applicant boarded a direct flight to Michigan.

37. On 29 April 1997 the Graz District Civil Court dismissed an application by the first applicant for enforcement of the return order.

38. In the continued proceedings, the expert on child psychology, Dr. K., had submitted his opinion on 26 March 1997 and the first applicant had been given an opportunity to comment. On the basis of the expert opinion, the court found that since the second applicant's birth her mother had been her main person of reference. However, the first applicant had had regular contact with her until 30 October 1995, the date of her abduction. Thereafter they had had no contact at all. Since the return order had been made, a year and four months had elapsed and the first applicant had become a complete stranger to the second applicant. Given that a young child needed a stable relationship with the main person of reference at least until the age of six, the second applicant's removal from her main person of reference, namely her mother, would expose her to serious psychological harm. Having regard to the considerable lapse of time since the return order had been made on 20 December 1995, the District Court found that there had been a change in the relevant circumstances, in that the second applicant had lost all contact with the first applicant while her ties with her mother and her maternal

grandparents had become ever closer. Consequently, her return would expose her to serious psychological harm.

39. The court noted the first applicant's statement of 28 April 1997 and his offer within the meaning of the "safe harbour" case-law but considered that this offer did not guarantee that the second applicant's relationship with her main person of reference would be preserved in the long run. As this relationship was indispensable for her well-being, the application for enforcement of the return order had to be dismissed.

40. On 28 May 1997 the Graz Regional Civil Court dismissed an appeal by the first applicant. It shared the District Court's view that the situation had changed fundamentally since the issuing of the return order. At that time the second applicant had been much younger and, given the short time which had elapsed between her abduction and the issuing of the return order, had not yet lost contact with the first applicant. A return of the second applicant accompanied by her mother could not be envisaged either. Apart from the reasons adduced by the District Court, the mother would face criminal prosecution in the United States and the child would, accordingly, be taken away from her.

41. On 2, 3 and 4 June 1997 the first applicant was granted a couple of hours of supervised access to the second applicant.

42. On 9 September 1997 the Supreme Court dismissed a further appeal by the first applicant on the ground that it did not raise any important legal issues.

43. On 29 December 1997 the second applicant's mother was awarded sole custody of the second applicant by the Graz District Civil Court. It noted that Article 16 of the Hague Convention, which prohibited the State to which the child has been abducted from taking a decision on custody while proceedings for the child's return were pending, no longer applied, as the decision not to enforce the return order had become final. Following appeal proceedings the judgment became final on 31 March 1998.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction

44. The preamble of the Convention, which has been incorporated into Austrian law, includes the following statement as to its purpose:

"...to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, ..."

45. The object of such a return is that, following the restoration of the status quo, the conflict between the custodian and the person who has

removed or retained the child can be resolved in the State where the child is habitually resident. This principle is based on the consideration that the courts of the State of habitual residence are usually best placed to take custody decisions.

Article 3

“The removal or the retention of a child is to be considered wrongful where

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or the retention; and

(b) at the time of the removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. ...”

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 any intermediary, they shall take all appropriate measures

(a) To discover the whereabouts of a child who has been wrongfully removed or retained;

(b) To prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

(c) To secure the voluntary return of the child or to bring about an amicable resolution of the issues;

(d) To exchange, where desirable, information relating to the social background of the child;

(e) To provide information of a general character as to the law of their State in connection with the application of the Convention;

(f) To initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;

(g) Where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

(h) To provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

(i) To keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.”

Article 11

“The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay ...”

Article 12

“Where a child has been wrongfully removed or retained in terms of Article 3 ..., the authority concerned shall order the return of the child forthwith.”

Article 13

“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, institution or other body which opposes its return establishes that

...

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. ...”

B. The Non-Contentious Proceedings Act

46. Section 19 (1) provides that adequate coercive measures are to be taken without any further proceedings against a party refusing to comply with court orders.

47. According to the Supreme Court's case-law the courts have, in any proceedings relating to the removal of a child, the courts have to take the interests of the child's well-being into account when assessing whether coercive measures are to be ordered and, if so, which ones are to be applied.

THE LAW**I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION**

48. The applicants complained that the Supreme Court, in its decision of 15 October 1996 in the enforcement proceedings, had ordered a review of questions which had already been dealt with in the final return order under the Hague Convention and that this review had eventually led to the non-enforcement of the return order. They alleged a violation of Article 8 of the Convention which, as far as material, reads as follows:

“1. Everyone has the right to respect for his private and family life, ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

1. *The applicants*

49. The applicants contended that the interference with their right to respect for their family life was not justified under the second paragraph of Article 8. They submitted, in particular, that the Supreme Court's decision had been based on an erroneous interpretation of the Hague Convention and had not served a legitimate aim. The interference occasioned by the non-enforcement of the final return order had not been necessary. Rather, as in the *Ignaccolo-Zenide v. Romania* case ([GC], no. 31679/96, ECHR 2000-I), the courts had failed to take all reasonable measures to enforce the return order and the delays caused by them had eventually made the enforcement of the return order impossible. In particular, two and a half months had passed between the Supreme Court's decision of 27 February 1996 and the return of the file to the Graz District Civil Court on 7 May 1996. The applicants also contested that no further enforcement measures could be taken after the mother had appealed against the enforcement order. Moreover, the interference complained of had not corresponded to a pressing social need as the second applicant's mother could have participated in the custody proceedings before the Oakland Circuit Court.

2. *The Government*

50. The Government conceded that the Supreme Court's decision had constituted an interference with the applicants' right to respect for their family life. However, it had its legal basis in section 19 (1) of the Non-Contentious Proceedings Act and Article 13 (b) of the Hague Convention and served a legitimate aim, namely the child's well-being. As to the necessity of the interference, the Government emphasised that the Hague Convention did not grant an absolute right to obtain the return of an abducted child but gave priority to the child's well-being. Referring to *Nuutinen v. Finland* (no. 32842/96, ECHR 2000-VIII), they pointed out that a State could be obliged at the enforcement stage to review whether a given decision was still in the best interests of the child. Consequently, a review of whether the child's return entailed a grave risk of harm for her within the meaning of Article 13 (b) of the Hague Convention was not to be excluded at that stage. The Government contended that at the time of the Regional

Court's decision of 29 August 1996 and the Supreme Court's decision of 15 October 1996, the Oakland Circuit Court had already awarded the first applicant sole custody without hearing the child's mother and without examining the first applicant's ability to take care of the child. Thus, contrary to the situation obtaining when the return order had been made, it could no longer be expected that the mother's accusations raised against the first applicant would be examined in custody proceedings before the United States' courts.

51. As to the procedural requirements inherent in Article 8, the Government asserted that the first applicant had been sufficiently involved in the decision-making process. He had been represented by counsel throughout the proceedings and had been informed about all the relevant procedural steps and given the opportunity to comment on them. Moreover, there had not been any unnecessary delays in the proceedings. Unlike in the case of *Ignaccolo-Zenide v. Romania*, the return of the child had not been delayed by the inactivity of the courts. The Graz District Civil Court had issued an enforcement order on 8 May 1996, one day after it had received the file with the Supreme Court's final decision on the return order, and an unsuccessful attempt to enforce the order had been made on 10 May 1996. No further attempts could be made as the mother had appealed against the enforcement order. Thereafter, no further enforcement attempts had been made in view of the Graz Regional Court's decision of 29 August 1996 to review the question whether the second applicant's return would entail a grave risk of harm for her. The decisions in the appeal proceedings had followed at reasonable intervals. Finally, the enforcement of the return order had been rejected on the basis of comprehensively considered judicial decisions which had weighed all the interests involved and had given priority to the child's well-being. In so doing, the courts had not exceeded the margin of appreciation afforded to them by Article 8 § 2 of the Convention.

3. *The third parties*

52. The third parties, Ms Jan Rewers McMillan, the National Center for Missing and Exploited Children and the International Center for Missing and Exploited Children, argued that the present case was similar to the *Ignaccolo-Zenide v. Romania* case. The main question therefore was whether Austria had complied with its positive obligations under Article 8. Consequently, the "all reasonable measures" standard developed in *Ignaccolo-Zenide*, which referred in turn to the standards laid down in the Hague Convention, in particular in its Articles 7 and 11, had to be applied. In their view, the main point in issue in the case was the Austrian courts' failure to enforce the return order in a timely manner. The review of the return order in the enforcement proceedings - which, in their submission, had been contrary to the Hague Convention and the contracting State's

positive obligations under Article 8 - was merely a consequence of this failure and not a justified interference with the applicants' rights under Article 8. In addition, they emphasised that the enforcement of final court orders was generally required by respect for the rule of law.

53. The mother of the second applicant, Mrs Sylvester, also as a third party, agreed with the Government that there was no indication of a violation of Article 8, as the Austrian courts had refused to enforce the return order on the ground that it would entail a grave risk for the child's well-being. Thus, their decisions were in line with the Court's case-law, according to which the State's obligation to reunite a parent with his child is not an absolute one, as the interests of the child's well-being may override the parent's interest in reunion.

B. The Court's assessment

54. The Court notes, firstly, that it was common ground that the tie between the two applicants was one of family life for the purposes of Article 8 of the Convention.

55. That being so, it must be determined whether there has been a failure to respect the applicants' family life. The Court reiterates that the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities. There may in addition be positive obligations inherent in an effective "respect" for family life. However, the boundaries between the State's positive and negative obligations under this provision do not lend themselves to precise definition. The applicable principles are nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation (see, among other authorities, *Ignaccolo-Zenide*, cited above, § 94; *Nuutinen*, cited above, § 127; *Hokkanen v. Finland*, judgment of 23 September 1994, Series A no. 299, p. 20, § 55).

56. The Court notes at the outset that the present case concerns the non-enforcement of a final return order under the Hague Convention.

57. It is comparable to the above-cited *Ignaccolo-Zenide v. Romania* case, in which the Court found that the positive obligations that Article 8 lays on the Contracting States in the matter of reuniting a parent with his or her child must be interpreted in the light of the Hague Convention, all the more so where the respondent State is also a party to that instrument, Article 7 of which contains a list of measures to be taken by States to secure the prompt return of children (*ibid.*, § 95).

58. More generally, a Contracting State's positive obligations under Article 8 include a parent's right to the taking of measures with a view to his or her being reunited with his or her child and an obligation on the national authorities to take such action. However, the national authorities' obligation

to take such measures is not absolute, since the reunion of a parent with a child who has lived for some time with the other parent may not be able to take place immediately and may require preparatory measures to be taken. Any obligation to apply coercion in this area must be limited since the interests as well as the rights and freedoms of all concerned must be taken into account, and more particularly the best interests of the child and his or her rights under Article 8 of the Convention. Where contacts with the parent might appear to threaten those interests or interfere with those rights, it is for the national authorities to strike a fair balance between them (*ibid.*, § 94; see also *Hokkanen*, cited above, § 58; and *Olsson v. Sweden* (no.2), judgment of 27 November 1992, Series A no. 250, pp. 35-36, § 90).

59. In cases concerning the enforcement of decisions in the realm of family law, the Court has repeatedly found that what is decisive is whether the national authorities have taken all the necessary steps to facilitate execution as can reasonably be demanded in the special circumstances of each case (see *Hokkanen*, cited above, § 58; *Ignaccolo-Zenide*, cited above, § 96; *Nuutinen*, cited above, § 128). In examining whether non-enforcement of a court order amounted to a lack of respect for the applicants' family life the Court must strike a fair balance between the interests of all persons concerned and the general interest in ensuring respect for the rule of law (see *Nuutinen*, cited above, § 129).

60. In cases of this kind the adequacy of a measure is to be judged by the swiftness of its implementation, as the passage of time can have irremediable consequences for relations between the child and the parent who does not live with him or her. In proceedings under the Hague Convention this is all the more so, as Article 11 of the Hague Convention requires the judicial or administrative authorities concerned to act expeditiously in proceedings for the return of children and any inaction lasting more than six weeks may give rise to a request for a statement of reasons for the delay (see *Ignaccolo-Zenide*, cited above, § 102).

61. The Court notes the Government's argument that there was a change in circumstances after the Supreme Court's decision of 27 February 1996 by which the return order became final, justifying a review in the enforcement proceedings of whether the second applicant's return entailed a grave risk of harm within the meaning of Article 13 (b) of the Hague Convention. They submitted, in particular, that, on 16 April 1996, the Oakland Circuit Court had issued a default judgment of divorce, awarding the first applicant sole custody of the second applicant. In contrast to the situation obtaining when the return order had been made, it could no longer be expected that an examination of the mother's accusations regarding the first applicant's harmful behaviour, namely his allegedly masturbating in the presence of the child, would take place in custody proceedings before the United States' courts.

62. For their part, the third parties Ms Jan Rewers McMillan, the National Center for Missing and Exploited Children and the International Center for Missing and Exploited Children, considered that to conduct a review under Article 13 (b) of the Hague Convention in the enforcement proceedings was in conflict not only with the aims of the Hague Convention, but also with a Contracting State's positive obligations under Article 8. They emphasised that the enforcement of final court orders was generally required by respect for the rule of law.

63. The Court accepts that a change in the relevant facts may exceptionally justify the non-enforcement of a final return order. However, having regard to the State's positive obligations under Article 8 and the general requirement of respect for the rule of law, the Court must be satisfied that the change of relevant facts was not brought about by the State's failure to take all measures that could reasonably be expected to facilitate execution of the return order.

64. The Court observes that the Graz Regional Civil Court's decision of 29 August 1996 (see paragraphs 29-30 above), setting aside the enforcement order, and the Supreme Court's decision of 15 October 1996 (see paragraphs 32-34 above) do not even mention the change of circumstances now relied on by the Government. That argument cannot, therefore, serve to justify the non-enforcement of the return order.

65. However, the Supreme Court advanced another argument, namely that the courts, when issuing the return order, had denied that there was any risk of psychological harm being caused by the alleged sexual behaviour of the first applicant, exclusively on account of the child's tender age at the time. Therefore, a review of the question whether the second applicant would suffer grave harm in the event of her return required further examination, including the taking of an expert opinion. However, the child psychology expert apparently did not deal with this issue in his opinion prepared in the continued proceedings; nor did the issue play any role in the subsequent decisions. Accordingly, that consideration equally cannot serve to justify the non-enforcement of the return order.

66. The fact remains that the decisions of 29 August and 15 October 1996 relied rather heavily on the lapse of time and the ensuing alienation between the first and second applicants. The Court will therefore examine whether or not this lapse of time was caused by the authorities' failure to take adequate and effective measures for the enforcement of the return order.

67. The Court observes that, while the main proceedings relating to the issuing of the return order were conducted with exemplary speed, as the case came before three instances in just four months, ending with the Supreme Court's decision of 27 February 1996, there is no explanation for the delay of more than two months which occurred before the file was returned from the Supreme Court to the Graz District Court on 7 May 1996.

Moreover, such a delay has to be viewed as an important one, given that under Article 11 of the Hague Convention any inaction of more than six weeks may give rise to a request for a statement of reasons.

68. Admittedly, the District Court immediately ordered the enforcement of the return order. But after the first unsuccessful enforcement attempt on 10 May 1996 no further steps towards enforcement were taken despite the first applicant's request of 18 June 1996. The Government argued that no further enforcement attempts could be made as long as the mother's appeal of 15 May 1996 was pending, while the applicants contested this. The Court is not required to examine which was the position under domestic law, as it is for each Contracting State to equip itself with adequate and effective means to ensure compliance with its positive obligations under Article 8 of the Convention (see *Ignaccolo-Zenide*, cited above, § 108). At the very least, the courts were under a particular duty to give an expeditious decision on the appeal in question. Nevertheless, it took three and a half months for the Graz Regional Civil Court to decide, on 29 August 1996, to quash the enforcement order of 8 May and to refer the case back to the District Court.

69. After the Supreme Court's decision of 15 October 1996, which confirmed the setting aside of the enforcement order, it took the District Court more than five months to obtain an opinion from the expert in child psychology, although he was already familiar with the case, as he had participated in the main proceedings. Relying on this expert's opinion, the District Court found on 29 April 1997 that, given the considerable lapse of time, the removal of the second applicant from her main person of reference, namely her mother, would expose her to serious psychological harm, as her father, the first applicant, had in the meantime become a complete stranger to her. The District Court's decision, which was upheld by the Graz Regional Court and, on 9 September 1997, by the Supreme Court, shows that the case was ultimately decided by the time that had elapsed. Without overlooking the difficulties created by the resistance of the second applicant's mother, the Court finds, nevertheless, that the lapse of time was to a large extent caused by the authorities' own handling of the case. In this connection, the Court reiterates that effective respect for family life requires that future relations between parent and child not be determined by the mere effluxion of time (see *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, p. 29, § 65).

70. Moreover, the Court observes that the authorities did not take any measures to create the necessary conditions for executing the return order while the lengthy enforcement proceedings were pending.

71. The Court notes in particular that following the first unsuccessful enforcement attempt of 10 May 1996, the mother of the second applicant apparently changed her whereabouts with the aim of defying the execution of the return order. However, the authorities did not take any steps to locate the second applicant with a view to facilitating contact with the first

applicant. On the contrary, it transpires from the correspondence exchanged from May to December 1996 between the Austrian Ministry of Justice and the United States Department of State that, in the Austrian authorities' view, it fell to the first applicant's counsel to take all necessary steps to obtain the enforcement of the return order. In this connection, the Court points out that it has refuted such a line of argument in *Ignaccolo-Zenide v. Romania*, finding that an applicant's omission cannot absolve the authorities from their obligations in the matter of execution, since it is they who exercise public authority (*ibid.*, § 111).

72. Having regard to the foregoing, the Court concludes that the Austrian authorities failed to take, without delay, all the measures that could reasonably be expected to enforce the return order, and thereby breached the applicants' right to respect for their family life, as guaranteed by Article 8.

Consequently, there has been a violation of Article 8.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

73. The applicants maintained that the Supreme Court's decision of 15 October 1996 ordering a review of questions which had already been dealt with in the final return order had eventually led to the non-enforcement of the return order. They alleged a violation of Article 6 of the Convention, which, as far as material, reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

74. The Government asserted that the courts were obliged in the enforcement proceedings to take the child's well-being into account in accordance with section 19 (1) of the Non-Contentious Proceedings Act. However, Article 6 did not prevent a review of a final court order if there had been a change in the relevant facts.

75. The third parties, Ms Jan Rewers McMillan, the National Center for Missing and Exploited Children and the International Center for Missing and Exploited Children, asserted that the failure to enforce the return order and its reconsideration in the enforcement proceedings raised an issue under Article 6. They referred to *Hornsby v. Greece* (judgment of 25 February 1997, *Reports of Judgments and Decisions* 1997-II), in which the Court had held that the execution of a judgment had to be regarded as an integral part of the "trial" for the purposes of Article 6 (*ibid.*, p. 510, § 40).

76. The Court reiterates the difference in the nature of the interests protected by Articles 6 and 8 of the Convention. While Article 6 affords a procedural safeguard, namely the "right to a court" in the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, family life. The difference between the purpose pursued by the respective safeguards afforded by Articles 6 and

8 may, in the light of the particular circumstances, justify the examination of the same set of facts under both Articles (see for instance *McMichael v. the United Kingdom*, judgment of 24 February 1995, Series A no. 307-B, p. 57, § 91).

77. In the instant case, the Court finds that the lack of respect for the applicants' family life resulting from the non-enforcement of the final return order is at the heart of their complaint. Having regard to its above findings under Article 8, which focus on the non-enforcement of a final court order, the Court considers that it is not necessary to examine the facts also under Article 6.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

79. The first applicant requested a total amount of 276,461.58 United States dollars (USD) equivalent to 278,021 euros (EUR). [Nota: On 2 December 2002, the date on which the claims were submitted.] in respect of pecuniary damage, broken down as follows:

(i) USD 31,033.54 for travel costs and related car rental, taxi and hotel costs for sixteen trips between Michigan and Graz from December 1995 to September 2002 in connection with the enforcement proceedings and subsequently for the purpose of obtaining contact with or access to the second applicant.

This sum includes USD 4,228.92 for travel and subsistence costs relating to a trip to Graz between 17 and 30 December 1995, USD 3,310.74 for travel and subsistence costs relating to a trip to Graz between 8 and 11 May 1996 and USD 2,667.56 for travel and subsistence costs relating to a trip to Graz between 31 May and 8 June 1997. The remainder relates to thirteen trips to Graz undertaken after the termination of the enforcement proceedings in September 1997.

(ii) USD 500 for the costs of assistance from an interpreter in an interview with a court-appointed expert in June 1999 in the context of access proceedings;

(iii) USD 181,901.04 for lost wages following the loss of his job in June 2001 allegedly as a result of the time and attention spent pursuing the Hague Convention proceedings and the ensuing custody and access proceedings in Austria;

(iv) USD 2,000 for the costs of supervision of access visits to the second applicant in June and December 1997;

(v) USD 41,328 for payments made to Mrs Sylvester allegedly to obtain her agreement to supervised access visits since July 1999;

(vi) USD 19,699 for the costs of psychological counselling and medical treatment relating to emotional and physical difficulties allegedly suffered as a result of the Austrian authorities' failure to enforce the return order.

The first applicant conceded that some or all of the above losses could also be examined under the head of costs and expenses.

80. As to non-pecuniary damages the first applicant requested an award of USD 1 million on his own behalf as compensation for the anger, anxiety, humiliation and frustration suffered as a result of the non-enforcement of the return order. He emphasised that the loss of having a life with his daughter was priceless. However, he suffered - to an extent affecting his physical and emotional health - as a result of the fact that he had effectively been prevented, by the second applicant's mother and the Austrian authorities, from playing any significant role in his daughter's life. Further, he claimed USD 2 million on behalf of the second applicant for her being deprived of her father and of any family life with her paternal family in the United States.

81. The Government contended that the first applicant's claims for pecuniary damage were excessive. In any case, as far as they related to the exercise of his access rights (travel costs, alleged payments to Mrs Sylvester, costs for supervision, interpreters' costs), the alleged damage did not have any causal link with the breach of the Convention at issue. The same applied to other items, such as lost wages and costs of medical treatment. As far as the travel and subsistence costs related to the Hague Convention proceedings, which was only the case for a minor part of them, their necessity had not always been convincingly established (for instance the need to use a taxi instead of public transport).

82. As to non-pecuniary damage, the Government also contended that the sums claimed were excessive and disregarded the Court's case-law in comparable cases. As regards non-pecuniary damage claimed on behalf of the second applicant, the Government contested that there was any causal link with the breach of the Convention at issue. Had the violation of the Convention not taken place, the second applicant would equally suffer by being separated from her mother and her maternal family.

83. As to pecuniary damage, the Court finds that there is no causal link between the damage claimed and the violation found, with the exception of travel and subsistence costs related to the enforcement of the return order under the Hague Convention. As regards the said travel and subsistence costs, the Court considers it appropriate to deal with them under the head of costs and expenses.

84. As to non-pecuniary damage, the Court sees no reason to doubt that the first applicant suffered distress as a result of the non-enforcement of the return order and that sufficient just satisfaction would not be provided solely by the finding of a violation. Having regard to the sums awarded in comparable cases (see, for instance, *Ignaccolo-Zenide*, cited above, §117, *Hokkanen*, cited above, p. 27, § 77; see also, *mutatis mutandis*, *Elsholz v. Germany* [GC], no. 25735/94, § 71, ECHR 2000-VIII and *Kutzner v. Germany*, no. 46544/99, § 87, ECHR 2002-I) and making an assessment on an equitable basis as required by Article 41, the Court awards the first applicant EUR 20,000. As to the second applicant, the Court considers that the finding of a violation provides sufficient just satisfaction for any non-pecuniary damage she may have suffered as a result of the non-enforcement of the return order.

85. In sum, the Court therefore awards the first applicant EUR 20,000 under the head of non-pecuniary damage.

B. Costs and expenses

86. The first applicant requested a total amount of EUR 288,419.72 under the head of costs and expenses broken down as follows

(i) USD 146,689.14, equivalent to EUR 147,517, for legal expenses paid to two United States law firms which advised him on matters relating to the Hague Convention proceedings and subsequent proceedings;

(ii) EUR 127,553.13 for costs of the Hague Convention proceedings and subsequent proceedings in Austria and of the Convention proceedings;

(iii) USD 3,556.37 equivalent to EUR 3,576.43 for telephone and postal costs;

(iv) USD 9,718.33 equivalent to EUR 9,773.16 for costs of a hearing in the United States Congress concerning the workings of the Hague Convention.

87. As to the costs of the domestic proceedings, the Government asserted, firstly, that the basis for their assessment was not in accordance with the Lawyers' Fees Act (*Rechtsanwaltstarifgesetz*). Secondly, they submitted that the bill of fees contained a number of unspecified items and numerous costs incurred after the termination, in September 1997, of the Hague Convention proceedings at stake in the instant case, costs which had probably been incurred in other sets of proceedings relating to access, custody or maintenance issues. Thirdly, the first applicant had failed to show to what extent the costs had been necessarily incurred to prevent the breach of the Convention at issue.

88. According to the Court's consistent case-law, to be awarded costs and expenses the injured party must have incurred them in order to seek prevention or rectification of a violation of the Convention, to have the same established by the Court and to obtain redress therefor. It must also be

shown that the costs were actually and necessarily incurred and that they are reasonable as to quantum (see, for instance, *Venema v. the Netherlands*, no. 35731/97, § 117, to be published in ECHR 2002).

89. The Court considers that the costs and expenses relating to the domestic proceedings, as far as they concern the enforcement proceedings found to cause a violation of the Convention (see paragraph 72 above) and the costs of the Strasbourg proceedings were incurred necessarily. They must, accordingly, be reimbursed in so far as they do not exceed a reasonable level (see *Ignaccolo-Zenide v. Romania*, cited above, § 121).

90. The Court finds that the costs claimed are excessive. Making an assessment on an equitable basis and considering, in particular, that the case was indisputably complex, it awards the first applicant EUR 20,000 for legal costs and expenses.

91. The Court now turns to travel and subsistence costs related to the enforcement of the return order under the Hague Convention. It notes that only two of the sixteen trips listed by the first applicant were undertaken during the enforcement proceedings. The first one from 8 to 10 May 1996 and the second one from 31 May to 8 June 1997. The Court finds that only the costs relating to the latter can be regarded as having been incurred in order to seek prevention or rectification of the violation of the Convention found, as the first one was apparently related to the one and only enforcement attempt, which would also have taken place had the violation of the Convention not occurred. The Court, therefore, grants compensation for the costs of this trip, which amount to USD 2,667.56, equivalent to EUR 2,682.61.

92. In sum, the Court awards the first applicant EUR 22,682.61 under the head of costs and expenses.

C. Default interest

93. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds* unanimously that there has been a violation of Article 8 of the Convention;
2. *Holds* unanimously that there is no need to rule on the complaint under Article 6 of the Convention;

3. *Holds* unanimously
 - (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 22,682.61 (twenty-two thousand six hundred and eighty-two euros sixty-one cents) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Holds* by 4 votes to 3 that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the second applicant;
5. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 April 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) joint partly dissenting opinion of Mr Bonello, Mrs Tulkens and Mrs Vajic;
- (b) separate opinion of Mr Bonello.

C. R.
S. N.

**JOINT PARTLY DISSENTING OPINION OF
JUDGES BONELLO, TULKENS AND VAJIC**

(Translation)

As regards the non-pecuniary damage sustained by the second applicant, the Court holds: “The finding of a violation provides sufficient just satisfaction for any non-pecuniary damage she may have suffered as a result of the non-enforcement of the return order” (see paragraph 84, *in fine*, of the judgment). However, in like circumstances, it awards the first applicant 20,000 euros for non-pecuniary damage (*ibid.*). The imbalance between the two awards does not appear to us to be justified, especially as the fundamental aim of the Hague Convention with which the present case is concerned is to protect children (see paragraph 44 of the judgment). Although a finding of a violation may in certain cases take on a symbolic value, in the present instance it amounts to reparation at its most frugal.

Personally, we do not share the view that, owing to its tender age, the child has not suffered or may not in the future suffer any non-pecuniary damage (such as stress or anxiety) of its own, warranting an award of compensation for the violation of Article 8 of the Convention which the Court has found as a result of the Austrian authorities' failure to take, without delay, the measures they could reasonably have been expected to take in order to enforce the return order, in breach of the second applicant's right to respect for her family life (see paragraph 72 of the judgment).

We consider that, as in the *Scozzari and Giunta v. Italy* judgment of 13 July 2000, in which the Court held that it had to take into account the non-pecuniary damage sustained by the children in view of their position as applicants (§ 253), the Court should have granted the second applicant, whose conduct cannot be criticised in any way, compensation reflecting the level of damage she sustained.

SEPARATE OPINION OF JUDGE BONELLO

1. The majority's ruling as to what just satisfaction to award the applicant and his minor daughter Carina Maria, to redress the ascertained violation of their fundamental right to the enjoyment of family life, finds me in radical disagreement. I am participating in the joint dissent disputing the majority's decision to award nothing to Carina Maria in so far as, in their view, the mere finding of a violation constitutes in itself sufficient just satisfaction for moral damages suffered by her. I have now to clarify my views concerning the damages and costs awarded to the applicant personally.

2. I voted with the Court on the amounts liquidated in favour of the applicant as material and moral damages and as costs and expenses. I did so not because I endorse the majority's reasoning and its mathematical outcome, but lest my negative vote be read as implying that, according to me, no damages or costs at all were due. On the contrary, I consider the amounts granted in favour of the applicant as mean and beggarly. I believe that the compensation awarded conspicuously fails the test of proportionality between the harm inflicted and the redress afforded.

3. The applicant's existence was skilfully and organically disrupted by the Austrian authorities' defiance of their responsibilities under Article 8 of the Convention - which, as the majority agreed, in the present case imposed on them a duty to ensure the enforcement of the final return order issued in his favour in terms of the Hague Convention on the Civil Aspects of International Child Abduction. The applicant and his wife had established the matrimonial residence in Michigan, USA. The wife's relocation to Austria, together with the illicitly appropriated child, coerced the applicant into instituting legal proceedings in Austria, which necessitated his presence there to ensure their diligent and successful prosecution.

4. The Court has identified two main sources of violation of the guarantees of Article 8 by the Austrian tribunals: some 'unexplainable delays' in the progress of the proceedings (para. 67) and the fact that they negated the final return order previously issued in favour of the applicant. I believe that, in accordance with the Court's case law, all the losses, costs and expenses "actually and necessarily" incurred by the applicant for the prevention or rectification of a violation of the Convention, ought to have been reimbursed to the victim of that infringement.

5. I would, of course, exclude from the liquidation of damages, costs and expenses, those the applicant incurred to counteract the actions of his wife at a time when the liability of the Austrian state had not yet been engaged.

Before that instant, nothing is due by Austria. But, as from then on, the unreasonable delays and the resistance to the enforcement of the final return order (for both of which the majority found the Austrian courts responsible) played a determining conjoint role in infringing the applicant's Convention rights. This cut-off point, after which the applicant was no longer battling his wife but was contending with the failures of the Austrian system, occurred in April 1996. It is my view that, from this moment when the state's responsibility was fully engaged, all losses, damages costs and expenses incurred by the applicant to redress the ongoing state of infringement, clearly became the liability of the respondent state.

6. If, in June 2001 the applicant lost his job in the USA, as the diligent prosecution of the proceedings in Austria prevented the diligent prosecution of his work responsibilities in the USA, then this loss too falls to be compensated. The Court considered that there is no causal link between the material damages claimed and the violation found (para. 83). In my view, the bond of causality between the efforts put in by the applicant to obtain redress for the infringement suffered, on the one hand, and the loss of his job (and various other substantial damages), on the other, is as compelling as it is overwhelming. To believe otherwise is also to believe that the applicant could have carried on working industriously in the USA, while engaging in a full-time legal affray in Austria, continually crossing the globe to attend court sittings and conferences with his lawyers thousands of kilometres away. Not one euro's worth of material damages was recognised and awarded to the applicant by the majority, under any head whatsoever.

7. The liquidation of 20,000 euros to the applicant as moral damages for pain and suffering, I consider paltry and uncaring. To a person who has had the core of his existence irretrievably gutted by the violation of fundamental rights, to a father who has been irrevocably barred from the covenant with his only daughter, to a victim of atrocity born of the distressed use of the law against him, the majority responded with the award of what, in my view, amounts to an almost offensive trifle. That is hardly the most eloquent idiom to underscore how hallowed the sanctity of fundamental rights is in the eyes of the Court. If neutralizing the Convention comes so cheap, states may well find it foolish not to have a brave try.

Family Abduction

Carina Sylvester



Birth: 09/11/1994 Race: White
Missing: 10/30/1995 Hi: 4'03" Wt: 70 lbs
Eyes: Brown Hair: Brown Sex: Female
Missing From: West Bloomfield, MI
Age Now 9 Yrs United States

Monika Sylvester



Abductor
Birth 04/29/1962 Race: White
Hi: 5'08" Wt 150 lbs Sex: Female
Eyes: Brown Hair: Brown

An updated photograph of Carina, from April 2004, is shown on the left and a photograph of Carina at the time of her abduction is shown in the middle. Carina's height and weight are approximations. She was abducted by her non-custodial mother, Monika Maria Sylvester. An International Parental Kidnapping warrant was issued for the abductor on May 29, 1996. Carina has both American and Austrian citizenship. The abductor may be using the alias last name Rossmann. The abductor has a prominent mole on her chin.



ANYONE HAVING INFORMATION SHOULD CONTACT
The National Center for Missing and Exploited Children
1-800-843-5678 (1-800-THE-LOST) OR

Federal Bureau of Investigation (Troy, Michigan) 1-248-879-6090
Or Your Local FBI

Chairman HYDE. Thank you.
 Senator DeConcini.

STATEMENT OF THE HONORABLE DENNIS DECONCINI, CHAIRMAN OF THE BOARD, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Mr. DECONCINI. Mr. Chairman, thank you very much, and Members, thank you for this hearing today. Thank you for listening to concerns of Mr. Sylvester. And nobody expresses those concerns more vociferously and clearly than John Walsh. And Mr. Allen, to my left, the President of the National Center, and I, as Chairman of the Center, are pleased to be here. We are here as kind of the hands-on part of what happens under The Hague Treaty.

I have learned just how serious this is, having served on the board of both the International Center and the National Center, and as Chairman today. We are committed to doing what we can through the National Center for Missing & Exploited Children to prevent family abductions from occurring and to fight for the swift resolution when they do occur.

We are working on the international level through the separate and nonprofit International Center for Missing & Exploited Children to get all countries to step up their efforts to resolve these issues in a consistent, reliable, and swift fashion.

We need to do more, and I thank you for the efforts that you are putting forth in this legislation. Mr. Chairman, H.R. 4347 is not perfect, but it is a step in the right direction. It is something that is overdue. The highlights of that legislation have been pointed out, but they are really not that difficult: Bringing about a swift resolution of these cases through granting jurisdiction to the Federal courts to resolve conflicts in custody orders between individual States.

Today, because of a Supreme Court decision, there is no way to resolve one State versus another State. Common sense is pretty easy to adjust and change. Assisting States in adopting the Uniform Child Custody Jurisdiction that Mr. Walsh pointed out is really not difficult. Locate children and resolve cases.

The database of the IRS can be used. This is not going to infringe on peoples' privacy. Create a national registry of custody orders so there is some place in this country that people can go. And law enforcement, of course, can determine which parent really, truly has the latest custody order.

Empower law enforcement to use protected custody in these cases to enable them to detain a child before that child can be taken out. Often our law enforcement have no tools. Even if they know that the child is getting on the plane with the wrong parent that does not have custody, they cannot do anything. This gives them that temporary effort to protect this child until it is resolved.

The registry and the courts can be involved, and providing limits to statutory immunity is also in the bill. We at the Center believe in The Hague Convention. Yet in too many instances and for too many parents, it just does not work. Mr. Sylvester has pointed that out so clearly.

We need to do better. At the last special commission meeting of The Hague with the personal presence and support of Congressman

Lampson and Congressman Chabot, we urged the creation of good practice guides for member states, a kind of rule book, a road map on how the convention should be implemented.

The Hague responded. Two particular guides have been completed, and a third is on the way. Today, our Center is working directly with The Hague to create a guide on vital issues of access for left-behind parents and enforcement of court orders.

We are making progress. Yet there is a fundamental problem: The permanent bureau of The Hague is attempting to implement more than 35 separate conventions, of which the Abduction Convention is just one, with very limited resources. Member states pay dues, but it is clear that the current Hague budget is not adequate, and there is the need to generate additional support.

Our new International Center for Missing & Exploited Children has negotiated a memorandum of agreement with The Hague Conference on private international law committing to work together to attack the problems on international child abduction. We are promoting the creation of an international training institute for judges, opening real dialogue with the Islamic world on this problem, aggressively attacking problems like providing access for left-behind parents, and enforcing court orders.

As part of this effort, we have proposed a modest increase in The Hague budget. Having served here for 18 years, I could not believe it was only \$150,000. I wanted to say, well, certainly someone will add that on. But this is a modest amount of money in truth, and it is a message that the United States is serious about it.

Let me emphasize that with the increase in funding comes a significant increase in expectations. We believe that it is time to finally provide the body charged with implementing this historic treaty with the tools and resources it needs to get the job done.

Our commitment is to keep the pressure on, and to work with them and more than 60 member states to make this treaty work, and to bring these children home. We are tired of cases like Mr. Sylvester's, and there are hundreds of these types of cases.

So, Mr. Chairman, this legislation is a bold step that will bring about real change in this complex, frustrating problem, and I thank you and the Members for their support, and hope that you might move it during this session of Congress. Thank you, Mr. Chairman.
[The prepared statement of Mr. DeConcini follows:]

PREPARED STATEMENT OF THE HONORABLE DENNIS DECONCINI, CHAIRMAN OF THE BOARD, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN

Thank you, Chairman Hyde, for the opportunity to appear before the Committee to discuss the important issue of international child abduction.

When I retired from the U.S. Senate, one of the key ways I chose to continue my public service was to serve on the Board of Directors of the National Center for Missing and Exploited Children (NCMEC). Last year, I had the high honor of being elected as Chairman of the Board, succeeding Robbie Callaway, long-time child advocate and Senior Vice President of Boys & Girls Clubs of America. I am also proud to serve as a member of the Board of Directors of the new International Centre for Missing & Exploited Children (ICMEC).

In those two roles I have had the opportunity to become familiar with the crime of child abduction. As we have heard from the previous witnesses, child abduction has devastating effects on the whole family. We are fortunate that parents who have suffered these tragedies are willing to work in the public interest to help create improved laws and responses so other families might be spared.

As many of you know, cases of children being abducted by a family member and taken away from the stability of the life they have known is a common occurrence in the United States. According to the latest research from the U.S. Department of Justice, there are more than 200,000 such cases each year. As the globe shrinks and international travel becomes more commonplace, more and more of these cases involve the transportation of a child across a national border.

As we know from the experience of Tom Sylvester and other parents, existing laws don't provide adequate protection or response. The result is that a parent, like Tom, can do everything the right way and according to the law, spend thousands of dollars and thousands of emotional hours yet live with constant uncertainty of when or whether he will see his only daughter again. By the same token, Tom's daughter, Carina, has a father who is loving, available and committed to her welfare, yet she has been robbed of her father's time and love—something that should be every child's right.

NCMEC is committed to doing what it can, as an organization, to fight for improvements in our global response to international missing child cases. From the day NCMEC began receiving calls through its Hotline 20 years ago, calls came in seeking the location and return of U.S. children who had been abducted and taken abroad. In 1995, NCMEC entered into a cooperative agreement with the Departments of State and Justice to handle cases in which a parent seeks the return of or access to a child abducted into the U.S. under the Hague Convention on the Civil Aspects of International Child Abduction. While NCMEC pursues improvements to the global system designed to resolve these cases and has aggressively sought the return of internationally-abducted children in each case, obstacles to the quick and successful resolution of cases remain.

As other countries face their own tragic cases in both the abduction and exploitation areas, many have sought the assistance of NCMEC to formulate similar services, programs and laws to combat these issues. As the number of cases with a global reach increased, we realized that if we were to really have an impact on abduction and exploitation that affects children within the U.S., we had no choice but to operate on the international stage. For these reasons, we created the International Centre for Missing and Exploited Children (ICMEC). ICMEC is a separate, non-profit corporation created to address the abduction and exploitation of children worldwide.

NCMEC and ICMEC work collaboratively to ensure that best practices of NCMEC and the U.S. are made available for other countries to adapt and implement. ICMEC serves as a global focal point for hammering out strategies to address the abduction and exploitation of children in a consistent and effective manner worldwide. In addition, the international policy work and the affiliations made by ICMEC create new opportunities and contacts to help individual parents and children whose cases are being worked by NCMEC.

Recently, H.R. 4347, "The International Assistance to Missing and Exploited Children Act of 2004" was introduced. This bill makes improvements to the law to help prevent and successfully resolve both domestic and international abductions of children. It is an important piece of legislation. One of the fiercest battles we wage in child abduction cases is against time. In stranger abduction cases, this battle plays itself out trying to identify the perpetrator and locate the child before harm can be done to them. In family abduction cases, the battle is location of the child and the speedy resolution of the legal issues in the case so that the child can be legally settled without the child living in hiding or being snatched back and forth as happens in these cases.

SWIFT LEGAL RESOLUTION OF FAMILY ABDUCTION CASES

H.R. 4347 contains several provisions to help quickly resolve family abduction cases. It is currently possible for two states within the U.S. to issue conflicting custody orders, each believing it is acting within the law. When courts in different states exercise jurisdiction and make conflicting custody decisions, the only recourse now available to resolve the conflict and thus determine which custody order is valid and controlling, is for the aggrieved party to appeal through the state courts, hopefully getting a resolution along the way. If not, U.S. Supreme Court review is available for truly intractable jurisdictional deadlocks—at least in theory. The reality is that Supreme Court rarely grants certiorari in child custody cases, which effectively leaves custody contestants without a legal remedy once the highest courts in two states have upheld conflicting orders. More importantly, the goal must be swift resolution of these disputes, not countless appeals that only serve to further alienate and disrupt the lives of the children and families involved. Custody contestant cannot go to federal court for relief when interstate conflicts first arise because of a

1988 U.S. Supreme Court decision in *Thompson v. Thompson*, 484 U.S. 1174 (1988). That case held that there is not right under the federal Parental Kidnapping Prevention Act (PKPA) to go into federal court for a determination as to which of the two state courts that have issued custody orders has done so consistent with the federal law. While the Supreme Court was unwilling to find an implied right of action in the PKPA to go into federal court to resolve jurisdictional conflicts, it did note that Congress might choose revisit the issue which is precisely what this legislation does. Many children remain caught in a legal limbo—NCMEC is contacted by parents who hold an order giving them custody of their child but who are unable to enforce it because the abducting parent also holds a custody order issued them by the state to which they abducted. The federal courts should be granted the jurisdiction to decide these rare but intractable conflicts.

In addition, the bill requires the Attorney General to establish a program to assist states to adopt the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), provide training for lawyers, judges and designated public officials on the uniform implementation of the act and provide guidance and funding to states to facilitate and expedite implementation of the public enforcement of custody/visitation provisions of the UCCJEA. The National Conference of Commissioners on Uniform State Laws approved the UCCJEA in 1997 to replace the law that is currently relied upon to resolve interstate family abduction cases, known as the Uniform Child Custody Jurisdiction Act (UCCJA). The UCCJEA improves the current law in important ways to deter parental kidnapping and to eliminate jurisdictional ambiguities that have often been exploited by parents to draw out litigation, secure conflicting custody orders, and delay or deny enforcement of valid custody and visitation orders. The law provides for an abbreviated, court-assisted process for a parent to register their custody order in a new state, and an expedited child recovery remedy. New provisions allow public officials to assist in the civil enforcement of custody determinations and to locate and secure return of a child in international cases brought under the Hague Convention on the Civil Aspects of International Child Abduction. The new procedures will simplify child custody enforcement and recovery as well as reduce self-help recoveries that can be emotionally and physically harmful to children and legally problematic for their parents.

Two years ago, NCMEC, in conjunction with the Internal Revenue Service, conducted an experiment in which the names of missing children, along with known facts about their cases, were run through the IRS information databases in an effort to determine the location of the missing children. The results were astounding. The IRS databases contained information that could lead to the recovery of a missing child in two-thirds of the cases submitted. Although NCMEC currently has access to a number of federal databases for the sole and narrow purpose of discovering information that might lead to the location of a missing child, the IRS is statutorily unable to provide access to their database information. This bill contains a carefully worded, narrow provision, allowing NCMEC to periodically run the names and case information of missing child cases in the IRS databases and have any results provided to investigating law enforcement for the purpose of resolving missing child cases. As is the case with other database information to which NCMEC is provided access, we have no interest in the financial information contained in the records—our sole interest is to provide law enforcement with any data that may lead to the location of a missing child.

As we seek to find the best ways to resolve family abductions within United States, we must be equally vigilant in resolving cases in which children are brought into the United States from another country. The bill before you today contains provisions designed to provide parents seeking the return of children wrongfully taken into the United States with better access to courts and to educate those courts about the laws of international family abduction. Specifically, the bill allows for the provision of free or reduced-fee legal services, waiver of filing fees and other court costs in connection with bringing a proceeding for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) and for training of federal judges and state judicial and legal education programs on both interstate and international parental kidnapping law and practice. Having a well-trained judiciary and providing parents with access to legal services and the appropriate courts are vital to achieving the goal of providing a stable situation for children through the swift resolution of parental abduction cases.

PREVENTING FAMILY ABDUCTIONS

Given the difficulties involved in resolving parental abduction cases as well as the trauma they cause, it is clear that a major focus needs to be placed on preventing abductions from occurring in the first place. This is particularly true in the case of

international abductions. The jurisdiction of the United States ends at our borders making it very difficult and often impossible to secure the return of a child who has been taken to another country. With better systems in place to stop children from crossing the border in the hands of an abducting parent, we stand a much better chance of ensuring that families stay whole and that children are not unilaterally cut-off from one parent.

This bill calls for creation of a national registry of custody orders. This is not a new idea, but is one that is overdue. A national registry of custody and visitation orders provides a single point of contact for courts and law enforcement to verify the validity of a custody order. In a particularly tragic case, a mother who had lawful custody of her only son, received a phone call from her son's school alerting her that the child's father had arrived to pick up the son even though he was not authorized to do so. The school also called the police who were on the scene when mother arrived. When questioned, the boy's father produced a previous custody order that provided both parents with joint custody but was no longer valid. Because mother did not have her current and valid sole custody order with her, the police allowed the child to leave with his father. That night father and son boarded a plane and traveled to a country that has not signed the Hague Convention. Despite her best efforts, the child's mother has had only two visits with her son in over 5 years—both under the watchful eyes and ears of the abducting father. Because of cases like this, other law enforcement officials are understandably hesitant to intervene when faced with conflicting custody orders or the inability to verify an order's validity. A national registry provides police with the necessary information to intervene and provides the courts the background information they need to determine whether or not they have proper jurisdiction to make a decision in a child's case. In addition, this type of registry could serve as a basis for a system that could be designed to prevent non-custodial parents from taking a child out of the United States without proper authorization and, therefore, prevent many tragedies of international child abduction.

The bill also strengthens the hand of law enforcement to help prevent family abductions by authorizing them to take vulnerable children into protective custody. Currently, when law enforcement, usually on the border, comes across an abducted child, they are unable to 'recover' the child. A left-behind parent may know the abductor is planning to take the child out of the country and may even know what airport they are likely to leave from, but without a warrant for arrest of the abducting parent and/or court-ordered sole custody, law enforcement usually lacks a basis for taking the child into protective custody. Parents continue to face challenges in obtaining warrants for family abduction, especially in the international context as evidenced by information provided at the October 1999 hearing of the Subcommittee on Criminal Justice Oversight of the Senate Judiciary Committee. Even in the best of circumstances, issuance of warrants can take days. Allowing law enforcement officers to recover a child without facts supporting the arrest of the accompanying adult will ensure that the U.S. is able to stop attempted abductions when the child has been reported as missing to police but before criminal charges issue.

RESOLUTION OF INTERNATIONAL FAMILY ABDUCTION CASES

Understanding that children are as easily taken across country borders as they are across state borders, this bill focuses attention specifically on international child abductions in several provisions. First, in order to better understand the problem we seek to correct, the bill requires annual reports to Congress on federal parental kidnapping investigations, prosecutions and extraditions. Congress regards international parental kidnapping as a serious crime, making it punishable as a felony under the International Parental Kidnapping Crime Act of 1993, and the Fugitive Felon Act. It is an extraditable offense under all U.S. extradition treaties. In previous legislation, Congress required the Department of State to produce reports naming those countries signatory to the Hague Convention that are not in compliance with the terms of their treaty obligations. These reports have been enormously helpful to courts when faced with the question of whether a parent should be allowed to remove a child to a certain country. In addition, the reports have led to productive discussions between the United States and the countries named in the reports providing a real opportunity to facilitate better ways to resolve these cases worldwide. In order for Congress to conduct meaningful oversight regarding the implementation of laws on international abduction and to identify obstacles that remain to the successful resolution of cases, information regarding investigations, prosecutions and extraditions is critically needed.

Since 1995, NCMEC has played a vital role in the successful implementation of the Hague Convention. It was in that year that the Department of State approached

NCMEC and asked if we would assist in the implementation of this important treaty. Given the vast number of family abductions into and out of the United States each year, the State Department was overwhelmed with applications for assistance under the Convention. Because of our experience locating children abducted within the United States, the State Department asked if we would, in the spirit of reciprocity, use our existing services to locate children who had been abducted from overseas. NCMEC has been providing that service for the past nine years. This bill provides NCMEC staff processing these cases with the same limited immunity provided to State Department staff working cases under the Convention. NCMEC recognizes the important role we can play in convincing other countries to return children abducted from the United States by properly living up to our obligations to return children wrongfully brought into the United States. This provision provides NCMEC with the protection against frivolous lawsuits that we need to continue helping children caught in the middle of international conflicts.

The bill also provides additional funding to the Hague Conference on Private International Law to allow it to continue to encourage member States to properly resolve cases of international abduction. The Hague Conference is the membership entity that oversees the operation of a number of private international law treaties including the Hague Abduction Convention. Several years ago, NCMEC and the International Centre for Missing and Exploited Children (ICMEC) promoted the idea of creating reports providing suggested 'good practices' that signatory countries could adopt to improve the operation of the Hague Convention so that cases could be resolved quickly and for the benefit of the children involved. The Hague Conference, through its membership, embraced this idea as an opportunity to encourage signatory countries to do a better job of return abducted children to their country of habitual residence. The Permanent Bureau of the Hague Conference has produced two Good Practice Guides, one on the operation of the Central Authority—the government entity tasked with implementing the Convention within a country and the second focused on what systems and legislation countries should have in place prior to implementing the Convention. Last year, ICMEC entered into a Memorandum of Agreement with the Hague Conference to support additional guides to good practice, create a judicial training institute, identify solutions to abductions involving Islamic law countries, among other things. One critical element to the success of the Hague Conference's efforts to improve how international child abduction cases are handled is to increase each country's contribution to the core budget. This bill contains a 'sense of Congress' that the Hague Conference core budget should be increased to strengthen its ability to help countries address the complex and frustrating problem of international child abduction. In so doing, the United States joins the United Kingdom, Canada and Australia who have all expressed support for increased funding. ICMEC aims to generate private sector revenue and support in order to assist Hague Conference with these special projects designed to improve they way cases are resolved. These projects are vitally important to the lives of countless children around the world. We must ensure that the Hague Abduction Convention remains a vibrant, living document that provides a uniform system for the safe return of abducted children no matter what country they are abducted from and where they are taken.

CONCLUSION

It is critical that the United States continue to improve our response to family abduction so that we are able to hold up our system as a model for other countries. H.R. 4347 contains provisions specifically designed to address identified obstacles to the successful resolution of family abduction cases, both domestic and international. The United States plays an important role in the world community and we must ensure that our own house is in order so that we can stand on the world stage and bring others to the table for the benefit of all children.

Chairman HYDE. Thank you, Senator.

As I have listened to your collective testimony, it occurs to me that enforcement is lacking, and as John Walsh said, it is lip service. They have a person serving as Assistant Secretary with a nice title, but she is a lone ranger, and the only thing we need is some way to get their attention.

I find money is very effective, and we have the authority to put a hold on certain funds, and we have done so for sometimes technical reasons having to do with the transfer of technology and

things like that. I do not see why we could not broaden our perspective and see if we cannot get the attention of some of these countries by withholding some money.

Now, that will make other people mad. I can understand the need to assuage Saudi Arabia's feelings, especially at a time like this, but they ought to understand our needs and our requirements, because justice is on our side.

So I do not promise you any magic results, but I promise you attention to this problem and conversations with people who can light a fire, and I am looking for places to withhold money. The Egyptian situation is a natural.

I do not know what we give Austria, but I am sure going to find out.

Okay, well, thank you. This was most interesting, most productive, most useful.

And now Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Once again I want to thank you for holding this hearing, and I want to thank all of our witnesses here this afternoon. Senator DeConcini, thank you for all your good work, and especially with the National Center for Missing & Exploited Children. You and our good friend, Ernie Allen, and all the good folks at NCMEC do a wonderful job. And those of us who work on these issues really appreciate everything that both of you do.

And, Mr. Walsh, thank you for being here. You and your family, of course, suffered a terrible tragedy, and the hearts and prayers of our Nation went out to you then and continue to, and we are so grateful that you have chosen to work on behalf of other parents who are suffering, and we wish you the very best in your endeavors as you continue working for the American people.

And finally, let me once again welcome and thank my friend from Cincinnati, Tom Sylvester. Tom, we are not going to give up until you and I can give Carina a tour of that Capitol building over there.

Mr. SYLVESTER. Thank you.

Mr. CHABOT. We do tours a lot of time for folks from Cincinnati, school groups, families, and church groups, and I will not be satisfied until you are holding her hand, walking through the Capitol building, and we are showing you our Capitol, her Capitol.

Mr. SYLVESTER. Thank you, Congressman.

Mr. CHABOT. She is an American.

Mr. SYLVESTER. Thank you.

Mr. CHABOT. I know that 5 minutes is not a lot of time, Tom, so if you would like to elaborate on your earlier testimony, I would be delighted to turn over whatever time I have left to you to tell us anything about your case that you think would be helpful for us to know. Most especially, anything that our Government ought to be doing, including this legislation, either additions to this or other things that you think we ought to be doing.

One thing that has always stuck in my mind is something you told me; that the abductor, your former wife, told you about our Government, and if you could perhaps share that with the rest of us again, and again my time is your time, so I will yield my time to you at this point.

Mr. SYLVESTER. Thank you, Congressman Chabot.

I recall vividly, as a matter of fact, I mentioned those words before this very Committee back in its last hearing on October 14, 1999. I had recently gone to Austria and talked at length with my ex-wife, looking to find some workable solution and resolution. And she looked at me as we sat across the table from one another, and very defiantly said to me, "Tom, you know, there is one difference between me and you." Of course, I thought there were quite a few more than one, but anyway I said, "What is that?" And she said, "My Government protects me."

Please know that, I will be brief here, and please know that clearly I am advocating for Carina. But I ask that you consider the possibility that when you hear her name, just when you hear her name, that you apply a broader message of an acronym that her name represents, and that is that all Children Abducted or Retained Internationally Need Assistance. And to me, that is how Carina's spirit lives on for us here, and she is with us here in that way, to give rise to the awareness that all children abducted and retained internationally need assistance.

So I certainly support, again, any legislation that can help any parent promptly recover their children. And from that standpoint I support this legislation generally. This legislation will help certain parents in certain situations, and that is great.

However, it appears to me there is room for improvement. I would like to see some recommendations be considered that would help American left-behind parents and American children to have additional support. And I have outlined many of those in my written testimony for the record, but just simply to highlight for the moment, I clearly would advocate and recommend increased involvement by the National Center for Missing & Exploited Children, an ambitious advocate, in outgoing cases. They have done a stellar job. This legislation appears to give rise to the possibility of providing even greater performance on behalf of the United States to fulfill its treaty obligations.

But I clearly feel there is opportunity, we have a right to demand and expect other countries to reciprocate. As we raise the bar and as we put systems in place and legislation in place that helps us be a better treaty partner, I would ask the support from the U.S. Government to help American left-behind parents and American children to urge the other governments to reciprocate and to do the same.

Once again, there are quite a few recommendations that I have, and perhaps I will have an opportunity to participate in some markup process or other legislation activities, but I would ask that those be addressed as part of the record.

Mr. CHABOT. And we intend to accomplish that, and we very much thank you for your testimony this afternoon.

I think my time has expired, Mr. Chairman.

Chairman HYDE. Your statements are in the record.

Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you very much, Mr. Chairman. I want to thank our very distinguished panel for that very powerful testimony from each of them.

Again, I think your bill does move the ball significantly forward. Registries and reporting are very important. If we do not even have a handle on the situation, if we do not have sufficient personnel dedicated, if you do not have enough people, if you have a one-woman show, as Mr. Walsh pointed out, the possibility and the probability of having effective outcomes is absolutely minimized despite good intentions. Personnel equals policy. So I think your point was very well taken.

And when you talk, Mr. Chairman, about, you know, withholding some funds, I think we have to look no further than the most recently enacted legislation on human trafficking to show that we are serious, we name names, we list countries that are either acting in compliance with minimum standards, and that is what we are talking about with The Hague Convention. And when we actually withhold non-humanitarian foreign aid as a way of trying to get their attention or using other diplomatic measures that are at our control, we are likely to see significant and profound changes.

The impact of the human trafficking legislation shows that smart sanctions work, and I think we need to be looking at that as well as it relates to these child abductions, and I thank you again for this powerful testimony.

I yield back the balance of my time.

Chairman HYDE. Our space engineers have finally solved the riddle of our electronic assets, and so I do not want their work to go for naught, so if you would play the tape.

[Video tape played.]

Mr. WALSH. I think you see the point of what that little girl said. We are all American citizens. Why were we not able to walk out of Saudi Arabia with our passports?

It is a nightmare. I know the update on that last family. Now, there is a mother who had to go to Malaysia to steal her children back because although she had total custody, sole custody, all her papers in order, nobody would help her, nobody would go get the kids. She went and paid her own way to Malaysia, and took a chance and stole that one daughter. The other little girl left behind has already been bartered off in an arranged marriage at 15 years old. She will probably never come back to the United States. They still don't know where that little boy is.

But I have to say I brought that video just to show you testimony from the mouth of that little girl. I cannot understand, as American citizens, why we could not walk out of that country.

Chairman HYDE. Well, one thing in addition to pressing the legislation that is before us: I am asking Mr. Chabot, and I will ask Mr. Burton, to give me a draft of a resolution condemning Austria's conduct and Saudi Arabia's, which I will then send to the Secretary of State, and say I cannot hold these people back.

Mr. WALSH. Great. That would be wonderful.

Chairman HYDE. We had better pay attention to this. It is getting out of hand.

Mr. WALSH. That would be wonderful.

Chairman HYDE. And we will generate some action.

Mr. WALSH. I really think, and I do not just single out the Saudis, but I think it is time to end the, you know, the double-dealings: They say one thing, they do not say another. This is not di-

rected at all Saudis, but I watched the other day when Prince Bandar came on television and told CNN——

Mr. ALLEN. It was not Prince Bandar. It was a member of the Royal family.

Mr. WALSH. Oh, member of the—no, no, the Prince himself, Crown Prince Abdullah, talking about the Khobar Towers, when they had the 22 people killed at the Khobar Towers. I was watching with an interpreter, and I watched him on Al-Jazeera turn right around and say, we are very concerned about Americans being killed here in Saudi Arabia. We are very concerned about them being taken, and held hostages and beheaded, but I just want to tell you that it is a Zionist plot contrived by members of the Israeli parliament and Zionists from Jerusalem.

I have been there. Where does somebody come up with this? I have been to the Persian Gulf hunting terrorists and stuff. They tell CNN one thing, and then go on Al-Jazeera and say that the kidnapping and murder of Americans is a Zionist plot by Jews from Israel.

I mean, it is time to hold these people accountable for all their double-dealings with the people in our country that are ex-patriots over there, our partnership, our ability to fight al-Qaeda, and especially our children.

I mean, they look at us with utter disgust. When I go over there, they say any child born of a Muslim father or a Saudi is Saudi property, it is not American property, you have no right whatsoever here. They do not respect anything we have to say and they do not respect our laws.

You are the lawmakers. Put some teeth in this bill. Put some teeth in this, and let us deal with these people the way they should be dealt with, okay?

You know, they may be our partners and we buy lots of oil from them and all those other things, and we may be together, but I am not so sure in the battle against al-Qaeda. I know that firsthand, and I have been profiling this Osama bin Laden since 1993. I know how horrible that threat is. But I have been dealing with the Saudis, trying to get fugitives out of there, trying to catch terrorists, et cetera. They say one thing on American television and say another thing on Arab television. Might want to look at that piece yourself.

But the point I am making is it is time to hold them accountable. If they really want to be our partners in this war on terrorism, if they really want to do business with us, then hit them where it hurts. Hit them in the pocketbook, and put some teeth into this legislation.

I love what you said there, absolutely. I mean, I know that there are people in the State Department right now, not just this wonderful lady who goes over there by herself and begs, et cetera. I would like to see a couple of U.S. marshals, a couple of FBI agents and some people go into that country and say, you want to deal with us, you know what, we have got the documents here, we are going to come and get these people out of here. It would be worth a try.

But anyway, it is wonderful that you held this hearing here today, Chairman Hyde. You have been a loud voice for children.

For 20 years, I have worked with you. I would love to see you mark this bill up, get it out. We will take care of it on the Senate side.

Chairman HYDE. Okay, that is a deal.

Mr. WALSH. That is a deal. I love that.

Chairman HYDE. The Committee stands adjourned. Thank you.
[Whereupon, at 4:28 p.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE DAN BURTON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF INDIANA

Thank you, Mr. Chairman, for convening this most important hearing on human rights today. As you may know, during my tenure as Chairman of the Committee on Government Reform, I launched an investigation into the matter of American citizens who have been kidnapped by their non-custodial foreign-national parent, often in violation of U.S. custody orders, and are being held in Saudi Arabia against their will.

These American citizens, many of them women and children, have reportedly been denied their most basic civil rights, as guaranteed by the U.S. Constitution. A great majority of them have been subjected to emotional, physical, and sexual abuse. Moreover, the young girls who have been abducted will never be allowed to leave Saudi Arabia, at any age, unless they have express written permission from their closest male relative, who is often the one who kidnapped them in the first place.

There are several details regarding Sharia law—the strict fundamentalist code observed in the Kingdom—and Saudi culture that make these particular international child abduction cases noteworthy.

For instance, Sharia law gives Saudi men extraordinary power over their wives and children, whereby the men literally “own” them.

Another disturbing factor in these cases is the fact that Saudi Arabia is not a signatory nation to the *Hague Convention Treaty on the Civil Aspects of International Child Abduction*. The Hague Convention treaty puts general guidelines and procedures into place regarding how to handle international child abduction and custody disputes. While this is not a perfect system for maintaining that the rightful parent is guaranteed the physical custody of their child, it is a step in the right direction, and a positive sign that signatory countries are willing to ensure international law is upheld.

Unfortunately, in lieu of the Hague treaty, there are absolutely NO legal standards governing the return of kidnapped children from Saudi Arabia.

Our investigation, which began back in the 107th Congress, produced numerous hearings, several legislative proposals, and even a Congressional Delegation to Riyadh, the capitol city of Saudi Arabia, in August of 2002.

Although it has been nearly two years since that visit, I will NEVER forget the tears on the faces of American women who literally risked their lives to come and speak with me. Nor will I forget how terrified they were of the physical torture—possibly fatal—that they might face if their Saudi husbands found out that they had gone to or been in touch with the U.S. Embassy. These women live in a constant state of fear, and it is the duty of the American government to help ensure their safe return home to the United States.

International child abduction is not just an issue in Middle East countries. Thousands of American children have been taken against their will to places around the world, such as Ecuador and Honduras. Even more astounding is that abductors have not only found safe haven in 3rd World countries, but also in Hague Convention signatory nations such as Spain, France, Germany, and Austria—where witness Tom Sylvester’s daughter Carina has been held since 1995. This is simply unacceptable.

Because of the attention that the issue of international child abduction has received in recent years, we have seen some marked improvements in the way that these situations are dealt with. Before, the custodial American parents were given NO hope that their sons and daughters would ever be returned to them, now we are beginning to see some light at the end of the tunnel.

Under the guidance of Secretary of State Colin Powell, as well as the personal attention that Assistant Secretary of State for Consular Affairs Maura Harty has given to this issue, many more children are being returned home to the United States every year. In addition, the Department of State has recently promulgated guidelines on how Embassy and Consulate staff are to treat victims of international child abduction should they seek refuge at any U.S. installation.

While these are positive changes that are to be congratulated, we must also call upon Congress and the Department of State to place further diplomatic and legal pressure on these non-compliant countries, whether Hague signatories or not, in order to guarantee the safe return of these U.S. citizens who are being held against their will.

To assist in this effort, I am currently drafting legislation to include international child abduction in the annual Human Rights Report submitted to Congress by the Department of State. This would not only be a useful tool for the U.S. government to utilize while working on these most important issues, but it would also send a clear message to all non-compliant Nations that the United States is keeping its watchful eye on the treatment of American citizens who have been illegally abducted. I certainly hope that once this legislation is ready, the Members of this Committee will join me in this fight and sign on as Co-Sponsors.

I would like to thank you again, Mr. Chairman, for holding this hearing today on the heartbreaking issue of international child abduction.

RESPONSES FROM THE HONORABLE MAURA HARTY, ASSISTANT SECRETARY, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE DIANE E. WATSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Question:

The National Center for Missing and Exploited Children has provided the Committee with some disturbing statistics of missing children. In my state the Center lists 292 missing children and 26 are from my area in Los Angeles. These numbers rank among the highest on the Committee. With a busy Tom Bradley International Airport, and the close proximity of the Mexican border, it is not too hard for a domestic abduction to become international. I would like to hear your thoughts as to what is the reason for such a high number of missing and exploited children in California? Also, what are you and your law enforcement counterparts working on in order to reduce that number?

Response:

We defer to the National Center for Missing and Exploited Children and other experts on domestic abductions concerning why the number of missing and exploited children in California appears so high, and to provide information concerning efforts underway domestically to address the problem.

The vast number of Mexican immigrants and Americans of Mexican descent in California, and the ease of travel between California and Mexico, however, are certainly factors in the number of international parental child abduction cases we handle involving Mexico. Unique in the United States, the California Attorney General's office is authorized under California state law to handle Hague applications for return and access directly, giving that office an important role in our efforts to return abducted children to the U.S. We work very closely with the Attorney General's office and its network of District Attorneys in pursuing both Hague and non-Hague cases. We participate with California officials in various outreach activities in California, and have included representatives from the Attorney General's office in various programs sponsored by the Department, such as seminars hosted by the U.S. Embassy in Mexico for local judges, attorneys, and Mexican officials. Over the past year, we have also placed increasing emphasis on prevention efforts, including the creation of a separate Prevention Unit within the Office of Children's Issues.

Question:

Ambassador Harty, as you know, one example of international child abduction was perpetrated by the daughter of the president of Uzbekistan, Gulnora Karimova, who was married to an American citizen named Mansur Maqsudi and who absconded three years ago from their home in the United States with their two young children, both of whom are American citizens.

These children have not been allowed to see their father for three years, despite an New Jersey court order giving sole custody to Mr. Maqsudi and issuing an arrest warrant for Ms. Karimova for violating the custody dispute.

Given the fact that Uzbekistan has become a strategic partner of the United States in the war against terror and have received large amounts of foreign aid from this country, why hasn't the State Department been able to prevail upon the President of Uzbekistan to have his daughter obey the order of an American court and allow her children to see their father?

Why hasn't the State Department even been able to provide Mr. Maqsudi with photographs of his two children?

Response:

Since Mr. Maqsudi contacted the Department in 2002 for assistance, the Department of State has actively pursued parental and consular access to Mr. Maqsudi's children, in keeping with his wishes. This has involved engaging the Uzbek Government at senior levels and, more recently, seeking assistance from the Russian Government as well. Assistant Secretary for European Affairs Elizabeth Jones raised the case with Uzbek officials, including Uzbek President Karimov and the Foreign Minister. Ms. Karimova, a diplomat with the Foreign Ministry of Uzbekistan, was assigned to the Embassy of Uzbekistan in Moscow in 2003. She took the children with her to Moscow. Since then, my Principal Deputy Assistant Secretary for Consular Affairs met with the Uzbek Ambassador to Russia to request consular access to the children; the Uzbek Ambassador denied the request. We have also worked with the Russian Government to seek consular access. We will continue these efforts despite Ms. Karimova's consistent refusal to allow State Department officials to visit with the children or to allow Mr. Maqsudi direct contact with them. We have not been able to provide Mr. Maqsudi with a photograph of his children for the simple reason that we ourselves have been denied access to the children.

RESPONSES FROM THE HONORABLE MAURA HARTY, ASSISTANT SECRETARY, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE, TO QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND CHAIRMAN, COMMITTEE ON INTERNATIONAL RELATIONS

Question:

The Office of Children's Issues maintains a database that is used as a workload manager, containing files on the number of active cases in which a parent is seeking custody of a child, and cases where the parent is seeking access to a child. Are you able to determine the number of open cases at any given time? Closed cases? Are the "closed" cases classified as to results, so that one may determine whether it was closed due to a recovery, failure to pursue the case, failure to find the parent or child, death of the parent or child, etc.? If not, don't you think that more useful information may be kept if case files maintained this information in the "closed cases" index? How difficult would it be to maintain this type of information?

Response:

The International Parental Child Abduction database used by the Office of Children's Issues allows us to determine the number of open and closed cases. Although the database allows us to capture information on the reasons that a case has been closed, it does not currently allow us to readily retrieve this information. We recognized this problem and are working with the systems developers to enhance the database's search capabilities. We agree that it would be very useful to retrieve such information.

Question:

Congressional Research Service reported that as of May 12, 2004, the Office of Children's Issues had 503 active custody cases, and 98 active access cases, both with the majority of the caseloads being from non-Hague countries. How do you count your caseload? How many cases does each case manager have? Do you see an increase or decrease in the caseload for non-Hague countries? What can be done in the non-Hague countries?

Response:

In fact, the Office of Children's Issues is aware of over 1,000 active abduction cases, involving both Hague and non-Hague countries, and over 200 access cases. We count those cases where we are actively working with left-behind parents to pursue either a child's return or parental access. Staff in the Office of Children's Issues involved in abduction casework numbers 18, and each staff member currently handles an average of 72 cases. We have seen an across-the-board increase in the number of cases for both Hague and non-Hague countries. In non-Hague countries, we

actively pursue children's return using a variety of tools, including civil, criminal, and diplomatic remedies. We have emphasized to other countries the importance that the U.S. places on resolving cases of international parental child abduction, and sought their cooperation in returning children to the U.S.

Question:

Although Mexico is a signatory of the Hague Convention, it has the largest number of active custody cases of children being abducted from the United States. What is the State Department doing to help in these cases? What more needs to be done?

Response:

The United States has no more important Hague Abduction Convention partner than Mexico. The number of cases we witness of children being taken to or from the U.S. and Mexico dwarf those we see with any other country. We are presently dealing with 134 active cases of children abducted from the United States to Mexico or wrongfully retained in Mexico after a visit, often in violation of the custodial rights of a Mexican citizen parent living in the United States.

In 2003, 21 abducted or wrongfully retained children were returned from Mexico to the United States. As an absolute number, that seems impressive; as a percentage of active abduction and wrongful retention cases, and in comparison with return rates from other countries with which we have many cases, such as Canada and the UK, the number is much less impressive.

Especially troubling is the number of cases in Mexico that have remained unresolved after more than 18 months. There are presently 22 such cases, some now over five years old; in contrast, we have no more than two such cases with any other Hague partner.

Among the underlying causes of Mexico's poor performance overall under the Hague Convention appear to be a woefully understaffed and underfunded Central Authority in the Foreign Ministry; a judiciary unfamiliar with, and not infrequently hostile to, the Convention; and law enforcement and court authorities unable to "locate" children even in cases in which we and the left-behind parents can provide exact addresses.

In general, Mexico has only partially implemented the Hague Abduction Convention into its legal, administrative and law enforcement systems. As a result, we found Mexico to be "non-compliant" in our last Annual Hague Compliance Report.

There is some encouraging news. Communication between the Mexican Central Authority and its U.S. counterpart, the Bureau of Consular Affairs' Office of Children's Issues, has noticeably improved over the last three months. Cases have been forwarded on to local courts in six weeks instead of eight or ten or more. Director Licenciada Rosa Isela Guerrero and her staff are dedicated and work extremely hard, despite the small size of their office and their lack of resources.

Our Embassy in Mexico City has embraced, as one of its explicit goals, a concerted effort to help promote improvement in Mexico's compliance with the Hague Abduction Convention. The Embassy has added a second staff member to its team dealing solely with international parental child abduction. In close coordination with our Central Authority, it will continue its monthly meetings with the Mexican Central Authority, monitoring and exploring solutions to problematic cases.

Likewise, our Hague Convention Central Authority, the Office of Children's Issues, has added an additional case officer devoted exclusively to Mexico cases as of July 2004.

We take every opportunity at all appropriate levels, in Washington and in Mexico City, to raise the general issue of compliance with the Hague Abduction Convention and specific abduction and wrongful retention cases with Mexican officials. Recently, the Principal Deputy Assistant Secretary for Consular Affairs met with Mexico's Deputy Attorney General and with the Office of the Attorney General's Coordinator of International Affairs. We specifically raised the issue of Mexico's seeming inability to locate children and the parents who have abducted them. The General Coordinator has offered himself as a direct point of contact in efforts to locate missing children, and our Central Authority has provided a summary of these cases. In addition, the Justice Ministry has referred all Hague cases now more than 18 months old to the Mexican Federal Investigative Agency, Mexico's equivalent of our FBI.

Aiming at longer-term, more structural solutions to our challenges with Mexico, the judicial training conference on the Hague Convention that our Embassy organized for family court judges from the Federal District of Mexico and the State of Mexico in July 2003 was followed up by a similar but longer conference in Guadalajara last month. This was organized by our Consulate in Guadalajara and co-hosted by the Jalisco Supreme Court, to target training for judges and officials working with children's issues in the state of Jalisco and surrounding states.

Question:

Although Germany is a signatory of the Hague Convention, it has traditionally had one of the largest numbers of active access cases of children being from the United States to Germany. What is the State Department doing to help in these cases? What more needs to be done?

Response:

Our Central Authority often serves as a conduit between parents in America and our German counterparts, helping with communication and attempting to clarify contentious issues. We specifically address access cases in our Bilateral Working Group with German officials from the Justice and Foreign Ministries. Our goal is to help ensure clear communication and explore potential solutions. Our consular officers in Germany meet with local agencies, such as the German Youth Authority, and with local, regional, and federal officials who may be able to assist in resolving access cases. Our consular officers are also available to meet with our U.S. parents when they come to Germany. Mediation is a tool that is increasingly being used with the support of our Central Authority and the German Central Authority. These cases are never easy, but we never stop trying to facilitate access for American parents.

We have found that the best way to avoid having long-term access cases is effective compliance with the Hague Abduction Convention. Children who are returned under the Convention do not become access cases. Germany is a leader in recognizing this fact and that is part of their motivation in working with us on compliance issues.

Question:

As you know from Tom Sylvester's case, he has done everything possible under the terms of the Hague Convention to get his daughter back from Austria. He has won every legal challenge, including being awarded damages from the government of Austria. Austria continues to enforce (sic) any of these orders. Since we don't seem to gain any traction through the normal Hague Convention negotiations, what do you think about pursuing other means of pressure? How can we compel foreign states to enforce their own laws? Suspend aid packages?

Response:

It is regrettably incorrect to say that Mr. Sylvester “has won every legal challenge” in seeking the return of his daughter. Following his success at every level of the Austrian court system in securing an order for the return of his daughter under the Hague Abduction Convention and Austria’s woefully inadequate efforts to enforce that order, the case was litigated once again in Austria. Mr. Sylvester ultimately lost the second set of proceedings, and his ex-wife was granted custody of their daughter. This result has seriously compromised his and our efforts to reunite him with his daughter. We will continue to work with Mr. Sylvester to pursue all possible options. The Department has conducted numerous high-level meetings with the Austrian government with still no satisfactory answers or resolution concerning Mr. Sylvester’s efforts to obtain meaningful access to his daughter. We are constantly considering measures that might prompt the Austrian Government—and his ex-wife—to take positive steps in his case. We will continue to make clear to the Austrian Government that Austria’s record in meeting its obligations under the Hague Abduction Convention, and in resolving this case, will remain a critical issue in U.S.-Austria bilateral relations.

In response to the question of whether the U.S. should withhold aid to countries that fail to enforce their own laws in the Hague Abduction Convention, Austria is not a recipient of U.S. aid.

Question:

Some have argued that the State Department should include information on each country's child custody and visitation system in the children's rights section of the annual human rights reports. What do you think about this idea?

Response:

Each year, the Department considers whether to address new issues in the *Country Reports on Human Rights Practices*, and we welcome specific comments and suggestions for improving the *Country Reports* and promoting human rights.

In early *Country Reports*, The Department used some of the key provisions of the Universal Declaration of Human Rights as the basis for fulfilling the legislative mandate to cover internationally recognized human rights. Since the first *Country Reports* was published in 1977, contents of the report have been broadened by specific additional legislative mandates and by Department decisions to expand cov-

erage to certain areas not necessarily linked directly to the Universal Declaration. At the same time, we have had a mandate to shorten the report and make it less duplicative of other reports to Congress.

The issues of child custody and international parental child abduction have been covered in previous *Country Reports*, to the extent that particular laws have involved restrictions on freedom of movement or other rights covered in the Universal Declaration. For several reasons, however, we have not made child custody issues or parental child abduction a separate topic in each *Country Report*. First and foremost, federal law requires that the Bureau of Consular Affairs provide an annual report on compliance with Hague Convention. Given the suffering occasioned by parental abductions, however, we will continue to look for other opportunities to highlight the issue, including, when warranted, in specific annual *Country Reports*.

Question:

Who sits on the U.S. government's interagency working group on international child abductions? How often does it meet? What is its mission?

Response:

The interagency working group on international child abductions meets 6–8 times throughout the year. Representatives from the Office of Children's Issues, the Office of the Legal Adviser, and the Office of Diplomatic Security in the Department of State participate in the working group, along with representatives from the National Center for Missing and Exploited Children and several branches of the Department of Justice, including the Federal Bureau of Investigation's Crimes Against Children Unit, the Criminal Division's Child Exploitation and Obscenities Section, the Office of Juvenile Justice and Delinquency Prevention, and U.S. INTERPOL. The group shares information about agency activities related to parental child abduction and identifies ways to work together to improve coordination of U.S. efforts to prevent international parental child abduction, get children returned to their habitual residence, and successfully prosecute kidnapping cases.

Question:

The United States government certainly gives a lot of foreign aid to Colombia, yet it is listed as one of the "Noncompliant" countries with its obligations under the Convention. Because of the seriousness of this issue, I'd like to take a moment to single out some of the other countries that fall into this category: Austria, Ecuador, Honduras, Mauritius, Mexico and Turkey. Does the United States, or any other Convention country, have any tool at hand that can force these countries to become compliant? Do we consider suspending any aid packages to these countries until they become compliant?

Response:

The issue of whether to adjust economic aid as a way of inducing countries to comply with the Hague Abduction Convention is complex. In some countries, a fundamental problem with the Central Authority is its lack of adequate resources, so that withholding assistance would likely not promote better compliance with the Convention.

In addition to humanitarian goals, foreign aid serves a whole range of U.S. national security, economic and other interests. The question of whether to increase or reduce foreign aid has to be considered within the full context of all of those interests. A judgment must also be made, on a case-by-case basis, as to whether adjusting foreign aid would be likely to influence the outcome of international child abduction cases generally or individual cases in particular. We are not aware of other countries that use foreign aid as a tool in seeking improved compliance with the Hague Abduction Convention.

Question:

Aside from country "flyers", what does the State Department do to educate U.S. courts and the public on the consequences of foreign custody jurisdiction over American children? Are there "flyers" for countries that have demonstrated patterns of noncompliance with the Convention? Or even those not belonging to the Convention?

Response:

We currently have posted flyers for 53 countries on our Internet website, providing information on both Hague and non-Hague countries. A number of other flyers are in production, and we intend to expand the list with assistance from our overseas Embassies and consulates. Our annual Hague Compliance Report to Congress is posted on our Internet website as a resource for judges, attorneys, and the

public, including for left-behind parents or parents involved in custody cases in a U.S. court.

Question:

How many incoming Hague cases are there each year? Outgoing?

Response:

As of June 2004, the National Center for Missing and Exploited Children, with which the State Department has a Cooperative Agreement to assist with the processing of Hague cases involving children abducted into or wrongfully retained in the United States, was aware of outstanding cases involving 414 children whose return from the United States was sought by foreign parents living in Hague partner countries and another 112 children in the U.S. whose parents sought access to them through the Hague process.

The Office of Children's Issues is currently aware of 364 children abducted from the U.S. to Hague countries whose left-behind parents have filed for the children's return under the Hague Abduction Convention.

Question:

Some parents feel that the U.S. policy that allows the Justice and State Departments to file amicus briefs and otherwise assist foreign parents at U.S. taxpayer expense in Hague-related litigation in U.S. courts is particularly offensive, when no U.S. government agency intervenes on their behalf overseas. Is there anything that can be done to alleviate the seeming disparity of fairness? Also, with regard to paid legal assistance overseas?

Response:

It is simply not accurate to suggest that we intervene in U.S. Hague cases to assist foreign parents while declining to do so for American parents involved in cases seeking the return of children overseas. The State Department, both in its capacity as the Central Authority for the Hague Abduction Convention and otherwise, remains strictly neutral on the merits of all Hague Convention petitions.

On very rare occasions, a court or a party will request the views of the United States Government concerning a legal or policy question at issue in a case. On even rarer occasions, and only if the subject matter of the court's or party's request is something on which the Department of State has unique expertise, the Solicitor General of the United States will decide to grant the request and will ask us to assist with the preparation of an amicus brief that the Solicitor General will submit to the court on behalf of the United States Government.

With respect to funding for litigation and related costs, when the U.S. signed the Hague Abduction Convention in 1980 and when the Congress ratified it, the United States took a reservation from the treaty's provisions concerning financial assistance to parents in Hague cases. Congress and the President made it clear that the United States would not be obligated to make such assistance available. At present, no law permits the Department to help parents financially with legal expenses in abduction cases and the Department has no funds available to it for that purpose. In contrast, some other countries decided to make significant funding available for parents pursuing or defending against Hague cases. We note with great interest that one provision within the proposed HR 4347 would provide funding that so far has not been available to American parents; such funding would no doubt help to offset the disadvantage some American parents have perceived when the other parent in a Hague proceeding receives financial assistance from his or her government.

Question:

The 2000 GAO report found that while roughly 90% of children abducted to the United States are returned to their host countries, approximately 24% of children are returned to the United States. Why the disparity? What should be done about it?

Response:

It is important to note that the two statistics you have cited are not taken from comparable data. The 90% figure cited in the GAO Report and elsewhere refers to returns of children under the Hague Convention in cases that are brought to court in the U.S. We believe that the high 90% percent rate of court-ordered return of children from the United States to other countries reported by the GAO reflects a sound understanding, on the part of U.S. judges hearing Hague cases, of the Hague Abduction Convention as implemented in the U.S. by the International Child Abduction Remedies Act. The Department of State has played an active role in educating U.S. judges about the Convention and these high percentages of court-ordered returns in Convention cases indicate that those efforts have been successful. The per-

centage does not, however, reflect those additional Hague cases in which the child has not yet been located, cases involving children abducted to the U.S. from non-Hague countries, or cases in which a child's return was pursued using mechanisms other than the Hague Abduction Convention. In contrast, the 24% return rate cited in the 2000 GAO report reflected both cases involving children abducted or wrongfully retained in both Hague and non-Hague countries. Regardless of what the current return rate is in cases involving various circumstances and countries, we believe we can always do more to promote the return of abducted and wrongfully retained children to their habitual residences in the U.S.

Question:

Pursuant to the Immigration and Nationality Act, as amended, how many individuals have been excluded from entering the United States who are in violation of a custody order of the U.S.? How many individuals would have been subject to exclusion, if they were not holding a child in a country that has ratified the Hague Convention?

Response:

Our records indicate that 53 persons have been found ineligible for visas under Section 212(a)(10)(C) of the Immigration and Nationality Act since that provision was enacted into law. It is important to note that a finding of ineligibility cannot be made unless and until the individual applies for a visa. This provision of the INA also only applies to visa applicants who have abducted a U.S. citizen child to a non-Hague country in violation of a U.S. custody order. It therefore does not apply in a large number of the abduction cases we are trying to resolve.

It is not possible to ascertain how many additional applicants might have been inadmissible had they taken their child to a country party to the Convention instead of to a non-Hague party country. The inadmissibility provision in the INA's Section 212(a)(10)(C) applies only in cases of U.S. children abducted to or wrongfully retained in non-Hague Abduction Convention Countries in violation of a U.S. custody order; the Convention does not require that a left-behind parent have a custody order in order to apply for relief under the Convention.

Question:

Since 2000 Germany has had significant improvement in its application of the Convention. There have been specific systemic changes as well as a bi-national group that meets semi-annually that have contributed to these changes. Is it possible to use Germany as a model for dealing with those countries listed on the "Noncompliant," "Not Fully Compliant," and "Countries of Concern" lists?

Response:

We have established formal and informal bilateral working groups similar to those we have had with Germany since 2000. Critical to the success of these working groups is a senior level policy commitment to resolving areas of conflict. We draw upon and encourage this political will in high-level meetings when visiting countries of concern or hosting visitors in Washington. Our embassies and the Office of Children's Issues follow up at the policy and the working level in formal and informal meetings. We raise cases, we propose solutions, and we encourage our partners to find creative solutions. Germany made significant improvements by adapting its court system, by improving judicial training, and by expanding outreach to local law enforcement and youth authorities. We encourage others to take this same proactive approach.

Unfortunately, not all non-complaint countries have the political will to engage with us in a serious effort to resolve their compliance problems. Even with those countries, the Department works actively to promote improvements in Hague Convention compliance.

As countries improve we note their efforts in the compliance report and, when improvements lead to overall systemic improvements in Convention implementation, we no longer name them in the compliance problem section of the report. That does not mean that our job is finished. It just means we have made significant progress and continued vigilance and follow-up is required.

Question:

In your 2004 Hague Compliance Report, of the 41 applications for return that have remained open and active for eighteen months after the filing date, 22 of them were cases involving the taking parent being living in Mexico. Of those 22 cases 16 of them involve children that have not been located. What actions is the Mexican Central Authority taking to locate these children and the taking parent?

Response:

We take every opportunity at all appropriate levels, in Washington and in Mexico City, to raise the general issue of compliance with the Hague Abduction Convention and specific abduction and wrongful retention cases with Mexican officials. Recently, the Principal Deputy Assistant Secretary for Consular Affairs met with Mexico's Deputy Attorney General and with the Office of the Attorney General's Coordinator of International Affairs. We specifically raised the issue of Mexico's seeming inability to locate children and the parents who have abducted them. The General Coordinator has offered himself as a direct point of contact in efforts to locate missing children, and our Central Authority has provided a summary of these cases. In addition, the Mexican Justice Ministry has referred all Hague cases now more than 18 months old to the Mexican Federal Investigative Agency, Mexico's equivalent of our FBI.

Question:

Your office estimates that there are 1,100 active cases on any given day. Due to legal costs ranging in the thousands, how many more cases do you think have occurred but the left behind parent has not taken action because they could not afford to do so?

Response:

It is not possible to estimate how many abduction or wrongful retention cases are not brought to our attention, whether because legal costs deter a parent from using the Hague Abduction Convention mechanism to seek a child's return or because other facts lead to a parent's decision not to request the Department's assistance. Whenever we become aware of an international parental child abduction or wrongful retention case, we strive to assist parents regardless of their financial situation.

Question:

What actions have been taken by the State Department to maintain better records, work with other agencies on cases, and insure that the applicant is contacted on a regular basis about the status of their application?

Response:

The State Department has worked with software developers to improve the operation and reporting abilities of the database that the Office of Children's Issues uses to track international child abduction and access cases. We plan to share information from the database directly with our consular offices abroad and agencies participating in the interagency working group, but even now we have strong working relationships that encourage case officers from the Office of Children's Issues to share case information with interagency group members and our consular officers overseas. For example, State Department caseworkers are in regular contact with FBI field offices that work individual cases. They also regularly contact U.S. INTERPOL to confirm whether international alerts have been issued in child abduction cases.

The Office of Children's Issues promotes outreach both within the State Department and with other agencies and organizations to improve understanding of the issue of international parental child abduction and the State Department's role. The Office of Children's Issues trains Diplomatic Security officers, consular officers and locally employed staff of our embassies and consulates abroad, in sessions held in Washington and overseas. The Office of Children's Issues also trains FBI officers from the field, employees from the National Center for Missing and Exploited Children, and foreign law enforcement officials through a variety of workshops and conferences.

As a standard part and important part of their case-work responsibilities, officers from the Office of Children's Issues contact left-behind parents or their legal representatives regularly by telephone or in writing to report new developments.

Question:

In 2000, both the House and the Senate passed a Resolution urging several countries (Sweden, Austria, Germany, Honduras, Mexico) to comply with the Hague Convention. How have these countries done with respect to fully implementing the Convention tenets since that time? The Resolution also called for the Secretary of State to disseminate to all Federal and State courts the Department of State's annual report on Hague compliance and related matters. Has this been done?

Response:

In the cases of Sweden and Germany, we believe significant progress has been made in addressing our concerns and complying with the Convention. However, in both countries, access issues, especially in long-term cases, remains a concern.

In view of Germany's significant improvement since 2000 in its application of the Convention in the context of return applications, the State Department has recognized and detailed Germany's improved efforts in our Compliance Reports to Congress. Problems in Germany with enforcement of access orders do, however, persist, as noted in our April 2004 report.

Specific systemic changes that have produced positive results in Germany's processing and adjudication of return cases include consolidating the number of courts that hear Convention cases, streamlining the processing of applications, and educating judges about their role in applying the Convention. Moreover, the German Central Authority has been prompt in responding to requests from the U.S. Central Authority, efficient in moving Convention applications forward for resolution, and available to discuss proposed solutions for difficult or problematic cases. The U.S.-Germany bi-national working group continues to meet semi-annually to discuss specific long-standing cases, new cases and/or other issues as they relate to the Convention. Increasingly since 2000, and including in the past year, German courts have consistently rendered legally sound decisions that are in accord with the Convention and have ordered the return of children wrongfully removed from the U.S. or retained in Germany. Bailiffs and police now more effectively intervene to enforce return orders when necessary in comparison with prior reporting periods. The latter development reflects a greater awareness among German authorities of the means at their disposal for enforcing orders and a greater sensitivity to the need to exercise the available legal authority to ensure that court-ordered returns in fact take place.

Sweden's progress in addressing return cases has also been addressed in our Compliance Reports to Congress in the past few years. In our view, Sweden has been responsive to the concerns raised in 1999 and 2000 regarding such issues as locating abducted children, enforcing return orders and issuing judicial decisions that are consistent with the law of the Convention. Although access concerns persist in Sweden, too, we continue to monitor closely Sweden's performance in each new case and will continue to seek resolution of long-standing cases of concern.

Austria, Honduras, and Mexico remain countries where significant compliance problems remain unresolved. As stated in our April report to Congress, we consider Austria, Honduras and Mexico to be noncompliant with the Convention.

The Department's concerns about Austrian compliance and willingness to address chronic problems persist. Bilateral interaction at the highest levels has increased in recent years and numerous Austrian officials have proved willing to meet to discuss problems, but we are troubled that these meetings have not yet resulted in any tangible progress in resolving the case. Legislative changes in Austria that will consolidate adjudications of return applications under the Hague Convention in fewer courts and provide those courts' with special training are not scheduled to go into effect before 2005, so it may be several years before we can begin to determine the effects of the legislation on judicial processing of return applications.

Until earlier this year, Honduras refused to process Hague applications for the return of children to the United States, maintaining that the Convention had not been ratified by the national legislature and was therefore not in effect between the U.S. and Honduras. The Honduran legislature ratified the Convention in January 2004 and we hope to see positive movement on pending applications.

As mentioned in answer to a previous question, serious compliance problems persist in Mexico, despite our efforts to work closely with the Mexican Central Authority and other officials involved in children's issues in Mexico. The underlying causes appear to be a woefully understaffed and underfunded Central Authority in the Foreign Ministry; a judiciary unfamiliar with, or unwilling to apply, the Convention; and law enforcement and court authorities unable to "locate" children even in cases in which we and the left-behind parents can provide exact addresses.

Regarding the dissemination of our Compliance Report to Congress, in addition to posting the document on our website, the Department reached out to all state governors in 2003 to request their assistance in identifying coordinators for each state who can help disseminate information about international parental child abduction, including our Compliance Report.

Question:

Parents have consistently claimed that they have been left in the dark about their missing children's cases. What is the State Department doing now to let parents see their children's case files, if requested?

Response:

Our case workers strive to keep parents informed about significant developments in their cases but we are restricted by law from releasing complete case files or government-to-government communications directly to parents. Parents can use the Privacy Act to obtain information from their children's files and we work hard to move those requests quickly. The Privacy Act permits, but does not require, release of information about minors to either parent regardless of which one has custody. In fact, it has been our administrative practice to accommodate all such requests for information except when there is documented evidence of physical abuse by the requesting parent. In addition, we exercise caution in not releasing information about the other parent, although this requires considerable care since the minor often resides with the non-requesting parent.

There are specific instances when we are able to expedite formal release of documents. That said, we are always willing to work with requesting parents to informally release documents when the "expedite" requirements cannot be met but the requesting parent is agreeable to an informal release.

Question:

The State Department publicizes the number of cases in which children are "resolved". How does State differentiate the number of those cases in which the child is actually returned home versus the ones closed when a foreign government denies a return request? Or the ones not pursued due to inability to fund the case?

Response:

We do not consider a case to be "resolved" unless the left-behind parent is satisfied with the outcome. We close cases once the child is returned, as issues of custody and the child's welfare then become the responsibility of the competent court and social welfare authorities. On the other hand, if a child remains abroad because a return application is denied or a left-behind parent does not pursue the child's return to the U.S. under the Convention, the Office of Children's Issues and our consular officers abroad provide the left-behind parent additional assistance. This may include seeking the child's return through other means, as well as monitoring the child's welfare, identifying mediation resources, or otherwise assisting the parent to maintain contact with the child. In such instances, although the Hague return application file is closed because no further proceedings pursuant to the Convention are anticipated, the State Department opens a non-Hague case file and works with the left-behind parent to provide the parent information on his or her remaining options and how the State Department can assist them.

Question:

Should the U.S. Departments of State and Justice have offices to proactively engage countries on these types of cases, so that they can globally resolve these issues? The U.S. has procedures for resolving international tax disputes and other intergovernmental conflicts. Why not have offices that proactively work on cases involving international child abduction in the same fashion?

Response:

The Department of State, often in cooperation with the Department of Justice, does work proactively on the problem of international parental child abduction, both in the context of the overall issue and individual cases. The Hague Convention on the Civil Aspects of International Child Abduction provides a mechanism for resolving abductions by requiring the return of a child to his or her country of habitual residence. Where the Hague Abduction Convention is not an option, or where it does not function as it should, we also pursue other means for seeking the return of an abducted child. Our "tools" include civil, criminal and diplomatic remedies, depending on the facts of the case, the country involved and, above all, the wishes of the left-behind parent.

Some of the greatest challenges we face concern children abducted to, or wrongfully retained in, countries that are not party to the Hague Abduction Convention and that have legal systems or cultural norms incompatible with the Convention. This is particularly true in various Middle Eastern countries where children and foreign national parents find their entry and departure strictly controlled, and easily blocked, by an abductor parent. Parents who have been granted custody rights by U.S. courts often find those custody rights ignored, unenforceable, and contradicted by local custody law.

Over the past two years, I have led Department of State discussions with leaders in non-Hague countries including Saudi Arabia, Egypt, Syria, Lebanon, Jordan, Pakistan, India, the Philippines, the UAE, and Morocco to explore developing closer bilateral cooperation to assist parents in abduction and access cases. In meeting

with my counterparts throughout the world, and particularly in the Middle East, I have encouraged the mutual recognition of the importance of facilitating parents' access to their children and to information about their children's welfare. Central to these discussions is the premise that, except in highly unusual and limited cases, children deserve and need to have contact with both parents.

Some of our discussions have resulted in joint statements that express our mutual concerns and shared principles concerning contact between parents and children. In October 2003, the governments of the United States and Egypt signed a Memorandum of Understanding (MOU) on Consular Cooperation in Cases Concerning Parental Access to Children. In April 2004, the U.S. and Lebanese governments signed a similar MOU. Both MOUs anticipate future consultations concerning how consular officials can cooperate to assist parents to obtain meaningful access to their children.

These memoranda confirm our shared belief that, while voluntary resolution of custody and access arrangements between parents should be encouraged, there are situations in which our respective governments can cooperate to overcome barriers to contacts between parents and their children. They also stress the shared principle that access by parents to their children is not a substitute for the return of abducted or wrongfully retained children. Any future arrangements on consular cooperation to promote such access would not operate to justify a failure to return children, or to prevent parents from attempting to establish or enforce rights of custody and access through the legal systems of either country.

The Department will continue to push, both bilaterally and multilaterally, for improved international cooperation to assist abducted children and their left-behind parents.

RESPONSES FROM DEPARTMENT OF JUSTICE TO QUESTIONS SUBMITTED FOR THE
RECORD TO THE HONORABLE DANIEL J. BRYANT BY MEMBERS OF THE COMMITTEE
ON INTERNATIONAL RELATIONS



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 22, 2004

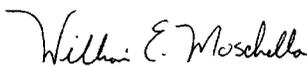
The Honorable Henry J. Hyde
Chairman
Committee on International Relations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions posed to Daniel J. Bryant, Assistant Attorney General, Office of Legal Policy, following Mr. Bryant's appearance before the Committee on June 22, 2004. The subject of the Committee's hearing was international child abductions.

We hope that this information is helpful to you. If we may be of additional assistance, we trust that you will not hesitate to call upon us.

Sincerely,


William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Tom Lantos
Ranking Minority Member

**Responses of
Daniel J. Bryant,
Assistant Attorney General, Office of Legal Policy**

**Hearing Before
Committee on International Relations
U.S. House of Representatives**

June 22, 2004

Concerning

International Child Abductions

- 1. The Missing Children's Assistance Act established an office within OJJDP to coordinate federal activities related to missing and exploited children. Specifically, it authorized the use of federal funds to create and operate a national 24-hour toll-free emergency telephone line for persons reporting information about missing children, and to establish and support a national resource center and clearinghouse related to missing children. Are these tools currently in place? How many calls are received each year? What is done with the information? How is the information from the telephone calls and the clearinghouse shared with the National Center for Missing and Exploited Children (NCMEC), if at all?**

The Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) implements the requirements in the Missing Children's Assistance Act regarding the creation and operation of a hotline and a national clearinghouse through its cooperative agreement with the National Center for Missing and Exploited Children (NCMEC). Over the past 20 years, NCMEC has handled more than 1.8 million calls for service through the hotline, 1-800-THE-LOST. Figures for the hotline broken down by year are not available. In 2003, however, NCMEC received reports of 9,492 missing children from all sources. Of that number, 710 were determined to be international parental kidnapping cases.

Once cases are reported to it, NCMEC's role includes distributing photographs and descriptions of missing children worldwide; providing technical assistance to individuals and law-enforcement agencies in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children; and networking with nonprofit service providers, private companies and state clearinghouses about missing persons cases, including AMBER Alerts.

- 2. Many parents are critical of the Department of Justice for not prosecuting more cases of parental kidnapping. Please walk us through the process in which a decision is made whether or not to pursue a particular case for prosecution. Also, what are the available civil and criminal penalties in an abduction case? How can we enforce them overseas?**

The Department of Justice is committed to prosecuting international parental kidnapping violations in appropriate cases. Federal prosecutors charged with prosecuting these violations exercise their prosecutorial discretion aggressively but appropriately, in ways that further the interests of justice and, most importantly, the child victims.

While I cannot discuss any particular case, I can describe certain factors that prosecutors may consider in deciding whether to prosecute international parental kidnapping violations. Of course, prosecutors are not limited to considering these matters, and are not required to consider any of them. These issues simply illustrate the difficult choices prosecutors must make.

As noted in my testimony, filing criminal charges in abduction cases is a very sensitive matter. Criminal charges may be ill-advised, especially when the children remain in a foreign country. While prosecution may punish wrongdoers, it does not necessarily precipitate the abducted children's return. Indeed, from a practical standpoint, prosecution of abducting parents may make return of the children more difficult. For example, a foreign country that has been asked to aid in the return of a child will often be less willing to do so if their national, the abducting parent, faces prosecution in the United States.

Moreover, an abducting parent informed that he or she will face prosecution in the United States will frequently go into hiding in a foreign country. It is not uncommon for abducting parents to hide children in remote areas with other relatives, or even to move from country to country to evade apprehension of the child. Thus, prosecution is often inconsistent with the recovery of the child. Consider the example of the prosecution of Fazal Raheman described in my testimony – seven years after Mr. Raheman abducted the children from the United States to India, and even after he was incarcerated, his former wife has still not been reunited with her children, who remain in India. Indeed, it is not clear that the existing three-year statutory maximum for international parental kidnapping is sufficient to deter the crime.

Additionally, prosecutors recognize that when a child is abducted and taken to a foreign country, the highest priority of the left-behind parent is invariably the return of the child. In cases in which children have been taken to a country that is a signatory to the Hague Convention on the Civil Aspects of International Parental Child Abduction ("Hague Convention"), return of the child may be best facilitated through the mechanisms provided in the Hague Convention. However, only 54 countries are signatories to the Hague Convention, and a number of those are not in compliance with it. In the remaining non-signatory countries, left-behind parents depend solely on the generosity of the host countries to locate their abducted children and arrange for their return, and this generosity is regrettably often lacking. For example, some countries view an abducting father as having superior rights over the mother and will not intervene in a parental abduction. Other countries do not have the law enforcement resources to pursue an investigation. Yet others simply have poor diplomatic relations with the United States and refuse to intervene.

Without assistance from the government of the foreign country to which the children have been abducted, a left-behind parent is essentially at the mercy of the abducting parent. In such a case, return of the children may depend on a negotiated settlement that allows for visitation or

joint custody with the abducting parent. Prosecution of the abducting parent in these circumstances directly conflicts with the left-behind parent's goal of having the children returned to the United States. In such cases, many left-behind parents – who are desperate for reunification – often are in favor of pursuing other options besides prosecution.

Given these various considerations, prosecutors may determine that pursuing a criminal case is inadvisable—not as a result of an unwillingness to prosecute, but rather as a result of the delicate matters that necessarily accompany international parental kidnapping cases.

Turning to the issue of civil and criminal remedies in these cases, I would refer you to a Department of Justice publication mentioned in my testimony, *A Family Resource Guide on International Parental Kidnapping* (2002), available at: <http://www.ncjrs.org/pdffiles1/ojdp/190448.pdf>. This report contains approximately 27 pages of information on civil remedies available in these cases and approximately 17 pages of information on criminal remedies available in these cases. Please note that since the report was published, the PROTECT Act, enacted on April 30, 2003, amended 18 U.S.C. § 1204 also to criminalize attempted international parental kidnapping. Prior to enactment of this law, attempted international parental kidnappings were not prohibited.

With respect to the issue of enforcement of American court orders overseas, the primary vehicle to return abducted children to the United States is the Hague Convention. As noted above, the Hague Convention process is not perfect, and at any rate it has no applicability in cases in which the children were abducted to one of the many countries that are not signatories to the Hague Convention.

3. The Fugitive Felon Act enhances states' abilities to pursue abductors beyond state and national borders by permitting the Federal Bureau of Investigation to investigate cases that cross state lines. How well-staffed is this unit in the FBI? How many cases each year does it get referred? How many cases does it open and investigate? How does it coordinate with NCMEC? With the State Department?

The mission of the FBI's Crimes Against Children Program is to develop a nationwide capacity to provide a rapid and effective investigative response to reported federal crimes involving the victimization of children; reduce the vulnerability of children to acts of sexual exploitation and abuse; reduce the negative impacts of domestic/international parental rights disputes; and strengthen the capabilities of federal, state and local law enforcement through training programs and investigative assistance.

The FBI's Crimes Against Children Unit has oversight of international parental kidnapping; other child abductions; violations of the White Slave Traffic Act; abuse of children on government reservations; unlawful flight to avoid prosecution; child support recovery matters; interstate transportation of obscene material that results in sexual exploitation of a child; and violations related to the national sex register offender register.

The chart below illustrates the number of parental kidnapping and unlawful flight to avoid prosecution cases, and the approximate number of agents (in estimated work years, or

WY) who worked these cases, in FYs 2001, 2002, and 2003, and through the 3d quarter of FY 2004.

	International Parental Kidnapping Cases Opened	International Parental Kidnapping WY	Unlawful Flight to Avoid Prosecution Cases Opened	Unlawful Flight to Avoid Prosecution WY
FY 2001	82	4.17	116	5.13
FY 2002	72	3.21	100	3.57
FY 2003	83	3.51	78	3.72
FY 2004	67	4.53	47	3.34
Total	304	15.42	341	15.76

To make full use of all available resources for missing and exploited children investigations, an FBI Supervisory Special Agent and three Investigative Analysts are assigned full-time at NCMEC to coordinate the cross utilization of FBI and NCMEC resources to facilitate the most effective FBI response to child abductions, parental kidnappings, and sexual exploitation of children matters. In addition, the Crimes Against Children Unit interfaces with the Office of Children's Issues at the State Department when responding the International Parental Kidnapping Matters.

4. Please explain the Department's policies and procedures for forwarding an arrest and/or extradition request to another nation based on an abduction case.

When the Department of Justice's Office of International Affairs (OIA) receives a request for extradition, our attorneys discuss the case and whether extradition is possible with the local (federal or state) prosecutor. If we together decide an extradition should proceed, the formal request is prepared by the prosecutor, working closely with OIA, and presented by the Department of State to the foreign country for provisional arrest and/or extradition of the fugitive through the normal diplomatic channels. In our attorneys' discussions with the local prosecutors, an initial consideration is whether the requested country has criminalized parental kidnapping. With respect to the older extradition treaties, which usually include "kidnapping" in their lists of extraditable offenses, a determination must be made as to whether the requested country considers "kidnapping" to include parental abduction. The United States' more recently negotiated extradition treaties follow a dual-criminality approach, enabling us to request

extradition for any serious criminal conduct that is so recognized in both countries, including parental abduction.

5. How often does DOJ use the Unlawful Flight to Avoid Prosecution (UFAP) warrants in parental kidnapping cases? Since part of the reason for this hearing is to educate the public of the problems associated with child abductions, this may be a good time to warn violators that they will be tracked down through any means possible.

In Fiscal Years, 2001-2004, the FBI opened 645 International Parental Kidnapping and Unlawful Flight to Avoid Prosecution Cases. Of those 645 cases, 173, or approximately 27 percent, resulted in the issuance of a federal warrant. Of those 173 cases, 111, or approximately 64 percent, ultimately resulted in the arrest of the subject and, in virtually all cases, the return of the child or children. The remaining warrants are outstanding.

6. Since the Extradition Treaties Interpretation Act of 1988 authorizes the U.S. to interpret extradition treaties that list "kidnapping" as encompassing the offense of parental kidnapping, how often does the United States request extradition?

The Department does not keep statistics concerning how often we make requests for extradition in parental kidnapping cases. However, U.S. state and federal prosecutors regularly consult with and seek guidance from OIA concerning potential requests for extradition of alleged parental child abductors. OIA attorneys provide advice concerning threshold issues, including the availability of civil remedies for seeking the return of an abducted child, the existence of an extradition treaty with the relevant foreign country as a vehicle for seeking the return for prosecution of the offending parent, any potential conflicts that arise from pursuing criminal remedies while civil solutions are being pursued, whether the foreign country recognizes the crime of parental child abduction, and if relevant, whether it will extradite its own citizens. Not all countries interpret extradition treaties that list "kidnapping" as encompassing the offense of parental kidnapping, as the U.S. does. Even if extradition is not available, OIA advises prosecutors to explore with left behind parents other possible steps, often in consultation with the Department of State, including consular visits for U.S. nationals, retaining the services of private attorneys and services provided by non-government organizations, such as NCMEC.

Which countries, if any, fail to cooperate with our requests?

A number of countries, including signatories to the Hague Convention and non-signatories, fail to cooperate in the investigation and prosecution of international parental kidnapping offenses under 18 U.S.C. § 1204 and in the return of children wrongfully taken. Because the U.S. government engages in sensitive diplomatic negotiations with those countries in order to secure cooperation in individual cases, it would not be appropriate in this context to name them specifically.

Which countries ask for extradition most often for fugitives in the U.S.?

Countries from which the U.S. receives a particularly high volume of extradition requests include Canada and Mexico. Pursuant to the Foreign Relations Authorization Act, in May 2003,

the Department of State submitted to the Committee a "Report on Extradition Practice and Policy" that provided extradition statistics for all countries, as well as a narrative on issues of concern in our extradition relations.

- 7. The International Parental Kidnapping Crime Act (IPKCA) makes it a federal felony to remove a child under age 16 from the United States or to retain a child outside the United States with the intent to obstruct the lawful exercise of parental rights. How many prosecutions have been made under this law? (If very low number, why so low?) What have been the results?**

As noted in my testimony, there have been relatively few prosecutions under the International Parental Kidnapping Crimes Act, 18 U.S.C. § 1204. According to records provided by the Executive Office for United States Attorneys, from FY 1999 through FY 2003, U.S. Attorneys' Offices filed charges against 96 defendants for violation of 18 U.S.C. § 1204 and obtained 32 convictions. Through May 2004, in this fiscal year, U.S. Attorneys' Offices filed such charges against 16 defendants and obtained 6 convictions.

RESPONSE FROM TOM SYLVESTER TO QUESTION SUBMITTED FOR THE RECORD BY
MEMBERS OF THE COMMITTEE ON INTERNATIONAL RELATIONS

In response to your questions following my testimony of June 22, 2004, I provide the following answers concerning the execution of the judgment in favor of both my daughter and myself in the European Court of Human Rights entered in the case of *Sylvester v Austria*.

Once the court's judgment became final in July 2003, oversight of its execution was transferred to a Committee of Ministers of the Council of Europe. It is the responsibility of the Committee of Ministers to ensure that the Republic of Austria, the violating party, comes into compliance with the judgment both as to the payment of the money damages awarded and as to Article 8 (the right to a family life free from state interference) of the European Human Rights Convention.

As a result, in addition to ensuring that the money damages have been paid, the Committee of Ministers investigates and oversees two important areas of Austria's compliance with the judgment: (1) individual measures—whether the violation of Article 8 has now ceased and whether my daughter and I are, as far as possible, in the same position as we were prior to Austria's violation and (2) general measures—what steps will be taken by Austria to ensure that Article 8 will not be violated again under the same circumstances so as to take all reasonable measures to timely enforce a return order entered under the Hague Convention.

Individual Measures

As pertaining to individual measures, it is my position to the Committee of Ministers that the violation of Carina's and my human rights has not ceased and that we are without question not in the same position as prior to Austria's violation of Article 8. In contrast, the Austrian government asserts that they are not in continuing violation of Article 8 in that I have an "agreement" with my ex-wife concerning my access to Carina because I have no petition for access now pending and therefore I have chosen the current arrangement of limited supervised contact with her. This is untrue. The current situation is not consensual. It is the result of duress. I do not now nor will I ever "agree" to the contrived and unnatural conditions for contact with my daughter imposed upon me by my ex-wife. At present, I am permitted by her to see my daughter only if I am under her continuous supervision in Austria, only for times and dates chosen by her, never on a holiday nor on Carina's birthday and never, ever alone. These periods of access to my daughter occur customarily three to four times a year for a two and a half day weekend. I have purchased this time with my daughter with payments of \$1,000 per month to Carina's mother. This system arose when she originally extorted the funds from me upon her realization that she benefited from the abysmal and now predictable failure of the Austrian legal system to provide me any order for access to my daughter.

Indeed, the characterization of the current situation as an agreement, in and of itself, should shock the conscience. The bizarre circumstances that have created this non-consensual situation were created by the irresponsible and reprehensible legal procedures established for the operation of the Austrian courts. Just as the rules of procedure allowed for the delays which resulted in Austria's failure to timely enforce the order for Carina's return to the United States, so that same system of procedures has systematically disallowed me relief to obtain even a timely order for contact with my daughter.

The origins of this situation are as follows. In early 1996, I obtained a favorable ruling from the Austrian Supreme Court which had finalized the December 1995 order under the Hague Convention that my daughter was to be immediately returned to the United States. In early April 1996, the court of the first instance permitted an initial and unsuccessful surprise enforcement of the return order. When that effort failed, I learned that I must apply again to the court for a second attempt for enforcement. When the abductor countered with four frivolous unrelated motions, the appeals taken on the decisions on those motions resulted in a stay of all other proceedings, including my request for a second enforcement. With the passage of time, no voluntary compliance by the abductor and no sanctions for her failure to comply, the same court accepted her request that the return order not be enforced. The reasoning of the court was that due to the passage of time, my daughter was now well-settled in that environment and further she did not know me because she had not had contact with me for years!

Following my appeals of these decisions, I was forced to petition this same court for access to my daughter in the year ahead. Thus, although I had a valid and final order of the Austrian court that my daughter be immediately returned to the United States, I had been precluded by Austrian legal procedure from petitioning for enforcement of that order and, because of the delay resulting from this procedural lim-

itation coupled with the mother's non-compliance, I was now forced to petition the same court for time with my daughter. Not only was this state of affairs grotesquely unfair and illogical but it also was inhumane to both my daughter and myself. Indeed it turns the rule of law on its head. It is this Kafkaesque situation which forms the underpinnings for the favorable decision by the European Court of Human Rights in *Sylvester v Austria* and the backdrop for my position on the issue of individual measures which must now be taken by the Republic of Austria to fulfill its obligations under *Sylvester v Austria*.

The result of my first petition for access to my daughter filed under Article 21 of the Hague Convention was an order for just six hours of access for all of 1997, taken in Austria in June and December, one hour at a time, supervised by a group including the mother, the judge, the grandparents and a psychologist. I was then billed and ordered by the court to pay \$2,500 for this supervision. For just that small bit of supervised time in a group setting for which I was to pay, I had worked through the Austrian courts one and one-half years. This was my first sight of my daughter since her adjudicated abduction almost two years earlier. This was thus the end-product of the two and one-half years of litigation wherein I had received every conceivable judgment in my favor on two continents necessary for the return of my child and the guarantee of fair proceedings as to her final custody: a valid and final order from the Austrian courts that Carina be returned; a custody order from the Michigan courts and a safe harbor order of the Michigan court guaranteeing safeguards upon Carina's return to Michigan.

In early 1998, I was thus forced to submit yet another access request to the Austrian court under Article 21 of the Hague Convention. As can be seen from the chronology attached, under the Austrian legal procedure, no access was ordered for 1998. This was repeated in 1999. After nearly two years of petitions, only three days were ordered by the court, always in Austria and always supervised by the mother.

In nearly every instance, my application to the Austrian court for specific dates for access to my daughter was presented, considered, referred to the so-called "expert," decided and appealed by the abductor, making the entire year's request moot by the time of its final resolution. Throughout this time, the mother would deny me any contact with my daughter as a punishment for seeking to exercise my rights through her courts.

Understanding the ludicrous and futile nature of continuing to work through the Austrian courts, I stopped. Instead, I managed to buy my way into a cursory life with my daughter. By paying the mother \$1,000 per month I was able to obtain "pay per view." I pay the mother money and buy her and Carina lots of things, and she makes Carina available to see me three or four times per year according to her schedule, under her supervision, always in Austria, never on a holiday and never alone. Although I am not subject to a child support order because of my award of custody of Carina by the Michigan courts, I have nonetheless paid her mother \$60,000 for a total of 60 days supervised time with my daughter.

Thus, after having my right to family life annihilated by the Austrian legal system's failure to enforce the return order, I have been put in a position either to futilely pursue an attempt at a legal remedy in their courts or purchase scant moments with my daughter. Since I am completely without remedy in the Austrian courts, I have no choice but to pay for brief moments with my daughter. To characterize this situation as and an "agreement" because I do not now have a petition for access pending before the Austrian courts, is not only illogical but also violative of my and my daughter's human rights to share a life together. In this situation, as before, Austria is and has been interfering with our human right to live as father and daughter.

Moreover, if my situation vis-a-vis Carina's mother were consensual, the United States Department of State would not have been involved in discussions with the heads of state of Austria since 1997 nor would they had found Austria non-compliant under the Hague Convention in each of the five Compliance Reports prepared. A chronology of the State Department's diplomatic involvement in attempting to improve my access to Carina is attached. Most recently, the State Department even communicated in writing its close interest in the proper and full execution of the *Sylvester v Austria* judgment to the Council of Europe.

Hence, prior to Austria's violation of Article 8, I had a custody order for my daughter from, and free access to, the Michigan courts, an order from the Austrian courts for her immediate return to the United States and a legal expectation and understanding that my normal life with her would resume upon the execution of the return order and Carina's return here.

As a direct result of Austria's failure to enforce the return order, I was denied her return here to the United States, her learning of English, her understanding her American heritage and culture and her knowledge of and love of her American

extended family. Instead, Carina remained sequestered in Austria, shielded by the Austrian legal system from even knowing me. I have been forced to participate in the bizarrely circuitous and ineffectual Austrian legal process concerning my requests for access to my daughter and have been denied both a remedy from the courts and time with my daughter in the process. The Austrian government cannot therefore be permitted to advance my refusal to do a useless and impossible thing such as further petitioning their courts as an excuse not to provide individual measures as required under *Sylvester v Austria*.

I can and must be placed in the same position as I had prior to Austria's violation. To do so I must recover my life with my daughter and she her life with me. The existing Austrian legal system has shown that it can never provide any relief in this regard. Therefore, other specific individual measures must be taken by Austria to remedy the fact that I cannot obtain an order for contact with my daughter in the Austrian court. This must happen promptly because although Carina was 13 months at the time of her abduction from the United States, she is now 10 years old. Specific, extraordinary, individualized measures must be taken by Austria so as to cease the continuing violation of our human rights.

General Measures

As to general measures I submit the following. Austria must now demonstrate to the Committee of Ministers that "measures have been adopted, preventing new violations similar to that or those found or putting an end to continuing violations." Consequently, Austria must prove that it has implemented a method by which litigants will enjoy all reasonable measures that can be taken to promptly enforce return orders entered under the Hague Convention. The Austrian delegation has responded to this requirement by indicating that it intends to reduce the number of courts competent to hear Hague Convention cases and further that it now accepts the legal concept of joint custody. These purported remedies are not responsive to the wrong found. There is no relationship between the number of courts competent to determine whether or not there is a violation under the Hague Convention and the enforceability or executability of any order ultimately entered by that court. For example, in my case, Judge Katter was extremely well-informed of the Hague Convention and the obligations of the Austrian government under this multi-national treaty. The education and competency of the court in no way affected the failure to enforce my particular judgment. Nonetheless, the order was not timely enforced.

Similarly, statistics show that the number of courts competent to decide Hague cases bear no relationship to the ultimate enforcement of the orders entered. In the United States, for example, there are over 30,800 courts competent to hear Hague Convention cases! Nonetheless, the judgments entered under the Hague Convention in the United States, however, are enforceable in all instances by the contempt powers of the court, so that a court can in fact compel a reticent party to come into compliance with an order for the return of a child under the Hague Convention. Sanctions, including imprisonment, can flow from the failure to comply with the court's order under its contempt of court powers.

Hence, Austria is incorrect in submitting that reducing the number of competent courts addresses the systemic problem for which the violation was found in my case. In fact, reducing the number of courts would have no effect on enforcement whatsoever. It is ultimately necessary that Austria legislate powers to their courts in order to allow them to exercise contempt of court in Hague Convention cases. Current Austrian legislation under their Code of Non-Contentious Procedure provides for some types of surprise attempts at enforcement of child-related orders generally. This was, in fact, the Code utilized in my case. Even with the so-called surprise enforcement, conducted at 7:00 a.m. with the Judge, police, social worker and others present, my return order was not promptly enforced, indeed it was never enforced. Instead, the Austrian legal system provided that if a second attempt at enforcement were to be had, a separate application was required to be filed with the Court of the first instance. Since the abductor had filed a panoply of frivolous motions, all under appeal, my request for a second enforcement was not able to be heard on the grounds that "the file was with the Court of Appeal," thereby staying all final court proceedings. In the time it took to hear the appeals of the frivolous motions, the trial court had determined that the order would not be executed at all under the same Code of Non-Contentious Procedures due to the passage of time.

Therefore, the existing Code of Non-Contentious Procedures alone is insufficient to ensure that new violations under Article 8 such as mine will not happen again. Indeed, under the same circumstances, *the same result would occur today*. Further, reduction of the number of courts competent to hear Hague Convention cases does not remedy this situation in any way whatsoever. There must in fact be separate enforcement procedural rules implemented by Austrian legislation specifically con-

cerning the prompt enforcement of Hague Convention return orders separate and apart from the ineffectual Code of Non-Contentious Procedures. That is the type of general measure required under *Sylvester v. Austria* in order to rectify the violation of Article 8 adjudicated.

It further goes almost without saying that enabling its courts to adjudicate a joint custody order has no relationship whatsoever with whether or not a return order entered under Austria's obligations under the Hague Convention is timely enforced by its courts.

The Committee of Ministers has now asked for further information to be supplied by Austria concerning the means available within its legal system for creating conditions necessary for executing return orders entered under the Hague Convention. Specific information is requested concerning the means available to ensure effective interim access rights while enforcement proceedings are pending, including the means available to ensure that authorities locate children which are hidden by their parents with a view to avoiding compliance with such decisions. The Committee will next address this case at the end of November 2004.

Austria has complied with the payment of the money damages awarded by the European Court of Human Rights.

I greatly appreciate the Committee's interest in this matter and ask that you contact me at any time if you have any further questions.

Very truly yours,

THOMAS R. SYLVESTER

CHRONOLOGY OF COURT PROCEEDINGS ON ACCESS

Case of *Sylvester vs. Austria* (Judgment of 24 April 2003)

1995	
10/30/95	Carina's Abduction from Michigan
12/22/95	Order of Graz Court for Specific Visitation (12/24&12/27) (no compliance)
Result: No access in 1995.	
1996	
9/26/96	First Petition for Access
Result: No access in 1996 while enforcement attempts made.	
1997	
2/12/97	Order that "expert" is to conduct investigation and make recommendation on access request
2/24/97	Monika Sylvester files response to access request
3/26/97	"Expert" opinion rendered on access request
4/22/97	Tom Sylvester files objection to "expert's" report
4/29/97	Order for supervised visitation at Institute for Family Learning for one hour each on 6/2/97, 6/4/97, and 6/6/97
10/21/97	Order for supervised visitation at Institute for Family Learning for one hour each on 12/12/97, 12/13/97, and 12/14/97
Result: Six hours court ordered access in 1997.	
1998	
3/3/98	Tom Sylvester files Application under Article 21 of the Hague Convention for access on April 10, 11, and 12, 1998 and June 27 through July 4, 1998
4/22/98	Order denying Article 21 access request on basis of inapplicability of the Hague Convention
5/25/98	Court of Appeals reverses decision of trial court and remands denying specific request as to dates in April now moot. Austrian attorney claims that a court order for access on June 27 through July 4, 1998 was now no longer possible due to insufficient time for court review
7/02/98	New dates on access are submitted to the court for September 6-14, 1998 and December 20-31, 1998
7/22/98	Monika Sylvester files objections to access request for remaining dates of September 6-14, 1998 and December 20-31, 1998
7/27/98	Order for supervised visitation, 2 hours per day, Mondays, Wednesdays and Fridays between dates requested

CHRONOLOGY OF COURT PROCEEDINGS ON ACCESS—Continued

Case of Sylvester vs. Austria (Judgment of 24 April 2003)

1998

8/13/98 Monika appeals visitation decision above
 10/12/98 Court of Appeals remands to expert again; all September dates are moot
 11/24/98 Supreme Court denies appeal of Court of Appeals decision

Result: No court ordered access in 1998.

1999

3/2/99 U.S. Department of State delegation meets with Austrian government in Vienna to discuss access
 3/16/99 Tom Sylvester submits to Austrian courts three proposals for access for the 1999 and 2000 calendar years
 4/15/99 Tom Sylvester submits revised access proposal because April dates are now moot.
 4/27/99 Monika Sylvester files objections
 6/24/99 Tom Sylvester meets with Dr. Kraft concerning whether visits by the father are in the interest of the child
 7/23/99 Tom Sylvester begins paying \$1,000 U.S. per month to Monika Sylvester at her demand
 8/4/99 Further opinion of "expert"
 9/4/99 Tom Sylvester obtains approval from Monika Sylvester of three days of unordered visits in September
 10/28/99 Order approving visits supervised by mother for 3 days from 9:00 a.m. to 7:00 p.m.: 12/31/99, 1/1/00 and 1/2/00; 4/28/00, 4/29/00 and 4/30/00; 9/15/00, 9/16/00 and 9/17/00; and 12/29/00, 12/30/00 and 12/31/00. Other 1999 dates mooted. All other requested access dates were denied.
 11/11/99 Tom Sylvester appeals above decision based on being granted only 1 of 41 days requested in 1999, and 11 of 78 days requested in 2000. Also, no visitation was granted unsupervised and there were no provisions for visitation in the United States
 11/22/99 Court of Appeals denies appeal as to dates past and future
 12/27/99 Tom Sylvester appeals to the Supreme Court
 12/28/99 Austrian Court enters child support order retroactive to date of abduction.

Result: One day court ordered access in 1999.

2000

1/18/00 Tom Sylvester's appeal denied
 9/13/00 Monika Sylvester files objections
 11/13/00 New access petition with new schedule submitted to trial court
 12/18/00 Hearing with judge on access request
 12/28/00 Hearing with Judge Lautner—"Statement by Minister of Justice submitted re: Complaint to ECHR"
 12/29/00 Dr. Kraft appointed "expert" again and given 8 weeks to expand on his opinion of 8/4/99 to determine whether request of 11/14/00 are in Carina's best interests

Result: Eleven days court ordered access in 2000.

2001

1/5/01 Tom Sylvester files formal objection to appointment of Dr. Kraft as "expert"
 5/21/01 "Expert" report completed without interview of or input from Tom Sylvester
 7/17/01 Order of interim access on September 14–16, 2001
 9/12/01 Request to Judge Lautner to change visitation due to September 11 attack in U.S.—denied by Judge Lautner
 9/14/01 Formal request to President of the Court for different dates
 9/18/01 New order entered for 2001 access
 10/5/01 Supplemental opinion of "expert"
 12/3/01 Order for access 12/29/01, 12/30/01 and 12/31/01

Result: Six days court ordered access for 2001.

2002

2/14/02 Tom Sylvester provides a detailed access request schedule for the year to his attorney in Austria

CHRONOLOGY OF COURT PROCEEDINGS ON ACCESS—Continued

Case of Sylvester vs. Austria (Judgment of 24 April 2003)

2002

- 3/4/02 Monika Sylvester's attorney calls Tom Sylvester's attorney in Austria to report that Monika Sylvester will allow access on March 22, 2002 in the afternoon, March 23, 2002 and March 24, 2002.
- No further petitions for visitation were made through the courts.
- Result: No court ordered access in 2002.

HIGHLIGHTS OF THE UNITED STATES GOVERNMENT'S INTERACTION WITH THE AUSTRIAN GOVERNMENT IN THE HAGUE ABDUCTION CASE OF CARINA SYLVESTER

- 3/02/99 Department of State Office of Children's Issues Director and other representatives from the Bureau of Consular Affairs and Office of the Legal Advisor met with officials of the Austrian Ministries of Foreign Affairs and Justice in Vienna to discuss the case.
- 9/13/00 U.S. Ambassador to Austria Hall, the U.S. Consul General in Vienna, Thomas Sylvester, and his U.S. attorney met in Vienna with the Austrian Minister of Justice Boehmdorfer, Minister of Justice official Schuetz, and counsel for Monika Sylvester in an attempt to mediate access issues.
- 9/25/00 Secretary of State Albright discussed the Sylvester matter by telephone with Austrian Chancellor Schuessel.
- 11/08/00 Secretary Albright and U.S. Ambassador to Austria Hall met with Austrian Foreign Minister Ferrero-Waldner in Washington D.C. and raise the Sylvester case.
- 11/26/00 Secretary Albright met with Austrian Foreign Minister Ferrero-Waldner and Austrian Chancellor Schuessel in Vienna and again raised the Sylvester case.
- 3/22–28/01 Department of State sent a delegation to participate in the Fourth Special Commission to review the operation of The Hague Convention on the Civil Aspects of International Child Abduction at The Hague and raised the case with the Austrian delegation.
- 6/28/02 Secretary Powell contacted the Austrian Foreign Minister Ferrero-Waldner, expressing his dissatisfaction with the status quo in the Sylvester case and asking her to help find a solution.
- 7/01/02 U.S. Ambassador to Austria Brown met with Austrian Minister of Justice Boehmdorfer to discuss the Sylvester case. Ambassador Brown wrote and hand delivered a letter dated June 10, 2002 noting that the Sylvester case was creating an irritant to otherwise outstanding bilateral relations and asking for assistance in reaching a humane and just resolution.
- 1/14/03 Assistant Secretary of State for Consular Affairs Harty met with Austrian Ambassador Moser and discussed the Sylvester case, urging the Austrian government to develop proposals to expand and normalize Thomas Sylvester's access to his daughter. Ambassador Moser agreed to ask authorities in Vienna to help develop a workable access plan.
- 3/21/03 Personnel in U.S. Embassy Vienna met with officials of the Austrian Foreign Ministry to discuss the case per instructions from the Department of State to follow-up on the meeting in Washington D.C. between Assistant Secretary Harty and Austrian Ambassador Moser. U.S. Consul General in Vienna reviewed all of the efforts made to date to obtain broader effective access rights, especially the right to unsupervised visitation both in Austria and the U.S. and requested concrete suggestions from the Austrian side on how to achieve these goals. Austrian officials promised to look into the case further and provide a response to the U.S. Embassy and Washington.
- 5/02/03 Assistant Secretary Harty approved a diplomatic note to the Austrian Embassy in Washington D.C. forwarding a copy of the European Court of Human Rights' unanimous decision in the case of Sylvester v. Austria, insisting that Austria urgently take steps to expand Thomas Sylvester's access to Carina Sylvester.
- 7/14/03 Assistant Secretary Harty met with Austrian authorities in Vienna to discuss the matter of Carina Sylvester and urged the Austrian government to develop proposals to expand and normalize Thomas Sylvester's access to his daughter.
- 7/16/03 Assistant Secretary of State for European and Eurasian Affairs Jones discussed the Sylvester matter with Austrian Foreign Minister Ferrero-Waldner in Vienna and urged the Austrian government to develop proposals to expand and normalize Thomas Sylvester's access to his daughter.
- 8/20/03 Assistant Secretary Jones raised the case in a meeting with Austrian Ambassador Moser.
- 8/25/03 Under Secretary of State for Political Affairs Grossman raised the Sylvester case in a meeting with Ambassador Moser.
- 9/18/03 Secretary of State Powell raised the case in a meeting with new Austrian Ambassador to the U.S. Nowotny.

HIGHLIGHTS OF THE UNITED STATES GOVERNMENT'S INTERACTION WITH THE AUSTRIAN GOVERNMENT IN THE HAGUE ABDUCTION CASE OF CARINA SYLVESTER—Continued

- 10/14/03 State Department Legal Advisor Taft raised the case in a meeting with Ambassador Nowotny.
10/29/03 Assistant Secretary Jones raised the case in a meeting with Amb. Nowotny.
11/13/03 Under Secretary Grossman raised the case in a meeting with Austrian Foreign Ministry Secretary General Kyrle.
12/04/04 President of the United States George W. Bush raised the Sylvester case with new Austrian Ambassador to the United States Nowotny as she presented her credentials.
1/16/04 Assistant Secretary Harty met with Amb. Nowotny to discuss the case of Carina Sylvester and ways for Thomas Sylvester to expand access to his daughter.
1/26/04 U.S. Attorney General Ashcroft raised the Sylvester matter with the Austrian Minister of Justice while in Vienna.
6/22/04 Assistant Secretary Harty raised the case in a letter to Amb. Nowotny for renewed possibility of increased access for Thomas Sylvester to his daughter Carina.
-

LETTER SUBMITTED FOR THE RECORD BY DAVID L. LEVY, J.D., PRESIDENT OF THE CHILDREN'S RIGHTS COUNCIL



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 The Claremont Institute
 Sacramento, California

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 U.S. Senator, Florida

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Honorable Sherwood Boehlert
 U.S. House of Representatives, New York

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June 22, 2004

The Honorable Henry Hyde
 Chairman, Committee on International Relations
 2170 Rayburn House Office Building
 Washington, D.C. 20515

Testimony for the Hearing on "A Parent's Worst
 Nightmare: The Heartbreak of International Child Abductions"
 From: David L. Levy, J.D., President, the Children's
 Rights Council.

Dear Chairman Hyde and Members of the Committee:

The Children's Rights Council is an international child advocacy organization, with chapters throughout the U.S. and in five foreign countries (Canada, United Kingdom, Japan, Sierra Leone and Israel). Since our inception in 1985, CRC has worked to prevent kidnapping of children in the U.S. and abroad, and to work on remedies when kidnappings occur.

Here are three problems and three suggested remedies:

**1. PROBLEM: DELAYS IN RETURN OF CHILDREN
 REMEDY: APPLY PRESSURE TO EXPEDITE RETURN**

There are no effective remedies for return of children from Austria and many other foreign countries. The rate of return of children from the U.S. to their foreign "country of habitual residence" is far higher (up to 90%) than foreign countries' return of children to the U.S. (reportedly under 25 percent). Other countries need to expedite their return process, comparable to the U.S. International Child Abduction Remedies Act. Your committee and the U.S. government must apply pressure to foreign countries to stop delays and re-hearings that prevent the expedited return of children to their parents in the U.S.

**A NON-PROFIT, TAX EXEMPT ORGANIZATION STRENGTHENING FAMILIES THROUGH EDUCATION
 AND ASSISTING CHILDREN OF SEPARATED, DIVORCED AND NEVER-MARRIED PARENTS**

Elisabeth Kübler-Ross, M.D.
 Author, Psychiatrist
 Scottsdale, Arizona

Yicki Linsky
 Author, Columnist
 Deephaven, Minnesota

James Levine, Ed.D.
 Families and Work Institute
 New York, New York

S. Richard Sauber, Ph.D.
 Family Forensic Psychologist
 Boca Raton, Florida

Judith S. Wallerstein, Ph.D. Founder
 Center for the Family in Transition
 Corte Madera, California

2. PROBLEM: CHILDREN OF NON-CUSTODIAL PARENTS HAVE FEWER RIGHTS

REMEDY: CONVINCING FOREIGN COUNTRIES TO FOLLOW ALL COURT ORDERS.

When drafting his bill on international child abduction in the 1990's, former Congressman George Gekas included the Children's Rights Council recommendation to include criminal penalties for interfering with access (visitation) orders as well as for interfering with custody orders. This is a step in the right direction, yet more needs to be done. Children need to have close contact with both of their parents and grandparents, and court orders need to be followed. As bad as the problem is regarding return of abducted children to the U.S., it is a far higher record if the U.S. parent has custody rather than only access (visitation). A court order is a court order. Visitation orders must also be adhered to. Please apply pressure to foreign countries to return children to their country of habitual residence to enforce their access (visitation) orders as well as custody orders.

3. PROBLEM: THERE IS FUNDING TO SOLVE CUSTODY PROBLEMS, BUT NOT VISITATION PROBLEMS.

REMEDY: FUND CRC AS WELL AS NCMEC

Visitation is as important as custody, because a child is born with, needs, and loves two parents, and about half of the kidnappings are done in violation of visitation orders. Without even a dime from the federal government, the Children's Rights Council has been helpful in the return of twenty (20) children to their non-custodial parents in the U.S. We have done this by stepping forward with volunteer resources. We have provided parents with information, advice, referrals to detectives and other organizations that can assist. It is time for the federal government to put the interests of children and their non-custodial parents on an equal footing with those of custodial parents. This can be done by funding the Children's Rights Council as well as the National Center for Missing and Exploited Children.

Thank you, Mr. Hyde and the Committee