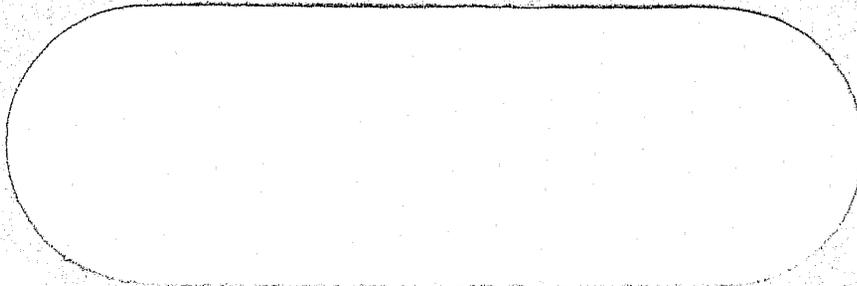
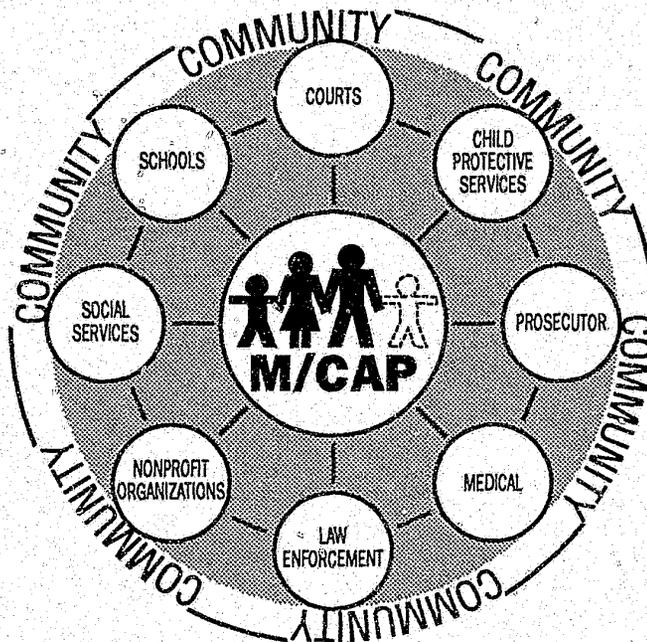


MISSING AND EXPLOITED CHILDREN COMPREHENSIVE ACTION PROGRAM (M/CAP)



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Public Administration Service
Special Projects Office
2101 Wilson Boulevard, Suite 135, Arlington, Virginia 22201-3052
(703) 516-6137 FAX: (703) 235-3892

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MISSING AND EXPLOITED CHILDREN COMPREHENSIVE ACTION PROGRAM

(M/CAP)

WHAT TO DO IF YOU ARE CONCERNED THAT YOUR CHILD MIGHT BE KIDNAPPED

Published: June 1994

Written by

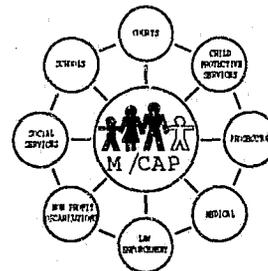
GERALD L. NISSENBAUM, J.D., LL.M. (TAX)

Nissenbaum Law Offices
211 Congress Street, Suite 400
Boston, Massachusetts 02110-2410
(617) 542-2220

Published by

PUBLIC ADMINISTRATION SERVICE

Special Projects Office
2101 Wilson Boulevard, Suite 135
Arlington, Virginia 22201-3052
(703) 516-6137



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Mr. Nissenbaum is a Fellow, and in November 1993 he was elected President-Elect of the American Academy of Matrimonial Lawyers. He is a Fellow and a Past President of the International Academy of Matrimonial Lawyers. Mr. Nissenbaum also has been appointed by the Secretary General of the Hague Conference on Private International Law to a Special Commission that supervises ratification and implementation of the Hague Convention on the Civil Aspects of International Child Abduction. He is also Certified as a Civil Trial Advocate by the National Board of Trial Advocacy.

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DEDICATION

Kidnapping is a problem that affects us all, sometimes indirectly and sometimes within one's own family.

This work is dedicated to the memory of ten-year-old Holly Kristen Piirainen. Holly was kidnapped from her paternal grandparents' home in Sturbridge, Massachusetts. Holly's maternal grandfather is married to this author's first cousin.

When Holly was kidnapped, the Piirainen family reached out to the National Center for Missing and Exploited Children (NCMEC), the Adam Walsh Foundation, and the Interstate Association of Stolen Children, all of whom offered immediate help. NCMEC tried everything in a Herculean effort to get Holly back alive. Unfortunately, Holly was not found alive.

It is hoped that the information in this publication will serve to prevent kidnappings and, if a kidnapping occurs, to help effect a speedy recovery of your child.

ACKNOWLEDGEMENTS

The author wants to express his sincere thanks and appreciation to a number of matrimonial lawyers from around the world who have contributed ideas that are incorporated into this publication. In particular, thanks go to:

Attorney Leonard Dubin
1200 Four Penn Center Plaza
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-5602; Facsimile: (215) 569-5555
Fellow of American Academy of Matrimonial Lawyers and International
Academy of Matrimonial Lawyers

Attorney William H. Hilton
Box 269
Santa Clara, California 95052-0269
Telephone: (408) 246-8511; Facsimile: (408) 246-0114
Computer Bulletin Board: (408) 246-0387
Certified Family Law Specialist by the California Board of Legal
Specialization

Attorney Patricia M. Hoff
American Bar Association
Center on Children and the Law
1800 M Street, N.W.
Washington, D.C. 20036
Telephone: (202) 331-2250; Facsimile: (202) 331-2220

Attorney Edward S. Snyder
280 Corporate Center
5 Becker Farm Road
Roseland, New Jersey 07068
Telephone: (201) 740-0500; Facsimile: (201) 740-1407
Fellow of American Academy of Matrimonial Lawyers and International
Academy of Matrimonial Lawyers

PRELIMINARY STATEMENT AND DISCLAIMER

This publication is intended to be used by people who are genuinely concerned that their child might be kidnapped or, sadly, whose child has been kidnapped by a former spouse, partner, or other family member. Perhaps this information will provide some ideas of what to do, where to go, and what kinds of things can be done to try to prevent a kidnapping or to help get the child safely returned. While much of the material in this publication focuses on children who have been taken out of the country, most of the information also is applicable to cases in which the child remains in the United States.

This material does not mean to suggest or imply that there will likely be a kidnapping every time there is a divorce, separation, or problem between the parents of children. As with all aspects of a child's life, each parent needs to assess his or her own situation and do what he or she thinks is appropriate and necessary to protect the child.

The following information and ideas are not meant to be provided as legal advice; as a substitute for legal advice; or as the only ideas, remedies, or methods to be used in applicable situations. Rather, this information is presented for such help as it may be, with the only advice being **get yourself a lawyer who is an expert in matrimonial law and who has experience in this area of the law.**

You can ask for the names of matrimonial lawyers by contacting:

- American Academy of Matrimonial Lawyers
150 North Michigan Avenue, Suite 2040
Chicago, Illinois 60601
Telephone: (312) 263-6477; Facsimile: (312) 263-7682
- International Academy of Matrimonial Lawyers
10 South LaSalle Street, Suite 2424
Chicago, Illinois 60603-1906
Telephone: (312) 782-3020; Facsimile: (312) 782-2397
- American Bar Association
Section of Family Law
750 North Lake Shore Drive
Chicago, Illinois 60611
Telephone: (312) 988-5613; Facsimile: (312) 988-6281
- The Bar Association in your state, asking for the names, addresses, and telephone numbers of the chair and council members of the Section of Family Law

We recognize that most left-behind parents have limited resources and legal assistance can be expensive. There are attorneys who will provide services pro bono (free of charge) or for reduced fees. Check with the bar association in your state and with legal aid services for assistance in locating such resources.

At no cost, you can obtain access to a computer bulletin board that is available to the public and maintained by Attorney William H. Hilton. Use your computer modem to call (408) 246-0387. You will be asked to supply identifying information and to provide yourself with your own "secret" code for future access. Once on line, you can use the HELP menu or review the index. You also can "download" whatever information you may need. This resource provides you access to comments, articles, forms, and cases concerning the **Hague Convention on the Civil Aspects of International Child Abduction**.

The **International Parental Kidnapping Act of 1993 (P.L. 103-173)** was passed by Congress and signed into law in December 1993. The Act makes international child abduction a federal felony crime and imposes criminal fines and/or a prison term on anyone who removes a child from the United States or unlawfully retains a visiting child in a foreign country. At the time this publication was printed, the U.S. Department of Justice had not provided information regarding procedures for handling these cases. If your child has been taken out of the country, you should contact the office of the U.S. Attorney in your area for information.

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SECTION I

ALL PARENTS SHOULD HAVE THESE ITEMS ON HAND AT TWO DIFFERENT LOCATIONS

1. Several recent color photographs of the child and parents. These photographs should be taken on a frequent basis because as the child grows his or her appearance often changes dramatically. If your child is missing, you will need to give these photographs to the police, press, and others. They can do a better job if they know what your child looks like in a recent photograph.
2. A list of any scars or unusual physical characteristics, height, weight, hair and eye color.
3. Two sets of your child's fingerprints—ask your local police department to take fingerprints and to give you the copies.
4. List of all passport numbers and the countries that issued them.
5. List of all driver's license numbers and automobile registrations, serial numbers, type and model of vehicles.
6. List of all credit cards, bank accounts, and social security numbers.
7. List of all the names and numbers of negotiable securities and bonds.
8. List of the names of all stock brokers and the numbers on all brokerage accounts.
9. List of the numbers of all Individual Retirement Accounts (IRAs) and other retirement accounts, including the name of the bank, mutual fund, etc. that holds these accounts.
10. List of all information about any other asset that is converted easily into cash, such as jewelry, oriental rugs, and expensive camera equipment. Also take photographs of each such item.
11. Names, addresses, and telephone numbers of your spouse's family members and close friends.
12. List of all magazine subscriptions and other subscriptions, including account numbers and who has control of the change of address process.

13. The location of the local post office where a change of address can be filed for your address.

SECTION II

PUT THE ITEMS MENTIONED IN SECTION I IN A PLACE OF SAFEKEEPING AT TWO DIFFERENT LOCATIONS

1. Keep these items at the homes of two different friends. In this way if one friend is away, you still will have access to these items when you need them. If you use a safe deposit box at a bank, you will not be able to gain access to these items on weekends or after hours.
2. You may never have to use any of the above items, but it is better to have them and never use them than to not have them should the need arise.
3. Before you get into a situation where you are concerned about your spouse kidnapping your child, try to create and maintain an atmosphere of a joint parental effort to do things that are in your child's best interests. Look at things from your child's point of view.
4. Even if your child is kidnapped by someone other than your spouse, these items will be needed by and useful to the police.

SECTION III

THINGS TO DO IF YOU THINK YOUR MARRIAGE IS IN TROUBLE

1. Get a court order, **NOW!** (See **THINGS TO DO IN COURT** in **SECTION IV.**)
2. If your spouse wants visitation, have his or her passport in your possession or have supervised visitation, or both.
3. Try to have your spouse sign a statement that clearly acknowledges that your local court has exclusive jurisdiction over all issues concerning your child, including legal custody, care and control, physical possession, visitation, and support.
4. If your child is a dual national,
 - a. By certified mail or express delivery, receipt required, write the foreign embassy and consulate and provide them with a certified copy of your court order. Also, if it is an emergency, fax the information.
 - b. Ask the foreign embassy not to issue a passport or a visa for your child. Foreign countries are not required to comply with a court order issued by a U.S. court.
5. If your child has a passport, put it in a place of safekeeping—outside your home.
6. Other passport considerations include:
 - a. Telephone the U.S. government's passport office¹ to request that your child's name be placed on the **passport lookout** system. Then if an application is made for a passport for your child, you will be notified before the passport is issued—and before the applicant is told that you are going to be informed of the application.
 - b. You will need to follow up your telephone request with a written request.
 - c. Try to obtain a court order that grants you sole custody. If you cannot get an order for sole custody, seek a court order prohibiting your spouse from requesting the issuance of passports or duplicate passports as the case may be. You also can seek a court order prohibiting travel outside your state or outside the United States.

- d. You can ask for the **passport lookout** even if you do not have a court order. If you do have a court order, then supply a copy of that order with your written **passport lookout** request. Then if a passport is applied for, the court order is sufficient justification for the application to be denied.
 - e. If the kidnapping parent is the subject of a federal criminal warrant, you can ask that his or her passport be revoked by the passport office. You will need to supply the passport office with a copy of the warrant, the parent's name, date and place of birth, and possible whereabouts.
7. Gather some useful family information.
- a. Prepare a detailed chronological narrative of your entire relationship with your spouse, starting with a thumbnail sketch of each of you at the time you met. Then write about all significant events chronologically. Include education; assets; places of residence; country of origin; name of siblings; parents' names and addresses; health problems, including any prescription medications needed on a regular basis; financial details of assets, liabilities, income, and expenses; child's history; and other relevant information.
 - b. Often it is useful to have photographs (recent photographs if possible) of your spouse's parents, his or her siblings, and even the siblings' spouses and children. Frequently, kidnapped children are taken to the homes of these relatives.
8. Collect information pertaining to your relationship with your child.
- a. Begin to obtain affidavits of school teachers, pediatrician, family members, friends, and neighbors attesting to your good relationship with your child, your child's apparent good health, and in general how much your child has bonded with you as exhibited by your interaction and care.
 - b. These items can be used to deflect possible charges by your spouse that your child has been mistreated by you, such that it would be dangerous to order the child returned.
9. Collect information pertaining to your spouse's relationship with your child.
- a. Begin to obtain affidavits that demonstrate your spouse's poor relationship with your child and any mistreatment of your child, prior psychiatric history or manifestation of mental illness, illegal use of controlled substances, excessive use of alcohol, etc.

- b. Collect and have multiple copies of hospital records, doctors' reports, and police reports that document trips to the hospital or other health care professionals to treat injuries inflicted by your spouse and interventions by the police department or reports by any Division of Social Service or Child Welfare agencies.
- c. All of the above items can be used to help show that your child is in danger by being with your spouse or that your spouse has not been the child's primary caretaker.

SECTION IV

THINGS TO DO TO TRY TO PREVENT A KIDNAPPING

THINGS CONCERNING THE CHILD

1. Personally accompany your child to and from school.
2. Consider telling your child of your concerns. This could include an instruction that your child not go with your spouse, even if your spouse says it's okay. Make sure your child knows that you must personally be present before the child can start any visit with your spouse.
3. Teach your child how to use the telephone.
 - a. Make sure your child knows your telephone number, including area code.
 - b. Make sure your child knows how to make a collect call or how to reach the operator and ask for help in getting you on the telephone. This might include teaching your child how to make a collect call from another country.
 - c. Have your child practice making these calls, and practice and practice again.
4. Teach your child to contact you before going any place.
 - a. Make sure your child knows that if anything unusual happens or that if anyone says you do not love him or her or you are injured or dead that he or she should react by immediately calling you collect. Practice this so your child will know that you are alive and well and waiting for the child to telephone you so that you can come and get him or her.
 - b. As mean and devastating as it sounds and is, many people who kidnap children tell those children that you are dead. Therefore, the child has no need to try to telephone you. Other kidnapers elaborate on the story, telling the children that they and the parent have to move, change names, and hide in order to be safe from the people who killed the other parent. There is no end to the things your child might be told. Therefore, your child must understand that no matter what he or she is told the child must try, and keep trying, to contact you or the police.
5. Make sure your child knows his or her own address.

6. Make sure your child knows how to telephone the police or fire department for help, even if the call has to be made in another country.
7. Inform the school of problems between you and your spouse.
 - a. Tell the school principal; home room teacher; course teachers; recess supervisor; cafeteria supervisor; school nurse; and anyone else at the school who may have your child for activities, such as music or band, sports, play, etc., that you and your spouse are having trouble, that you are concerned about a kidnapping, and that you will be seeking a court order. In the meantime, they are **NOT** to release your child to anyone else but you, personally.
 - b. Provide the people with a recent color photograph of your spouse that has been taped to a piece of paper on which you have written **DO NOT, NOT, RELEASE [child's name] TO THIS PERSON!**
8. If you are not going to personally accompany your child to and from school, also tell the school bus driver not to release your child if you are not present at the bus stop.
9. If for some reason you are not there to pick up your child and another person arrives, even with a supposed note from you, the teacher, etc., must confirm the authenticity of the note by telephoning you. Even consider having a code word to identify you in order to avoid your spouse having an accomplice at the telephone ready with an answer.
10. If your child walks to and from school, with or without school friends, you must consider training him or her to run if anyone approaches, even if it is your spouse.
11. Collect court documents.
 - a. Determine if there is any court action involving custody, care or control, physical possession, or visitation with your child that is pending or has been completed. If yes, where?
 - b. Even if it is your own case, obtain two certified copies and two **exemplified** copies of the docket and all of the pleadings. If you have to file a claim regarding your child in another state, one set of either the certified or exemplified copies probably will have to be provided to your local attorney or filed in that court.
12. Determine your child's state residence.
 - a. Has the child lived in your state for six months or for one year? If not, where has the child lived for the last six months or for the last year?

- b. If the child has not lived in your state or jurisdiction for the necessary time period, is this an emergency that would permit your state to exercise its jurisdiction in order to protect the child?
13. Call the **National Center for Missing and Exploited Children (NCMEC)** at 1-800-THE-LOST (1-800-843-5678); or write to NCMEC at 2101 Wilson Boulevard, Suite 550, Arlington, Virginia 22201-3052 and request a copy of its publication on *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted*.²
14. Call or write the **Office of Citizens Consular Services**, U.S. Department of State, Room 4817, Washington, D.C. 20520; Telephone: (202) 736-7000 and request a copy of its booklet entitled *International Parental Child Abduction*.

THINGS TO DO IN COURT

1. If you believe that your spouse is about to take your child without your permission and against your wishes, then you must immediately do what is needed to get a court order giving you temporary sole legal custody, care and control, and sole physical possession.³
2. Ask yourself these questions:
 - a. Is this an emergency, such that, without immediate action, there will be irreparable harm to you or to your child?⁴
 - b. Are you afraid that your spouse will kidnap your child if you give advance notice that you are going into court to ask for a temporary order of sole legal custody, care and control, and sole physical possession of your child?
 - c. Has your spouse threatened to take your child or threatened to make sure that you never see your child again?
 - d. Has your spouse threatened to physically harm you or physically harm your child?
 - e. Has your spouse ever physically harmed you or your child?
 - f. If there ever has been physical harm caused by your spouse, did that occur once, long ago? If so, are you still afraid because of what happened back then?
 - g. Has physical harm occurred on many occasions?

- h. While your spouse was growing up, was his or her father or mother abusive to each other or to the children?
 - i. Was your spouse raised in a dysfunctional family?
- 3. If the answer to any of the above or similar questions is "Yes," then you should go into court without giving advance notice to your spouse. If you do go ahead without notice, you will be trying to get what courts call an **ex parte** court order. An **ex parte** court order is issued before the other side has notice of the case or of this particular motion. These orders usually are good for no more than ten days.
- 4. In which court do you file your case? You go into the court that is in the place of your child's "home state" or "habitual residence" or "domicile."⁵ If it is an emergency, go into the court in the jurisdiction where your child is or where you and your child were last together.
- 5. Check the kidnapping laws in your state. For example, in Massachusetts the laws against kidnapping your own child do not apply unless you have filed a court proceeding for custody, separate support, or divorce,⁶ and perhaps not until you obtain an order of custody.
- 6. After getting an **ex parte** order, you probably will be required to serve a copy on your spouse. Usually there also will be another court paper, which may be called an **Order of Notice**. The content of this second paper tells your spouse that you have started a case in court, that you have asked for and received a temporary order, and that there will be a hearing in court on a particular date, usually within three to ten days. The purpose of that hearing is to decide if the temporary relief should be continued indefinitely.
- 7. The following is some general information about the courts.
 - a. When you go back into court for what is often called the "return" of the **Order of Notice**, the case usually will be heard **de novo**. This is supposed to mean that the judge will start off the hearing as if there was no temporary or emergency relief granted to either party.
 - b. As a practical matter, when courts deal with children, the parties often are faced with an "inertia" problem. That is, courts are reluctant to change whatever the status quo may be, no matter how it got that way. But the courts are equally reluctant to permit one person to unilaterally change the status quo. So if the child has been "kidnapped" or "wrongfully retained," the courts generally are willing to send the child back so as to put things back the way they were.⁷
- 8. If you intend to seek an **ex parte** order, you must prepare a detailed affidavit. The purpose of the affidavit is to provide the court with information

that will support your claim and provide a sufficient basis for any relief that might be granted. In other words, your affidavit must convince the judge that your concerns and fears have a rational, reasonable basis, based upon threats or other conduct of your spouse and that what you want to do is to maintain the status quo.

9. Specific items to include in the affidavit are:

a. Your detailed affidavit should contain all relevant facts that demonstrate danger and harm to your child or you, or both.

b. Your affidavit should start off by saying that if the court does not grant the relief requested you and your child will be irreparably harmed. Your affidavit also should contain the following:

(1) A brief history, such as who you are, your date of birth, and current residence; the name, date of birth, and current residence of your spouse; where and when you were married; the name, date, and place of birth of your child; and where your child has resided over the past twelve months.

(2) Some information about your marital relationship.

(3) All of the relevant facts, including all of your spouse's acts and words, including threats that demonstrate danger and harm to you or to your child, or both.

(4) Include the names of anyone who was present or overheard these threats or anyone who was present and anyone who saw the aftereffects of this conduct.

(5) Include any information that indicates that your spouse has relatives or friends in another country who either would provide funds to facilitate or personally assist in any kidnaping or wrongful retention.

(6) Allowance of your request will maintain the status quo.

10. If you are proceeding with an **ex parte** or emergency hearing, be prepared to convince the judge that your concerns and fears have a rational reasonable basis based upon numerous threats or other conduct of your spouse.

11. If you are seeking an **ex parte** or emergency order and you have time to get them, also give the court affidavits by relatives, friends, teachers, or others, plus copies of hospital records, police reports, and the like. This will give the judge additional opinions and documentary evidence that back up your affidavit and support your claims for relief.

12. If you think that your spouse will not kidnap your child if he or she gets notice of the court hearing and there is no emergency or fear, then you do not have to seek an **ex parte** court order. Instead you just file your case in court and do what is necessary to get an **Order of Notice** or have a motion for temporary relief heard by a judge or court hearing officer.
13. Additional information pertaining to hearings.
 - a. Your affidavit, the additional affidavits, and the documents referenced above also should be prepared for any hearing, even those that are not **ex parte** or emergency.
 - b. Court rules may require you to provide your spouse with copies of these documents when you give notice of the hearing.
14. You may not need to use all of these other affidavits, but it is a good idea to have additional affidavits and reports that you can hold in your file folder just in case they are necessary. Then if the other side claims you are dangerous to your child or you are not a good parent, you can pull out the affidavit from your pediatrician, priest or other religious clergy, mental health worker, or school teacher attesting to the fact that you are a good parent and that your child is safe and well cared for and protected by you.
15. Whether on an emergency basis or otherwise, you still want the court to grant you temporary or permanent **sole legal custody, care and control, and sole physical possession**.

THINGS TO DO AFTER YOU GET THE COURT ORDER

1. Obtain several certified copies of the order granting you temporary custody or sole legal custody, care and control, and sole physical possession. Send a copy of this order to the U.S. Department of State, Office of Passport Services (see **SECTION VIII** for address) to ask for or to follow up on your request for a **passport lookout**.
2. Give certified copies of the court order to:
 - a. local police department and local station house
 - b. school principal
 - c. home room teacher
 - d. course teachers
 - e. recess supervisor

- f. cafeteria supervisor
 - g. school nurse
 - h. school bus driver
 - i. anyone else at the school or elsewhere who may have your child for activities, such as music or band, sports, play, etc.
3. Give certified copies of the court order to neighbors and ask them to help by watching your house at every opportunity and to warn you if they even think they see your spouse.
 4. Give certified copies of the court order to your child's pediatrician, dentist, orthodontist, and other health care providers.
 5. Give certified copies of the court order to anyone else who may come in contact with your child at a time when you might not be present.
 6. Distribute photographs of your spouse.
 - a. Attach a recent photograph of your spouse to the copies of the court order so that your spouse can be identified more easily should he or she come near or onto the school ground.
 - b. Provide the people with a recent color photograph of your spouse that has been taped to a piece of paper on which you have written **DO NOT, NOT, RELEASE [child's name] TO THIS PERSON!**
 7. **Personally accompany your child to and from school** and after school or other activities.
 8. Frequently remind the school of the continued need to be ever alert to the possibility of a kidnapping.
 9. Reread and apply, as necessary, the information in **THINGS TO DO TO TRY TO PREVENT A KIDNAPPING** in **SECTION IV**.

THINGS CONCERNING USE OF ASSETS

1. Check your bank accounts.
 - a. Go to or telephone the banks where any joint funds are on deposit and determine if your spouse has withdrawn funds; and if so, how much.

- b. You should make this inquiry before you go to court. If withdrawals have been made without notice to you, this may signal that your spouse is getting ready to leave and needs cash for that purpose.
2. You also can ask the bank if your spouse has any individual accounts and, if so, whether there have been any recent withdrawals. If your name is not on these separate accounts or if the bank does not cooperate because it has to follow certain laws, subpoena the records into a deposition or a court hearing.
3. If you have joint bank accounts,
 - a. Consider closing all joint bank accounts and joint bank boxes—but understand leaving all or some of these assets in place might represent a source of information if your spouse tries to withdraw or transfer money to an account in another bank.
 - b. In any event, do not take out the funds as cash. You may have to account for every penny. The best way to document how you use the money is by using checks and getting receipts. In this way, if your spouse claims you hid or misspent money, you will have documents to refute that claim.
4. If you have joint credit cards,
 - a. Call the credit card companies and ask them to immediately advise the details of all recent charges on the cards. This can provide crucial information about airline tickets or other purchases, which then might indicate where your child is being taken or where your spouse and child are located. You must act immediately to put that information to good use.
 - b. If you are not on these accounts and if the credit card company will not cooperate because it has to follow certain laws, subpoena the records into a deposition or to a court hearing.
5. Consider not canceling charge accounts—these accounts often are a fruitful source of information about what your spouse is charging and where. That information may help focus the search for your spouse and child. Indeed, you may want to renew those credit cards on the possible chance that later on your spouse may need to use the card. Then that might provide you with a valuable, if not your only, lead.
6. Money considerations for lawyer fees.
 - a. Put aside or begin to raise enough money from relatives and friends so you will be able to hire a lawyer who is experienced in this kind of case. You also may need enough money to hire another lawyer in a second

state or country. Your retainer can cost anywhere from \$2,500 to \$25,000, depending on the circumstances.

- b. Kidnapping cases are usually among the most difficult. Work on these cases substantially interferes with a lawyer's other previously scheduled matters. These cases also can involve substantial out-of-pocket expenses for such things as civil arrest teams.
7. Beyond the emotional expense, a kidnapping case also can be very expensive in terms of out-of-pocket costs. If at all possible, you should go to the other jurisdiction for the court hearing. Even if you say nothing or if the judge decides no evidence is needed from you, you will be there to demonstrate that you do not have "horns or a tail" and that you are ready, willing, and able to personally chaperon your child back to his or her habitual residence.⁸
 8. Your lawyer can advise you if there is any chance of obtaining a court order requiring the kidnapping parent to pay your costs and attorney's fees. You will have to assess the likelihood of collecting any such award because you will be responsible for paying the lawyer in the first place.

OTHER THINGS TO CONSIDER

1. Is this case covered by any of the following Federal Acts:
 - a. Parental Kidnapping Prevention Act (PKPA), Title 28, USC, Sections 1738 (a), *et seq.*; Title 42, USC, Sections 654, 655, 663; and Title 18, USC, Section 1073
 - b. Missing Children Act of 1982, Title 28, USC, Section 534(a)
 - c. Missing Children's Assistance Act of 1984, Title 42, USC, Section 5771, *et seq.*
 - d. International Child Abduction Remedies Act of 1988 (ICARA)
 - e. National Child Search Assistance Act of 1990
 - f. Uniform Child Custody Jurisdiction Act (UCCJA),⁹ as enacted by the state in which you or your child is located
 - g. International Parental Kidnapping Act of 1993 (P.L. 103-173)
2. Is it possible that your spouse might take your child out of the United States?
3. If so, has the country to which your spouse is likely to go adopted the **Hague Convention on the Civil Aspects of International Child Abduction**?¹⁰

4. Are there any other international laws that apply to your case?
5. Is your spouse going to stop along the way in a country that has adopted the Hague Abduction Convention? If so, try to obtain an order in that country.¹¹
6. Determine if that other country provides free legal services in this kind of case? If so, make necessary contacts to have a lawyer ready to proceed without delay.¹²
7. Gather necessary documents to show that your child is not a habitual resident of that other country.
8. To the extent you are able, begin to fill out a **Request for Return** form, which would be needed to begin the process of invoking the Hague Abduction Convention through the Central Authorities. This helps in effecting a speedy return of the child.
9. Consider calling the U.S. Department of State [Central Authority] or directly calling the Central Authority of the other country to alert them that you may be making a request for return of your child.
10. Determine if the law in the place of the child's habitual residence will afford the mother or father a fair opportunity to be heard and to prevail. For example, the country of habitual residence could be governed by a religious law that requires all boys over the age of nine years and all girls over the age of twelve years automatically have their care, custody, and control awarded to the fathers. If so, if the boy is over nine-years-old and the girl is over twelve-years-old, the mother will have no reasonable opportunity to win custody in that country. In that situation, countries that are governed by a civil code or common law would likely find it against their own public policy to award care, custody, and control of a child to a parent merely on the basis of the age of the child. That is because most civil code and common law countries award children on what is called the best interests of the child test.

If the country of habitual residence does not make decisions about a child's care, custody, and control by using a best interests of the child test, the civil code or common law countries would not be likely to return a child. Then the country to which the child was taken, that is not the child's habitual residence, will decide the issues of care, custody, and control according to its own best interests test rather than entering an **Order of Return**.

11. Determine if there are allegations of extreme conditions that would warrant a refusal to enter an **Order of Return**.

SECTION V

THINGS TO DO IF YOU THINK YOUR CHILD IS MISSING OR MAY HAVE BEEN KIDNAPPED

1. Call the local police and file a missing person report. If possible, demonstrate that you have an order of legal custody, care and control, and sole physical possession. Advise your belief that your child has been kidnapped and ask for help.
2. Contact the **National Center for Missing and Exploited Children** at 1-800-THE-LOST (1-800-843-5678) for assistance. It offers assistance in the search for your child.
3. Get out the documents referenced in **SECTION I**.
4. Determine if the kidnapping constitutes a violation of a criminal statute where you live. If so, determine whether it is a misdemeanor or a felony. Then consider if you want to seek a criminal complaint.¹³
5. If you go forward with the criminal process, request that an arrest warrant be issued for the kidnapping parent and request the Federal Government to issue a warrant for **Unlawful Flight to Avoid Prosecution (UFAP)**.¹⁴ The Parental Kidnapping Prevention Act mandates that parental kidnapping be addressed through the Fugitive Felon Act, Title 18, USC, Section 1073, which in turn is a stepping stone in the process of seeking a UFAP warrant.¹⁵
6. Another possible resource for assistance is the Federal Bureau of Investigation (FBI).
 - a. Consider whether you can seek the assistance of the FBI.
 - b. Know that if the FBI obtains a UFAP warrant, it will be looking for the kidnapping parent—not the kidnapped child. Obviously, the FBI is sensitive enough to understand that location of the child is also of crucial importance. To the extent the circumstances permit, the FBI will time the arrest to coincide with the presence of the kidnapped child. But there can be situations where the kidnapping parent is located and arrested by the FBI and the kidnapped child's location will not be determined. At that point, the FBI is not authorized to continue its investigation because the UFAP warrant has been executed by the arrest of the kidnapping parent.

7. Try to obtain information through the **Federal Parent Locator Service (FPLS)**.¹⁶
8. Request that your child's name and description and your spouse's name, description, social security number, and driver's license number be put into the **missing persons section of the National Crime Information Center (NCIC) computer**, per the Missing Children's Act of 1982, Title 28, USC Section 534(a) and the Crime Control Act of 1990 (also known as the National Child Search Assistance Act of 1990).¹⁷ **There is no need to file criminal charges in order to make use of this assistance.**
9. Request your local police to request the international criminal police organization, **INTERPOL**, to conduct a search in the country where you think your child has been taken.¹⁸
10. Call the **Office of Citizens Consular Services**, U.S. Department of State, at (202) 736-7000 to request a **welfare and whereabouts search** for your American citizen child missing abroad.
11. If your child has been taken to another country, obtain and complete a form requesting the **U.S. Central Authority** (i.e., the State Department) to fulfill its obligations under the **Hague Convention on the Civil Aspects of International Child Abduction** to assist in obtaining an **Order of Return**—if the other country also has adopted this Hague Convention.
12. Double check with the U.S. Central Authority to be sure that it has issued a request for an **Order of Return**.
13. Contact the Central Authority in the other country to advise them to be on the lookout for the request for return coming to them from the U.S. Central Authority. By facsimile or by express delivery, you can provide the other country with a copy of what you filed with the U.S. Central Authority.
14. If you think you know the state or jurisdiction to which your spouse has gone,
 - a. **Immediately contact a lawyer in that state or jurisdiction** and ask him or her to prepare a complaint seeking a **Writ of Habeas Corpus**, which will give the police or deputy sheriff the right to take possession of your child and immediately bring your child to court.
 - b. In the complaint, you also can ask for a **Writ of Ne Exeat Regno**, asking that the police or deputy sheriff be permitted to take possession of your spouse in the event that your child is not present when the authorities go to try to effect the **Writ of Habeas Corpus**.

- c. The complaint should seek an immediate **Order of Return** without the need for the court to hold an evidentiary hearing or exercise plenary jurisdiction.
15. Legal service expenses.
 - a. Unless you already have hired a lawyer, you must be prepared to pay a sizable retainer to get an expert in this kind of case to take your case. This can range from \$2,500 to more than \$25,000 depending on the circumstances and the expected difficulties.
 - b. Some countries, such as England (but not the United States), provide for "free legal services" in this area of the law. The lawyer in the other country should be able to tell you if you might qualify for this public assistance and, if so, to provide you with the form needed to apply.
16. Relationship with relatives and friends of your spouse.
 - a. Try to establish and maintain contact with relatives and friends of your spouse.
 - b. Always stay calm. Never express anger or threaten revenge. Stress your child's need for contact with both parents. Express sympathy and understanding for the acts of your spouse.
17. Determine if your child's school or pediatrician has been asked to forward a copy of your child's records to another school or doctor. Also ask if your spouse has asked for copies of these records.
18. Ask your local district attorney to request that the U.S. Postal Inspection Service put a **mail cover** on any addresses in the United States to which you think your spouse might write.
19. Ask your local district attorney to subpoena documents or issue a search warrant for such things as credit card records, telephone bills, and bank records, or you can start a civil action and subpoena those records into a deposition.
20. Consider legal action against third parties in order to obtain information. For example, your spouse's parents or siblings may have aided in the kidnapping or in hiding your child's whereabouts. If they know of the court order granting you custody, they may be held in contempt or you might sue them in a civil action for having intentionally or negligently inflicted emotional distress. Once these people have their own assets or liberty at stake, they may, as part of a settlement, divulge the whereabouts of your child.

21. Frequently check at your local post office to see if your spouse has put in a change of address form for his or her mail or magazines.
22. In the event you locate your child and your spouse expresses concerns about the safety of the child if placed into your custody, ask your spouse to pay for all three of you to return together to the place of habitual residence or ask the court to appoint a court-connected probation officer or family service officer to travel with you and your child back to the habitual residence. Also offer to obtain an order from a court in the habitual residence that will appoint a neutral person, such as a grandparent, aunt, or uncle, to take over the care and control of your child until some other court order is entered.

SECTION VI
OTHER THINGS TO KNOW

1. Legal services.
 - a. In the United States if you are of limited means, there is not likely to be any legal aid or other free legal services that will be promptly available to you. And in these cases, speed is often crucial.
 - b. An experienced lawyer might be very helpful, but you do not need a lawyer in order to contact the U.S. Central Authority. The Central Authority might be able to recommend an experienced lawyer who would be willing to assist you for a reduced fee.
2. You must file a **Request for Return** within one year after the kidnapping in order for the right of return provisions of the Hague Abduction Convention to apply.
3. If your spouse is found, the lawyer can ask the court to order your spouse to pay for all of your legal fees and costs. But the client still has the primary responsibility for paying these fees and costs to the lawyer. Typically if one spouse is of limited means, the other spouse also will have limited means. So there may be little likelihood of actually collecting an award of fees from the other spouse.
4. In the event of an **Order of Return** pursuant to the Hague Abduction Convention, an award of attorney's fees, absent strong countervailing reasons, is mandated by U.S. federal legislation.
5. Make sure that your fee agreement with your lawyer is in writing. If your fee is being guaranteed by someone else, that person also should sign and have a copy of the written agreement.
6. If the kidnapping is to another country that has not adopted the Hague Abduction Convention, consider using the principles in the Uniform Child Custody Jurisdiction Act (UCCJA).
7. Consider if the court has power to take full or plenary jurisdiction merely because the child is now present in this state. At a later point in time, the court might decide to decline to exercise full jurisdiction.
8. If you are seeking return of your child, make sure your local attorney is an expert in matrimonial law. Then your attorney can prepare an affidavit for the

foreign court stating that your local court will provide each parent with due process and a fair hearing without any predetermined agenda.

9. If the facts of your case would not permit you to get your child returned to his or her habitual residence, then do your best to use available official channels to request assistance to get access to your child and to obtain visitation.
10. The lawyer's affidavit should set out the factors that your local court will consider at the time of a hearing on determining who will be the primary or custodial parent.
11. Sign the complaint and any other documents as follows: "I have read the above document and the facts are true to the best of my knowledge and belief, except as to those which are upon belief and as to those, I believe them to be true. Signed under the pains and penalties of perjury." In this way these facts will stand in rebuttal to any reply affidavit that might be filed by or on behalf of your spouse.
12. Carefully read and make sure that every fact in your affidavit is true. Make sure that you understand every court pleading signed by you or filed on your behalf.
13. If you are not near your attorney, then you can fax a copy of the signed complaint or affidavit and send the original by express delivery. This verification helps to fulfill counsel's obligation to try to independently verify facts.¹⁹ This verification also gives more weight to the facts alleged, leading to a greater likelihood that a Writ of Habeas Corpus will be issued.
14. Your attorney can represent to the court that the original signed document is on its way by either express delivery or is being hand carried by the client.
15. If possible, make plans to go immediately to whatever place your spouse and child are found so you are present when your child is taken into possession by the police or deputy sheriff. This will give the court some assurance that when your child is taken into possession you either will be outside or on your way, thus reducing the concern about the health and welfare of the child.
16. In practice, your personal presence, which should not be necessary, probably helps immensely in getting the judge to order your child returned to you and to the child's habitual residence.
17. **Hand carry** all of the photographs, affidavits, and other documents prepared or obtained by you to that point in time. Do not put these valuable documents into a suitcase that might be lost as checked luggage.

18. Be certain that the complaint also requests your spouse to deliver your child's passport and other travel documents, including airplane tickets, to the police, deputy sheriff, or court officer.
19. If you are going to go to another jurisdiction where you think your spouse is located with your child,
 - a. Tell no one of these travel plans; or if someone is told, that person must be certain not to disclose the plans to anyone.
 - b. If your spouse has been telephoning, it is likely he or she is trying to be certain of your location; and in that event someone else has to be in the house to answer the telephone. Every time your spouse calls, some excuse must be found to keep the impression that you are in the house or in the area.
 - c. In this way the left-behind spouse tries to lull the kidnapping spouse into thinking there is no need to be apprehensive about an impending try to regain physical possession of the child.
20. The kidnapping spouse should be informed that no rekidnapping of your child will be undertaken as that will do even more damage to your child.
21. If you seek the return of your child, you should be willing to be the primary custodial parent or to participate in a shared parenting plan, if attainable. There is no sense in spending lots of money to effect a return, causing lots of additional emotional turmoil, only to find that a week or two later you have agreed to let your soon-to-be-former spouse return to the other state with your agreement to some kind of minimum visitation for yourself. That kind of "yo-yo" will harm your child.
22. You will want to meet or speak at length with your local attorney who could provide some insight into the likelihood of the local court awarding you temporary custody for the purpose of returning with your child to his or her habitual residence or the prospect of your being awarded custody if the case has to be fought there. If you decide that you cannot get custody, maybe you should consider agreeing to let the other side have custody if he or she agrees to live within a few miles of your home.
23. If the documents are from or are to be used in another country, you also may need to supply certified translations. The more ribbons and seals that can be affixed to any certified copy of court papers or to translations the better. It makes the documents "look" more official, and psychologically they may be given greater weight by those who read them.
24. Your travel plans must anticipate that the judge might decide to hold a full hearing. Indeed, a full hearing may be required under the Uniform Child

Custody Jurisdiction Act. Whether or not there is a hearing often depends upon the nature of the allegations.

25. The following are some factors a judge might use in deciding who should have custody of the child:
- a. age of the child and the parties
 - b. physical and emotional health and needs of or danger to the child—past, present, and future
 - c. physical and emotional health of the parties
 - d. school performance, special interests, and activities of the child
 - e. ability of each party to foster the growth and development of the child
 - f. ability of each party to provide continuity and stability of environment
 - g. relationship and attachment of the child to the parties, their parents, siblings, and any other person who may have a significant effect upon the child
 - h. ability of each party to cooperate with those persons to whom the child has such a relationship and attachment and to provide them access to the child
 - i. acts or omissions of each parent that may indicate the nature of the existing parent-child relationship
 - j. any excuse, justification, or reason for acts or omissions of the parents
 - k. expressed preference of the child, provided that the court has found such child to be of sufficient age and understanding to express such a preference
 - l. motivation of the parties seeking custody or visitation
 - m. length of time the child has resided in a party's environment
 - n. employment of each party
 - o. financial or emotional support of the child—past, present, and future
 - p. amount of time spent away from the home by each party, adequacy of child care arrangements, and programs available to assist the parties to promote the best interest of the child

- q. geographical accessibility of persons to whom the child has a significant relationship and attachment
 - r. any other factor that the court considers of relevance to its determination of custody, to the end that the best interests of the child are determined
26. Consider asking that the U.S. passport be revoked if one was issued.
 27. Consider if extradition of the kidnapping spouse is possible.

SECTION VII

CONCLUSION

Custody cases are very difficult, but kidnapping cases are even more difficult to resolve. The best thing is to do what is needed to prevent a kidnapping. If a child is kidnapped by a parent, international law is moving toward mandating the return of the child to his or her habitual residence.

You should recognize that the ideas in this publication are not inclusive and that you must hire a matrimonial lawyer who is experienced in this kind of case.

There must be thorough preparation. Careful and accurate pleadings must be filed. And, speed is of the essence. Do not wait to get a lawyer to help. You may need two, three, or several days to get ready to file a court case. By that time, the kidnapper may have moved on and out of reach.

Reading this publication and doing some or all of the things suggested may give you some comfort. If a potential kidnapper reads this publication, it is hoped he or she understands that the law is moving toward the speedy return of kidnapped children and is forcing the kidnapper to pay for the expenses of the other side, including attorney's fees. Beyond that, kidnapping is utterly damaging to a child.

Any parent who kidnaps a child must ask himself or herself if love and protection of the child is the true motive. If so, then go to your local court and seek protection. If you take any other action, your motive is suspect.

If the reader, whether potential kidnapper or left-behind parent, learns nothing else from this publication, let it be that you must consult with a lawyer who is an expert in matrimonial law and experienced in this kind of case. And you must do so as early as possible.

SECTION VIII

SUMMARY OF SOURCES AND BOOKLETS

National Center for Missing and Exploited Children (NCMEC)

2101 Wilson Boulevard, Suite 550

Arlington, Virginia 22201-3052

Telephone: 1-800-THE-LOST (1-800-843-5678); Facsimile: (703) 235-4067

Request a copy of its publication entitled *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted*

U.S. Department of State

Office of Citizens Consular Services

Room 4817

Washington, D.C. 20520

Telephone: (202) 736-7000

Request a copy of its booklet entitled *International Parental Child Abduction*

Office of Citizenship Appeals and Legal Assistance

Office of Passport Services

1425 K Street N.W., Room 300

Washington, D.C. 20522-1705

Telephone: (202) 326-6168

American Academy of Matrimonial Lawyers

150 North Michigan Avenue, Suite 2040

Chicago, Illinois 60601

Telephone: (312) 263-6477; Facsimile: (312) 263-7682

International Academy of Matrimonial Lawyers

10 South LaSalle Street, Suite 2424

Chicago, Illinois 60603-1906

Telephone: (312) 782-3020; Facsimile: (312) 782-2397

American Bar Association, Section of Family Law

750 North Lake Shore Drive

Chicago, Illinois 60611

Telephone: (312) 988-5613; Facsimile: (312) 988.6281

The Bar Association in Your State

Ask for the names, addresses, and telephone numbers of the chair and council members of the Section of Family Law

One World for Children

P. O. Box 1018
Owosso, Michigan 48867-1018
Telephone: (517) 725-2392

Computer Bulletin Board of Attorney William H. Hilton

(408) 246-0387

Information, forms, cases, and articles about the Hague Convention on the Civil Aspects of International Child Abduction. First time callers can create their own password, which will permit immediate access. HELP menu available. Contact the system operator at (408) 246-8511 and leave a message with a telephone number where you can be reached via a collect call.

SECTION IX

FOOTNOTES

1. Office of Citizenship Appeals and Legal Assistance, Office of Passport Services, U.S. Department of State, 1425 K Street N.W., Room 300, Washington, D.C. 20522-1705; Telephone: (202) 326-6168; Facsimile: (202) 326-6173. Be prepared to provide your child's full name, date of birth, place of birth, parents' addresses and telephone numbers, and social security number, if available.
2. The National Center for Missing and Exploited Children has several publications that you may request. For example, *Family Abduction: How to Prevent an Abduction and What to Do If Your Child Is Abducted*, *Just in case . . . Parental guidelines in case your child might someday be missing*, *Just in case . . . Parental guidelines in case you are considering family separation*, and *Just in case . . . Guidelines on using the Federal Parent Locator Service in cases of parental kidnapping and child custody*.
3. Ask the court to use all of these underlined words. In some countries, one with "care and control" of the child has, for all practical purposes, the right to take the child to another country without the need to get permission of the other parent or from the court. On the other hand, in the United States there is no separate concept or definition of legal rights for someone who has "care and control" of a child. So a U.S. judge seeing those terms might think it simply means "physical possession." A U.S. judge might think that all you need is an order of "sole legal custody" or "sole physical possession" or "sole legal custody and physical possession." A U.S. judge might think that "care and control" are just extra words, but those extra words will mean a great deal to judges sitting in Australia and elsewhere in the world. We know that kidnappers can move easily from country to country. Therefore you should start off your case by trying to get the most inclusive court order available in order to give you as much worldwide protection as possible.
4. The use of the word "irreparable" has specific meaning when used in this kind of case. The purpose and scope of this publication do not permit the space to explain all of the technical words. Therefore you should consult with a lawyer who is an expert in matrimonial law and who has experience in this kind of case.
5. Each of these words has a technical meaning and application. This is a complicated area of the law so please do yourself and your child a favor. At the earliest possible moment, retain the services of a lawyer who is an expert in matrimonial law and who has experience in this kind of case.

6. G.L. c. 265, 21§26A; Comm. v. Beals, 405 Mass. 550,541 N.E.2d 1011 (1989).
7. Each of the words in quotation marks has a technical meaning and application. Please see footnote 4.
8. For example, if you have to come from another country to the United States, the following costs might be reasonably incurred:
 - a. Air Fare: Round trip between Santiago, Chile, and Los Angeles, California, is about \$1,300; between Budapest, Hungary, and Boston, Massachusetts, is about \$1,000.
 - b. Rental Car: \$450 to \$500 a week plus gas and insurance.
 - c. Hotel Room: \$60 to \$300 a night depending on where you are staying and when and how many people are going to be in the room (e.g., you and two children).
 - d. Meals: \$50 or more per person per day. For an adult and three children, this is about \$150 a day. For a two-week stay, this can cost over \$2,000.
 - e. Translation of Documents: \$30 for 100 words plus the services of the translator at the trial, if needed. This cost can be anywhere from \$300 to \$10,000.
 - f. Telephone: For voice calls and fax transmissions, this can cost \$50 to \$80 an hour depending on where the calls are going to and coming from. For 20 hours of telephone time, it could cost \$2,400.
 - g. Reproduction of Documents: If you have to copy 2,000 pages at an average cost of \$0.25 per page, this will cost \$500.
 - h. Certification or Exemplification of Court Documents: This can cost \$10 to \$200 depending on the court and the number of pages involved.
 - i. Attorney's Fees: (1) An attorney in the foreign country probably will be needed in order to provide an affidavit of the law of that country as well as to file any needed papers, obtain documents, and facilitate the original filing of papers in a U.S. court, and to assist in preparing any needed affidavits. This cost can be anywhere from \$2,500 to \$15,000 depending on what is needed. (2) An attorney in the state in which you file the action will be needed. This cost again will depend upon what is done and the time the case takes. One can estimate the cost to be at least \$1,500 to \$30,000.

- j. Miscellaneous: You should add up the above figures and add another twenty percent to cover the miscellaneous items that will occur.
- k. Total: As if it is not enough that you are worried about your child, when faced with the possibility of these kinds of costs, you can despair. If the judge holds a summary hearing and immediately orders the child back to the habitual residence, the costs will be on the low side of the estimate.
9. See footnote 4.
10. See footnote 4.
11. For example, we were able to obtain a court order in Massachusetts returning a child to England. The kidnapping father had stopped in Massachusetts to visit his brother. The father had planned to continue on to the family home in Colombia, South America.
12. The Central Authority of that country might be able to help. Also, try to contact a Fellow of the International Academy of Matrimonial Lawyers.
13. Carefully consider if you want to seek a felony warrant. If the kidnapping parent is in the United States, it may be worth all of the steps noted. If the kidnapping parent is not in the United States, then getting a felony warrant may be counterproductive. Why should a kidnapper return a child to a place where the kidnapper will lose custody and go to jail? In many cases if the child is in the country of the kidnapper's nationality and that country is not one that has ratified the Hague Abduction Convention, it may be better to agree to give the kidnapper sole legal and physical custody and to make sure there are no outstanding warrants. In that way the kidnapping parent might agree to return so that you get the child back.
14. If the kidnapper does not have dual citizenship and is in a non-Hague Abduction Convention country, perhaps getting a federal felony warrant and an Unlawful Flight to Avoid Prosecution (UFAP) warrant is a good thing. At that point, the U.S. State Department can revoke the kidnapper's passport, which in turn makes the kidnapper an undocumented alien and subject to deportation back to the United States.
15. The requirements for getting the Federal Bureau of Investigation (FBI) to begin a federal Unlawful Flight to Avoid Prosecution (UFAP) investigation in parental kidnapping cases are supposed to be the same as for any other fugitive investigation. Those requirements are: (1) the existence of a state felony warrant; (2) probable cause [for the FBI] to believe that the fugitive has fled the jurisdiction of the wanting state; (3) the written request of an appropriate state authority for federal assistance; and (4) the assurance that the fugitive will be extradited to the jurisdiction where sought for prosecution for the state charge. **After these requirements are met**, the FBI then will

seek authorization for the filing of a request for a federal UFAP warrant from the U.S. Attorney and will present the facts to a U.S. magistrate or judge.

16. An **authorized person** can request the Federal Parent Locator Service (FPLS) to search several data banks using the kidnapper's social security number. You must anticipate that the kidnapper will use a false social security number or a number belonging to someone else. But at some point the kidnapper may use his or her own social security number. So the search should be made periodically. An **authorized person** can be, but not limited to, a police officer, a prosecutor, a judge of a court that can make or enforce a child custody determination or any agent of such a court, or any other state official seeking to enforce a child custody order. An **authorized person** may contact the local **Child Support Enforcement Office** by getting the telephone number from the local directory.
17. The Missing Children's Assistance Act of 1984, Title 42, USC, Section 5771, *et seq.* required establishment of a national resource center on missing children. Since 1984 the National Center for Missing and Exploited Children has served as such.
18. The Hague Conference on Private International Law has a Special Commission that reviews the ratification and implementation of the Hague Convention on the Civil Aspects of International Child Abduction. INTERPOL representatives have assured this Special Commission that it treats requests for information on children with the highest priority.
19. This obligation is important, especially if the case is going to be filed in the Federal District Court. See Federal Rules of Civil Procedure, Rule 11(a).